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## **Standing Committee on Natural Resources**

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**EVIDENCE**

**Tuesday, February 19, 2019**

**Chair**

**Mr. James Maloney**



## Standing Committee on Natural Resources

Tuesday, February 19, 2019

• (1535)

[English]

**The Chair (Mr. James Maloney (Etobicoke—Lakeshore, Lib.)):** Good afternoon, everybody. Welcome back. I hope everybody had an enjoyable and interesting break week or non-sitting week.

We have two groups of witnesses with us for the first hour. From Oxfam Canada, we have Mr. Ian Thomson.

Thank you, sir, for joining us.

From the Canadian Nuclear Safety Commission, we have Rumina Velshi and Liane Sauer.

You probably all know the process. Each group will be given up to 10 minutes for a presentation, and after both of you have completed your presentations, we will open the floor to questions from around the table.

Since you've been waiting patiently, why don't the two of you start?

**Ms. Rumina Velshi (President and Chief Executive Officer, Canadian Nuclear Safety Commission):** Thank you.

[Translation]

Good afternoon, Mr. Chair and members of the committee.

My name is Rumina Velshi. I am the President and Chief Executive Officer of the Canadian Nuclear Safety Commission.

[English]

I am joined this morning by Liane Sauer, director general of the strategic planning directorate at the CNSC.

Before beginning my remarks, I would like to acknowledge that the land on which we gather is the traditional unceded territory of the Algonquin people.

Thank you for inviting me to provide comments on best practices for engaging with indigenous communities regarding major energy projects.

Before giving you my thoughts on that subject, I will provide a bit of background about our organization.

The CNSC is Canada's nuclear life-cycle regulator and is responsible for regulating everything nuclear in Canada. Our mandate is, one, for the protection of health, safety, security and

the environment; two, to respect Canada's international obligations on the peaceful use of nuclear energy; and three, to disseminate information to the public. It is a clear mandate and one that we have fulfilled faithfully for over 70 years.

The commission is an independent quasi-judicial tribunal, comprised of up to seven members, that makes licensing and environmental assessment decisions for major nuclear facilities and activities.

Canada's nuclear sector is broad and ranges from uranium mining, nuclear reactors, nuclear medicine and industrial applications of nuclear technology to the safe management of nuclear waste. Our focus is safety at all times; however, we have many priorities. One of our top priorities is ensuring the meaningful participation of indigenous peoples in our processes.

During my six years as a commission member, I have had the opportunity to hear the perspectives of many different indigenous peoples and leaders during commission proceedings. Now, as president, I'm committed to meet with indigenous community leaders with a view to further enhance the CNSC's relationship-building efforts.

As an agent of the Crown, the CNSC fully embraces its responsibilities respecting engagement and consultation. Those responsibilities include acting honourably in all interactions with indigenous peoples. This means that we appropriately consult on, and accommodate when necessary, indigenous rights and interests when our regulatory decisions may adversely impact them. That is a responsibility we take very seriously.

We have mechanisms in place to ensure that indigenous peoples are consulted on projects that might have an impact on their rights. One important consultation mechanism is the commission's public hearing process. Leading up to a hearing, and beginning very early in a project, CNSC staff meet with potentially impacted indigenous communities to better understand potential impacts and identify ways to avoid, reduce or mitigate them.

Applicants are intimately involved in that process as well, whether in concert with CNSC staff, or separate from them. In fact, we have had a regulatory document in place since 2016, REGDOC-3.2.2, Aboriginal Engagement, which sets out various requirements and guidance for applicants. For example, applicants are required, before an application for a major project is even submitted, to identify potentially impacted indigenous communities and meaningfully engage with them throughout the process.

The outcome of those consultation and engagement activities, and any measures taken or committed to, are then presented to the commission in an open and transparent public hearing. During these hearings, CNSC staff, applicants and indigenous peoples each present to the commission. The commission considers all information presented, and before making a licensing decision, satisfies itself that what is required to uphold the honour of the Crown and to discharge any applicable duty to consult has been done.

We have recently published on our website a compendium of indigenous consultation and engagement best practices, which I have provided to this committee. It builds on our experiences with indigenous communities, as well as those of federal, provincial and international counterparts.

I have mentioned our regulatory document and meaningful participation in commission public hearings, but there are a few other practices that I would like to highlight as well.

Having a mechanism to assist indigenous groups with financial capacity to participate is key. We have a flexible and responsive participant funding program or PFP that we administer and that is funded by licensees. The PFP supports the participation of indigenous peoples as well as other eligible recipients in our regulatory processes. Recently it has been expanded to support indigenous knowledge and traditional land use studies, which will provide important information for the commission to consider in its deliberations.

The PFP also directly supports several other best practices, one of which is multi-party meetings. These meetings bring together indigenous groups, CNSC staff, licensees or applicants, and other governmental representatives, when appropriate, so many issues can be heard and addressed at once. These meetings are often held in indigenous communities, and they allow CNSC staff to get a better perspective of the issues of interest or concern to community members and their leadership. The PFP also supports participation in commission meetings, which are non-licensing proceedings.

The commission has recently decided to provide indigenous intervenors the opportunity to make oral submissions, whereas other intervenors are invited to make written submissions only. That decision was made in recognition of the indigenous oral tradition for sharing knowledge and in the spirit of reconciliation.

The PFP can also be used to support participation in our independent environmental monitoring program or IEMP, which is another best practice. Our IEMP takes environmental samples from public areas around nuclear facilities to independently verify whether the public and the environment are safe. In recent years we have supported the participation of indigenous peoples in sampling activities under the program, including the design of sampling campaigns so it reflects their values and interests.

A final best practice I would like to mention is the CNSC's ongoing engagement throughout the life of nuclear facilities and activities, not just during the licensing phase.

We are committed to building long-term, positive relationships with indigenous communities with a direct interest in nuclear facilities or on whose territory nuclear facilities or activities are found.

As a life-cycle regulator we want to understand all issues of interest or concern and work to address anything that is within our authority throughout the life of a project. We are committed to that and are currently implementing a long-term indigenous engagement strategy with 33 indigenous groups who represent 90 indigenous communities in eight regions in Canada. We welcome the opportunity to partner and work with these groups for many years to come.

I believe we are on a journey in Canada as we continue to explore how best to engage indigenous peoples in relation to major energy projects. Expectations and best practices are evolving, and it is critical that we continue to stay abreast of these developments. We have learned many lessons over time and continue to learn. We value and are committed to long-lasting and positive relationships with indigenous peoples in Canada and look forward to continuing to work together in the spirit of respect and reconciliation. This is how we will move forward together.

Thank you.

• (1540)

**The Chair:** Thank you.

Mr. Thomson.

**Mr. Ian Thomson (Policy Specialist, Extractive Industries, Oxfam Canada):** Good afternoon, committee members. Thank you for inviting Oxfam Canada to be part of this study today.

I'd like to join my fellow witness in acknowledging the Algonquin territory on which we're meeting.

My name is Ian Thomson. I'm a policy specialist with Oxfam Canada focused on the extractive industries.

Oxfam is an international NGO. We're active in more than 90 countries, working through humanitarian relief, long-term development programs and advocacy to end global poverty.

At Oxfam, we firmly believe that ending poverty and reducing inequality begins with gender justice and women's rights. Oxfam works with indigenous people's organizations in many parts of the world to support their struggles, to defend their rights and to protect their lands, territories and resources.

In 2015, Oxfam surveyed 40 leading oil, gas and mining companies to assess their commitments around indigenous engagement and community consent. Our community consent index revealed that extractive sector companies are increasingly adopting policies with commitments to seek and obtain community consent prior to developing major projects. It has become a recognized and accepted industry norm. It's good development and good business all at the same time.

Further research, however, has identified major gaps in the ways these commitments are being implemented. In several countries our indigenous partners have found that women face systemic barriers in participating fully and equally in decision-making by governments or companies around major resource development projects.

We have two recommendations for the committee to consider today.

First, indigenous engagement processes, whether by the Crown or by private sector actors in the energy sector, should become more gender-responsive and conducted in accordance with international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples.

Second, the Canadian government should be proactive in promoting gender-responsive and rights-based engagement internationally through our trade, aid and diplomatic relations.

I would like to share some research and findings from two indigenous partners in Peru and Kenya that illustrate both the real challenges and opportunities in this area.

A decade ago, social conflicts over energy projects in Peru boiled over into violent confrontations. The conflicts revealed deep failures on the part of both governments and companies to engage indigenous peoples in a meaningful way in decisions around major projects.

In 2011, Peru adopted a new law on indigenous consultation or *consulta previa*. To date, 43 consultation processes have been recorded by the Peruvian government, 30 of them related to energy or natural resource projects. The Ministry of Energy and Mines reports that only 29% of the participants were women.

In December, with the support of Oxfam, ONAMIAP, the indigenous women's federation of Peru, published a study examining women's participation in these consultation processes over the past seven years. The study was aptly named "Without Indigenous Women, No Way!". ONAMIAP had conducted surveys with indigenous women in different parts of the country to identify barriers to their participation. Women's participation was hindered by their limited experience of participating in public spaces, the domestic care work that was not taken into account by those organizing when and where consultations were held, the very technical content presented without adequate time or support for people to make sense of projects, lower literacy rates and language barriers, failure to recognize women's rights with respect to communal lands and forests, consultation methods that did not address gender needs, and a lack of genuine dialogue with processes directed at convincing communities to accept projects and conditions.

ONAMIAP recommends that governments and project proponents should be explicit about the differentiated impacts of projects on women and men. Women must be included fully and equally at all stages of decision making processes. Finally, public policy reforms are needed to recognize women's rights and access to communal lands and forests, which would facilitate their participation in these processes.

● (1545)

Last April, Oxfam invited the president of ONAMIAP to an indigenous women's gathering in Montreal, spearheaded by Quebec Native Women. Indigenous women leaders from a dozen countries gathered together to share their experiences, and they quickly learned that their experiences shared striking similarities. Everywhere they recognized that they were tackling an entrenched gender bias in how decisions are made around energy and natural resources.

Turning now to Kenya, where Oxfam is also researching indigenous rights, and in particular the free, prior and informed consent standard, our 2017 study called "Testing community consent" focused on Turkana County, one of the poorest and most remote regions of the country, where significant oil and gas deposits have been discovered.

While most people noted that company engagement practices though initially poor were steadily improving, many key ingredients of free, prior and informed consent were not present. In particular, we noted that pastoralist women who engaged in traditional livelihoods of nomadic herding had been unable to participate in community meetings over oil and gas development projects. Their livelihoods would be affected by the well pads and pipelines and roads being built in the area, but they were least likely to participate due to how the engagement process had been conducted. This year, Oxfam is planning to do follow-up research to look more closely into how those gender justice gaps can be addressed.

Our first recommendation to this committee would be to ensure that indigenous engagement is conducted in a manner that is gender responsive, advances gender equality, and that is consistent with international human rights standards, including the UN declaration. We believe that energy projects must go beyond "do no harm" and actually be transformative and positive changes to advance gender equality where they're being developed. This also means listening to and respecting indigenous people when they say no to certain projects. Project reviews that listen to women and men and take into account the differentiated impacts will result in better-designed projects and share benefits more equitably.

Oxfam is pleased that gender responsiveness could soon be added to federal impact assessment processes through Bill C-69, currently under review in the Senate. Oxfam supports this bill and hopes that gender-based analysis in project reviews will establish this norm across all industries and unlock even more systemic change. Likewise, we welcome Bill C-262, which would ensure that Canadian law is consistent with the UN Declaration on the Rights of Indigenous Peoples.

Interestingly, our stories from Peru and Kenya also have a direct connection with the Canadian energy sector. Peru's largest oil concession, known as Block 192, is operated by a Toronto-based company, Frontera Energy. In Kenya, the oil project in Turkana County that we studied is a joint venture that involves a Vancouver-based company, Africa Oil Corporation. Both of these companies, within the past two years, have had to temporarily suspend their operations due to indigenous protests over unresolved community grievances. Canadian companies operating internationally risk losing their social licence to operate if they can't foster positive and respectful relationships with indigenous peoples.

Our second recommendation is for the Canadian government to take action and raise the bar for Canadian companies operating internationally. The long-awaited Canadian ombudsperson for responsible enterprise, announced by the international trade minister over a year ago, should be appointed without delay and granted the necessary powers to investigate corporate practices internationally.

Canadian embassies should provide more support to women human rights defenders who are working to defend their rights and participate in major decisions around energy projects.

Export Development Canada should have a statutory requirement to respect human rights and gender equality in all of its business transactions.

Finally, Canada's international assistance should support indigenous peoples organizations to engage in and transform natural resource governance, particularly indigenous women's organizations like ONAMIAP in Peru, which have identified many of the solutions but are sorely under-resourced.

I would like to conclude by saying that we believe major energy projects in the future will look very different when they genuinely engage indigenous peoples and respect their inherent rights and title. An energy transition is under way, and Canada can position itself as a leader in the new energy economy.

• (1550)

I'd like to thank the committee for engaging in this study and would welcome any questions you may have.

**The Chair:** Thank you very much, Mr. Thomson.

Mr. Tan, are you going to start us off?

**Mr. Geng Tan (Don Valley North, Lib.):** Thank you, Chair.

I have a couple of questions for CNSC. As you mentioned in your presentation, the CNSC has been actively engaging in indigenous consultations by organizing public hearings and meetings. The CNSC also applies some other means like notification letters and

emails, and organizes open houses, not hearings, and also face-to-face meetings.

Are these also effective means in your opinion?

**Ms. Rumina Velshi:** Yes, the CNSC uses many different mechanisms to engage with indigenous communities. I'll list some of them, the ones that you have listed. When we have any hearings or meetings coming up, we do send out emails, and we recognize that for some of these communities that's not the best way to communicate with them. So we use phone calls or personal contacts with them. We have meetings within the community itself where it's convenient to meet with them.

We also have what we call "CNSC 101" sessions within the community where we can talk about their concerns, their needs, and explain to them nuclear risks and try to address their concerns. Then there are some of the other ones that I have told you about within our proceedings and our hearings as well.

We apply multiple ways and are always open to any more that they suggest.

**Mr. Geng Tan:** How often does the CNSC organize this kind of direct contact with the indigenous groups?

• (1555)

**Ms. Rumina Velshi:** Certainly, prior to any hearings or meetings that affect certain communities, we would definitely be in touch with them months and months before that. What we now try to do is establish ongoing relationships with them. It varies.

Maybe I'll ask Ms. Sauer to give some more details on how often those happen.

**Ms. Liane Sauer (Director General, Strategic Planning Directorate, Canadian Nuclear Safety Commission):** As President Velshi mentioned, we do engage quite frequently in meetings in communities. Often they're either one-on-one meetings, or if we're invited to participate in a community event, we will do so. The number of meetings per year does vary because it's reactive. It's based on invitation from the groups. We've had some years where there have been 30 or 40, and there was one year where it was up to 70. So it does vary.

We're very responsive when we get an invitation; we make best efforts to go out.

**Mr. Geng Tan:** I assumed that CNSC was incorporating the national best practices for regulating the nuclear industry and even generating some of its own.

Internationally, in your opinion, what counterparts of CNSC in other countries do a particularly good job of incorporating the views of indigenous people in the early assessment process?

**Ms. Rumina Velshi:** We have done some benchmarking with other nuclear regulators internationally. None of them have an approach similar to ours. They really look towards us for best practices, particularly when it comes to our processes, which are very open and transparent. Also, our participant funding is very flexible.

I think that's fairly limited or in a very nascent stage, certainly, for other nuclear regulators.

**Mr. Geng Tan:** Another question is about the SMR, because we're talking about the nuclear industry.

In recent years, there has been a renewed interest in the nuclear industry, nuclear energy solutions for North America to meet the energy needs of North America. You're involving a new generation of SMRs.

How might these SMRs be a solution for Canada's north? Have you received any expressions of interest among the indigenous communities in the north for this kind of solution?

**Ms. Rumina Velshi:** I'll give you my perspective as a nuclear regulator. One of the things we have tried to do as a regulator is to make sure that we are prepared for any SMR applications that come our way. One of the things we have done is to offer a service that we call a "vendor design review", whereby vendors can come in front of the regulator and get their different designs assessed to see if there are any regulatory concerns. Right now we've got 10 different vendors who've submitted their designs to us for our review.

As far as expressions of interest go, it's not what we look at, but we are ready. If we were to actually receive an application today, from a regulator's perspective we are ready for it. SMRs, as most of you know, have many different applications. Whether it's on-grid, or—certainly for indigenous communities—off-grid, remote community applications are extremely positive. That would be very helpful.

**Mr. Geng Tan:** Let me address a quick question to Oxfam. A couple of weeks ago, our committee heard from a witness from Norway who spoke of a third model, which is actually being developed a little bit in Canada. Under this model, indigenous people or the local communities take ownership of their energy production and the use of it for local development, and possibly some income. Do you know of any examples in Canada's north of this so-called third model being used?

**Mr. Ian Thomson:** I'm not aware of any specific examples on which Oxfam has done research. I know that's a live debate within Canada around indigenous ownership of natural resource development projects. Certainly, in some of the exchanges I mentioned between indigenous women's organizations that we help to support and convene, that is part of the debate. When indigenous peoples' role is no longer as people impacted by settler projects, but as actual proponents of projects and developers of the resources on their territories, I think that's the exciting new direction indigenous peoples are going in and that we as a country will be embarking on in the future.

•(1600)

**The Chair:** Thank you.

Mr. Schmale.

**Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC):** Thank you very much, everyone, for attending. We do appreciate your time.

Mr. Thomson, could you just clarify something for me? When you say that any plan in Canada needs to be "gender-responsive", can you tell me your exact meaning? I just want to be clear on what you meant by that.

**Mr. Ian Thomson:** Yes, as I was alluding to earlier, there are moves under way to bring more systematic approaches to doing federal impact assessments. At the moment, it's done on occasion, depending on the project, but Bill C-69 would have it as a factor in impact assessments. Looking at the gender-differentiated economic, social and health impacts would be part of any federal study of a project. The approval process and the mitigation strategies that would be attached to a project, if approved, would take into account those gender-differentiated impacts.

Now, that would necessarily involve the participation of men and women in expressing how they understand what those impacts would be. The fact that it's participatory, I think, would also open up avenues for people to express their views on the project and to have that sort of analysis brought to bear. It's our hope also that the analysis will actually develop within regulators and federal institutions, so that the more gender-based analysis is applied to understanding and evaluating projects and developing mitigation strategies, the more expertise there would be, both within our regulators and in our approval processes. It is also our hope that project proponents would come forward having done more of this analysis from the outset. Increasingly, it would just be expected that industry would take into account and mitigate gender impacts.

**Mr. Jamie Schmale:** I'm curious. Are there any situations you're aware of in which indigenous women were not heard from in our current consultation process?

**Mr. Ian Thomson:** The examples I was giving in other countries were more—

**Mr. Jamie Schmale:** I mean in Canada.

**Mr. Ian Thomson:** In Canada, we haven't statistically studied who is participating and who isn't. That's not our research.

**Mr. Jamie Schmale:** Would you not say we have a fairly open consultation process?

**Mr. Ian Thomson:** I'd say the women who were at this gathering that we sponsored felt that the systems were not open to hearing from all of their views.

**Mr. Jamie Schmale:** Were they the ones directly impacted by potential projects?

**Mr. Ian Thomson:** Yes.

**Mr. Jamie Schmale:** What was the issue, not enough time?

**Mr. Ian Thomson:** Often it was a resourcing question. It was about there not being enough time or not enough resources to fully understand, appreciate and analyze the project. In other cases, they mentioned there was a difference in world views. They felt that their knowledge and understanding was not able to fit into the meetings and the consultations to which they were being invited.

**Mr. Jamie Schmale:** What do you mean by “world views”?

**Mr. Ian Thomson:** Different peoples have different world views, understandings and values, and some of those world views and understandings weren't necessarily being accommodated. There were certain assumptions built into certain processes where, hearing from other cultures, they did not feel that they were being welcomed into the room as equals.

**Mr. Jamie Schmale:** Okay.

Throughout the consultation process, if you look at northern Alberta, in a lot of cases where there is resource going through them, the companies are employing indigenous communities, are probably one of the largest employees in some of these areas. I would also argue that we're a world leader in environmental and labour standards.

Are there any examples you have throughout northern Alberta where communities were not consulted? Do you have any examples you can give us that show there were first nations communities that felt they weren't listened to?

We have examples of first nations communities taking the government to court because of a shipping ban. They did not want this legislation to go forward, and they were not consulted.

Do you have examples?

• (1605)

**Mr. Ian Thomson:** The example I'd be interested in sharing is actually from northern B.C., not northern Alberta. It's more about the conditions for workers in the industry and how to create industry camps that are more welcoming and safe for both men and women. If we are serious in talking about increased women's employment in these sectors, more has to be done both by government and by the private sector to deal with some of the safety issues that women face when they work in industrial camps and are still in the minority, looking at what is the culture, what are the safety protocols, how can we make them the most accepting workplaces possible and what occupations are open to women. These are more the priority issues that I've heard of in that part of the world.

**Mr. Jamie Schmale:** Mr. Thomson, you mentioned an ombudsperson to look at best practices worldwide. You mentioned that they would have the ability to investigate those that are the bad actors outside the boundaries of the Canadian border. What authority do you see this office or this person having?

**Mr. Ian Thomson:** The ombudsperson, as announced by the government, was to have the power to investigate, to ask for testimony and documents, when allegations are brought before them, from Canadian companies operating internationally, to determine whether they are living up to the human rights and environmental standards that Canadians would expect our companies to adhere to when they operate abroad.

**The Chair:** Mr. Schmale, you're right on time. It's like you timed it.

**Mr. Jamie Schmale:** Okay.

**The Chair:** Mr. Cannings.

**Mr. Richard Cannings (South Okanagan—West Kootenay, NDP):** Thank you.

Thank you all for being here today.

I'm going to turn to Mr. Thomson and pick up where Mr. Schmale left off.

You talked a lot about what's happening abroad, in various examples. We were just talking about the proposed ombudsperson. We still haven't seen that person yet, for some reason, after a year, but coincidentally there was an article in The Globe and Mail today about Canadian resource companies abroad and their actions.

We've heard around this committee room that within Canada we have some of the best indigenous engagement and consultation processes around the globe. We still have a long way to go, I think, but here we have Canadian companies acting one way within Canada and yet, many of them, acting quite differently abroad.

Some may say they're just trying to do what's in their best interest, but it's clear from this article that it would be in their best interest to act as responsible corporate citizens abroad.

We have an example of Tahoe Resources in Guatemala, which now has had a very large mine shut down—they are in dire straits because of that—because the Guatemalan government said that they didn't consult with indigenous peoples properly. There are other examples of the same sort of thing happening.

I wonder whether you could comment on the interests of Canadian companies acting abroad and what indigenous engagement policies they're using, what they should be doing and how it can be brought back to this office of an ombudsperson that we're still waiting to see.

• (1610)

**Mr. Ian Thomson:** It's clear that indigenous engagement is becoming a major risk for Canadian investors operating abroad. Among the examples you just cited, that of mines being suspended over their failure to adequately consult indigenous populations offers a perfect example of this risk. This is an example in which there is a shared responsibility between the Guatemalan state and the company in question to have done adequate consultations.

I don't think this is entirely on the company, but they're obviously partly responsible for this mine's being shut down and for not having done adequate consultation.



The hope with an ombudsperson, which is different from bringing a particular company to court, would be that some of the learnings from ombudsperson investigations could actually lead to more industry-wide changes. The ombudsperson may be called to investigate a particular case, but if he or she finds that there are patterns developing in the problems that Canadian companies are either creating or are subject to internationally, then some of the prescriptions from the ombudsperson wouldn't only apply to the case they were specifically investigating but could be more wide-ranging.

The hope would be that the ombudsperson would understand what a problem is from a particular context, but that their advice and recommendations would have a ripple effect. Their rulings wouldn't be binding—you're not in a court of law—but I think they would have a certain authority to make pronouncements and recommendations that would be heard across the industry.

**Mr. Richard Cannings:** Some of these cases are in the courts right now. I think there are at least three in Canada that are in the courts. I'm wondering whether you might speculate or comment on the effect that rulings there would have not only upon the Canadian industry but also upon the resource industries around the world concerning the way companies should be acting and the way they should be carrying out indigenous engagement and consultation.

**Mr. Ian Thomson:** It's not only NGOs like Oxfam that are watching these court cases closely to see what their outcomes are. I know that many industry players are watching and that governments are watching to understand, if companies can be held legally liable for not respecting human rights internationally, what the consequences will be for their operations, for their investors and for the jurisdictions in which they're operating. It's yet to be seen what the outcomes will be.

The ombudsperson offers a non-judicial path to have allegations investigated and to have cases heard. I don't think we want to close off the option of seeking justice in the Canadian justice system, but not everybody necessarily has the resources to bring a case forward to the Canadian justice system. The ombudsperson would provide a parallel path that would lead to different outcomes.

I am curious to see what the court cases reveal—the ones around Eritrea and around Guatemala. They're ground-breaking, and it's hard to tell exactly what the consequences will be.

**Mr. Richard Cannings:** You also mentioned the United Nations Declaration on the Rights of Indigenous Peoples, how that would be applied to Canadian law and, within that, the concept of free, prior and informed consent. I guess it's a two-part question.

How do you see that effort being applied globally and also even here within Canada—this idea of consent? Does that imply a veto—that indigenous communities would have vetoes over resource projects—or is it just the informed consent, the engagement, that is most important?

**Mr. Ian Thomson:** Nowhere in the UN Declaration on the Rights of Indigenous Peoples is the word “veto” used. I don't think free, prior and informed consent is a veto. I do think it is a standard to protect the human rights of indigenous peoples. As such, meeting that standard ensures that their rights will be adequately protected. I wouldn't equate it to a veto. I think, in Canada, to the extent that

Canada is taking a rights-based approach to its engagement with indigenous peoples....

As Oxfam, we think that is the path that has been called for by indigenous peoples' organizations themselves and by the Truth and Reconciliation Commission's call on both governments and the private sector to use the UN declaration as the framework for reconciliation.

• (1615)

**The Chair:** Thank you.

Mr. Whalen.

**Mr. Nick Whalen (St. John's East, Lib.):** It's an interesting panel. I wasn't really sure what to expect, but it seems like there's some pretty good synergy here between the two groups who are coming at this issue from interesting ways.

When you talk about trying to engage in—and this is really for both groups—the gender-based analysis and gendered intersectionalities within indigenous groups themselves to make sure that the groups are properly heard, what approaches do your two organizations take to the problem of bypassing the elected representatives within those groups and looking past the band councils to get to the subgroups within that population? Do you have best practices to suggest in that regard?

**Ms. Rumina Velshi:** Let me start off with our processes, and I'm sure Ms. Sauer will want to add to that.

Our commission processes are open to everyone, so we don't necessarily go just through the leaders. Anyone can appear. We get participation from all aspects of the indigenous communities. Certainly, women are just as well represented, if not better represented, in our proceedings.

In order to address some of the concerns that Mr. Thomson has identified, one of the things we do with our proceedings is have them in the evenings, if that's what's more amenable. We've heard, not just from indigenous women, but from women generally, that to make our processes more accessible, that would be helpful. There are other things that we do. As I said, it's open to everyone, and we do hear from all aspects and get different perspectives.

Similarly, when we meet within the community, we make sure that we meet not just with the leaders, but with different representatives within the groups.

Did you have anything to add? No.

**Mr. Nick Whalen:** Mr. Thomson.

**Mr. Ian Thomson:** Yes, as Oxfam, we've developed a tool for the private sector to guide how to conduct a gender impact assessment for a project. It's something that was developed by colleagues at Oxfam Australia, and it's been rolled out in various energy-related projects, including some hydro dams and some more extractive sector projects.

It's a four-step process, but the first step, really, is establishing that baseline of what the gender power dynamics are within a local community at the starting point and what impact a project would have to ameliorate or reduce inequalities, or to exacerbate inequalities. So, understanding that starting point is important. I think that each context is going to have a different starting point and different concerns and considerations, depending on what sort of project or development is being proposed.

It's about understanding that starting point and what some of the possible gender impacts of the project are. The gender impact assessment tool that we've developed has sometimes been used before a project is in place. At other times, it's been used after the project has been running for a number of years and local populations are better able to express and document what the gender impacts have been.

**Mr. Nick Whalen:** Ms. Velshi, does the CNSC have a gender-based analysis framework it is engaged in? I know the federal government has some online webinars and most of us have been encouraged, both ourselves and our staff, to take a course in gender-based analysis for policy review. Is there anything specific that CNSC does and should it be part of your compendium?

• (1620)

**Ms. Rumina Velshi:** It's new territory for us. I, too, have had staff who've gone through the training, and certainly when it comes to the development of our regulatory documents and requirements, we're now using gender-based analysis plus for doing so.

Going forward, with Bill C-69 and impact assessments it will be a requirement that gender-based analysis get done then.

As far as our licensing decisions right now are concerned, we don't specifically do gender-based analysis in that systematic way, but one of my personal priorities is around gender representation. As a commission we very much pursue that and explore the impact of our licensing decisions and ask our applicants and licensees how they're addressing that.

**Mr. Nick Whalen:** My experience with participant funding is really with respect to the Newfoundland and Labrador offshore, and in that case, all the recipients of participant funding were bands. Do you have any examples in your world where participant funding has been given by CNSC to indigenous groups other than the band councils or their corporate arms, to women's groups, for instance?

**Ms. Rumina Velshi:** I'll get Ms. Sauer to answer that.

**Ms. Liane Sauer:** We do have examples, for sure. We support any group that has a good application. We don't differentiate between whom they might be.

**Mr. Nick Whalen:** I'll end with you, Mr. Thomson. Are you getting the sense that the system that's in place and CNSC's approach to international best practices.... Do you have any other suggestions that might help make our system here better, at least with respect to nuclear safety?

**Mr. Ian Thomson:** I take the president's point that as legislative change is under way expectations will be raised. We're hopeful that Bill C-69 will pass the Senate and that this will become the new norm in Canada. I think all agencies, CNSC and the impact assessment agency, will have to develop their own internal expertise

around this and more capacity-building is needed within these federal institutions.

I think equally important is looking at the organizations at the grassroots, like you were just referring to. Do women's organizations that are close to the community concerns, that understand the local context, that sort of baseline what I was talking about, that understand of where you're starting from and what some of the existing gender gaps might be.... If we're not resourcing them, then it doesn't matter how much the federal agencies do. We do need them to do more, but we also have to ensure that the affected people and their organizations are resourced to be able to participate fully in these processes.

**The Chair:** Thank you.

Mr. Falk, you have five minutes.

**Mr. Ted Falk (Provencher, CPC):** Thank you to our witnesses for attending committee here today and for your presentations.

I'll start with you, Ms. Velshi. You're the regulator of the nuclear industry. You've obviously worked with indigenous groups before when it comes to regulatory issues.

**Ms. Rumina Velshi:** Yes.

**Mr. Ted Falk:** In your experience with these groups, what are the issues that are important to them?

**Ms. Rumina Velshi:** One of the primary ones we hear is the impact on their traditional way of life, particularly when it comes to country foods, of potential radioactive contamination. It's usually issues around this that we hear at our proceedings.

We at the CNSC have an independent environmental monitoring program, and as a priority we have made sure that we've engaged with the indigenous groups to help us come up with a sampling program, because there are certain foods that are more important and that they want reassurance about it being safe for them to consume. They help us come up with a sampling program and are actually now involved in the monitoring itself, which gives them greater confidence that it is safe. That's usually a very high priority for them.

The other one is just the general risks associated with nuclear power and being able to understand that in understandable language that is not highly technical. We try to do that. We have interpreters. In fact, in our proceedings we have interpretation available for that. With our CNSC 101, that's another area where we try to help address their concerns around nuclear safety and the risks associated with nuclear facilities.

• (1625)

**Mr. Ted Falk:** In your process with indigenous groups, safety and risk are the number one issues they are concerned with.

**Ms. Rumina Velshi:** It would be safety and risk as they then manifest, whether with their food or waste management. The issues are safety and risk associated with nuclear...

**Mr. Ted Falk:** When you conduct these consultations, do you meet with the communities as a whole? Do you have town hall meetings in the communities? Do you meet with band elders? Do you meet with the chief? Do you meet with their administrative people, or outside consultants? Whom do you meet with? Who are the decision-makers?

**Ms. Rumina Velshi:** We meet with whoever asks to meet with us. Similarly, with our proceedings, we will have all of those you listed. We will have general members of the community. We'll have their consultants. We'll have their chiefs. It's the full spectrum.

**Mr. Ted Falk:** Okay.

**Ms. Rumina Velshi:** We hear all of the different perspectives, and the concerns are very similar.

**Mr. Ted Falk:** Who would be the decision-makers?

**Ms. Rumina Velshi:** When it comes to any licensing decision, it's the commission, which is an independent tribunal.

**Mr. Ted Falk:** Also, from the indigenous perspective, who are the decision-makers there?

**Ms. Rumina Velshi:** In our proceedings, they are not really decision-makers. They inform the commission, and they'll provide their perspective.

**Mr. Ted Falk:** Okay.

You're having consultations with them, but at some point they get an approval from you. Who do you give that approval to?

**Ms. Rumina Velshi:** Our approval is our decision on whether or not a project should proceed, and the conditions associated with that. It is not an approval to a band, if that's what you are asking. It is for the project, and to the proponent.

**Mr. Ted Falk:** Okay.

Typically, is there a process the bands follow when communicating their concerns to you?

**Ms. Rumina Velshi:** I think that varies. Ms. Sauer can give you the details. As I have told you, we would meet with whoever asks to meet with us and [*Inaudible—Editor*].

**Mr. Ted Falk:** How often do they ask for a gender analysis?

**Ms. Rumina Velshi:** I'm not aware of any time they have asked for that. They have not.

**Mr. Ted Falk:** I think you answered my questions. Thank you.

I'm done, sir.

**The Chair:** Mr. Graham, you have about two minutes, including an answer to your question.

**Mr. David de Burgh Graham (Laurentides—Labelle, Lib.):** I will take them and make them count. Thank you.

Ms. Velshi, you talked about the 70-year history of CNSC. I'm wondering if you can give us a sense of that history. At what point did these consultations start? What prompted them and how did that process happen? I'm assuming these consultations did not happen 70 years ago.

**Ms. Rumina Velshi:** I have been a commission member for six years and a president for six months, so I can tell you what's happened in that period of time. Even within the six years, I have seen that it's a moving thing: expectations keep on changing and our processes become a lot more inclusive.

Yes, it is a constantly evolving process. Even as we speak today, we have identified ways that we can do a better job and are continually improving on that.

**Mr. David de Burgh Graham:** Okay. I think that's all the time I have. Thank you.

**The Chair:** Thank you, all, very much, for joining us today, and for your evidence. It's greatly appreciated.

We've run short of time every session, but that is the format.

We're very grateful to you for taking the time to be here. We will suspend for two minutes and then reconvene.

[*Proceedings continue in camera*]

• (1625)

(Pause)

• (1630)

**The Chair:** Welcome back, everybody.

We have two groups of witnesses for this hour. From the Canadian Electricity Association, we have Ian Jacobsen and Channa Perera. Thank you, gentlemen, for being here today. By video conference, we have Professor Dwight Newman. Can you see us and hear us?

You are nodding. That's a good sign.

**Professor Dwight Newman (Professor of Law and Canada Research Chair in Indigenous Rights, University of Saskatchewan, As an Individual):** Yes.

**The Chair:** Thank you. You are from Saskatoon. Is that right?

**Prof. Dwight Newman:** That's correct.

**The Chair:** Great.

The process is that each group will be given up to 10 minutes for their presentation and then we'll open the floor to questions.

Gentlemen, you are here. Why don't we start with you?

**Mr. Channa Perera (Vice-President, Policy Development, Canadian Electricity Association):** Thank you, Mr. Chair and members of the committee, for the invitation.

My name is Channa Perera. I'm the vice-president of policy development at the Canadian Electricity Association. I am joined by my colleague, Mr. Ian Jacobsen, the director of indigenous relations at Ontario Power Generation. We are very pleased to be here today to share our perspective on indigenous engagement.

CEA is the national voice of the Canadian electricity industry. Our members represent generation, transmission and distribution companies, as well as technology and service providers from across the country.

Electricity is indispensable to the quality of life of Canadians and to the competitiveness of our economy. The sector employs approximately 81,000 Canadians and contributes \$30 billion to Canada's GDP.

As a major economic sector, we are uniquely positioned to help advance Canada's clean energy future and indigenous reconciliation. As we work toward reconciliation with indigenous people, CEA recognizes the importance of the United Nations Declaration on the Rights of Indigenous Peoples and the recommendations of the Truth and Reconciliation Commission of Canada. However, it is imperative for the government to ensure that there is no ambiguity in the implementation of these policy instruments, so that we can work toward genuine reconciliation.

The electricity industry is already at the forefront of indigenous engagement. In 2016, CEA and our member companies developed a set of core national principles for indigenous engagement, further codifying our long-standing commitment to work with local indigenous communities across the country.

Our work with indigenous communities has led to major partnerships and joint ventures, impact benefit agreements, supply chain business opportunities and direct investments in indigenous education, training and employment.

Let me highlight a few examples of these initiatives by CEA members. One example of a joint venture is the 200-megawatt Wuskwatim Power Partnership signed by Manitoba Hydro in 2006. This marked the first time that Manitoba Hydro and a first nation had entered into a formal equity partnership, ensuring the community of important business income, training, employment and other opportunities.

The industry also works with many local indigenous communities in the development of impact benefit agreements. IBAs have become an important instrument, allowing these communities to fully participate in projects carried out within the traditional territory. An example of this is the Lower Churchill project, an IBA between Nalcor Energy and the Innu Nation. These types of IBAs allow companies to work with indigenous communities on many project elements, from mitigating environmental impacts to facilitating education, training, employment and procurement opportunities.

Our efforts do not end there. We are also investing in a new generation of indigenous leaders, through specific education and training initiatives. That's why companies such as ATCO based in Alberta are taking leadership roles. In 2018, ATCO launched an indigenous youth leadership and career development pilot program for grade 9 students across Alberta. This allows indigenous students to explore local work sites and connect with skilled professionals to learn about employment options and how to build a career of their own. In addition, ATCO and other CEA member companies also support indigenous students across Canada, through financial assistance to pursue higher education.

Now, let me turn to my colleague, Ian, who will provide a practitioner's perspective on indigenous engagement at Ontario Power Generation.

• (1635)

**Mr. Ian Jacobsen (Director, Indigenous Relations, Ontario Power Generation, Canadian Electricity Association):** Great. Thank you, Channa.

OPG is the largest electricity generator in Ontario, providing about a half of the province's power. Our diverse generating fleet includes two nuclear stations, 66 hydroelectric stations, two biomass stations, one thermal station and later this year, one solar facility.

With operations that span the province, OPG's commitment to building long-term, respectful and mutually beneficial relationships with indigenous communities is based on the acknowledgement that our assets are all situated on the traditional territories of indigenous peoples in Ontario.

OPG and its successor companies have generated electricity in Ontario for over a century. However, we also recognize that hydro development over the better part of the 20th century had significant impacts upon many indigenous communities in Ontario. With this understanding, OPG developed a formal voluntary framework to assess and resolve historic grievances largely related to the illegal flooding of reserve lands. Over the past 27 years, OPG has reached grievance settlements with 21 first nation communities through a respectful, non-adversarial and community-driven process. This process has led to some successful equity partnerships. In fact, this spring OPG and Lac Seul First Nation will celebrate the 10-year anniversary of our partnership on the Lac Seul generating station.

The station was completed in 2009, with OPG and Lac Seul forming a historic equity partnership, the first for OPG, in which the first nation is an equity owner in the Lac Seul generating station, a 12-megawatt unit capable of generating enough electricity to meet the yearly demand of 5,000 homes.

Building on that model, in 2016, OPG completed the \$2.6-billion Lower Mattagami River project, an equity partnership with the Moose Cree First Nation. This project was completed ahead of time and on budget. Approximately 250 local indigenous people worked on the project. Moreover, Moose Cree benefited from over \$300 million in contracting opportunities. Throughout the project, OPG worked closely with Moose Cree and other surrounding communities on a number of employment, environmental and cultural initiatives. These included the development of the Sibi employment and training initiative, which provided a number of client support services to maximize community employment on the project, as well as undertaking traditional ecological knowledge studies. They also included the creation of the Mattagami extensions coordinating committee in collaboration with Moose Cree, Taykwa Tagamou Nation, and MoCreebec to monitor the completion of the terms and conditions of the environmental assessment approvals. As well, they included supporting the development of the dictionary of the Moose Cree.

More recently, in the spring of 2017, OPG completed the Peter Sutherland Sr. generating station, another equity partnership with Taykwa Tagamou Nation. Named after a respected TTN elder, this new \$300-million generating station was placed in service on budget and ahead of schedule. Fifty TTN members worked on the project, which employed about 220 individuals at the peak of construction. In addition, approximately \$53.5 million in subcontracts were awarded through competitive processes to TTN joint venture businesses during the construction phase of the station.

In May 2016, OPG announced an equity partnership with the Six Nations development corporation to build a solar generation facility at the Nanticoke generating station on Lake Erie. This was formerly a coal-fuelled power station that was retired in 2013.

The Nanticoke solar park will be capable of generating 44 megawatts of clean, renewable power for Ontario when it is placed in service later this year. In 2018, OPG launched the indigenous opportunities in nuclear program, also known as ION, to support the Darlington refurbishment project and to fill the widening skilled trades availability gap. Working in collaboration with Kagita Mikam Aboriginal Employment and Training and the Electrical Power Systems Construction Association, the ION program seeks to recruit qualified indigenous workers and set them on exciting projects such as the Darlington refurbishment project.

Since the program's launch, ION achieved its 2018 targets for successful placements and we are on track for continued success in 2019. From a project development context, we believe these types of partnerships and collaborative relationships with indigenous communities and the mutual benefits they bring can be excellent models for reconciliation and for OPG to demonstrate what providing power with purpose is all about.

Channa.

•(1640)

**Mr. Channa Perera:** Thank you, Ian.

In conclusion, I want to reiterate our commitment to advancing indigenous reconciliation in Canada. Let's work together and create a brighter future for our indigenous people.

Thank you.

**The Chair:** Excellent. Thank you.

Professor.

**Prof. Dwight Newman:** Good afternoon.

My name is Dwight Newman. I work as a professor of law and Canada research chair in indigenous rights in constitutional and international law at the University of Saskatchewan. In this role, I carry on a broad-based program of research on indigenous rights law, with one significant focus within that being on global intersections of indigenous rights and resource development. I also serve in related policy discussion roles, including as a member of the International Law Association committee on the implementation of the rights of indigenous peoples, and I've engaged in some related practice roles. However, I appear today as an individual simply to assist the committee in whatever ways I can.

I'll begin by commending the committee for its attention to this issue framed in broad ways. There's both room and need for broad, strategic thinking in the context of reconciliation in general, and economic reconciliation specifically, and trying to find good ways to move forward together.

I'm going to do two things in my opening remarks. First, while appreciating the committee's efforts to think creatively, I will probably sound somewhat of a cautionary note on the idea of going out and finding international best practices elsewhere, and will urge ongoing attention to the need to keep doing sophisticated policy work and developing the best ways forward that work for Canada and the indigenous peoples of Canada.

Second, I will try to refer to some promising practices present in emerging ways in Canada and in other jurisdictions. I'll suggest learning on a smaller scale, more so than hoping to find one perfect international best practice that we can import.

On my first point, then, we need to be cautious about seeking the perfect international best practice. Let me offer a few examples of some risks that can arise in trying to transplant best practices between very different contexts.

Consider something such as the Sami Parliament in Norway, often cited as a powerful example of an institution for consultation with indigenous peoples. There's a mechanism within the procedures by which Norwegian legislative and policy development processes work so that issues that could affect the Sami people of Norway trigger an alert to the Sami Parliament and consultation may proceed from there at a full countrywide level. However, the Sami Parliament operates in a very different context in which, first, the Sami people are more linguistically and culturally unified than the diverse indigenous peoples of Canada.

A key issue for Canada, were it to think about moving toward some larger scale consultation mechanism as part of Canadian policy, going beyond the duty to consult, in thinking about anything similar to the Sami Parliament, would be the need to see the indigenous peoples of Canada decide in what ways, through what more complex combination of institutions, they could present their interests analogous to the way the Sami present through the Sami Parliament.

Second, we also shouldn't glamorize Norway for its indigenous engagement on energy issues. Most Norwegian energy development and the source of Norway's immense wealth has been North Sea oil, which the Norwegian government took the view had nothing to do with the Sami people whatsoever.

If we're thinking just within Scandinavia, in neighbouring Sweden where resource development questions centre on potential mining development that almost inevitably interferes with the Sami people's reindeer herding—which I think this committee heard a bit about in prior testimony—there's a much more tense situation on indigenous rights generally. Sweden hasn't found the same solutions as Norway, but it operates in a very different context.

In Alaska, which I think has been referred to before in this committee, many indigenous communities have prospered from north slope oil and the foundations it provided for a set of regional economic development corporations. Today, there's meaningful support for the Alaskan system within the state. However, the origins of the system came effectively from a top-down decision that aboriginal title claims in the state were to be resolved on a statewide basis all at once. While there were some negotiations with the Alaska Federation of Natives, which also contributed ideas such as that of a corporate structure in which native Alaskans would be stockholders, the 1971 Alaska Native Claims Settlement Act adopted by the U.S. Congress to implement a resolution to all aboriginal title claims in Alaska at the same time has met with mixed reactions over the years due to its top-down character. Therefore, even while some tout what the Alaskan system achieved, its origins came from a process that would not fit with many Canadian expectations of engagement with indigenous peoples in policy development and claims resolution.

●(1645)

I could go on with more examples along similar lines showing why it's very important to be cautious in transplanting ideas, but I want to turn to smaller-scale best practices that are already emerging in Canada and elsewhere, and that have a lot of potential.

Successful engagement is probably best said to exist when all involved can say they've had a successful process and a successful result. Two jurisdictions in the world stand out, from large numbers, of win-win agreements in the form of indigenous industry agreements to facilitate particular developments. Those are Australia and Canada itself.

Indigenous industry agreements have received much less scholarly study than one might hope, although there is an Australian scholar who has done some important comparative work on agreements in both Canada and Australia. He identifies a lot of contextual factors for what makes for successful agreements and what doesn't.

A colleague and I ran a workshop recently and are working on an edited collection on indigenous industry agreements. I think we would agree with much of that. Facilitating indigenous industry agreements is probably one of the best ways of finding engagement that works.

Here, I deliberately use the term “indigenous industry agreements” as a broader term than just “impact benefit agreements” or IBAs, a concept that has drawn much attention over the years. Some IBAs have brought significant resources into indigenous communities, and some have enabled building for the future, particularly when they have included strong provisions supporting business development that outlasts a particular non-renewable resource or that builds from the base of an existing renewable resource.

There are other, further models to consider, however, including joint venture agreements, equity partnerships—as referenced already in this session—and even indigenous-led development that may be significant parts of the future of indigenous industry agreements more generally. When some indigenous communities themselves seek to undertake particular energy developments, their doing so provides a strong sign of successful engagement or even something going beyond mere engagement.

Here, though, we need to think of many different policy issues, including sound financing mechanisms. We also need to be very attentive to the fact that indigenous communities in Canada are highly diverse. Some wish to ensure strong protections for traditional lifestyles. Others are very enthusiastic to participate in energy development and even to be leaders in energy development.

One of the risks of too much legislation in Canada is framed around our adopting some assumptions rather than others. Too much is framed around old assumptions that development is going to occur or not occur after a bit of consultation with indigenous communities who are assumed to be “in the road”. Then, even in current legislation we continue to see legislation putting obstacles in the road of those indigenous communities that want to carry out indigenous-led development.

There is, then, a lot of complexity at stake.

I'll refer just briefly in closing to the 2013 report of the United Nations special rapporteur on the rights of indigenous peoples, which concerned extractive industries. Even while cautioning against some types of development, the special rapporteur commended the idea of indigenous-led development. I would suggest it is the practice that we should seek to foster in any context in which it works, because it's certainly one that brings everyone together. Wherever it can work, just as constructive indigenous industry agreements work but going even beyond them, indigenous-led development represents a real win-win in resource development, bringing a lot of alignment between otherwise competing interests.

Making it work requires a lot of ongoing and important policy work, on finance issues, opening opportunities for indigenous business and economic success more generally, and all kinds of other policy issues that are different from the traditional concerns we've tended to focus on. I think they speak to the future.

I'll end on what I hope is an optimistic note. It may be possible to learn some things from various practices that have been developed, and I again commend the committee for doing so. In my own view, the best practices are probably still ahead of us and are ones to keep seeking.

• (1650)

**The Chair:** Thank you very much, Professor.

Mr. Hehr, you're going to start us off.

**Hon. Kent Hehr (Calgary Centre, Lib.):** Thank you, Mr. Chair, and thanks to the guests for coming and taking part in this very important study on how we engage with our indigenous peoples both in the duty to consult and in the way we move projects forward. I appreciated the commentary on how we move from a discussion on the duty to consult, and how people are adversely impacted, to how we make them proponents of projects and part of the apparatus that sees projects through and communities thrive.

On that note, can you discuss the topic of early engagement? It seems to me that this has to be one of the ways that successful projects happen. With early engagement, people can get everything out on the table concerning how we move forward.

Mr. Jacobsen, do you mind starting us off on that?

• (1655)

**Mr. Ian Jacobsen:** Absolutely.

As a practice, OPG undertakes early engagement and consultation on all of our projects, primarily with a goal of achieving a common understanding of the project, of potential impacts and of mitigation strategies, as well as finding mutual interest in common objectives.

As demonstrated in our equity partnerships, I think we've been successful in doing that. It's a standard process for us at OPG. We're unique in that some of our assets are over one hundred years old, so we have long-term relationships with many of the communities that are in our operation. We do have the benefit of having those ongoing relationships.

**Hon. Kent Hehr:** Do you have anything to add, Mr. Perera?

**Mr. Channa Perera:** Yes. The association of members is currently working with other organizations as well to promote

indigenous capacity-building. That way, they can actually be some of the project proponents. We're working with 20/20 catalysts, a program based in Ottawa. Their main mandate is to promote clean energy projects across the country.

CEA is very much involved with them. We've been working with members to send potential indigenous candidates to participate in their programs so they get the skills and information they need to go back into their communities and initiate run-of-river projects and similar, smaller-scale projects, and to work with the community leaders to make some of these ideas prosper and happen over time.

**Hon. Kent Hehr:** Perfect.

Manitoba Hydro has international operations in Scandinavia and South America. How have those projects incorporated indigenous voices, and what can we learn from those endeavours?

**Mr. Channa Perera:** Are you referencing Manitoba Hydro?

**Hon. Kent Hehr:** Yes.

**Mr. Channa Perera:** I do not have a lot of information as to what they're doing outside the country. However, Manitoba Hydro, as I mentioned in my remarks, has engaged indigenous communities for about two decades. They were one of the first to sign an agreement with first nations, going back to 2006, the Wuskwatim Power Limited Partnership. That took a long time. Although they signed that in 2006, it went through many years of negotiations. It's not easy to do, but it takes the building of mutual trust and capacity.

We need to ensure that indigenous peoples have that capacity to bring companies and project proponents, such as Manitoba Hydro, to the table for discussions about how to move forward, equity partnerships, and so forth.

I'm sure Ian can speak to that more, if you're interested.

**Hon. Kent Hehr:** I do have a question for Dr. Newman.

I'm interested in the difference between an indigenous benefit agreement and an impact benefit agreement. Can you go more into detail to allow me to understand the distinction that you find between those two?

**Prof. Dwight Newman:** Sure. There would be a distinction between an indigenous industry agreement, the broader category, and the category of an impact benefit agreement, which is usually one type of indigenous industry agreement. However, indigenous industry agreements could be a broader category.

Some joint venture agreements might also be impact benefit agreements, but some might not be. Some types of equity arrangements might be an indigenous industry agreement, but they're not necessarily oriented towards impacts and benefits. They're just oriented towards striking a deal.

Indigenous industry agreements are simply a broader category.

**Hon. Kent Hehr:** Have you looked at how courts in other countries have shaped the state of indigenous rights and the best practices we should be taking from what has been said out there in the court systems?

• (1700)

**Prof. Dwight Newman:** On the issue of consultation, I think the Canadian courts have said more than probably any other court system in the world, in many ways. There are particular decisions from other jurisdictions that may be inspiring in particular ways. There's an ongoing judicial conversation that takes place between jurisdictions, and so the Canadian courts have heard about New Zealand decisions recently and considered them in the context of some of their indigenous rights cases. The New Zealand courts have heard about Canadian cases. I don't think anything jumps out, though, as something Canada needs to start considering specifically out of foreign courts' case law.

There are some very different models elsewhere. I'll just highlight that Canada, in having a constitutional provision on indigenous rights, is also situated differently from some other countries. Australia does many similar things on indigenous rights in some ways, and not in others, but it does those in the context of title under a statute passed by the Commonwealth parliament in Australia rather than out of an accumulation of court decisions, as in Canada. That's the structure under which indigenous industry agreements arise: under provisions that they have shaped and reshaped within a statute rather than within court decisions, as has often occurred in Canada.

**Hon. Kent Hehr:** Thank you.

**The Chair:** Thank you, Mr. Hehr.

Mr. Schmale.

**Mr. Jamie Schmale:** Thank you, everyone, for attending.

I guess I'll start with my friends here.

I want to talk about the process to ensure that indigenous communities make their way off diesel. I know a lot of progress has been made and that there are many options.

Is there a preferred option that OPG or anyone has to move the community forward to ensure they get off diesel? Is there a preferred option?

**Mr. Ian Jacobsen:** I can respond to that. Thank you for the question.

I don't think there's necessarily a preferred option. Of course, I think we'd be interested in exploring all technology options. We have a good example, actually.

We're working with Gull Bay First Nation at the moment to develop a new renewable microgrid project that will help reduce the community's dependency on diesel fuel. We're just in the midst of completing that project, in collaboration with first nations. The

project will offset approximately 100,000 litres of diesel fuel per year, which should offset around 300 tonnes of emissions. It is a project we're working on in collaboration with the first nation. It's certainly of interest to see what comes out of it.

I don't think, though, that there's a preferred technology at this point.

**Mr. Jamie Schmale:** Okay.

Right now, I'm guessing, you see storage as one of the main issues that would be a bit of a hurdle to cross. Is that the case? I know that technology is coming on board, but once we get to the point that it is readily available and affordable—that type of thing—this may change. You would maybe look at wind and solar more.

**Mr. Ian Jacobsen:** Yes. The Gull Bay project is a solar microgrid project, and storage is a part of it. Certainly there are factors you would have to consider. I'm by no means a subject-matter expert on storage—

**Mr. Jamie Schmale:** No, for sure.

**Mr. Ian Jacobsen:** —but certainly you would have to look at factors around climate, cold weather and things such as those.

**Mr. Jamie Schmale:** In some of the remote communities, as we look to move them off diesel—and as I said at the beginning, progress has been made—covering the base load.... Obviously, the wind isn't always blowing and the sun isn't always shining. This is just wind and solar, for example, not hydroelectricity.

What would you use as a backup in that case? I just had and lost an article about investment in wind and solar in some first nations communities in northern Ontario. What is being used as the backup when such production doesn't happen?

**Mr. Ian Jacobsen:** Right now I think diesel is the backup.

**Mr. Jamie Schmale:** Diesel is still the backup. Okay.

**Mr. Ian Jacobsen:** It's still the backup, yes, as far as I know.

**Mr. Jamie Schmale:** Okay. But it would be used as an emergency...?

**Mr. Ian Jacobsen:** Right now, our microgrid project is meant to offset diesel. Diesel will still be used, but this will significantly reduce the dependency, by about 25% in that particular project.

**Mr. Jamie Schmale:** Okay.



Concerning a consultation process with the communities involved, I noticed in your testimony that you mentioned that jobs and the training are there as well. I think that's a good first step, and congratulations for taking it. I think that's great. Are there any other opportunities available for members of indigenous communities that you are able to work with to ensure that the learning is lifelong?

• (1705)

**Mr. Ian Jacobsen:** Absolutely.

I can use the example of the Lower Mattagami project. We had about 250 people employed on that project. There was significant training and capacity-building in developing the Sibi employment and training. In some cases, people received education upgrading, developed lifelong skills—transferable skills. In some cases, folks went on to work with other companies to further develop their careers.

Procurement also has a huge impact. In our work with the communities, the local businesses and our contractors were able to develop capacity by building relationships between some of the local businesses as well as some of the larger vendors. In some cases, those relationships continue, and we were able to build on other work in the regions.

**Mr. Jamie Schmale:** It's interesting. You raised a good point.

In some of those communities, there are the people available who have the skills and it would be an easy start up.

Are there any communities you've approached that the skilled trades or the knowledge to deal with such a complex system wasn't readily there and you would have to basically start from scratch?

**Mr. Ian Jacobsen:** That example with Sibi was something that was built from scratch in collaboration with the community, OPG and a number of other partners. Our unions, our contractors, helped to build that capacity. There was a lack of capacity, as I understand it, at that time.

That's a great example of where in our discussions on the projects, certainly jobs, employment and training were a big priority for the community. So through collaboration, we developed that program initiative.

**Mr. Jamie Schmale:** Right.

Obviously, that's a great model to chose.

When you come together like that, is the word spreading that this is a great opportunity for first nations communities that may still be on diesel and may be investigating whether or not to move forward?

**Mr. Ian Jacobsen:** I'm reluctant to speak on behalf of the remote communities that are looking at this.

**Mr. Jamie Schmale:** But just as you expand, I guess—

**Mr. Ian Jacobsen:** I think that project was a model project in Ontario.

Certainly, in talking with other communities, people are aware of the good work that was done in collaboration with the community. So it's certainly looking at similar opportunities, or similar programs and initiatives.

I referenced the indigenous opportunities in nuclear program that we launched in 2018. That's in partnership with Kagita Mikam. Similarly, we're tapping into the capacity that exists currently in some of the communities in being able to broaden our outreach and our relationships. We provide the need, and the communities supply the interested candidates to work in the project.

**Mr. Jamie Schmale:** Excellent. Thank you.

Professor, I have a quick question on your testimony concerning the Sami people.

In terms of what we heard in our last meeting a week or so ago, one thing that wasn't clear in my mind at the end of it—I think that was on my part—is that when the consultations are taking place with the Sami people, are they speaking with one voice, or is it kind of a fractured voice when you're talking about energy consultations?

**Prof. Dwight Newman:** Well, as in any community, there can be some differing viewpoints obviously, and any human community has differing views. The voices get unified together in some ways through the Sami parliament. Insofar as it's drawn into commenting on particular issues, there's a unified voice.

I'll add that there is more linguistic, more cultural cohesion amongst the Sami people than amongst the very diverse indigenous peoples of Canada. You do potentially get more of a unified voice there, but even then, you have divisions within any human community.

**The Chair:** Thanks.

Mr. Cannings.

**Mr. Richard Cannings:** Thank you all for being here before us today. It's been very interesting.

I'm going to start with Dr. Newman and try to take advantage of some of his obvious legal expertise on this big subject.

Some of the testimony we've heard—and not just here in this committee, but across the country—about indigenous engagement and consultation is that it's not rocket science. We know how it should be done. It involves, as Mr. Hehr said, early engagement and developing respectful relationships. If we are consulting with indigenous communities and governments, we should not just write down what their concerns are, but try to make meaningful attempts to address those concerns.

Obviously, there are some situations that are more complex than others, especially when we've heard today some examples—and perhaps you might have mentioned it—of where some indigenous communities have one viewpoint on a project and others that are equally as affected have another.

One example that comes to mind is an international situation. You have the Arctic National Wildlife Refuge in Alaska. The Inupiat people who live in Alaska are in favour of drilling there, but the Gwich'in of northern Yukon, who subsist on the caribou that calve in Alaska, are against it.

Could you make some comments on those complex issues and how they can be addressed legally?

• (1710)

**Prof. Dwight Newman:** I'll just say that, in general, yes, there's a lot of clarity on a lot of issues on consultation in Canada in terms of what's legally required.

You've highlighted two of the issues that actually give rise to complexities.

One of those is early engagement. In one way, that's actually very straightforward for a lot of contexts. A lot of industry proponents take that on board as a given—that they would pursue early engagement—but those that do that tend to be larger companies, those engaged in the development of a resource.

Early engagement can actually be quite challenging at the exploration stage, for example, which often involves smaller enterprises. That's been one of the contexts where we've actually seen conflicts emerge around what can or can't be expected of small exploration stage-type companies. However, there can be ongoing attempts to develop ways of moving together respectfully there.

Meaningful consultation has, of course, been in the news in recent months. A very important principle is that there be meaningful consultation, yet somehow there have been failures to achieve this in the context of the court challenge on Trans Mountain, identifying problems in what the Government of Canada did, even with the guidance that was available from the northern gateway decision. The government has had to go back and do more there.

It highlights the situation that has generated a lot of complexity, which is something like a linear infrastructure project that involves a lot of communities along the route, where some take one view and some take another. You've highlighted this in the context of an international difference between communities, but it, of course, exists even within Canada. It's going to be one of the very challenging things to sort out. How do we sort out situations where there is not unanimity among different indigenous communities that are all potentially affected by a project, some of which, indeed, may be proponents and equity partners in that very project, while other indigenous communities express ongoing concerns about it? That's not something that actually has an easy answer, but it's going to be one of the things that need to be sorted out.

Ironically, the situation that you have raised, I think, might have made for easier answers—where there is the possibility of international law coming into play from the effects in one country of developments that have effects on another country. To put claims based on transboundary harm and principles of international law around transboundary harm, I think, becomes probably the way to deal with some of those types of situations. However, the particular harms would need to be identified very specifically in a way that would engage the international law doctrines that pertain to them. If specific harms weren't clearly identified, they couldn't be taken before an international body.

Obviously, the hope is to fend off the harm before it occurs, so there needs to be a deep international conversation that takes place in the context of that issue to try to find a way forward. The fact that there's one state on each side of it, potentially, actually opens up more possibility for a clearer route forward than in some of the more complex situations that occur even within the country.

So, there are no easy answers, but maybe some answers on some of these.

• (1715)

**Mr. Richard Cannings:** Here's another easy difficult question. You mentioned the series of cases that have been brought forward in Canada that have framed and somehow defined the way that we go at indigenous engagement. In Canada, we've had more of that perhaps than other countries. You know them all, from Delgamuukw all the way up to the Federal Court of Appeal decision on Trans Mountain.

Do you see it as almost a chain of decisions, with each one citing previous ones? First of all, is there some lesson that we as legislators or the government can take from those decisions to avoid falling into those situations again? Or do you see this more as just a gradual refinement of the legal framework of our engagement with indigenous peoples?

**Prof. Dwight Newman:** In terms of lessons to take from the chain, I would highlight particularly the chain from Haida onwards, on the proactive duty to consult. I would distinguish it a bit from Delgamuukw and other cases prior to Haida, which were focused on consultation as part of the test for whether a particular infringement of an aboriginal or treaty right was justified.

Haida and the cases following it say that in every instance where there might be an impact on an indigenous right, there ends up being this proactive duty to consult that arises. That arises in Canada hundreds of thousands of times per year. Most of those situations move forward fairly successfully, but a few end up in challenges and litigation in some instances.

One of the key lessons that I would identify is the need to try to get beyond the uncertainty that Haida and its subsequent cases are dealing with. Haida was put forward as an interim case to try to deal with situations where there is not yet certainty on the final shape of indigenous rights in a particular situation, and if greater certainty could be achieved, whether it's through the courts if need be, but ideally through negotiation between governments and indigenous communities.

Some of that doctrine on consultation can become a lot clearer than it is right now. Otherwise, I guess, there's guidance in the cases on just trying to take all of the steps involved in meaningful consultation, and there can be ongoing work to try to follow that. However, there may be things still to be clarified in law. There may be ways for governments to move that along and to seek answers from the courts faster than those that have been received thus far in the context of that ongoing interim doctrine.

**The Chair:** Thank you.

**Mr. Richard Cannings:** I had another good one.

**The Chair:** You're only allowed so many good ones in one day, Mr. Cannings.

Mr. Whalen, I think you're going to share your time with Mr. Graham.

**Mr. Nick Whalen:** Yes, of course. Thank you very much.

I just have one question. It was really interesting to hear about the environmental impacts and early engagement with indigenous people in the previous panel. You guys are looking at some of the economic impacts. We heard some incisive testimony on February 5 from Chief Byron Louis of the Okanagan Indian Band, who was representing the Assembly of First Nations. He pointed out quite rightly that indigenous groups need to benefit economically from projects in meaningful ways.

What best practices should there be in IBAs, and what other incentives should there be? What would you suggest be included in an indigenous consultation processes to allow us to achieve Chief Louis' laudable goal that we "rebuild, not only socially but economically."

I guess I'll start with the panel here. Mr. Perera.

**Mr. Channa Perera:** Sure. IBAs are one of the things that CEA member companies are doing. I mentioned Nalcor earlier. Among some of the activities or things they included are environmental impact mitigation. That's a major, important thing for indigenous communities, that you will equip them to protect the environment and the local community.

On the economic side, I would say that employment is the top priority for those communities. Many of the CEA member companies put a lot of emphasis on ensuring that the local indigenous people have first priority when it comes to employment. Then, procurement on the supply chain side is very important as well.

Again, Ian can speak to this for OPG. We put a lot of emphasis on procurement efforts. As I said before, education and training are very important to our member companies, because we want to make sure that it's not just about what is there now but also about the future.

• (1720)

**Mr. Nick Whalen:** Should those education and employment strategies be baked right into the benefits agreements?

**Mr. Channa Perera:** Yes. Some of those are included. In the case of Nalcor the training and education components are included.

That's important, because we also need to think about the future. It's not just during the construction phase of a project, but what's going to happen five, 10 or 15 years from now. We need to be sustainable as we look at delivering value to these communities. It's not a one-time thing, but over time—

**Mr. Nick Whalen:** It's over the life cycle of the project.

Mr. Newman, before we hand it back over to Mr. Graham, do you have anything to add?

**Prof. Dwight Newman:** No, nothing specific on this particular point.

**Mr. David de Burgh Graham:** How much time do I have, four minutes? Thanks.

You said the Canadian Electricity Association has existed since 1891, which I believe would make it among the oldest industry associations in the country.

At what point did the CEA start worrying about indigenous rights and consultations?

**Mr. Channa Perera:** Even before the association, I must mention that our members have been working with local indigenous communities for decades. OPG is a very good example of that, and Manitoba Hydro, Nalcor, Nova Scotia Power and B.C. Hydro. Many companies across the country are working with indigenous communities.

In 2016, the CEA board of directors, the CEOs of all of these companies, agreed to go beyond their local activities. They wanted to indicate their commitment at the national level.

One of the things we do at the association is to bring these members together and share best practices, somewhat like what you are doing right now, trying to understand what's happening across the country in terms of best practices. We do that with these members around the table and we share what each other is doing.

I would say the commitment goes back many decades, but at the association level, during the last five years, we have been putting a lot of emphasis on indigenous activities. We have been meeting with indigenous leaders. I personally had the opportunity to go to Yukon and meet with people such as Peter Kirby, who has a great hydro-power project in northern B.C.

We try to learn and we try to educate our members about what's happening across the country as well.

**Mr. David de Burgh Graham:** Speaking of your members, are all the CEA members on the same page on consultation, or do you have a wide diversity of opinion among your members? For that matter, how many members do you have?

**Mr. Channa Perera:** We have a very diverse membership, 37 member companies. They are mostly large-scale companies such as OPG, Hydro-Québec, and so forth.

I'm not in a position to say that we agree on every single point. One of the issues that came up was one approach to dealing with diesel.

The point I want to make when we look at these communities is that every community is different. If you go to northern Canada and you see one northern community, the next community is totally different. There isn't one cookie-cutter approach. We need to understand what's important to those local communities and the indigenous leaders there.

Again, going back to your question, I'm not able to say we're on the same page on every single thing, but it's about developing mutually respectful relations with individual indigenous communities.

**Mr. David de Burgh Graham:** Have you found any consultations that have directly resulted in the project being cancelled or significantly changed?

**Mr. Channa Perera:** For the most part, because of that relationship and because we have invested in talking to community leaders and working with them and building trust, we have been quite successful in our relations with indigenous people. OPG again is a very good example of that success.

Ian can speak to the fact that they have settled some 22 grievances

• (1725)

**Mr. Ian Jacobsen:** Twenty-one.

**Mr. Channa Perera:** They've settled 21 grievances, out of 23 or so. That goes to show how much we have invested in developing good relations with these communities and ensuring that our projects are supported.

**Mr. David de Burgh Graham:** All right. Thank you.

**The Chair:** Thank you, Mr. Graham.

Mr. Falk, you can finish us off. You have about three minutes.

**Mr. Ted Falk:** Okay. Thank you, Mr. Chair. Thank you to all of our panellists here, our committee presenters.

In my home province of Manitoba, Manitoba Hydro, with its Keeyask dam project, its generating station there, has worked very well with four separate indigenous communities.

You talked about the diversity among indigenous communities, Mr. Perera. Mr. Newman has also mentioned that there's not the same cohesiveness as in the Sami community in Norway, from what we've learned about at the committee. I appreciate that.

I'm going to focus my questions on you, Mr. Newman. When you have all these different communities on a major project... You're from Saskatchewan, where I think there are seven or eight indigenous communities involved as partners in a large mining operation there. Who makes these decisions? Does every community make them? Is it the individual chiefs? Is it the band members or council members? How is it determined that they come together to form partnerships?

**Prof. Dwight Newman:** Well, it ends up being a decision at the band council level to enter into agreements. Obviously, there's a democratic process within the community. This is a simpler context, perhaps, than some of those in British Columbia, where we've seen divisions between the Indian Act leadership and the hereditary leadership, which present additional challenges when there's a stronger division that way.

Within a community in Saskatchewan, there would end up being a decision, ultimately, at the band council level. In some instances, there's an economic development corporation that's at play as well, so things can be a little more complicated than this, too.

In terms of different communities coming together, they would choose to do that. That conversation might be initiated in various ways. If there is ultimately an impact on other communities, they're

either going to need to be brought in, or there would need to be consultation with those communities. It's probably a better win-win scenario for everyone if all of the potentially affected communities can be brought in, as well as any communities that are interested in investing in the project and participating, even if they're not directly affected. It's like different communities that might collaborate together in a non-indigenous context as well.

**Mr. Ted Falk:** Right. For indigenous communities, are the contact points through the chief or through the band councils? Obviously, the decision is typically made at the band council level, but would it be the chief or would it be people in the administrative office?

You also mentioned the economic development corporations. Many bands have those as well. We're looking for best practices for indigenous engagement, so who do people need to work with?

**Prof. Dwight Newman:** I would say that some first nations in Saskatchewan have issued consultation or engagement policies that specify how they want to be worked with. Certainly, these identify their preferred ways, and might be very helpful where they exist.

There's a huge diversity of communities within Saskatchewan in terms of size. Some of the larger communities such as the Lac La Ronge Indian Band and Peter Ballantyne Cree Nation are up in the range of 10,000 members. There are other communities in the province that have 200 or 300 members.

The larger communities will have a consultation office. They may have a consultation manager. That might be more of the contact point, as opposed to going directly through the chief. However, on a larger project, the chief is going to be involved and the band council will ultimately be involved. In a smaller community, it may be a more centralized function.

It's really a case of having to learn how each specific community's processes work. Certainly, there can be information available on that from the Government of Saskatchewan, for example, and industry can draw upon that.

• (1730)

**Mr. Ted Falk:** I think I'm out of time.

Thank you, sir.

**The Chair:** I want to thank you all very much for joining us today. That's all the time we have, unfortunately. We'll see everybody on Thursday.

The meeting is adjourned.







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