

Expert Panel Public Presentation Session

Review of Environmental Assessment Processes

November 14, 2016

Victoria Inn Hotel & Convention Centre, Thunder Bay, ON

Expert Panel:

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

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**TRANSCRIPTION/TRANSCRIPTION
EVENT/ÉVÉNEMENT**

Transcription prepared by StenoTran Services Inc. exclusively for Canadian Environmental Assessment Agency

Transcription préparée par les Services StenoTran inc. exclusivement pour Agence canadienne d'évaluation environnementale

DATE/DATE (of transcription): December 8, 2016

LOCATION/ENDROIT: Client Supplied Audio

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SUBJECT/SUJET: Review of Environmental Assessment Processes, Thunder Bay Public Presentations.

SHANNON DODD-SMITH

Shannon Dodd-Smith: Hello. Can everyone hear me?

Johanne Gélinas: As you know, you have 20 minutes or so to make your presentation. And if you can make your presentation short enough that we can have a dialogue with you, it will be very much appreciated.

Shannon Doss-Smith: I'll do my best. Thank you.

Thank you very much for hosting this, and thank you to the current government for the mandate. I'm here as a stay-home mother, primarily. I brought my daughter; she is in SK. I think the point that I want to make is it's important for people to feel like they can be engaged in processes like this. And when we're talking about the EA process and making improvements, diversity and meaningful engagement is extremely important.

My professional background prior to deciding to stay home for a while is primarily around the Ontario *Planning Act* which, of course, is quite heavily centred on public engagement. And prior to that, I worked with the Ontario *Environmental Assessment Act*, the CEAA, so I have some experience, but primarily, I think, I'm speaking as a citizen.

In my experience in community processes and on the other side — community processes that are government processes, I guess, like the *Planning Act*, I have seen the way public engagement can work really well, and I've seen how it just doesn't work. And one of the components that make it work is time.

One of the things I did read on your web site was that how do we use this process or ensure this process is set up in such a way that we can move our resources to market more quickly. And I would like to say that I don't think we should be asking how that question, how we can move it more quickly to market. I think we should be asking the question, how can we move it better to market. How do we value add? How do we make sure that we're moving it to market in a way that benefits all Canadians and beyond Canada as well? And I'll get to that latter point in a minute.

Those — the process, the public process part of it, engagement, meaningful engagement takes time, and so I would like to say that we shouldn't be focused on getting our resources out the door quickly per se. There are so many other components, as we all know.

So I think there are ways, though, that we can ensure meaningful engagement in a timely way. I would like to just take a pause and tell a story about my planning days.

I was an environmental planner in a small town, Guelph, Ontario. Not so small, I guess. But the point is people were very opposed to a particular development downtown. Because of the *Planning Act* and the provisions in the *Planning Act* when they're used properly or when enough people speak up and become engaged, it's a bit of a Catch-22, the outcome — it took forever. It was very frustrating for both the developer and the municipality to a certain point, but it — because of the process in place, people had to work together.

And they had to listen to the folks that had the most concerns in spite of what seemed like superficial concerns to some, maybe to the developer or whatever.

And at the end of the day, the quality of that development was far beyond anything that came through the doors as a proposal, and it benefited everybody, including the developer. The developer was able to make more money, to have a higher quality product at the end of the day because of the public engagement process which took longer.

Now, in terms of EAs, they can be quite lengthy because of the public engagement part of it, and I think one way to make sure proposals or undertakings — ensure they go through the process, make sure they start at a higher level. We should be insisting on better environmental design. It's out there. It is a choice. And so we should be raising the bar in terms of what we expect in terms of environmental design.

We should also — I'm thinking about David Suzuki's blue dot movement, so I'm thinking about a charter of environmental rights and freedoms that establish our shared environmental and social and economic values at the outset, so any multi-national considering a project or an undertaking in Canada will know right off the start where we stand in terms of our values and what our expectations are.

That brings me to my next point, international agreements. NAFTA Chapter 11 should not — should not happen again, and I see — I'm worried that it is through the CETA and the TPP.

I don't want our — what might be a great result at the end of this process. Maybe we'll have an end to our patchwork environmental legislation in Canada, and maybe we'll have a really — a solid EA process, but if we cannot implement it because of international companies' rights to sue when they lose money over having to clean up their mess in Canada — that's just an example — it is pointless and it is a waste of all of our time and it's an insult to the people who have spent time thinking about this and participating in it.

So I call on the government to raise the bar in international agreements so that we can implement these really good processes that the government's taking on right now and improving and restoring the components of the *Navigable Waters Act*, the *Fisheries Act*. As an environmental planner, we relied on those two Acts to be able to implement the outcome of an environmental assessment. Those were the only two that really had any teeth. Those were nixed with the last government, and I'm so proud to see that those are being reviewed again and in hopes — and I hope they'll be restored because in our patchwork environmental legislation, again, that's — I'm hoping that maybe, as a result of this, there could be some sort of legislation that brings the provinces together, is — allows for better coordination and easier implementation, monitoring.

Speaking of monitoring, that is another aspect of environmental assessment I would like to see strengthened, the requirement for undertakings for proponents to have a contingency plan. I think it's in there already, but a contingency plan if their project doesn't go as planned.

So many projects are based on hypothetical data, extrapolations. It's quite another thing when they get built and they're in operation. I would like to see contingency planning and monitoring and data collection, so — data

collection is so important, as we know, not only before the project to be able to assess impacts, so we need good data, good science, but we also need to monitor afterwards to see what — what's happening as a result of the true impacts of that project. And that data needs to go back into our shared data banks that are coordinated across provinces and accessible to all levels of government when they're looking at impacts or potential impacts for any size project.

Of course, I'm pie in the sky, but thank you for the opportunity to think pie in the sky.

And that data would also have the potential to then influence public policy going forward, not only future undertakings of a similar type, but public policy.

So I'm saying a lot in a short period of time, but it's the micro part of it. We need good data, we need data that's accessible, and I think there are ways in which we could do that.

For example, my husband, he travels to the far north. He's paid by Environment Canada to travel to the far north to set up monitoring stations for other things, but it could be bio data that they are collecting.

The helicopter is paid for. Thousands of dollars a day. The fuel is paid for. Everything's paid for for that data collection. Why not also collect other types of data during that time?

Indigenous knowledge. A huge body of knowledge that is coming together provincially in Ontario, but what's happening in other provinces? I'm sure the same. Let's coordinate indigenous knowledge as well. Every bit as important or more important than scientific.

What about monitoring programs, scientific data collection for people who live in the north, First Nations? I'm sure they would love the opportunity. There's community planning that's happening right now in Ontario in the far north. Maybe that can extend to scientific monitoring and data collection. There are ways to make scientific data collection accessible to everyday people.

You don't have to be a scientist per se to collect data. It helps, it's true, but there are opportunities there that would benefit everybody.

Excuse me while I pause for a minute and check my notes.

When I — I read the choice book. I thought it was quite well done. I am, again, concerned that we are thinking about revising this EA process to lower the bar in order to implement and activate international trade deals, the TPP, the CETA. NAFTA was already mentioned in the choice book itself.

I don't want the bar lowered. I want the bar of those trade agreements raised. I know I said it before, but I think that's the centre point of all of this. We can do all the work we want on our legislation and our processes. If we don't have those protections in place, that ability to exercise our sovereign right to implement our own legislation, then it's pointless.

And I'm particularly thinking about — oh, when we do an EA — I'm jumping a little bit here. When we do an EA, I think we should be answering some key questions.

There are lots of questions but I would like to see, first and foremost, how does this project or undertaking or proposal, whatever you want to call it, improve climate change or — that's probably not the right word. Prevent climate change. Not contribute to climate change.

How does this project improve bio diversity? We are facing extinction at alarming levels. No project — I think we — I think we've gone too far already. We shouldn't be talking about how we speed up development. It should be how we choose the development that's going to heal some of those things, one of them being bio diversity.

Again, I know this is pie in the sky, but I don't think it's unrealistic.

How does this project contribute to sustainability? How does it advance the wellbeing of indigenous people? How does it balance corporate interests against the best interests of our country and the globe as a whole? How is it — what are the cumulative effects of this project? Those are the questions that I would like to see answered, among others. But I'm sure other people will touch on those.

Transparency is key in all of this, so projects for which, as you say, summary notes and whatnot are posted online is fantastic. Harnessing various ways of communicating with people, so this is great. Ten minutes is good for because I have to stay — like I've got things to do. Most of these people work full-time. They've got to go. Ten minutes is great.

An evening workshop is great for people who work during the day, so I think you've pretty much nailed it. What can we do for online? And I think you've got that, too, covered. So how do we translate that to EA processes to make sure you get a diverse set of input?

I think that I've touched on most of the questions that you've prompted through the choice book.

In terms of what to do with the agency itself, I would like to see, I think — as a Canadian citizen rather than an expert in any EA process, it makes sense to me to have a separate agency for that.

The NEB concerns me only because it's got a particular mandate and interest in a certain area whereas the CEAA — maybe changes are required there, but it is dedicated, I would like to think, in an arm's length way to the process and maintaining transparency.

And I'm going to leave it at that. Thank you again for the opportunity. I really appreciate it.

In terms of getting people to come out to things like this and to — or to participate in EAs, now that I'm a parent, I know there are certain challenges with getting out of the house. And if there's, you know, like a play area or — I know my sister, she's First Nations person, she's on a Board, and that Board, it provides daycare. It provides child care.

And I know that's not financially possible in every situation, but it's the difference between getting women involved and not. Mostly women. And I don't want to be sexist because lots of men are the primary caretakers, but I think still women are mostly the main ones. And it gets women out and it — so I think that's something to consider.

I think on your web site you did offer help. And I didn't know what help that was. I was curious. But you know, I haul my kids around to these things and they're usually great, but if you were to have a little set of toys or something like that and that became commonplace or required anyone administering the EA or a public process to have something around child care or child friendly something, it not only would maybe help get more diversity, it would also bring kids into the — and — into something like this.

My daughter's watching me right now. She will play this at home, and she will know, growing up, that she can participate. And that is everything.

And so I think if we could tap into the youth and children as well to get them used to this idea of it being important and relevant to get engaged and say what they think is, I think, we'll have a much better country — or I mean maintain a great country.

So anyway, that's it. I'll end on that.

Johanne Gélinas: Don't go anywhere.

Shannon Dodd-Smith: I spared you the — well, I shouldn't say that. I didn't bring a PowerPoint, so I can't really go back to any previous points, but —

Johanne Gélinas: We have taken notes.

So what's the name of your daughter?

Shannon Dodd-Smith: Delilah.

Johanne Gélinas: She was listening very carefully. She should be proud of her mom.

I have one question for you. You mentioned at the beginning of your presentation meaningful engagement takes time. Based on your experience, and obviously you have a lot of experience, where is the best value added for public engagement considering also that people have other things to do in life than getting involved in projects?

Where you will see communities should be engaged? And when you say it takes time, based on your experience, compared to what we have right now, how much more time, and where?

Shannon Dodd-Smith: There are two areas. The first is getting a common set of values around environmental impact assessments, so I'm thinking again about David Suzuki's blue dot movement, trying to get a charter of environmental rights and freedoms.

And there's a baseline already established of what we all feel is important in a project, so that is already in the hands of any proponent, so that saves time right there because if they come in at the bottom, it's hard to move it — move the bar.

Again, that's a bit pie in the sky, but if we can get that up front, that might save some time.

So second of all will be people — what I find in community processes, and I'm speaking now as a participant in community processes. Right now in my community, there is a garbage incinerator gasifier plant coming in. And people didn't really get it until they had a certain information. And that information was, how's it going to impact me.

So I think that if you could get project details to people at a level of detail where they can see themselves or understand it in layperson's terms, that would be idea.

Again, I'm not sure if I've ever achieved that in my past career, but so many notices go out, for example, under the *Planning Act* that are written in a legal language, no map attached. If we were to have the ability to write those in a language that was layperson's language and include a map and include this is what's

happening here and this is what the potential implications are in that same ad, like a — instead of the legalese ad, wow, that would get you a very different reaction.

Thank you again.

Renée Pelletier: Oh, I have questions.

Shannon Dodd-Smith: Okay.

Renée Pelletier: Thank you for your presentation, and thanks for bringing your daughter.

A question about the example you gave about the development in Guelph that you said was — I think you were giving it to us as a best practice. And you said it took forever but, at the end of the day, everyone sort of walked away happy.

Can you walk us through the elements of that process that made it such a success?

Shannon Dodd-Smith: Yes. First and foremost, there's a legislation, the Ontario *Planning Act* which, are the core of it, is based on public input and public consultation, at least in my opinion. So there was a requirement for certain notices.

The second part of that, though, was a set of design guidelines that was developed by the municipality, so if you wanted to compare it to the EAA legislation at the core of it being public consultation and then the municipal part where the design guidelines, that would be, say, our charter or our basic principles of environmental values or social values.

So the proponent before even coming to the municipality with their application knew that he had to fulfil certain things in terms of consultation with neighbours and the broader community because it's laid out in legislation, but also the design guidelines.

The bar was set up here, not down there. If there are no guidelines, they will go straight to the bottom because they're a business. Of course they've got — there's the whole *Corporations Act*, which is very problematic.

So having the bar set higher for design guidelines right from the start, there's no questions asked. He had to come in with something that was basically good, and those design guidelines were designed through a public process.

So the municipality created those guidelines with the community, so the community has established the terms of reference for what kind of development they want to see in the city.

And there is also another requirement, and that is the level of detail that is brought in to be shared with people so people could see what was being proposed. I will give you an example of what happened in Nebing.

In Nebing, which is my little community just outside of town, it's towards the border about 20, 25 minutes away, is the — is where I live. But anyway, we had an opportunity to have an information session with the proponents. We all got there, there was nothing. There was nothing to look at, nothing. And they clearly made it up as they went along. And if they didn't make it up as they went along, it felt like it did.

So everyone's very suspicious, very anti-development in terms of this project. Had they brought something to look at, we — they might have some credibility.

So in the case of Guelph, there was lots to look at. People could roll up their sleeves, put a pen on paper and say I don't want this window from this proposal — proposed building facing my window, so it was changed. I want to look at something green, so it was changed. So hands on. And it goes back to the level of detail at the time of the proposal so that people can see themselves or understand better the potential impacts before the impact assessment has been completed.

Doug Horswill: Thank you very much.

So a few questions. I just want to make a comment, though. The mandate — I had to go back and look because you said — you suggested our mandate is to get resources to market faster. That's actually not in the mandate.

Shannon Dodd-Smith: I agree.

Doug Horswill: It's just get them there. And right now, one might say they're not getting —

Shannon Dodd-Smith: Okay.

Doug Horswill: -- there, whether they're going quickly or not. So we take a broader view of what we're supposed to look at than faster, although that —

Shannon Dodd-Smith: Good to know.

Doug Horswill: -- that's valuable.

Shannon Dodd-Smith: I'm not sure, actually — I may not have gotten that from your web site anyways. I'm thinking it could have been — I don't know.

Doug Horswill: So we're all looking at doing something.

The other thing I just wanted to say is your concern about the trade agreements and — south of the border last week, something happened among the many things that may not make those so relevant right now, but I'll just say that.

Shannon Dodd-Smith: I hear you.

Doug Horswill: We can pause.

Shannon Dodd-Smith: It may solve all that Chapter 11 business.

Doug Horswill: Yes. But your comment about “raise the bar”, I just want to say again, it's our mandate, and we can't tell you where we're headed, but if you look at the mandate, the three things we're supposed to do beyond getting resource to market is one is to regain public trust and the other is to introduce new, fairer processes.

So I would take a slightly broader view of whether we're going to just stay where we are or do something different based on those, so that's just a response.

Shannon Dodd-Smith: And that's wonderful, and I do believe you're going to raise the bar with processes and acts. But I think it's impossible to raise the bar without — if you can't implement it at the end of the day because of international agreements, then it's pointless.

Doug Horswill: Fair enough. But I don't see anything in our mandate talking about an international agreement.

Shannon Dodd-Smith: But I'm hoping you can take in the — in the choice book, certainly international agreements are mentioned.

Doug Horswill: Yeah.

Shannon Dodd-Smith: So I think — I'm hoping you could take some of your feedback and pass it on.

Doug Horswill: For those who have not looked at Choicebook but have some tonight, the international agreements referenced do reference trade agreements but also the Biodiversity Convention and the Paris Accord, which — so it's a mixture.

But the question I wanted to pick up is this question that my colleague asked you about in the *Planning Act* and this idea of design standards and starting points.

So I'm just curious what period of time this occurred because planning used to be fairly difficult to spot a baseline level, and then the province, in 2004

and '05, created a policy statement and said it applies to everything, and it must be consistent with that.

Is this thing you're talking about post 2004-05, or pre?

Shannon Dodd-Smith: It would have been around that time exactly. I think — it was post — the very first PPS, Provincial Policy Statement, was implemented in 1997, and then it was updated in 2005 and again just recently. But regardless, the Act has always been there. So the things that took place in Guelph that I described really, I think, the power to do them was still there and the requirement — the requirement under the Act for public consultation would have been there no matter what the status of the provincial policy was at the time.

Doug Horswill: Right. Okay.

Shannon Dodd-Smith: Whereas the design standards, it's possible that the provincial policy gave a little more support to the municipality to do those and implement them. It's possible. Without that policy statement, they may have been challenged, maybe, by different sectors and may not have had as much power to implement them.

Doug Horswill: Okay. And just a final question.

One of the things you may hear about from other presentations because we've seen them here is the discussion about regional assessment and what the importance of that is. And I just want to throw your way, an official plan is a form of regional assessment. And when you talk about community input, do you regard the official plan that would have been operative in Guelph as being helpful to this exercise, or was it even relevant?

Shannon Dodd-Smith: Absolutely helpful. So I do believe that regional planning is very important, so regional environmental assessment, I think, are very important. They do take into consideration regional variations, and they can fit together with other regions. There is a way to knit them together or place them into a larger context like nationwide or CEAA or something like that.

The official plan is the blueprint for how development takes place in any given planning area. It is supposed to be watershed based. They're not always, especially up here. We're quite different in the way we do official plans. But they are very important, and they're an important source of data if they're done properly. Some, though, aren't necessarily based on primary data or even secondary data, but it's an interesting point.

Doug Horswill: Okay. Thank you very much.

Johanne Gélina: Now you can go.

Shannon Dodd-Smith: Thank you very much.

Johanne Gélinas: Thank you very much.

I would like to invite Jason MacLean.

JASON MacLEAN, LAKEHEAD UNIVERSITY

Jason MacLean: Good afternoon.

Johanne Gélinas: Good afternoon, Mr. MacLean.

Jason MacLean: Can everybody hear me? Okay.

I'm an assistant professor of law at Lakehead University specializing in environment law, and I want to echo — well, I want to say a couple things by way of preface.

One, I feel a little — okay.

I feel a little guilty that I didn't bring my daughter. I left her in school. But if I did bring her, we would be listening to Taylor Swift's "Shake It Up" constantly, and I think that might get a little old, although it's fun at our household.

So thanks very much for holding this and for doing this excellent work and for listening to Canadians. And this is a really critical reform project, and I'm very grateful to be able to be here and to share some ideas with you, but I really want to applaud you for the excellent work that you're doing and for everybody here to understand that this is hard work that you're doing, listening to citizens across the country and trying to make sense of all of our ideas which are coming at you from all kinds of different directions.

Now, the first point — I'm going to try and just make a series of relatively quick points.

The first point that I want to make, that I want to respectfully submit to the panel, and I think the panel already knows this, but I'm going to say it anyway, is that the reforms that you recommend must be fundamental, so they must be at the highest level of ambition and only at the highest level of ambition will the reforms succeed in restoring the trust of Canadians in assessment processes.

As my colleague, Chris Tollefson, at University of Victoria put it really aptly, this is — when it comes to environmental assessment, this is a teardown. It's not a reno. And if it were merely a reno, you know, Rod's already written the book on EA, so he could just write another little — you know, an addition to the book. You have to write a completely different book.

Now, what do I think that that fundamental reform is?

Respectfully, I think the fundamental reform that needs to be contemplated is that we have to move away from the idea of environmental assessment tied as it is to looking at adverse biophysical impacts of economic projects and move to a model of sustainability assessment, so from EA to SA, as it were.

Now, the word on the street with respect to your panel because, you know, you're developing quite a reputation, is that you're both — you're interested both in big picture, bold ambitious reforms, but you're also very interested as well in the nuts and bolts, the concrete aspects of how these things are going to work. And that's a really good combination of ideas.

And I would submit to you that despite reservations that anyone might have about the concept of sustainability and its precursor, sustainable development, in some concepts, and used in certain sectors, it's a bit of a much-abused concept. It's kind of a controversial concept to some. But I think sustainability, properly understood, gets at both the ambition and the so-called nitty-gritty of establishing robust and fair assessments of economic projects.

You know, drawing on the work in particular of Jeffrey Sachs, with whom I'm sure you're familiar, sustainability has both an aspirational component and an analytic component.

The aspirational component is to use — is to envision a society that's socially equal and inclusive and that marries economic activities to respect for ecological integrity for the biophysical limits of our planet.

Analytically, sustainability is a tool for accomplishing that integration of economic, social and environmental considerations.

And what Professor Sachs, in particular, I think, really helpfully adds, and this is where this becomes particularly relevant to your panel, is the concept of good governance. Good governance is the processes through which this integration of these — of economic, environmental and social considerations takes place.

And in a sense, whether fair or not, there's a perception, and there's been a perception in Canada for quite a long time, that governance with respect to environmental assessment is not good and, moreover, it's not good in a particular way, is what Professor Mark Winfield calls bipartite bargaining. It's a process that, whether in reality or in perception, and I would say there's a lot of evidence for both, is subject to a lot of negotiation between industry proponents and government to the exclusion, often, of meaningful local public participation on the part of a diverse set of stakeholders.

So in that sense, I really echo the recommendations made by the first speaker today, but I would add a caveat, and that is, under sustainability assessment, I think the very question that's asked in respect of proposed economic activities has to change.

Now, I'm simplifying a little bit, but in many ways, there's a perception that environmental assessment, and being as it is, in — you know, primarily an informational tool, and that's its origins. Environmental assessment has always been — a lot of people don't understand this, including law students, in fact, but environmental assessment isn't — hasn't been a way of, you know, making decisions per se about projects. It's about furnishing decision-makers with information in order to be able to make decisions.

I think sustainability assessment in terms of being ambitious, in terms of it being a comprehensive, systemic overhaul of assessment, has to ask a fundamentally different question. The question has to be not how does this project, how does this proposed economic activity go forward or, as Professor Bob Gibson says, how do we make this bad project a little less bad, right, by mitigating adverse biophysical impacts, and instead, the question has to be, "Does this project go ahead at all?" right. It's not how, but whether.

And it may seem simple, but I think it's a fundamental philosophical shift. And how do you answer that question under the rubric of sustainability analysis? You answer it by asking whether or not the question — whether or not the activity in question or proposed makes a net contribution to sustainability.

Now, I want to also say that, you know, that may sound really broad or, to use the apt phrase of the previous speaker, kind of pie in the sky, but that's okay because pie in the sky is part of this panel's mandate, so that's good. But I would say that — and this, to me, is a really important point — assessment — assessment processes, whatever regime you recommend that gets put in place, it doesn't have to do everything.

The key instead is to take the fundamental idea of integration and use that to apply it outwards. So in other words, we are now in a different — a much different reality than we were in the early seventies. We're in a reality where we know and the government recognizes that we have to mitigate climate change.

We're also in a situation where — and so we're in the process now of the government is, you know, unfolding, plank by plank, its climate change policies. So that work is ongoing.

At the same time, pursuant to a really interesting little piece of legislation called the *Federal Sustainable Development Act* passed in 2008, the

federal government undertakes the periodic creation of federal sustainable development strategies. And we're currently now in the 2016-2019 plan.

So interestingly, though, according to the Commissioner of the Environment and Sustainable Development, our current federal sustainable development plan isn't actually integrated with the UN's recent launch of 17 sustainable development goals comprising 169 concrete targets. That was the other really big international event that happened in 2015, along with the Paris Accord.

So the model that I'm suggesting for sustainability analysis in linking proposed economic opportunities have to be linked to our climate change policies and our sustainable development policies. So in other words, sustainability analysis doesn't have to do everything alone. It's not overly ambitious, although it may appear to be extremely ambitious.

Instead, what we need is a linkage between our climate change policies and our sustainable development policies at the assessment level. If assessment has historically been the kind of forum in which we try to resolve these social, political and economic debates about economic activities and to the extent that they run into community interference and even federal and provincial relationships, we need to broaden that forum and link it up.

So section 5 of the *Federal Sustainable Development Act* is really fascinating because it actually acknowledges the need to integrate social, environmental and environmental concerns in all decision-making. In all decision-making.

And that, I think, is essentially what sustainability analysis can do. Sustainability analysis could be a tool to finally realize that bold ambition.

Now, I think there are two really critical things that have to be added that follow from both the aspirational and the analytical dimensions of sustainability, and one is to echo the excellent suggestions just made to you by the first speaker, and that is what is critical is that sustainability analysis involve meaningful public participation on behalf of as plural and diverse a set of stakeholders as possible from the very beginning. From the beginning of determining the terms of reference of an assessment. Having that buy-in, having that participation right at the outset is critically important.

In fact, one thing I would suggest is that as a — as a proposal, as a recommendation to the government that the panel simply say, look at the processes we've put in place for consultation. We need to find ways to mirror those consultation processes in the resulting law reform that comes out of it, right, so the same idea of engaging Canadians in the formulation of the very question that's going to be asked by an assessment and empowering Canadians, giving them the information

and, as the previous speaker pointed out — and lawyers are guilty of this. We tend to speak our own language. The language has to be translated into a way that ordinary Canadians who aren't lawyers or who aren't environmental scientists can understand and they can add value to.

The other aspect of that beyond that equal structuring of public participation is science and traditional ecological knowledge.

It's critical, it's absolutely critical, that sustainability analysis be science-based, and that has to go beyond simply catch phrases like "scientifically rigorous" or "scientifically robust" which have been associated with environmental assessment, most recently even the environmental assessment of the Pacific Northwest LNG Project which, upon further review, appears to have numerous scientific gaps. It is not scientifically rigorous. It is not scientifically robust. And with all due respect to the Minister, simply saying so doesn't make it so.

Peer reviewed science with respect to climate change, with respect to sustainability, is presenting policymakers with obdurate constraints. Sustainability analysis must take into consideration those constraints.

And I think that that is part and parcel of the answer "no" being on the table from the outset of any sustainability analysis.

So again, if the question is not whether and how — sorry, not how a project proceeds, but whether it proceeds, science plays a key role in that. There are just some natural resources projects that ought not to proceed on the basis of scientific evidence.

Now, I know I'm probably running over or getting close to my time, but I wanted to address very quickly the question that the Chair put to the previous speaker about public participation, in particular, how much more aware.

My answers to those two questions because I think those are great questions, how much more, as much as it takes on a case-by-case basis. Where? At the very outset, in the very shaping and scoping of assessments and their terms of references — terms of reference so that Canadians feel that they're meaningfully involved in the entire process and not just coming on board, you know, where certain decisions have already been made or even appear to be made.

And one point that I think that emerges out of that that I really want to make, it stems to — it's part of the origins of signatory, this issue of time and time constraints, you know, vis à vis the consideration of efficiency.

There's actually no empirical evidence that suggests that environmental assessments were taking too much time under the previous regime. That was one of the rationales for the reform that led to CEAA 2012, but there's peer-

reviewed research, and I'd be happy to share it with you if the panel would like, that actually shows that under CEAA and under the *Fisheries Act*, environmental assessments weren't taking too much time. There was actually no evidence to sustain that.

So that's a concern that's typically raised by industry proponents. Red tape has to be reduced, assessments are taking too long, but it's a claim that actually doesn't have any evidence to it.

There's another aspect of it, and this will be my final point, I promise.

The concern of trying to shorten environmental assessments and these kinds of processes that involve public engagement and issues that are — that involve First Nations and indigenous peoples and local communities, if you shorten the time and you shorten the approval processes and shorten the assessment processes, you may appear to be saving costs up front, but as litigation experience shows, you will pay those costs on the back end through protracted litigation.

And to the extent that you want to provide, as any law should, frankly — any law should provide the basis for those who are governed by it to be able to govern their affairs with a certain level of reasonable predictability. You create more uncertainty by displacing the costs to the back end at litigation, so — and the rigour that comes through judicial review isn't the same that could come at the front end.

So you know, a point that was also made by the previous speaker is that better processes are better for everyone. They're better for project proponents, too, and they'll save them money.

So with that, subject to any questions that you might have, those are my respectful submissions. And thank you again for the opportunity to address you.

Johanne Gélinas: Thank you very much.

We'll take on your offer to get this information on timeline and the absence of evidence that public consultation creates way too long timeline based on what some are saying.

My other question to you is, you were talking about Article 5 of the *Sustainable Development Act*. Is there any way that this can be linked to project-based EA in some way? Have you looked at that?

Jason MacLean: Well, I mean, so I want to be — I want to be careful so as to not mislead the panel.

I don't think that the *Federal Sustainable Development Act* creates any obligation on the part of the government to do that. It simply creates an obligation to create a federal sustainable development plan, and the government's complied with that.

The relative success of those plans, however, that the governments have created, and this doesn't come from me, but in audit after audit of the — conducted by the Commissioner of the Environment and Sustainable Development, the ambition that you can read in the *Federal Sustainable Development Act* has not been remotely realized by the plans.

So one of the things that I think is going to be a particularly — and I didn't address it today, but I'll address it now. And I didn't really address because I don't really have an answer for it, but I think one of the trickiest things for the panel is figuring out the relationship between strategic environmental assessments, regional environmental assessments, the project level assessments, and most people who study this suggest that, you know, assessments have to move beyond the project level, that, you know, project-by-project level assessments doesn't get added, makes it almost impossible to consider, for example, cumulative effects when you go project by project.

In my view, I think that if the planning process around the federal sustainable development strategy were linked to climate policies and other matters of environmental governance, it could be the tool — you could essentially sidestep that question of CEAA versus REA versus project, and you could do it all under SA.

So in other words, the sustainable development strategy, particularly if it were linked to the UN sustainable development goals and those specific targets and Canada's commitments, that could be your overarching federal strategy that could be used to inform project-by-project decisions. That could be the larger context.

So in order to be able to understand and to make it fair as well for proponents to meet the bar, which would be an admittedly — an expressly high bar, does your proposal make a net contribution to sustainability, if we had in place a rigorous and comprehensive sustainable development strategy for the country, then that could be used as the surrounding context in order to make that determination.

And I think that that's feasible, but it would require government agencies to probably have more integration than they presently do. It means moving away from a silo'd approach to real integration among different agencies.

Renée Pelletier: So thank you for your presentation, firstly.

I wanted to pick up on your comments around the importance of science and traditional knowledge. You spoke a lot about science. You didn't say too, too much about indigenous traditional knowledge and I'm wondering whether you have thoughts on what we do with traditional knowledge, how do you — how is it weighted, what do you do in instances where traditional indigenous knowledge might conflict with western science.

Do you have any views on those things?

Jason MacLean: So not difficult questions at all. Okay. Good.

I didn't say as much about traditional ecological knowledge because I'm — I should immediately situate myself as I'm not an expert in that area. But what I would say, and I did allude to the environmental assessment of the Pacific Northwest LNG Project and the infirmities with that which are now before the Federal Court in the very early stages are both in terms of, quote unquote, if you want to call it that, western climate science, but also it appears that a number of the gaps might have been filled had traditional ecological knowledge been listened to and given greater importance.

I think that to answer your question off the top of my head, at least, I think that, at least initially, you know, going into any given project where both are applicable, they should both be given equal weight.

Traditional ecological knowledge is a — has been shown in project after project to yield insights that traditional scientific approaches seem to be blind to, so it really should be valorized at that level.

Where there are conflicts, you know, I feel like this is a question that sometimes my law students try and get me to — you know, to answer. I'm usually very wary of issuing bright line rules because I think that either you want to have whatever process that you put in place, I think, you know, would put both, quote unquote, western science and traditional ecological knowledge as equal sources of knowledge applicable to proposed economic activities and then I think you would answer that question if conflicts arise and they're more than just apparent conflicts on a case-by-case basis.

And I think — but here's how I can — so so far, I've kind of dodged your question. Here's how I'll try and engage with it just a little bit more.

In the piece about sustainability assessment really being about multi-stakeholder participation, and in a structurally balanced way so as to counteract that idea that Professor Winfield talks about of bipartite bargaining where the institution, the mechanism themselves allow for equal participation among a wide variety of stakeholders.

And I think you have to articulate a consensus-based approach within that that looks at, you know, there's going to be trade-offs. There's going to be trade-offs among competing concerns, especially when you take on — if you take on these issues under a sustainability rubric, it means you're moving away from just biophysical impacts and you're looking at the problem in its reality, which is polyjural and polycentric, right.

There's a lot of competing jurisdictions and interests, and there's a lot of competing issues. And so the mechanism that you come up with — and I think in one of the pieces that I provided to the panel in advance, we — that I co-authored with my colleagues, Professor Tollefson and Professor Doelle, both of whom know far more about this than I do, and hopefully you'll hear from them in Victoria and Halifax, if you haven't already — we tried to articulate how that will work at the conclusion of that paper. But essentially, the closer you can get your decision-making processes to consensus and avoiding costly trade-offs, the better — the better, you know, you are in terms of working toward the actual aspiration of sustainability.

But I should say, like I just — you know, I don't think that that's ever going to be easy, and I don't think it should be. I think that's hard work. But I think that's the right approach.

Renée Pelletier: Thank you. I'm satisfied that you answered the question.

Jason MacLean: Okay. Well, I appreciate that. Thank you.

Rod Northey: Yes. So I'm going to take you into a paper that you kindly provided us where you were referencing these great terms of polycentric and polyjural. I had to figure out what "polyjural" meant. I don't think I've ever heard it before.

For those of you who don't know what it means, it just means a lot of jurisdictions, more than one or two. And polycentric is similarly a lot of things going on in EA.

So the first question is this. Before we get to how federalism creates a mess of the environment, let's talk about sustainability because one of the words that's interesting to me is that if you want to go to sustainability, implicitly you've got ecology or economy and society together, which has been a basis of being comprehensive. And your paper makes an entire part about how difficult it is to be comprehensive in EA at all because of the *Constitution*.

So the first question is, can we do sustainability assessments? And I think your comments to the Chair are interesting also. The Feds could do sustainability strategies, but can we do sustainability assessments without cooperatively working with other jurisdictions, or does that, by necessity, mean we have to cooperate and if we don't cooperate, we can't do sustainability?

The worry is, if you say it needs to be comprehensive, which your paper kind of loads the gun with, then you might not be able to step into that because you would be at a standstill every time somebody didn't want to cooperate with you.

So what I'm hoping you're going to say, but I'd like you to help me with it, is that you can do sustainability even if you're only one jurisdiction among many, and then we could all agree that it would be better if everyone came to the table, but so now that I've asked my leading question of you, where are we?

Jason MacLean: So that's a great question, and what we try and do in that particular paper, and I've taken this on in a subsequent paper as well, which I'd be happy to share in draft form, but that first section that deals with the constitutional jurisdiction problem, our overarching argument, despite the fact that the case law still has a gap with respect to environmental assessment in the multi or polyjural context is that the federal government has ample constitutional authority to take on sustainability assessment. And you know, what's unclear after, you know, Oldman River and Red Chriss(phon) is the decision-making part, right.

So you know, the first way to get at it is, well, there's absolutely no jurisdictional controversy whatsoever, as you recognize, that if the federal government were to undertake sustainable — sustainability strategies as the informational context for an assessment.

In our paper, we set out for, I think, it's five scenarios for how SA could unfold.

Rod Northey: I'm looking at them right now.

Jason MacLean: And we say, I believe, at number 4, that cooperation is ideal. And so what we're looking at is a situation where, you know, we believe that the federal government has this residuary jurisdiction, but it's — you know, for purposes of implementation and quality, we think it's best when the affected provinces and/or territories are involved. And we also — of course, we think in our polyjural model that jurisdiction really needs to be even broader than that. We need to think about First Nations, indigenous communities, municipalities, right, which is going to come up in a number of the cases that are presently working their way through the Courts.

But there are going to be situations where you're going to have a recalcitrant jurisdiction, and in those cases, our argument is, on the basis of our reading of the Supreme Court of Canada's jurisprudence, that it will not stand in the way of the federal government taking over in those situations and doing sustainability assessments.

And not even just the Supreme Court of Canada, but even the Federal Court of Appeal. So the Federal Court of Appeal's decision in *Sincruide*,

right, where it upheld bio fuel regulations as a valid exercise of the Fed's criminal law power, even though it had ancillary economic impacts, the Court made the really helpful finding, which is that where the government is seeking to integrate economic and environmental concerns, there's absolutely no question about its jurisdiction, particularly because that integration is something that any one jurisdiction other than the federal government can't do on its own.

So we're quite confident — it's not been tested yet, but we're quite confident that, you know, on our reading of constitutional law, jurisprudence, with respect to the division of powers that the federal government can do this.

The federal government, ideally, would seek to cooperate and work with as many jurisdictions are affected but, in fact — and this goes back to the efficient point, and I just want to sort of slot this in there. There's sometimes a sense that — and I think even in the terms of reference of federal environmental assessment reform in Minister McKenna's mandate letter, one of the terms of reference says to eliminate overlap with provinces, or redundancy, whereas a lot of environmental scholars point out in Canada it's only when you have overlap and redundancy that you actually really accomplish environmental protection.

Overlap is important, and that's sort of consistent with the Court's jurisprudence on cooperative federalism, which is sort of all the rage, but that's a fancy term for essentially the Supreme Court of saying, look, get it done, right. We're not going to — we're not going to take a technical reading of the Constitution that would otherwise frustration a genuine *bona fide* attempt at progressive environmental protection, and I think that that would go even more so for sustainability because it has that integrative effect.

So we're — you know, I want to make it clear to the panel that this isn't a matter of settled law. I mean — and you know that very well. You all know that. But on our reading, we're quite confident that this would be upheld.

So not only can the federal government do sustainability strategy-making and policy-making, but I think it can make — it can issue unilateral decisions under a sustainability assessment model.

Rod Northey: Okay. Can I — another simple question for you to answer.

And we heard it also from the first speaker, but you pick it up in your paper in a way that I just want to pursue.

So everyone is talking about the *Fisheries Act*, the *Navigable Waters Protection Act* as it was, and the government has made a commitment for Parliamentary reviews. And those are not small things, and you've noted those.

But one of the things that has not arisen directly from papers like yours but is part of our mandate, and I'm curious to see what the theory is, is the whole issue of UNDRIP and the *Constitution* in 91(24). And I'm wondering whether, when you step back from the abyss on this stuff in your paper, are you — have you given any thought to why or whether 91(24) is analogous to navigation and shipping, analogous to ocean and inland fisheries as being the basis for something that we haven't yet seen or do you see it as a different sort of power that wouldn't authorize that?

Jason MacLean: That's a great question.

We didn't address that in our paper because our paper is part of a — nobody cares about this, but our paper is part of a special issue, and another paper is —

Rod Northey: You mean you're saving it for another special interest.

Jason MacLean: Another paper is supposed to take on that actual question, and then that paper kind of dropped out. And this was all coming out of the — sort of the conference we had in Ottawa in the spring for two days which the Minister kindly addressed. But you know, the view that came out of that discussion over two days in Ottawa with a number of leading EA scholars and practitioners, it wasn't uniform at all, so I don't want to mislead the panel. But it was raised more than once that 91(24) would be structurally analogous to, say, 91(10) and would provide that kind of plenary jurisdictional competence for the federal government to enact — to make decisions regarding sort of these aspects that come that, you know that sort of overlap with UNDRIP and FPIC.

It's more complicated, though, than that in the sense that a number of other voices during that conference said, well, we have to be careful about that or we want to think through that carefully about the federal government's plenary jurisdiction because there could be instances where — and this would be encouraged — where, you know, affected First Nations and indigenous communities want to conduct their own environmental assessment and how do we work that into a truly polyjural model which, ideally, is based on consensus.

My own view of it would be that 91(24) does provide for that jurisdiction for the federal government, and could be, you know, in order to come to decisions.

I don't know if that's answering your question or not. In terms of the connection to UNDRIP and FPIC in particular, and I guess I was guilty before of, you know, polyjural, polycentric, but for those who aren't familiar, UNDRIP is the United Nations Declaration on the Rights of Indigenous Persons, and FPIC is a principle familiar to that convention, Free, Prior and Informed Consent.

The view that I like is that where a community, whether it's indigenous or it's the Port of Vancouver in respect of a pipeline that would run into its harbour, where a community is affected in that way, the community ought to be able to have the power to consent.

That often gets — it often gets translated, well, that's giving too much power to the communities. It's essentially giving a veto right.

This is getting far afield from my own published expertise, but, you know, to the extent the other broader policy goals — which I've invited by talking about sustainability strategies — certainly reconciliation with indigenous peoples has to be also one of those overarching public policy goals.

I don't think that the goal of reconciliation is possible if FPIC doesn't become part of our law. I think that right now, and I've written about this a little bit, but that section 35 is too amenable to what I would call "check the box" constitutionalism, and you know, we consulted, check, we accommodate where appropriate, check. But you know, clearly, in process after process, that's not adequate. And it's certainly not going to deliver on reconciliation, and I think it certainly isn't going to work to restore Canadians' trust in the processes.

So I don't know if that answers your question, but —

Rod Northey: Yes, that does. And thank you very much.

Johanne Gélinas: Thank you very much, Mr. MacLean, for your presentation and your time. Very much appreciate.

And further detail that we are looking for, our colleagues will talk to you.

Jason MacLean: Thank you very much.

Johanne Gélinas: Thank you again.

I would like to invite Karen Peterson. And I have to apologize right away, but when we enter into a discussion with presenters, sometimes we go a little bit beyond our time limit, but we're here to listen, so we don't want to lose that opportunity.

Ms. Peterson, good afternoon.

KAREN PETERSON, KAREN PETERSON & ASSOCIATES

Karen Peterson: Thank you, and good afternoon to you. And I appreciate the opportunity of being able to present to the panel, and I appreciate that you're doing this

review. I think it's well overdue, and I'm glad to see that you're going right across the country and doing a thorough analysis.

So my presentation today, I'm going to be looking at some very specific areas.

So for — the focus, I guess, is I wanted to give you first a little bit of background.

I had a PhD in Environmental Design, and my other two degrees are in environmental studies. So I've participated in environmental assessment processes in a number of different ways. I've designed social impact assessments, and I've taught environmental assessment at the university level.

What I wanted to do today, I just picked out a couple of questions that relate to decision-making and follow-up as well as the public involvement that were provided in your guidelines. And so I set up my slides looking at what's broken and how do you fix it.

So the first area I'm going to look at is the decision-making and follow-up, so what's wrong, and the previous two speakers also brought this to focus, too, in regards to project-specific. A lot of projects are considered just in isolation one project at a time, kind of thing.

So how to fix it is to tie in again with the long-term vision grounded in sustainability, and I would say to focus on social well-being rather than the economic goals.

Economic goals always have the implicit bias that the social structure is going to fall into place, but I think if you have a focus on social well-being like to have some lofty goals in regards to how we can improve the social well-being of all the people in Canada, then — and how does the economy fit in, how does that — how does the environment — to protect the environment, all those things would come into play as well. They don't fall into place as where I think when you look at economics and the implicit biases that the social structure will just fall into place.

Again, then, the strategic plans, policies and programs all need to be linked to that long-term vision, very much. I am in agreement with the previous speaker who talked about how all the *Sustainability Act*, the *Sustainable Development Act*, the UN work and all that all needs to be linked and balanced and complement one another.

There would also need to be robust cumulative effectiveness guidelines and the regional approach.

Question 5 then related to the management of scientific uncertainty, so I identified what was wrong is the basic assumption that project impacts are amenable to prediction and mitigation. Not all impacts can really be mitigated, and as the previous speaker was talking about as well, that it's not so much in regards to how the project goes ahead, but whether it should, and that there are severe impacts that there's no reversible way to address those, then maybe that project shouldn't go ahead.

I also noticed in the way that you talked about that the assessment seems to be based on science and it include traditional knowledge, and I see that as a type of implicit bias as well where I also view science and TEK, traditional knowledge, as being equal, and one would complement the other, that they — one doesn't override the other. And so how to fix it?

Make use of precautionary principle and adaptive management strategies. Build in flexibility to enable ongoing review and early identification of issues to meet timely adjustments. Involve the public and indigenous people in determination of the risks and what adjustments can be made. And integrate science and TEK.

So again, the management of scientific uncertainty. What's wrong? There's a heavy reliance on the technical positive approach to inquiry and problem solving oriented towards the development and growth aspects which then compromise the social and environmental values.

How to fix it? In regard — we recognize that there is so much uncertainty, we need to really look at the assessment process through the lens of complexity science, critical theory, systems ecology and the participatory democracy approach. Consider thresholds and the limits to growth and that not all impacts can be mitigated.

So the next area I wanted to focus on was public involvement. And the first question was in regards to the meaningful, effective and inclusive involvement.

What was wrong? Participation is reactive. The ends are pre-determined.

You talked about the three pillars or the three-legged milking stool, the social, economic and environmental aspects, but as one Elder said to me at one point, the cow will still be milked. There's no question whether the project should go ahead or not, that it will go ahead and whether — and again, with the previous speaker, you know, it's not how, but whether.

Restricted and short timeframes for public input. There's not really sufficient time to do the work, to provide thorough analysis. I'm going to be getting into funding as well.

How to fix it? Involvement needs to be ongoing, and from the outside — from the outset, right from the choosing of the people for the review panel, developing the terms of reference, developing the public involvement documents, scoping through to monitoring and evaluation.

So continuing with the same theme area, what's wrong? Public — the public is disadvantaged in relation to the proponent's resources for expertise to represent their cause or agenda. The limited funding restricts access to expertise, demands for investment of time and effort is overwhelming, with insufficient resources to conduct thorough reviews.

How to fix it? Increase funding levels to enable thorough public review.

I know that's not always easy with budgets and so on, but there's been more cutbacks and so on that has impacted the ability of publics to participate.

Another aspect that's wrong, the number of projects are increasing, but the funding is decreasing. And the funding is not increased if projects are prolonged.

So how to fix it? Provide sufficient funding levels and additional funds when review is extended due to additional information and time requirements for participation.

Continuing with the same theme, government cutbacks reduces the objectivity of governments that are increasingly relying on the proponent to do a lot of the work to provide the scientific evidence and so on. There's also a heavy reliance on written submissions, which limits dialogue and debate.

How to fix it? Provide sufficient resources for public to engage experts to create a level playing field and promote a balanced review, and make extensive use of public review groups to enable more dialogue and debate.

The second question was in regards to the extent of public views being considered.

What was wrong? Short turnaround timeframes to get work done, sometimes the public would have maybe 30 days to respond to lengthy documents. It was difficult to keep up with changes to projects. Input was not equally considered. The interests of the intervenors have often been ignored. And these are

some of the concerns that I've heard when I've been doing some consultations in regards to how people have felt.

Once approved, there's no more public input, no more public involvement.

How to fix it? Ongoing involvement would reduce the urgency to respond within restricted timeframes, providing an appeal process for the public if they disagree with the outcome, and involve public in oversight. Public and indigenous peoples, I should say, as well.

Again, this is a question 2, the extent of public views considered.

What's wrong? The sense of urgency increases time pressures. The scope of involvement is restrictive. There's bounded frames of reference, so the public is basically given guidelines on what they can talk about and what they can't.

And how would you fix it? Ensure reasonable timeframes for public review. Involve the public in the development of the guidelines for public involvement. And enable flexibility to include issues and concerns that may be outside the scope of reference if and when they arise.

Information required. What was wrong, again, the ends are pre-determined and the cow would still be mixed.

How to fix it? Provide information regarding the alternatives that were considered, including the consideration of the (indiscernible) alternative.

And that's it. Thank you very much.

Johanne Gélinas: Thank you very much, Ms. Peterson.

One quick question. You're one of the few who have raised two comments in — with respect to how to fix things.

First one is the selection of the review panel. I would like to — I would like you to elaborate a little bit on that one.

And I would like to hear from you, what is your view in terms of the value of written submission and written comments and responses, written responses that you get?

Karen Peterson: The value of them?

Johanne Gélinas: Yeah.

Karen Peterson: Yeah.

Johanne Gélinas: Because you see, you're of the view that it's more and more — or less and less dialogue and more and more back and forth written questions and answers.

So how have you seen that evolved, and when you see the value of that because it seems to be a trend, right.

Karen Peterson: Right. Okay.

In regards to the review panel, I think — I know the review panel is chosen by the government, by — and it would be helpful, I think, to also consult with some public interest groups and the — maybe some of the ones that are more well-known or that have got hired expertise that are working diligently with a lot of these issues, so they may also have an input on who may be included as well.

I just think it would help with looking at that concept of trust and transparency and so on if they had a say or a view of who may be chosen as well.

And in regards to the written submissions —

Johanne Gélinas: If I may just come back on this first point, your comment is a general comment or it applies more to CEAA, NEB or CNSC?

Karen Peterson: I think more of just a general comment and a general observation. Not that there's anything wrong with any of the people that have been selected.

And in regard to the written submissions, especially as it seems that with government cutbacks, it's getting narrower and narrower, the amount of time that people have to respond. I've been involved in some processes — mind you, it was with the Ontario process — where we had a number of review groups, and those review groups consisted of expertise from different departments within the government, for example, and then interest groups. They also had representatives.

So I, at that time, was working with a corporation, and we would bring a number of issues to the table, and there was a lot of dialogue and debate, so there's other people around the table, too, where, you know, could trigger some ideas. So it becomes more of learning through the whole process itself.

I don't see that as happening as much as it had in the past, and I think it's valuable to have that kind of a process included in EA.

Johanne Gélinas: Thank you.

Doug Horswill: Yes, thank you. A couple of questions.

One is just trying to tie together some of the big strands that you've got going.

We've heard it put somewhat differently because they link a few things. One is that EA is now more regulatory and less planning. And what people mean by that is they line up on regulatory time lines, lengthy documents, formality, paper, and then they say, well, planning is face to face, talk, broad concepts, whatever.

What do you think about that split? Is your piece in favour of more planning and maybe not less regulatory, but early planning? Is that away of summarizing where you are?

Karen Peterson: Yeah, I would say so. That's why I linked it to the whole concept of vision and linking it to sustainability where there had been forethought in regards to the — like the official plans ahead of time, and then how do the projects fit into overall plan. I think that would be a better way to approach than a rigid kind of — more the technocratic kind of approach to EAs.

Doug Horswill: Thank you. So I — okay.

So I'm now going to skip to the other end whereas I was quite interested in your statement at the beginning, not all impacts are mitigable, and then you followed up, and I think your slides — and I didn't have yours slides in advance — where you referenced two — a couple of concepts that — adaptive management and flexibility.

Now, the reason for asking you a bit more about this is that many people think that adaptive management and flexibility are problematic, not solution because they allow sometimes, the view is, some people to defer the tough issues to the post-EA adaptive management phase as opposed to assessing uncertainty up front.

You're encouraging it as a means forward, and I'm just trying to understand, what did you mean? Why is adaptive management, to you, regarded as a positive thing?

Karen Peterson: Well, I was looking at adaptive management in the respect that adaptive management is based on learning. It's like trial and error.

So if you're doing assessment and looking at kinds of impacts and trying to identify how to mitigate, to also look at some of the learning around that and maybe the involvement of the indigenous perspectives that may see things totally different to be able to be open, learn from that and adapt to a different way of approaching it that may not have been done in the past.

Unidentified Speaker: Thank you. That's very helpful.

Johanne Gélinas: Thank you very much for your presentation.

We'll take a quick 15-minute pause, and then we'll start. We have five more presenters.

(BREAK)

Johanne Gélinas: Good afternoon, and welcome.

GRAHAM SAUNDERS, ENVIRONMENT NORTH

Graham Saunders: Thank you. And thanks for this opportunity. And I — can you hear me?

Johanne Gélinas: Don't touch the mic. Just speak louder, and closer.

Graham Saunders: Okay. Give me guidance whether to be closer or farther away, or whatever.

So I quoted you people at the top there because I think what you're doing is very important, and certainly that Canadians trust the environmental regulations policy and so on is really important.

So mostly, I'll be talking about climate change. This is a specialty of mine and a passion, I suppose, and why it's so urgent, a little bit about what we've seen so far in local impacts in northern Ontario, and I'll mention a few ideas about how do we align policies — federal policies to meet certain targets.

And my first scary slide is the global temperatures, and it goes from 1970 to this year. I included this year, and you probably know that it's projected unless the sun goes out in the next few weeks will be the warmest global temperatures recorded.

And basically, it's illustrating that we have a pretty steep trend. About two-tenths of a degree per decade doesn't like very much, but if we think about how much energy is involved in the system if we have that kind of increase in temperature, I think for most people in the know, it's a fairly scary proposition.

One of the tenets of climate change is that if the global temperature increases, other parts in the world will increase, too. In the middle latitudes like we are, the temperature increase is much more than the global average. This is about at least a half a degree per decade, so two, two and a half times more than is happening at the global level.

And as well as temperature change, actually, probably most Canadians wouldn't mind a little temperature change on the upside, but it means that the atmosphere can hold a lot more moisture. And I'll go through these very quickly, but these are a few consequences in recent years, severe weather, flood in the region.

This is from 2008, locally. And I use this slide — it's a little dated now, 2002, and it is a little indication of the worst flooding experience in Ontario, at least in duration and extent. Most people don't know a lot about it, and most people in this district of Rainy River, no irony intended, have boats and ways to get around. But areas were shut down for two weeks. There was no access.

And this photo here, I think, is kind of sinister because it's a railway track and there's no longer anything underneath it. So you couldn't bring a train across it, probably would be risky to walk across it.

This is the flood as probably you know about in Thunder Bay, May 2012. And this is a radar image. And basically, the warm colours like red and yellow indicate very intense rainfall happening. And in about two and a half hours, Thunder Bay got a month's worth of rainfall.

And it was the year of the flood, not just in Thunder Bay, but around the Thunder Bay and also Lake Superior. There were floods in Duluth. This is a photo of that. And also on Wa-wa, Sault Ste-Marie. So there were major floods all around Lake Superior that particular year.

And another way to look at it is what's changed over the decades. This is Kenora, heavier rain events by decade. And if we go back to the old days, the 1960s, we find that they're pretty infrequent.

In Thunder Bay, I couldn't find any heavy rain events in the 1940s and '50s. It really only begins in the 1960s.

And as we go from left to right, we can see the frequency of heavy rain, that's 50 to 79 millimetres, exceptionally heavy rain, the next category, and potentially catastrophic rain, more than 100 millimetres in a 24-hour period or less, tend to grow in frequency.

And not to stick on Kenora too much, but here's a graph showing that rainfall overall is increasing, and the black line for visibility in this case is

actually decreasing. We actually have less snow in this region over time, and we have — especially in the west, we have more heavy rain events and more total rainfall.

So in some of my work, I think about what could affect this particular region. And there's a lot of, obviously, flood, but there's other potential damaging severe weather events. And all of these, we expect, become more frequent with more global and regional warming.

So I won't read out the list. I think that's fairly visible.

I put extreme heat at the bottom because I think that's — will wait a little longer, especially with Lake Superior immediately adjacent, to have the extreme weather effects of extreme heat.

Another component of climate change in this region is frequency of fire, forest fires. And if they compare recent decades, the last couple of decades, with the mid-20th century, 1950, '60s, '70s, we find that the area burned is two and a half times.

This is true pretty much in western Canada as well, so that's a hazard, and we have potential fire going into communities and much more danger because of the frequency than used to exist.

And this is a glimpse of what's happening with extreme rainfalls. I had to go — this is back when I made this — borrowed this slide. It happened in the time when scientific research was more restrictive in Canada, a few years ago, so I borrowed it from the Americans, and I thought we can project for — at least for Ontario, an increase of 45 percent in heavy rainfall events like I described before, 24-hour period, and what kind of rainfall happens.

And probably you're familiar with this. It's a list of different catastrophe put out by Munich, the insurer in Europe. And the interesting thing for me is that earthquakes, tsunamis, in spite of what happened a couple of days in New Zealand ago, not much change. But all the other severe events that we might expect to be related to heavier precipitation, if we look at the 1980 levels and then the modern levels, we find that all of these different flood, severe rainfall and related matters have all doubled or tripled or even quadrupled in frequency.

So limiting the global temperature is critical, and the present global temperature is about 15 degrees. And it's higher by about 1.3 degrees above industrial times.

Well, the Inter-Governmental Panel on Climate Change is still optimistic, and they say it's technically possible to limit the increase in temperature to two degrees Celsius.

Well, to get back to, I think, a little more depressing outlook, this is what's happening in Canada. And if we had started in 1997 with Kyoto, we would be in better shape than we are now.

For example, even if we started in 2005, the present time, we can look at the chart and in 2005, the extreme left, and take it by the targets for 2020 and 2030. Now, the upper part of the graph illustrates where we are right now, or almost right now, and if we have increased emissions higher than projected or at what's projected or less than projected, we have all those scenarios that bring us way above the target years of 2020 and 2030. So we can't — realistically, that's not going to happen.

But what could happen? Well, I'm thinking that environmental assessment should consider this as a priority. We're talking about earlier, sustainability was mentioned and discussed, certainly climate change was mentioned by other — by previous speakers. Here's three different scenarios.

And what I've done is taken — if we are progressing at a certain rate right now, the top illustrates what happens if we go more or less business as usual, if the environmental process doesn't consider very seriously climate change, so we have a situation, we don't even vaguely come close to the 2030 target. The 2031 is out of the question, in my opinion, right now unless something — the sun goes out or something.

But even to reach the target of 524 mega tonnes — that's the goal in Canada — it's recognized as a weak target, and it was inherited by the present government from the previous. And the question is how else we could influence this.

Well, we could have other — if we took seriously the goal to limit the global increase to two degrees, then we have to have much more going on limiting and reducing emissions, and most of or virtually all natural gas and oil expansion has to be limited or decreased.

What else could happen? I think we have to look at other ways of reducing fairly dramatically, and that's in the Building Code. If we have some incentives for people, companies, et cetera, to reduce the energy used for heating buildings and other infrastructure, then we have some gains possible there.

What would happen if we had a more solar power manufacture in Canada? What would happen if the — Prime Minister Trudeau mentioned something about this. Maybe it wasn't totally serious. What would happen if we had solar panels on all houses constructed from this point on and retrofitting going back in time?

So on the left, this is where we are now. There's a projected growth of oil and gas, is going to make it impractical to meet the goals, and what is possible, they could align — and I'm somewhat shocked — and they did it in 2005 based on 2005. You subtract about nine mega tonnes per year and you end up with your goals when you project from that date forward.

I think we have to do it again, but take that reduction much more seriously, and even to the extent if we are not meeting our goals, say, in 2025, then we say, surprise, this is the more strict standards that are going to be applied beginning in 2026 or '27.

So I think future environmental assessments should look at this as a critical factor. How do we accomplish what Canada pledged at the international level? How do we keep the temperature — at least Canada's contribution to limiting the global temperature increase to two degrees? How do we do that? What kind of measures do we need to employ?

And I think about some of the more draconian measures, it seems, anyway — Oslo, for example, says by 2020, we're going to have the global emissions of our city. Does that work in Canada? We're more complicated than that, but I think it should have really strict goals that take over really immediately.

Thank you.

Johanne Gélinas: Thank you very much.

So your presentation is more about how to implement at the project level some strict policies like the climate change one in the country in the future; right?

Graham Saunders: That's right.

Johanne Gélinas: We have heard in other places people proposing, just for us to share with you, what people are calling now the climate test as we do environmental assessment of project.

I'm curious still to see, knowing what's going on in the country province by province, how do you think it is feasible to assess a project in some provinces, taking into account the GHG emission?

Graham Saunders: I think we need a spectrum of different policies. One is carbon pricing, and that's coming in. Not at a level I think it will be effective at, but nevertheless, we have to price carbon. We have to have companies and individuals and families having some incentives to switch over to renewables.

What else can we do? I just lost my train of thought for a second.

The — we need goals that are set, as I mentioned before. Maybe it's — well, it has to be more than nine mega tonnes, but we need other incentives that get it down, and if that means — I think part of your question is, how do we deal with provinces like Alberta and Saskatchewan.

And that's a difficulty, and I don't have a magic solution for that, alas. But I think one of the things — one of the policies in the spectrum, we know that climate change is more extensive in Canada now than it used to be. The — for example, the Federal Disaster Relief used to be in the millions of dollars in the 1970s and 1980s, and then it was in the hundreds of millions of dollars, and now it's in the billions of dollars with floods in Toronto, Calgary, and Fort McMurray will push it up closer to \$5 billion. The feds have to pay out with their obligations.

So what would I do? I would — and interestingly enough, I'm not making any conclusions, Alberta is especially hard hit in recent years with fire and floods and hail, so I think the federal government should approach Alberta and all the provinces and say, "Here's the problem. It's going to cost much more, and we have to, with your cooperation, revise the federal assistance program". Yes, we're going to have to pay out more money because the trend that I talked about before likely is not going to go away, but I think that could be a tool that reinforces we're all in this together, you provinces, you municipalities and so on, so how do we do that.

Not just because the feds want to give away money, but to make that as part of the program. We're going to deal with climate change, and this is one of the mechanisms we're going to use. The others include some of the ones I just mentioned.

Johanne Gélinas: Thank you very much for your presentation.

Graham Saunders: You're welcome.

Johanne Gélinas: Carl Atlin, it's your turn.

I said Carl, sorry. Cole. Should know you by now; right? I'm saying that because Cole was with us in Toronto last week.

COLE ATLIN

Cole Atlin: Thank you very much for providing me this opportunity to speak. I'd also just like to laud — give you some — to thank you for not only the endurance you guys have shown in this process, but I think you've made people feel listened to and engaged really — engaged significantly with each person who's come

up, and I think that's a challenging task, so I just wanted to say as I've monitored this so far, I really appreciate that you've done that. And I'm very pleased to be participating.

So I am a PhD candidate at the University of Waterloo. I'm working under the supervision of Dr. Robert Gibson, who has already presented to the panel. Some of the things might seem a bit Gibsonian, if that's a term that we'll make up, so — but this presentation, in particular, actually sort of stemmed from conversations that came out of things I heard in Toronto.

There was a lot of discussion about strategic environmental assessment and its implementation, so I started working on what models could look like in terms of tiering.

I've written a submission. I have not submitted it yet because I feel there will likely be many questions that we'll want — you may have, so I'd like to be able to elaborate those questions in the submission, so I have my notebook ready.

So I guess I'll start with, so my research focuses on next generation assessment. That's sustainability-based assessment, primarily, and strategic environmental assessment. This presentation focuses on strategic environmental assessment.

And in my own research, I look at regional environmental effects but, in particular, cumulative effects, conflict and concerns about how you assess those issues in northern mining developments. My primary case study is the Ring of Fire, so a lot of this model that I generated is kind of out of that understanding of what's been happening in the Ring of Fire. But sustainability-based assessment will trickle in every once in a while.

So this is sort of an experiment of what could a generic approach for regional strategic planning and assessment governance look like for regions such as the Ring of Fire.

I've given two options that are very similar, but I will identify their differences. And this takes a big assumption in it, that it assumes that there's multi-jurisdictional collaboration and that you have a wide and great breadth of participation, which is a big assumption.

Okay. So option 1. So the regional strategic environmental assessment — and I think you would actually also talk about this in terms of strategic environmental assessment at large, but — presumes that it acts as a means for plans and policy development. So you have probably multi-jurisdictional proponents where you have the feds, the provinces, First Nations, and it would cover not only the assessment of the region, but in so doing, you would have road corridors, mine developments, other induced policies, things like that.

And the easiest way to visualize doing that would be through the use of scenarios, for example, you know, five or so scenarios of what potential development trajectories could look like in a given region.

From there, you would go and develop — sorry. I'm popping the mic. An approved plan or policy. And that almost acts as an official plan, so to speak. That would have authoritative guidance for individual undertakings. It would also suggest what required socioeconomic policies might be needed, so for example, increases in educational consideration, increases in health care, all of those socioeconomic elements.

Additionally, it would require provisions for amendment, so if things weren't working.

And this plan would have to be reviewed at a given number of years or after a given point of time, say you put in a number of caps of how many permits could be issued or something like that. But let's say every 10 years or something like that, you'd re-evaluate the plan, so it would almost be stages of development.

Stage 1 development, three mines could be operational then, you know, once — after 10 years, you can look into what stage 2 looks like, for example, something like that.

And so from there, you would flow into that EA proposals versus specific projects like mines as well as infrastructure projects. They would all be underneath the approved plan. And terms and conditions would meet those needs.

And so monitoring those terms and conditions as well as monitoring the overall goals of the plan would go into a monitoring plan, with a monitoring body to support it. And that is something that we've heard quite a bit about in academic conversations as well as quite a bit at the panel here, that there is a — there lacks a link between assessment and monitoring.

So how do you do that? It's likely that you need them to be linked. And so the monitoring plan and body would assign responsibilities, roles, would have transparency requirements, would have the capacity for people to come discuss issues. Present community-based monitoring information, traditional knowledge monitoring, those sort of things would be incorporated in this.

And then the criteria is sort of the unifying structure. This is sustainability-based criteria, obviously Gibsonian, but that you would have sort of a criteria that's developed in the CEAA that pans down throughout various levels. That's the first option.

Second option's very similar. Actually, you'll see from the approved plan downward that it's the same structure. But this it would apply more for if you had, say — we've talked about provincial policy statements in this — in this room, but we've also talked about Cabinet directives, things like that. If there were a plan that were presented, you could then do an assessment — a regional assessment or a strategic level assessment of that plan and then, from that assessment, you would move down to an approved plan.

The plan would be modified by the understandings that the assessment would provide. This would allow for more of a top-down construction.

And I should mention that this would require significant funding, particularly a monitoring body, because monitoring bodies have not been well funded, historically. And so that would require, again, some consideration.

So the benefits of a package like this is that when you're looking at sectoral and regional issues, you're able to more easily determine desirable long-term futures. A lot of the time when we have folks that are upset about processes, it's often — one of the major responses we have is that we need more data. It's cognitive uncertainty. We need to get more information because that will obviously deal with the issue.

And to some extent, it's right. You need data, you need good data. But a lot of the problems that are being identified are ones of strategic uncertainty where you have a wicked problem and you have to decide what you want to do, where you want to go forward, what would be right for the community, for Canadians, for people at large.

So when you are dealt with issues of strategic uncertainty, it's often best not to simply just pour more data on it, but give a constructive process that's iterative that allows for adaptive management, not to just use a — you know, a jargon term, but allows for re-evaluation as times change and also allows for people to have an ability to determine what is a desirable future.

So approve plans and then implement the strategic environmental assessment. And why I think the strategic environmental assessment and the approved plans would be different than just, say, the regional plan is because regional plans primarily deal with placement. And what strategic environmental assessment can do is deal with the pace and scale, which is what is — in sustainability assessment has proven to be a really effective component of sustainability-based assessment, but could be an incredibly effective component of strategic environmental assessment.

You have situations where people may not want — may want to mine or may want to industrial development, but they may not want everything

mined at the same time. They may be worried about cumulative effects and an inability to keep up.

I mean, we can look at the tar sands as an example of that, right.

So that's one of the elements that's really positive about strategic environmental assessments.

And so the project assessments then occur under the conditions of the approved plan and the CEAA goals, and when you get to project assessment, those big strategic uncertainty questions are sort of eliminated. Well, not eliminated, but drastically reduced. You hope for an increased efficiency at the project level because you're following a larger strategic understanding.

And then the monitoring body tracks the implementation and flags adaptive management needs, and then you would iteratively cycle that back — whatever is in the monitoring board back into the plan. It sort of goes back and back and back.

So I'm — since I'm in the academic area, these provide a lot of outstanding questions, and — I'm not allowed to ask you questions. I know. Maybe this is for the group at large.

So when you're talking about strategic assessment — and because Canada — those strategic assessment questions are different than a lot of other jurisdictions. We're a — we're a large industrial-based, resource-driven economy. A lot of strategic environmental assessments in other areas, if you, say, look at the UK, they relate more to physical planning of communities and things like that. They're not as industrial in nature.

So who are the proponents in these situations? Who funds? How is mutual agreement negotiated? What are the scopes and terms of reference for strategic assessment and planning? Is there a screening process? When a policy window comes up, what is it? And how are proponents — persons other than proponents engaged? And how do you ensure transparency, and what are the processes for formal review?

I think likely, in most cases for strategic assessment — and this is going to sound like a convenient answer, but most are context dependent. Each of these situations that are going to come up are different, so you need to — when you're designing this all-encompassing amount of information that you're working with, it needs to be specific enough for everyone to be able to have a good understanding but allow room for context to be able to sort of flourish.

And so in conclusion, this governance structure is simply process if it's not designed to address key objectives and deliver key benefits.

I believe that sustainability isn't just about balancing, which is, a lot of the time, what we hear. It's about seeking lasting mutual benefit and avoiding adverse effects. I often phrase it as mutual benefit plus.

So you have mutual benefit between all of the — all of the proponent, the communities, the First Nations parties, the provinces, the feds, for example, but sometimes that mutual benefit isn't necessarily thinking about long-term considerations or ecological needs, so it's also avoiding that adverse effect, but it's an additional component.

And sustainability is a high test. We've heard this by multiple individuals today, and unless you can achieve positive sustainability effects, a project should be a no-go.

And that doesn't mean that you can't re-evaluate. I mean, that's one of the great things. The Berger report was re-evaluated under a sustainability assessment 30 years later, and what they found was if these conditions were met, you could have a sustainable project.

Well, you had a collapse of mineral — of gas prices and things like that, so the project didn't go ahead, but it doesn't mean — an assessment isn't a one-off situation that it's one and done. You could have multiple iterations as more information, as more technology, all these things happen.

And again, proper participation, you get more perspectives, more learning, greater understanding.

And thank you to all my funders who make this research possible.

Johanne Gélinas: Thank you very much.

There has to be something tricky about applying sustainability criteria because we would have had that for a while if it was simple. So I guess you won't need your notebook because I will invite you to answer the questions that you have raised yourself, which are the one that we are looking for also.

I don't have any particular question.

Rod, on your side?

Rod Northey: All right. A few.

One is, in both diagrams you've distinguished the project here between the mine proposal — I might call it the private sector — and infrastructure —

Cole Atlin: Yeah.

Rod Northey: -- and I'm just interested why you think that is important. What's behind that?

Cole Atlin: Because I think you would have different proponents for the environmental assessment at the project level. So I did this based on Ring of Fire, so that's why I went mine versus infrastructure, but if you had a — it as a federal proponent or a provincial proponent, it's — I think it changes the dialogue, and —

Rod Northey: Do you think that the scope of the assessment at the project level is different for — depending on the sector?

Cole Atlin: Yes.

Rod Northey: Okay.

Cole Atlin: So — and which is why you still need — which is one of the reasons why you need strategic environmental assessment because when we've talking about in the Ring of Fire, for example, mines, we talk about Ring of Fire the benefits as a region, the regional benefits, the \$60 billion in ore and the potential benefits for First Nations and all of these things, but each mine is still evaluated individually.

And for a proponent's sake, I mean, that would make sense, right. I mean, to burden proponents with trying to figure out the strategic implications of developing the region, it should be bounded as such for project level EA. But for roads, roads and infrastructure projects have impacts that their legacies are not simply just for the benefit of the mines that might be coming in, but also for the needs of the First Nations communities that these are addressing, for example, or larger, the needs of the public.

And so the legacy considerations for, say, mines where you have them — it's a one and done versus a road or a hydroelectric project or something like that that has a longer-term legacy, you have different requirements for a project EA.

Rod Northey: All right. So just trying to work out the idea of the regional EA and what it means, right now we've had, in Ontario, something called the *Far North Act*, which has been trying to implement community-based land use plans by — with the communities in question being First Nations communities. There is a critique in front of us — there's probably more than one of them — one what the *Far North Act* does as not being terribly oriented to sustainability, but nevertheless, has some virtues as being community-based.

So where are you in terms of the model of the regional EA? A region, by definition, strikes a large area, bigger than a project. Many people think it's similar to a land use plan.

Have you considered the question for the Ring of Fire what the *Far North Act* does and doesn't do and how that compares with sustainability as you see it?

Cole Atlin: So for the Ring of Fire, the community land use plans, I think there are multiple benefits and, per community, you'll have a different story about how it's going. Again, though, they're dealing with placement, their understanding where traditional land use is.

They're trying to take an understanding of those important factors, but they're not dealing with the necessary larger strategic uncertainty question of, one, should we be mining up there and, if so, how, where, what — at what pace. How do you ensure that First Nations communities have both the capacity to engage in that economic development and aren't just inundated with outsiders just coming into mine? All those sort of questions that a regional plan can't necessarily address, even when you put them nicely together, right, in my opinion.

Secondly, the thing about the regional assessments, and as — I think that they had to be done separately and individually for each community, but it's sort of like working with a puzzle, so making decisions on what the overall puzzle will look like. When you're just working with piece by piece, it makes it much harder for people to plan because they're still working on understanding what one piece is. So —

Rod Northey: So if I might, in a sense, you're saying the region's not large enough. A community plan is bigger than a project, but still not big enough to be a sustainability entity.

Cole Atlin: Yeah.

Rod Northey: Is that fair?

Cole Atlin: Yeah. I think that when you're talking about the Ring of Fire, you're talking about — and I should have put a map on, but you're talking about the nine affected Matawa — indirectly or directly affected Matawa communities, and then you also — there's some discussion that it's broader than.

So I mean, obviously, this is often about bounding for regional strategic assessments, but I think it's actually been pretty clearly bounded. The province has done a pretty good, clear job of discussing the benefits of this — developing this region, so you have a good understanding that it is — what the region is by who's being —

Rod Northey: Well, just to follow that, so do you think the bounding that I think I've seen is morally — a social boundary around the traditional territories of the First Nations as opposed to an ecological boundary, or an economic boundary?

So what are you — are you going to call that case specific?

Cole Atlin: I think — well, this is, obviously, the issue with bounding, right. I mean, you're choosing a parameter and working with it. And it's never going to be perfect. So I mean, I'm thinking about it from a First Nations because I've been working with community in the First Nations in this research, but again, there are multiple corridors. And that'll probably be something when you set boundaries that that would be something that a community would — you'd actually have to have public consultation on prior to even having the assessment go on and, you know, designing criteria and things like.

If you were to do a CEAA of the Ring of Fire, you'd have to say, okay, so this is the area that we're including, and these are affected communities, but not directly. What — how it — what is the perspective on that? So it's a long-term, complex — and could be challenging perspective, right, when you're bounding.

That said, it's likely better than the alternative of not at all.

Rod Northey: Right, okay. Final question just from my end. I'll see about my colleagues.

So your starting point is jurisdictional cooperation. That, of course, hasn't been evident at all.

Cole Atlin: No.

Rod Northey: And so where does that leave us? Are we to — can you give us a piece where the puzzle is not involving cooperation and can you proceed? There have been suggestions that Ontario should trigger a strategic EA without the feds, or is it the feds should trigger one without the province or what?

At this point, we don't have an abundance of players saying they want it. So what happens?

Cole Atlin: There is — I think that you're right. I don't think that there are abundance of players that want it. And I do think that the jurisdictional coordination element is extremely challenging. In particular, this is where we discuss upward harmonization all the time, right, moving towards the upper standard of what's appropriate.

And I think that what would — what triggers a strategic environmental assessment from the feds would have to be legislated as something that

the province sort of can contribute to, that if it's been triggered or if there — if it's been screened as something that needs to occur or under whatever triggers — I mean, I'm trying to figure out what the triggers are for a little while. And in so doing, that you would have — you could have a situation where the province wouldn't want to cooperate at all, but I don't think that, politically, that's something that you would necessarily — when the rubber hit the road, would the province totally ignore the findings of a strategic environmental assessment if the feds engaged in one? I think it would be very unlikely, nor do I think it would have — I think it would have some significant legal implications.

So I — it would be ideal if everyone got along, but I think we can see from this if everyone didn't get along, people would still play.

Rod Northey: Thank you very much.

Renée Pelletier: So not a question that you need to answer now, but just to echo what the Chair said, I, too, would welcome your thoughts on the questions you have posed to us when you're preparing your written submission, but in particular, given your work with indigenous communities, you have a point here, question number 3, how participants other than the proponent are engaged. I would really welcome your thoughts on how indigenous groups, especially, can play into either of your options.

Cole Atlin: And I will include that, for sure. And I — this is something I've also been thinking about in that why — it does not necessarily mean that the feds or the province have to be the proponents for the regional strategic assessment. The First Nations could be the proponents for the strategic environmental assessment.

So you could have, actually, a bunch of mines as the proponents for a strategic environmental assessment. There's nothing, necessarily, at this stage in time determining who it is. But that's something that is an interesting element of CEAA because we haven't really looked at it extensively. But I will include that in my submission.

Johanne Gélinas: And as this is the subject of your thesis, have you already talked with proponents to see how they will buy into a strategic assessment, or you haven't had that chance yet?

Cole Atlin: A little bit. I've start — I presented at a conference in Vancouver in the summer about this topic to — at a mining conference. And it was mixed. I'll tell you it was mixed, the response that I got on the topic.

That said, I think if you look at, as Jason earlier included, that if you have litigation, the number one — or the number two cost for most mining companies now are the social costs, the costs related to litigation, related to consultation on all of these issues. If you present it as a structure that could reduce

those costs, I think you might — and that's where I found I had the most success in my conversations with proponents, but it's on my list. It's on my list to talk to them.

Johanne Gélinas: Thank you very much, and we wish you good luck. And we'll see you in Fort St. John; right?

Cole Atlin: Yeah.

Johanne Gélinas: See you soon, then.

Our next presenter is — oh, boy. Cheryl. I'm right with your first name? I should stop there.

Cheryl Chetkiewicz: It's Cheryl Chetkiewicz.

Johanne Gélinas: You would have had difficulty, I'm sure, too.

So we have received your submission. Thank you very much.

CHERYL CHETKIEWICZ, WILDLIFE CONSERVATION SOCIETY CANADA

Cheryl Chetkiewicz: How's that? Can everybody hear me all right?

Thank you so much for this opportunity to talk to you, and I'm speaking today as a conservation biologist, as a scientist that's been engaged in wildlife research, particularly in the far north. And our work involves mainly issues around species at risk like caribou, wolverine and lake sturgeon, but that work necessarily falls into policy, legislation, planning, particular with the *Far North Act* and land use planning with communities, but also environment assessment, in particular cumulative effects assessment as well.

So I am an Associate Conservation Scientist for Wildlife Conservation Society (WCS). We're an NGO, Canadian NGO that's actually focused mainly on science and trying to bring that research and that understanding to decision-makers like the governments, like the First Nations, like other NGOs and stakeholders.

And I've been based since 2009 in Thunder Bay and, as I mentioned, most of my work is really focused on the far north. So I'm going to be reiterating some of what Cole Atlin has discussed around the Ring of Fire in particular, in part because that's how I've come to understand environmental assessment and issues related to environmental assessment, is having to then try and engage with both provincial and federal processes around environmental assessment in the far north.

And what's interesting, too, in the far north is it's actually not integrated with land use planning, so these are concurrent processes that are

happening around decision-making in mines, for example, and roads, but also decision-making around communities and what they want to see around their traditional territories moving forward.

So that presents a real challenge, I think, in terms of thinking about the future of these landscapes. There are some real interesting aspects of these landscapes which probably are not unusual or not surprising to you, but change, I think, the dynamic and the conversation about what does EA look like in some of these regions.

These are very intact, remote regions. They've got some of the most globally significant ecosystems left on the planet. It's not just what's very interesting for Ontario; it's actually a globally significant area. And so some of the elements of that make this trying to think about inviting development into these regions pretty complicated.

So just from the ecological perspective, the biophysical environment, which probably most of you would think a wildlife conservation organization would be focused on primarily, is that we do have these large peatland complexes, these very large wetland complexes which, in and of themselves, are really important, but they're now also part of the conversation, in particular in Ontario, but hopefully federally as well, around climate regulation and carbon sequestration.

As I've mentioned, there are federal and provincial species at risk in this landscape. Some of those things have recovery strategies attached to them, with obligations and commitments. Others do not.

And there are a number of other aspects around this region in particular which are relevant to many sub-Arctic and Arctic environments in Canada, and that's the impact of climate change. And as Graham sort of mentioned, we're all dealing with climate change, but the far north in particular is an area where we're expected to see more significant impacts than anywhere else in Ontario and other parts of Canada, to be honest.

And First Nations in particular are already feeling those impacts and are already documenting changes and trends in different ecosystem indicators such as polar bears, such as permafrost, that are evidence that these areas are also changing rapidly.

The second component of this work that's really unique and I think brings a really important element to EA is the social environment. This is a remote, but people, landscape. It's been lived on — lived in for thousands of years by First Nations. We have about 40,000 First Nations living in 34 communities; 31 of those are remote. There is no road access.

Their constitutional Aboriginal Treaty rights tied to a healthy environment, which I think are actually really important indicators of how well EA, for example, could be delivering as a social tool for change.

And most of the history around EA participation by First Nations and other indigenous peoples in Canada has been one of marginalization. And I know that there's a lot of interest and effort in trying to improve that participation and that engagement.

And I also came to this landscape recognizing that there is no sort of meaningful land use planning processes that can speak to these regional scale issues, so even though we do have the *Far North Act* and we do have a mandate within that Act to develop a Far North land use strategy which talks about things like watershed protection, that talks about things like climate change, like cumulative effects, for example, the actual way in which that work is being provided to the community-based land use tables is not actually making what I think are real significant changes to people's decision-making on the ground around the community-based planning.

That creates a real sort of mismatch, again, when I think of planning. Not only is EA not integrated with the *Far North Act* work, but the — within the *Far North Act*, community-based planning is not really talking about regional scale.

That said, as part of the challenges to one of the Ring of Fire mining proposals back in 2012 was a judicial review that led to a process that ended up with a regional framework agreement between the mine and Matawa communities and the provincial government which created a framework that possibly can speak to some of these regional issues like infrastructure, like EA participation, like revenue sharing, like regional monitoring. Those were, in fact, the four objects in that *Far North Act*.

And so those are places where there could be possibilities for indigenous communities to actually come forward and talk about regional style processes. But again, within that — from a public perspective from somebody sitting on the outside, it's really unclear how that process is actually helping deliver a better involvement in EA, a better outcome for the region and also for the communities.

And so in that sense, there's still a lack of real attention to what the futures of these regions will be from both a biophysical perspective, but also from a social perspective.

And as Cole was referring to, when you've got an environment that's being sort of promoted as a — where the economy is all around non-renewables like mining, there are clearly these legacy impacts and there are clearly issues that need to be thought about in advance of going into these places and just, project by project, deciding what's going to happen around mines and roads, for example.

And the last point on my social story for this presentation is that there really is a severe lack of capacity, and that takes many forms. I think everybody sort of made a point about trying to bring the financial resources to these processes, but there are also demands on the few people in these communities to actually be engaged in these processes, particularly Elders, for example, and information — trying to get that information.

There's a lot of effort to try and get, whether traditional knowledge, whether it's just sort of traditional understanding of what's been happening in the region into EA processes, for example, when, in fact, these people are also involved very busily in many other planning processes. This is not just the one thing.

So if I had, and I do — in my presentation, I try to just focus on two things that we've been really engaged in as an organization, I've been more personally engaged in through our work, and that's trying to get at what — the cumulative effects assessment and what that is and what that — where that needs to go. And then another sort of push for requiring and enabling some kind of regional strategic environmental assessment process, with or without the province.

And so from my perspective, just trying to understand what cumulative effects assessment is at a regional, I really feel, again, as sort of in the previous presentation, this idea that there's this big regional plan but then informs what could possibly come forward as an individual project.

I think even if we just had some cumulative effects assessments or regional frameworks that we could look at cumulative effects, that could be a place to start to think about where those individual projects fit into that much broader region. And I think there is a lot of effort and focus on deciding what we should be looking at in those cumulative effects assessments, and those should be a — that should be a dialogue.

I think there's clearly some biophysical ecological things that you want to have in those processes, but you'd also want social values and social indicators that were important to include there as well. And some communities I am aware of are actually moving towards — they have that value base, they have the well-being — that well-being data to help sort of create those processes when they're ready.

On sort of the requiring enabling strategic environmental assessment at the regional level, I mean, there's clearly been a federal experience of SEA, and I think that most of what I've read is that's not been a very productive and useful avenue for the federal government around internal SEA processes, but I think we really need to start getting serious about how do we then enable some kind of regional environmental assessment process instead of just having to rely on project EA and then expecting project EA to also be a space where people can talk about things that concern them at the policy program or regional level.

And so I don't pretend that I have all the answers there, but I think there's definitely a need to have some kind of legislative piece that says SEA and REA are possible. They can be done.

They need to be linked in some legal framework, in part because, again, the experience with Ontario's *Environmental Assessment Act* is that there is no lever or legal mechanism to talk about a regional study, let alone a regional EA. And when you go and talk to the Minister of the Environment and Climate Change, they — they're clearly focused on the legal piece, which is the project-by-project approach.

So there is no sort of download mechanism that we can look at in the Ontario EA process. As I mentioned, the framework agreement could be a vehicle. If indigenous communities really wanted to take it that far, they could.

So that's, you know, another suggestion, is legislation an indigenous trigger that allows an indigenous government or an indigenous community or set of communities come forward and say, "We want to see something regional".

It's not happening in our land use planning processes. We're not going to negotiate something unique for these groups. We want sort of a lever or a trigger that would allow that to happen.

Ideally, I agree. I think the province should be at the table. I think they should be leading some of these things. I — we have had conversations, certainly, with many of them through staff about why, and I think a lot of it is the silo'd approach to thinking about environmental planning.

So we have a Ministry of Natural Resources and Forestry that cares about the community-based land use planning piece, which is about zoning, zoning for protection and zoning for general use, zoning for development. It does not consider the rates, intensity, scale of development. It is sort of tied to individual communities that come forward.

And then, on the environmental assessment side, which is our Ministry of Environment and Climate Change, they just had the mandate to look at project by project, low requirement for cumulative effects, and actually, with mining, that's a voluntary agreement. It's not even required the private sector come to the individual EA table.

So I — maybe it's unique to Ontario. I mean, my experience has been mainly in the Northwest Territories and other parts of the world, and it feels like there is a very complicated social-political system, but I would argue that that's probably not that different from any provincial laws and probably not that different in many territorial jurisdictions as well.

And so I think considering those mechanisms in which the provincial legislation is not a very good one around EA, thinking about where those gaps are that could be filled with federal EA, but providing a real opportunity to create a regional and strategic approach would be very helpful.

And I think that commitment to cumulative effects assessment at the regional scale, most of the academic (indiscernible) of the work certainly in Alberta around regional cumulative effects assessments and different frameworks provide good examples of how this — with a trigger, what kind of models could be — could come forward. And I think they do depend on the context.

I think it is important to think about what is it that's unique about the Far North around environmental assessment that looks a bit different from southern Ontario, for example, and take some of those lessons forward because I agree that having the trigger would be useful, but then context of that process that unfolds within those regions needs to be very much tied to that landscape and those people and the futures for those regions.

The other interesting piece about Ontario is that much of its broader policies or plans, much what Cole was pointing out, the northern growth plan, for example, is not subject to any kind of environmental assessment itself, so we end up with sort of even with the strategies and plans and programs that should be speaking to the broader — a broader vision, for example, has, you know, check the box on consulting people, have been brought to open houses and have been chatted to about the different types of plans, those are not actually subject to what would be the impacts of actually taking this growth plan forward.

What will be the impacts of the *Far North Act* that commits to 50 percent protection, for example, and by default, 50 percent development? Can those pieces of policy actually deliver on sort of the outcomes that they're promising through these fairly large pieces of legislation?

So I don't think that that's something that the federal process can deal with, but just to be mindful that many of the provincial environmental assessment pieces are also quite limited in their ability to deal with some of the same issues that I think you're addressing at the provincial level as well.

And the last point I'll make is around sort of the need for information.

So this ties back to sort of cumulative effects as well. The proponents are out there collecting their baseline data. Depending on the quality of those — the consultants, actually, usually not so much the proponents, but the quality of that data goes into these different EA processes. That data may or may not be

available to the public. It may or may not be available, you know, until much of that technical information's been collected. There's no room to sort of change that.

So we do really rely on the other authorities to make sure that that information is fairly accurate and organized and available, but I think that there's also space and opportunity, then, for the federal government to be engaged in those data-gathering, data information processes as well.

I can appreciate maybe you don't always feel comfortable sort of making decisions about that data, but at the same time, there's nothing to sort of prevent people — prevent the government from being more engaged in the data collection as well and making that available for all.

And because I've heard enough sort of comments about traditional knowledge, I think there really is a fundamental challenge, particularly in Ontario, about the relationship between governments and First Nations to be able to invite that conversation, to actually want to share that information. And I know there are federal processes around — Cassiwick(phon) for example, there's Aboriginal committees that can speak to and comment on species at risk.

We don't really have anything like that here in Ontario, and I think that could be a much longer and, I think, more involved conversation, but it's certainly the pathway to reconciliation, in my mind. But we do sort of need to find a structure that enables First Nations and indigenous peoples to bring their knowledge to bear on these processes, not only because those processes are really important and crying out for them, but I think in many cases we'd also be interested in restoring some of that knowledge.

I think there has been a lot of damage to that — to that knowledge, and that relationship needs to be restored in order to bring that information forward to the processes as well. And I think only by doing that will we end up with a different type of EA because as long as it stays within a fairly technical scientific proponent-driven process, we're going to get the outcomes that work around a scientific technical proponent-driven approach.

And so I'll just leave it there, and I do have a report on why we need strategic environmental assessment in the Far North. I'd be happy to share that with the panel. It was just too large for me to email, so I'll find another way.

Thanks.

Johanne Gélina: We will certainly welcome having that information.

As I was reading your submission, I had the impression, and correct me if I'm wrong, that, for you, let's talk about regional assessment or cumulative effect assessment because — let me just step back for a second.

For you, assessing cumulative effects could be part of a regional assessment. Am I right saying that?

Cheryl Chetkiewicz: Yes, it could be.

Johanne G  linas: That's what I thought. Okay.

As I was reading your submission, then, I was under the impression that the federal government could easily — let's call it that way — initiate a regional assessment without getting too much into jurisdictional aspect and getting everybody around the table and so on as an information-gathering process as a starting point.

The two tricky parts are what triggers that or what is the justification to initiate a regional assessment and when it comes to the decision-making process.

So let's forget about the decision-making process. What, for you, would be a kind of natural trigger to initiate regional assessment?

Cheryl Chetkiewicz: In the case of the Far North, mines going into places where we know that the only way those mines survive is if you build all-weather permanent infrastructure and you have to invest billions of dollars to do that. There's huge public and personal risks associated with developing that infrastructure, and although the conversation around the Ring of Fire has been mainly about mining, I mean, there's a sort of — many communities are interested in having roads. They've wanted roads for a long time as well, so I think any sort of major infrastructure transmission, region-opening event in places where it's never been done before, to me, those are triggers for thinking about a regional type assessment.

And I think regional studies could be part of that, but could lead to a regional assessment. I don't think you actually need to say we have to do a regional assessment. I think — but I think the studies could be framed in a way that that information is supported with a regional assessment.

Johanne G  linas: Thank you.

Rod Northey: I want to write that last point down.

Johanne G  linas: But as you're writing that last point, I just want to ask a quick question.

Were you involved in the MacKenzie Valley pipeline project?

Cheryl Chetkiewicz: I was not, but I've read a lot about it.

Johanne Gélinas: Okay. So your proposal as an example was more based on what you read than —

Cheryl Chetkiewicz: Yeah, and I was actually working for the Gitwinksihlkw in 1995, and most of our — most the land claims agreement components that I was dealing with there grew out of and learned from the MacKenzie Valley project.

Johanne Gélinas: Thank you.

Rod?

Rod Northey: Yes, thank you.

So the report that you've spoken about, background, I take it is not — I better the name right. I think it's called "Getting It Right".

Cheryl Chetkiewicz: It's called "Getting It Right".

Rod Northey: Yes.

Cheryl Chetkiewicz: Yeah.

Rod Northey: So that was largely, in fact, entirely recommendations about a provincial involvement in this, or have I missed something?

Cheryl Chetkiewicz: It was about trying to begin that conversation with the provincial government, but it did show that there were places in the federal process that could enable that; a regional study, for example.

Rod Northey: Yes.

Cheryl Chetkiewicz: The provincial government could come and say we want to do a regional study with the federal government.

Rod Northey: Right. Which no one has decided they want to do just yet.

Cheryl Chetkiewicz: M'hmm.

Rod Northey: So we're back to our triggers problem. The thing that I found interesting about your process, I think your analysis of what the problem is is very detailed, especially on the science and the biophysical problem, so what is not clear to me in your short piece is the process, exactly, of what is a regional assessment.

Cheryl Chetkiewicz: Right.

Rod Northey: And even your statements about you need to start or could start with cumulative effects or a regional study, it's still not clear to me how to do it. I

think you make a very powerful case why the biophysical needs attention in the Ring of Fire particularly and the global concern question, but how does one or where is it? Is it lurking in something we don't have the step 1, 2, 3, 4 kind of approach to what —

Cheryl Chetkiewicz: No, it's really just drawing on the CCME guidance documents which have been around since 2009.

Rod Northey: Yes.

Cheryl Chetkiewicz: It's like start with your vision, what is the vision. And I would argue it would be the vision for the Far North, and that — you know, we've got some government ideas about what that vision is. We do have some First Nations ideas about that vision. That's where you start. And then you go through a process of trying to assess, well, what are — what is — what do we know about this environment right now.

And so from a cumulative effects perspective, we've been working on a series of scenarios to try and think about, well, what happens around different development trajectory ideas, high-low development scenarios, high — worst case-best case scenarios for climate change. And so we've got that very — feel much more comfortable around that when we're trying to figure out what's going to happen to caribou if we end up with the high growth development trajectory and climate change.

Rod Northey: Right. So the scenarios you're talking, okay, are —

Cheryl Chetkiewicz: Yeah. So I could imagine that you could be doing that with social indicators and economic indicators as well, so we've actually been using a cumulative effects simulation tool that's applied in Alberta to help us sort of visualize and then have that conversation about the future.

Rod Northey: Right. Do you — and you might have heard my question to the previous submissions just on this difference between a project — a private sector project and infrastructure. You've alluded to what's going on in the Ring of Fire.

Do you have some thoughts on how to deal with that question? Do you see them similar? Do you think they require different treatment? Do they have different priority? How does that fit into the framework as you see it?

Cheryl Chetkiewicz: Yeah. Well, I think the EA process naturally is going to talk about the project, the mining project, and as you know, most of these mines are actually multiple components. It's not just — it's not just the pit. It's the processing facility, it's the air strip, it's the construction. The reality is with those chromite mines or the nickel mines, we're going to need a road to get that ore out of there. It's not a diamond mine or something else that you can fly it out.

So you know, no one's really talking about it, but the only way that mine works is if there's a road that goes to that mine or a railroad, for example. And so that's part of the conversation around the regional framework agreement, but it's not necessarily going to be part of any project EIA. That's going to be happening in some other sphere.

But intuitively, they should be together. It's just the proponent's not going to take on the cost, the scoping associated with putting in that road. They have their own ideas about what road they would like, of course, but I think that invites the conversation about, well, if we're going to put all-weather roads into these places, should it just be about supplying that mine and are there different options for placing that road or that railroad.

as well, so it's like — We have a transmission line going in just on the other side

Rod Northey: Sure.

Cheryl Chetkiewicz: -- who is actually keeping all these pieces together, and doesn't it behove us to think about that strategic and regional conversation before we end up sort of piecemealing pieces through these projects.

Rod Northey: Okay. One final question. Given the amount of time you've spent in the Ring of Fire area, what kind of timeframe do you think a serious effort to get this kind of regional assessment going and completed is realistic?

Cheryl Chetkiewicz: Well, it's taken since 2000 — 2007, we had the big mining claims rush. In 2010-2011, Cliffs was filing for its comprehensive study; 2012, judicial review. I don't want to talk about how inefficient, maybe, the provincial government is at managing this, but I think we've already spent a huge amount of time trying to set up some kind of process.

I think we could have spent at least that amount of time, if not less, just coming up with some of the visioning statements and some of the ideas around what were the regional environmental assessment look like and just find the political will to make that happen.

I don't — you know, other SEAs have been two years. I don't see why, given the amount of effort that's going into even monitoring right now or what work is happening in communities, that we couldn't have a regional environmental assessment within a couple of years. I don't think it's impossible.

And I noticed you asked about proponents as well in the last one. So for Nirant, at least, there is this real impression that they are now being asked to address regional scale issues in their provincial terms of reference. We actually saw that as very positive, but then we realized that maybe the proponent's not going to be

able to deliver on these regional scale requirements such as cumulative effects, such as climate change scenarios, such as infrastructure.

So I think there's a real gap there that could be filled by a federal REA or SEA trigger.

Rod Northey: Thank you very much.

Cheryl Chetkiewicz: Thanks.

Renée Pelletier: Your comments that the government should be more involved in data collection, we've received some submissions, people have suggested that it should be someone other than the proponent who is doing the actual impact assessment, so someone other than the proponent doing all of the studies, not just data collection.

Is that what you are submitting here, or is it something else?

Cheryl Chetkiewicz: I think it's a bit of both. We've looked at sort of a number of proponents' deliverables around data, and it really depends on the quality of the consultant and how much money those proponents have. And I'd rather — I'd rather have sort of a data-gathering process that didn't depend on the proponents' ability to collect that information. And I also think that, you know, that information is proprietary. It's not public. And so I would imagine government would be in much better — a much better governance structure to actually be able to make that information public and available.

And I know there's areas where, obviously, the federal government has lots more information that it does share in various ways, but I feel like the organization around sort of a regional approach would make much more sense if the government is actually managing the data input and collection process, and it has those standards set out.

Johanne Gélinas: One last question for you, Cheryl. On page 2 of your submission, there was a reference to a document called "Scientific dimensions of cumulative effects assessment toward improvements and guidance for practice". Can you tell us a little bit what is that?

Cheryl Chetkiewicz: I can't remember.

Well, I know Peter Duinker is sort of the pre-eminent cumulative effects assessment guru. He's Gibsonian — the Gibsonian version of — for cumulative effects assessment.

My colleague, Dr. Justina Ray, is going to be talking to you on Wednesday about science in the EA process, and my — if I remember this paper

correctly, you know, there's a lot of uncertainty around sort of — certainly around future scenarios. There's only so much data that we're going to be able to collect. Cumulative effects assessment is thinking about the implications on the environment from both the scientific perspective, hopefully from a social perspective, and a value-based perspective as well.

My — if I remember rightly, I think it was more about thinking carefully about what is that science and how does that science get applied. And my colleague will do a much better job of talking about some of the challenges around that and some of the potential opportunities for doing that.

Johanne Gélinas: But we can contact Peter directly.

Cheryl Chetkiewicz: I can —

Johanne Gélinas: I was just wondering if you knew something specific about that that can be of good use for us.

Cheryl Chetkiewicz: I think some of the challenge, particularly — same with EA — is that it's not about — necessarily about collecting more and more data. It's also been about thinking how does that data get applied in the decision-making and who is empowered through that data-gathering process. If it's all just going into a black box and then getting — decisions are behind made behind closed doors, for example, is that — does it matter if that data is good or bad?

I think that public perception of what is the data, how is it collected, is it rigorous, and then being more transparent about what don't we know or what are the uncertainties. And I think that leads back into the adaptive management.

We talk about doing it all the time in wildlife, but we're not doing it very well, and we don't do it very often. It is — but it is about the idea that only through monitoring do you learn.

All of these projects are essentially hypotheses. They're experiments that we're running in these landscapes, and I think society's obligated to take care of this environment for future generations. We need to be actually committed to saying, well, how's this experiment going. Is it actually working?

And I think cumulative effects assessment is one of those places where we sort of looked to over 40 years of history and said we're — it's not going very well on project-based EA. What can we do differently?

And the tendency has been to sort of push it to, well, maybe if it was regional. I don't know that's the right answer, but I think it's at least a place to start to begin having these conversations about the bigger picture and not just the project.

Johanne G  linas: Thank you very much for your time.

Cheryl Chetkiewicz: Thank you.

Johanne G  linas: I would like to invite Paul Berger to join us, and then we will be two more presenters.

PAUL BERGER

Paul Berger: Can you hear me? Okay. Is that good?

So I'll start by thanking the members of the panel for the opportunity to provide input. I see this as an historic opportunity to design a next-generation process that responds to the state of the world in the 21st century and that reflects Canadian values and priorities.

I am here representing CUSP, Citizens United for a Sustainable Plant, a grassroots organization here in Thunder Bay that's particularly concerned about climate change.

I'm going to start by giving somewhat of a laundry list of things that we think are important to be in the EA process, and then I'll focus more specifically on a climate test, how that would impact the proposed Energy East pipeline that we're engaged with here and why it's so critical that we get this right this time, even given, and perhaps especially given, what's just happened to our neighbours to the south.

We believe it's important that a new EA process encourages rather than limits meaningful public participation. The opportunity for public participation is really vital, as is transparency.

We believe it goes without the need for argumentation that indigenous peoples must be partners in the EA process for any projects on traditional indigenous lands, which is to say all projects.

Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission's Call to Action number 92 demand no less, so you'll notice I've provided a bit of argumentation anyway, and I said it wasn't necessary.

As you've already heard today and no doubt many times before, the EA needs to look at cumulative impacts. It needs some built-in decision-making criteria for net benefit assessment and some trade-off rules that don't allow too much impact to be put on one community or generation while another community or generation reaps the benefits. That would be a response to basic fairness.

It also demands that the long-term net costs and benefits need to be considered, with the real possibility that projects that don't provide net term benefits — net long-term benefits or only do so by sacrificing particular communities will be rejected. With about half of all wild land animals on earth gone in the past 40 years, this should include plant and animal communities.

The dominating culture's being compared to drunken teenagers trashing the place, something that's troubling difficult to argue with. An EA process with integrity must acknowledge that we live on a full planet. Any development will have consequences, and we should start sceptical and ask proponents to make a convincing case that there are long-term net benefits.

We ask the wrong question if we ask whether there are adverse effects of a project that can be mitigated. The real test should be whether a project makes continued human presence on the planet more or less likely. And that might seem hyperbolic, but it's not a fringe idea that certain humans' activities are currently triggering the planet's sixth mass extinction. Human impact is so great, from the melting of the ice caps, one of the defining features of our planet, to acidification of the oceans, all of the oceans, a huge amount of water.

The geologists have proposed that we've left the Holocene and entered the Anthropocene, the age of humans. But it's not a stretch to think that author Derek Jensen is more correct in calling it the "sociopocene", the age of sociopaths. Who else could trigger the sixth mass extinction and barely seem to notice or even care?

While we believe the proponent should be responsible for making the case that the project increases the likelihood of humanity's survival in the long term, government should be responsible for conducting the science and social science needed to substantiate the proponent's claims, for obvious reasons.

I'd like to reiterate here that we're involved today — what we're involved in today is a huge possibility, and perhaps bigger than any of us have really grasped, a once-in-a-generation chance to invent an EA process like none other before based on what's important to us and what we understand about the world that we didn't really know before, didn't really know fully before.

I'm going to shift now to discussing why a rigorous climate test is a crucial component of the new EA process.

When one listens to UN Secretary-General Ban Ki-moon, "climate change is a defining challenge of our time", the IPCC, the World Bank, the Pope or Donald Trump — sorry, scratch Donald Trump — we're way behind on taking climate change seriously and acting accordingly.

Canada recently signed the Paris Climate Agreement and was, in fact, a part of the high ambition coalition working to make the agreement more stringent. In Paris, we agreed to limit the global average temperature increase to two degrees Celsius and to try for 1.5 degrees. We collectively made commitments that would likely see a 3.5-degree Celsius rise, and we're actually on course for a 4-degree increase. It's widely agreed that a 4-degree increase would be really catastrophic.

And yet the International Monetary Fund estimates fossil fuel subsidies per year are about \$5.3 trillion U.S. and, in Canada, fossil fuel companies still receive subsidies from the government to look for more fossil fuel, even while we know that two-thirds of the fossil fuel in the reserves that are known already can't be burned if we're going to reach that 2-degree target that we've agreed on in Paris. This all borders quite closely on insanity.

If we do the math and the science, Canada needs to cut greenhouse gas emissions by 8 to 10 percent a year every year to do its part in meeting the climate agreement, the 2-degree goal. A climate test in the EA process should ask, does this project fit with the pathway to decarbonisation by 2050. Will it help Canada stay on the pathway to meet or exceed its Paris commitments? Does the project as proposed or an alternative or no project at all get us further towards decarbonisation?

If, at this point, you're starting to think that maybe CUSP is a group of foreign-funded radicals, I assure you that we don't even have a bank account or a treasurer, but we don't believe that any massive new fossil fuel infrastructure or development projects could actually meet a climate test like this one. We're leaving the age of fossil fuels, and we need to leave it more quickly.

This isn't a preference or an ideology; it's an understanding of the science.

Richard Feynman, who investigated the Challenger shuttle crash, famously said, "For successful technology, reality must take precedence over public relations, for nature cannot be fooled."

We live in a world where it's politically challenging to act on the logical conclusions of the Inter-Governmental Panel on Climate Change. Our leaders have been trying or, in some cases, not trying since 1990, but not only can nature not be fooled, nature doesn't actually care. It doesn't care how difficult it is for the politicians to tell the truth or to act on it. The carbon we continue to emit in vast quantities will foreclose possibilities for those who come after, and it will continue to wreak havoc for us and those who are considerably more vulnerable than we are.

A rigorous EA process will help politicians to avoid these difficult decisions. For example, in our local context, where there's intense opposition to the proposed Energy East pipeline, a pipeline whose climate impact would be the

equivalent of putting seven million cars on the road or reopening all of Ontario's coal-fired power plants, a climate test based on Paris would quickly be failed. In all likelihood, if the EA process had included a rigorous climate test even before Paris, the project would never have even been proposed.

It's 2016 and we don't need to go more slowly down the wrong path. We need to change paths. If we have any intention of honouring our Paris commitments, we can't build projects like Energy East. An ambitious EA process will reflect who we are and what we value. It will help us to rise above worrying about what's difficult or whether we should do the right thing if others aren't. Its impact should actually not be underestimated.

A process that pays attention to the things that I've described would provide clear guidance to business and industry, driving innovation and helping us move into the mid-21st century and beyond. The world will look different because it has to look different. We need an EA process with integrity that will help us get there.

Thank you.

Johanne Gélinas: Thank you very much.

Any question?

As you're looking for question, I have one for you. You talked about Energy East and you said that you were involved in this project here in Ontario, right. Are you considered as an intervenor?

Paul Berger: No. We're a group of activists here in Thunder Bay, really.

Johanne Gélinas: So how is the nature of your intervention, if there's any, with respect to this project?

Paul Berger: So we've asked City Council here to publicly oppose the Energy East project, and we've had a fairly large petition here that's also asked Councillors to do that. We were part of the Ontario Energy Board hearings that were here. We made submissions to the first round, and then we were part of the second round. And we've been generally trying to raise awareness of the project because it's not very well known amongst people here what the costs and benefits of the project would be.

Johanne Gélinas: Thank you.

Renée Pelletier: Actually, I'd like to pick up on that. So you said that you were actually involved in the NEB hearings?

Johanne Gélinas: No.

Paul Berger: No, the Ontario Energy Board hearing.

Renée Pelletier: Oh, okay. That's okay.

Johanne Gélinas: So it means that it's the first time I hear that, and I'm not from Ontario, so there was a provincial process?

I'm from Quebec, so in Quebec, we had a provincial process looking at that, and NEB was also supposedly having hearings, but you know the rest of the story.

Paul Berger: Yeah.

Johanne Gélinas: So you had that specific provincial process; right?

Paul Berger: Yes.

Johanne Gélinas: Okay.

Paul Berger: And like with our request to City Council — City Council doesn't have jurisdiction in this process. The Ontario Energy Board didn't have jurisdiction in the process. But we believe in times where there's a broken environmental assessment process, calling on other layers of government to stand up and take a stand gives some sort of a social licence or a lack of social licence, shows that, again, if we had a robust environmental assessment procedure that was able to look at this and say, look, we've got a climate test. This project — you know, we're going to have to ask 7 million Canadians to stop driving cars if this project goes ahead. And at that point, we still won't be further towards our Paris goals. We'll only be breaking even. Okay, it's — you know, it's not a good idea. We wouldn't really need to have — Ontario Energy Board wouldn't have needed to weigh in and to have hearings, and we wouldn't need to approach City Council and try to get their support.

Johanne Gélinas: It's a long process to reach your — the climate test, so to speak. You have to go through the city, then, at some point, maybe the Ontario government through the Ontario Energy Board may look at that. And for NEB, we don't know.

Paul Berger: Well, the NEB — at the time when we started our involvement, the NEB's process quite explicitly does not include climate as a factor, right. So not only that, but we couldn't claim that we're directly affected, so we haven't applied for intervenor status because we — you know, we could have gone through the nine-page application to be rejected so that we said that we had done it, but that wasn't the way we had decided to spend our energy.

Johanne G  linas: Okay. Thank you very much for the clarification.

Rod Northey: All right. Well, you've decided to put the elephant in the room, so let's try and see what you think we can do.

The trickiest point that I think you're making is people call the environmental assessment a process to reach some kind of outcome or decision. And one of the things that we've heard very strongly is that putting everything into a proponent's lap is a bad way for government to do big policy decisions.

That said, the climate test you're advocating sounds exactly like putting everything in a proponent's lap. So the question I'm asking is, we've been encouraged to go elsewhere and go think bigger than projects and to think about strategic EA or regional EA. And it strikes me the strategic EA of policy is really the place where you want something to happen.

So here's my further question for you. If you think that strategic EA has something to offer this, are you prepared for the possibility that the government might reject the outcomes that you think should happen in a strategic EA?

And I guess the reason I'm asking this question is, it strikes me that you think the end target is self-evident, and an EA doesn't need to prove or disprove that. And so the question is, what, exactly, is EA doing if you don't agree with what the government thinks the goals are?

And I'm concerned how we or anybody can legitimize EA when it's supposed to be doing everything to everybody when it can barely do nothing for anybody at this point.

So where do we really go? Is it just implement Paris? Isn't that kind of where you are, you don't need a process to even get there, or do you think there is some value to a strategic EA being done by government to show the consequences that you've been listing here and have a public transparent process?

Do you see that as part of what you're advocating to us?

Paul Berger: That might — that might help a lot. You know, you've seen that I'm pretty categorical here about my belief that, in the world we live in with the science we have, massive fossil fuel projects need to be rejected. Whether that's — whether that's done at a more political level so they didn't even get into an EA process or whether the process is built to actually protect the common good in a way that the science is recognized and things don't — things wouldn't go ahead, you know, I don't think it's easy, but I don't think it's easy for politicians to make the decisions.

And I like the idea of a process being at arm's length from the sitting government so that the adjudication of it, the consideration of it and the —

and the answer that comes back to the politicians can be based on science, not based on what's politically expedient or possible.

And so I don't know the ins and outs of the different ways that that could work, but I wanted to represent to you that I, and I think many Canadians, are strongly convinced that massive fossil fuel infrastructure projects have had their day, they have contributed to Canada, but we know too much now to keep going with them. And if we create a process that, you know, somehow balances the economy versus the environment in such a way that it doesn't actually take the seriousness of what's going on with climate change properly, if it doesn't have a climate test at some level, we're going to be in trouble.

Now, if the — if there's a political process that decides that the — you know, it's terrible for the climate but we're — you know, we're going to go ahead with it anyway because it's good for the country, I would retain my right as a citizen to protest that, but I would — you know, I'd be really happy to see a process that was clear, that wasn't like the process that we have now or had in the previous government where, even if the environmental assessment process said that the project's not good, the Cabinet could just sit and say, "Oh, well, we're going to do it anyway".

I think Canadians are really distrustful of that sort of situation.

Johanne Gélinas: Thank you very much.

Our next presenter is Mr. Paul Filto, and then we'll have one last presenter.

Mr. Filto(phon).

Paul Filto: (Inaudible - off mic)

Johanne Gélinas: Regardless of where you sit, you have to speak in the mic. That's a given.

PAUL FILTO

Paul Filto: Can everybody hear me? Okay, then.

My name is Paul Filto. I'm here from Thunder Bay. I'm not — I'm representing myself. However, I did make a consultation with the Council of Canadians. We had a meeting, and I'd like to just acknowledge that Ruth and Tom Cook and Ed Lutson(phon), they're just behind me here with the Council of Canadians.

I'm reformulating this as I go. I'm just listening to some of the argument. And one of them, I guess it's the relationship between a regional environmental assessment and, I think, how our communities are organized.

I notice that you're on the way to Fort St. John, the Peace River area, and just noting that in British Columbia, you have regional governments there. And they're organized on watersheds. And I think there's a relationship between the amount of opposition you're getting to projects in British Columbia and because the people are organized and they think regionally, and I think this is also very similar to Quebec, you know, from Lac St-Jean or Gaspé, you know, you're going to reflect that region, and so you tend to think that way.

Here in northern Ontario, we're organized by districts, and southern Ontario it's by counties, but here we're by districts. And by law, our municipalities are very much constrained, so we tend — if we live in Thunder Bay, we think about Thunder Bay, and not a lot outside it except we have two — we have Greenstone and we have Temiskaming Shores. Those are only two regional groupings in northern Ontario, so we tend to be very — if you're just looking at the — an official plan of a town, it won't have much of a regional reflection in it. So I'll just make that comment.

What I'd like to do, my own background is economic development, and I guess over the years, it's just a perspective of having participated in hearings. And what I'm seeing at the community level and how we can improve that process that communities can meet and can engage with the federal process, I guess it was a feeling with the group that I met with, we felt that the federal environmental review process should be a gold standard. It should be a high process, and it should be stringent.

We wish you success in that process of building confidence or trust with the public, but also, there was a feeling there was a conflict with your second mandate, that is, to get resources to market. And I'll comment further on that.

Here in this area, I think Paul, that was just here before me, noted that the National Energy Board hearings are coming this way, and that's — probably will be our first or our next big hearing process.

Now, the question is, we understand that's not an environmental review process; however, we think it should be. So we would hope that this environmental assessment review would come up with a number of principles and standards that would be reflected in the National Energy Board hearings. In other words, those hearings would be an equivalent of an environmental review process.

Also, eventually, we would hope that you're so successful that we come up with an environmental Charter of Rights and that we can embed those

in the Canadian *Constitution*. I'm sure David Suzuki — he may not live to see that, but he would applaud it.

First of all, on easily understood common EA principles and standards. We feel that these should be common and across all federal jurisdictions, including agencies, Boards, Commissions, and are easily understood by the public. For an example, an EA process done under the National Energy Board should be no less stringent than if undertaken by the Canadian Environmental Assessment Agency. And I just already mentioned, I guess, the — an environmental Bill of Rights to form part of our *Constitution* protecting our land, air, water, wildlife and human health.

Intervenor funding. We can't really engage up here often unless we do have some funding. And in cases, I think — I was thinking there was the Adams Mine. It was a proposal to bring garbage from Toronto and put it in an old open pit near Kirkland Lake, Ontario. And one of the reasons I think that that proposal was defeated, there wasn't — it was a provincial environmental review of a process, but enough red flags were — the environmental review recommended it go ahead with an awful lot of conditions, but that sort of put so many red flags out to the public that there was a massive turning against the project.

So anyway. But that — you need intervenor funding. How the funding is made available to the public or to the intervenors is important. It should be done — I personally feel, in most cases, it should be paid by the proponent. In this case, if we have the Energy East pipeline coming, then Energy East should pay for intervenor funding to community groups that want to intervene in that process. How it should be made available, it should be at arm's length or in escrow. In other words, it should be put out there in trust so that the proponent doesn't control the process. It's important the public feels if you want confidence or trust from the public that they control that process themselves.

Also, this could be stipulated in terms of reference to any consultants that are engaged.

Capacity building. Often, we don't have the capacity in our smaller communities that want to participate. Again I'll use the Energy East example.

If we're coming — you know, we're coming across the North Vermilion Bay, we're going to Geraldton up to Kapaski(phon) through to Kirkland Lake and down through Martin River and North Bay, a lot of those smaller communities may need assistance in capacity building, and this could be consultants who would assist them in researching or ghost writing presentations and that, again, could be covered under intervenor funding.

Participation, witnesses, payment and travel. We feel that participation should be as inclusive as possible, not only to indigenous, but in all

northern communities. And I'll just make a point here. We're seeing a lot of division here. We're seeing that it's because of the right to consult under treaty. You know, that's come down, but we're seeing all our northern communities, we have a lot of indigenous people, people like ourselves. A lot are the Métis ancestry, so just whether we're living in Thunder Bay or living in a First Nation further north, I think all these communities should be consulted with and that there's no divide and conquer, break us up by ethnicity.

The public and traditional knowledge is invaluable and should be acknowledged and included. This includes sacredness, seven generations and respect of the land as practised by First Nations.

Again, from our own perspective, and that's from a non-native community, a backhoe operator can tell us about corroded gas lines exploding in Muskeg. Hydro linemen know what it's like to restore power in winter over several days when one or more of the transmission towers are blown down that are twinned with gas lines. Geologists may testify rock is impermeable, whereas miners who work on the same rock have been constantly wet.

Witnesses and traditional spokespersons provide — or spokespeople provide valuable testimony and should be paid as well as the expert. This input is invaluable and often at odds to big consultants' testimony.

While we emphasize science, the opinions are often an exercise of the art of the deepest pockets. He who pays the piper plays the tune.

The public right to trigger a federal environmental assessment, public has the right to request commencement to trigger an EA review if the process conducted under federal jurisdiction or other provincial liaison is not — are not sufficiently stringent.

For example, if NEB gives the go-ahead to Energy East pipeline without a process equally stringent and publicly accessible as the Canadian Environmental Agency standards, then a new EA can be ordered. In other words, a federal EA should be the gold standard.

Regional representation. Regions and communities should have a say in who represents them on EA panels, Boards, Commissions, et cetera on especially large projects such as Energy East. There may be Board representatives that change as hearings cross the country. Crossing northern Ontario alone is over one-half of the energy pipeline span, and there should be a public process for nominating regional representatives on an EA panel. Too often, the EA experts come from industry and urban elites. Their information is comprehensible, and they are closely allied to the proponents.

I'll just cite an example here. You know, if you're in the mining industry, it's a good chance if there's a consultant on the project, they work for Golders. If you go to the provincial environmental review people, it's a good chance they've also worked for Golders. It's like a rotating door, so we're really dealing with the same people.

Often, they often don't relate to rural folk or First Nations. The public should feel the EA nominees represent the public and their interest.

The Transportation Safety Board. Need for public inquiry into the handling and safety of transportation of toxic substances. Where historical safety of transport systems are a concern, then the Transportation Safety Board should be requested to produce public analysis of safety scenarios to be included as part of an EA. The federal and technological control systems or inadequacy thereof with recommendations for improvement also be included. The frequency and danger of oil spills, gas line and oil rig explosions, rail derailments and explosions, spills at sea with the accompanying tragic loss of life are all too frequent.

Notwithstanding the more insidious toxicity spills in the environment, why are we discussing expansion of the pipeline system without first an inquiry in to the hazards of transporting toxic substances by existing land, air, water technologies. I think it's time for a national inquiry into why all the spills.

Clear lines of authority and responsibility for spill response and environmental liability. Are there clear lines of authority and responsibility in both the safety prevention and action taken when spills do occur? Do companies have effective training plans for spill prevention and response?

Spills are regularly reported in the media and responses are slow. Ineffective and questionable whether it be Horne Pain(phon), Prince Albert or Bella Coola. Also, for long-term liability relating to spills, are the corporate responsibilities clear?

The companies organized to distance themselves for — from environmental responsibility and the taxpayers usually end up getting stuck with the bill or the clean-up is left for future generations or forgotten. You know, it's my own experience with mining companies, you know, maybe the mining company comes on the scene, 20 years later the ore starts to get run down, it's converted into Gold and Shields. Gold and Shields sets off into another junior company. By that time, you don't know who originally owned that property or any longer who is responsible in the present for that property.

So we're just getting abandoned mine tailings all over the country because of that.

Public health and cumulative effects. Environmental, social and economic determinations are interwoven with the natural fabric of the land. Impacts of development are cumulative. As our watersheds are increasingly exploited by mines, forestry, dams, factories and tourism, the natural sources of food become contaminated and impoverished. The stories of Walbagoon(phon) and Cheslata, Muskrat Dam are all too common.

Northern communities often sit in the huge network of logging and exploration lines and roads, clearcuts, mine tailings, aggregate pits, polluted waters and fish, diminished and toxic wildlife. Hardly pristine. Every year, our species at risk grows longer.

Oil spills into Lake Superior would be another insult to the environment. Following the Great Lakes Seaway and Lake Superior, the lake trout near fishery — like when they built that St. Lawrence Seaway, the first thing that came into this area that impacted the area were the lamprey eels. These attached to lake trout, so that industry got knocked out.

The next thing that the — I guess it was done, I think, through federal-provincial cooperation, was the Algoqui(phon) diversion. We diverted water flowing north into Hudson and James Bay down. We established the Golqui(phon) reservoir, and that flows through at Nippigan. Well, salting from that caused the salting of the pickerel beds, and that knocked out the pickerel fishery here on the north shore.

And now I guess what we would have to ask if we have Energy East building a pipeline, there's a case — I talked to a hydro line foreman, and he was telling me that the existing gas pipeline when they went over by helicopter to do their line inspections, they saw the gas line dripping down into the river. It stayed that way for a week.

Well, imagine if that was crude oil and that crude further leaks down. This is where we draw our water supplies from there.

So just to use — using that as an example.

Business planning. The public should be able to access the proponent's business plan, include — again, you know, I'm speaking from my own background. If I'm doing a business plan for a proponent and there are a number of competitors, I may object as a businessperson to you having my business plan. But again, crossing the table and putting on an environmental hat, if there was an objection, then I feel that if we're doing an environmental assessment, then the environmental costs related to doing — to carrying forth with that business should be available to the public.

Also, the break-even figure should be known. For example, use the example of Energy East. If they want to send crude across, well, we know that crude right now, I think, is below \$45 a barrel. They've told us that their break-even cost for transporting it to make them some money is somewhere between \$75 and \$90 a barrel, then as a member of the public and a taxpayer, I've got to question why are we paying for an environmental assessment at this time.

It's the same with the discussion of the Ring of Fire. If the price of coal is low and it's too low to support this projects, then the company should show in their business planning what are the break-even costs, and we shouldn't be investing a lot up front into the planning process, I think, until such a time that market conditions demand it.

So just I think it would save a lot of — save a lot of money.

I just wanted to notice the — and again are the environmental costs including discharges, clean-up, remediation and monitoring including pay for public monitors, that is, paid for the proponent, but again through a third party, free of proponent's control as well as the EA. I find that if it's, let's say, an example of a mining project, we're asked to sit on a monitoring committee. Well, they want us to do that as volunteers.

It takes an awful lot of time and, as far as I'm concerned, if the mine is making money, then it should be able to pay for the monitoring after if it's public monitoring done outside by volunteers. I don't want to be a volunteer on that.

I'm just looking at the liability cost of Deep Water Horizon. You know, it was \$42 billion. Obviously, BP, they know up front planning on that expenditure.

The government of Canada is committed to reviewing the environmental and regulatory process to build trust and help get resources to market and support infrastructure development in a responsible way. This is a contradictory statement.

Certainly how a proponent such as Energy East gets a resource to market is their responsibility. However, if they can't do it safely and without spills, then it is not in the public interest to grant them permission. Therefore, this shouldn't be a government commitment and it doesn't build trust. Their business planning should examine alternative scenarios.

Alternative scenarios. Instead of a pipeline, why isn't Energy East considering shipping Hibernia to refineries in Montreal and Sarnia? Aren't there already three ports linked by pipeline through the U.S. and, it appears, to Keystone pipeline will also become a fourth down to Galveston.

Why not building refineries in Alberta to increase employment and reduce environmental liability? Only two-thirds of the diluted bitumen that is shipped can be turned into oil. For every 100 cars that go to Sarnia or Montreal or go east to be shipped out of Saint John in New Brunswick, we've to bring — a third of that has to come back as diluent. It doesn't — sometimes you have to see the business plan to make sense out of these things.

For this kind of investment, we could build a national energy grid with rechargers and make the transition to electric vehicles.

Long-term monitoring, clean-up, remediation, posting bonds up front. Again, ensure a long-term and clear trail of authority and responsibility for environmental liability. Companies distance themselves from liability and leave their wastes abandoned to public detriment. Oil companies, like mines, should be required to post bonds sufficient to cover clean-up, remediation and long-term responsibilities.

There needs to be a superfund like there was for the mine waste clean-up in the U.S. David Suzuki cites that only 14 percent of spilt oil gets cleaned up. After Exxon Valdez, big oil was able to evade its liability. The list of flagrant damages is long.

Scoping. Any scoping or narrowing the examination of a full EA be done with the consensus of communities and participants. Certainly scoping shouldn't be done that excludes an interested public. And for example, the upstream effects such as climate change and should downstream effects also be considered.

We welcome your consideration to these items and it is our hope that Energy East is subject to a full EA and that all communities in northern Ontario potentially impacted by this project have an opportunity and support to participate. However, before the EA proceeds, the safety and financial liability of the pipeline be ascertained, it would be a test of public confidence in the federal EA process.

Johanne Gélinas: Thank you very much. Your presentation was crystal clear. I'm not sure that we have any specific questions.

I have one. If — you mentioned that you come from an economic development background. What kind of economic information beyond what you have said, you know, the cost of barrel, for example, or the cost of metals and to see where is the breaking point where it's profitable or not, but what other kind of information you think an environmental assessment study should have?

Because there's a lot of people who are debating as they are presenting to us if it should be essentially an environmental type study or there should be some socioeconomic components to it or purely economic or financial data into the assessment.

You talked about the business case. The business case is often the pre-feasibility study or the feasibility study.

Paul Filto: Yes.

Johanne Gélinas: So what else are you looking into a study that will be of any help in terms of consultation and decision-making process related to economic info?

Paul Filto: You also need the relationship between the business plan and the environmental assessment.

Johanne Gélinas: Yeah.

Paul Filto: I would say, traditionally, that if a proponent comes with a business project, then what doesn't get accounted for or — are social and environmental costs, you know, the three pillars. So they tend to look at market viability, is it feasible, can the project go ahead. And that will be based on market conditions.

If — I think that a broader view, it's — an environmental assessment process will look at a broader view and take into account social and environmental factors and costs as well. And this, I think that the — they should ask the proponent to give some thought to. Also, to look at alternative scenarios, for example, let's say you were going ahead with a mining project and we're getting so many tonnes of waste.

I saw an example in British Columbia near Houston, a copper mine. And when it — it was ordered to go to environmental review. When they did the review, the project was denied. The proponent came back and found out that he could reduce his tailings considerably by mining it in a different manner, so then it became an accessible — an acceptable proposal.

And then I thought, well, if the company up front had of looked at the alternative scenario, in other words, asked that question, how can we mine it with less waste, they could have saved themselves a lot of cost right up front.

Johanne Gélinas: Thank you for your presentation.

Our last presenter is Mr. Stanfield.

KYLE STANFIELD

Kyle Stanfield: Good evening.

Johanne Gélinas: Good evening, yeah. It's almost there.

Kyle Stanfield: I'd like to thank you all for coming to Thunder Bay and for extending the opportunity to Canadians to consult with you and offer opinions on our experience and our opinions regarding the environmental assessment process.

My name is Kyle Stanfield. I spent six years managing and coordinating the environmental assessment for the Rainy River Gold Project, which is a \$1 billion mining project which is now under construction within the Rainy River district. It is the only project to have successfully undergone CEAA 2012 environmental assessment process as well as the only project in Ontario to undergo the individual EA process in Ontario.

I'd like to make five points here today before I conclude. I'm going to keep it very concise so that we have an opportunity for any questions you may have of me, and also in the interests of time given the length of dissertations today.

Regarding the Rainy River project, we as a proponent — and I did work for two companies at the time, one being Rainy River Resources. We were subsequently purchased by a larger mining company called New Gold based in British Columbia, and we took the approach of progressive, intensive consultation with both First Nations, Métis as well as local communities at the very beginning before we actually had a project.

And my own background and experience, briefly, I have a diploma in environmental protection from Kwantlen Polytechnic 1992 as well as a Bachelor of Applied Science in Bioresource and Chemical Engineering from the University of British Columbia in 1997, so I've been doing this for approximately 20 years now, mainly in the mining sector, but also in contaminated sites in the Northwest Territories, in British Columbia where I'm a registered Professional Engineer and also here in Ontario as well as overseas in Niger and in Latin America and Venezuela and Costa Rica and other jurisdictions, including Chile.

So I have rather broad experience regarding mining in particular, but also industrial developments, and my specific background is in environmental protection and environmental management on the scientific side. And I think that each of you are lawyers, so I have a bit of a different background in terms of the technical piece.

I read the bios of some of you. I may have missed some of it, but —

Johanne Gélinas: (Indiscernible - off mic)

Kyle Stanfield: Given — and it's important. I mean, given the length of a lot of the environmental legislation we have in this country, without lawyers I don't think we'd navigate very well.

I guess what I'd like to say first of all is I found the CEAA — well, we had to switch from the old process to CEAA 2012 during our EA, so that was a big process for us. We had to go back and kind of duplicate some of our time line. It made it more challenging for us.

We didn't know what the outcome was going to be of our EA through the entire process. We didn't know if it was going to be yes or no. You know, some proponents go into the process thinking they're going to get a yes. I've resided back here in Thunder Bay with my wife, and we have two young children here in town. And I watched the American large international firm come into town and not really do a very good approach with respect to public consultation, and also a bit of a misinformation campaign respecting the Ring of Fire, so I have a very good understanding of the need for clarity and being sincere in the approach with communities, and that is the approach that we took. And fortunately, we had a Board of Directors and a CEO and shareholders that appreciated that.

So improvements. I have five here listed that I would like to outline to you, the first being federal-provincial coordination or, you know, jurisdictional coordination.

The coordination between the feds and the province I found to be a very big challenge. We really — in this country, given the size of our nation and given the very large difference in administrations, it's a real challenge to, as a proponent, navigate between federal and provincial jurisdictions, and there is some overlap.

I mean, you know, mineral development is a provincial responsibility but, of course, there are triggers federally under CEAA, which certainly a large project like Rainy River would obviously trigger. But the coordination between the federal and the provincial governments was a major challenge for us to navigate.

Avoiding duplication. Common EA conditions is something that I think many of us would like to see and would serve the public interest much better as well. Between the federal and the provincial governments right now there are two separate condition documents that are issued that the proponent has to navigate and report to.

Common annual reporting is another area that I think should be looked at. You know, in an age of globalization that's being rejected in many jurisdictions — look to Europe, look to the United States — we need to be mindful of how we conduct ourselves from a bureaucratic perspective or we're going to face a backlash. And I think we're seeing that in many jurisdictions now. And globalization has triggered a lot of that.

So we need to be more efficient in how we do things. And where we can improve and make it more efficient, respecting the public interest and the need for proper protection, I think that that's important to make sure that we're efficient.

Number two, expand the use of analysis of alternatives, the scientific approach in the EA process. Environment Canada uses that process for tailings location, so multiple accounts analysis where you take a very scientific approach to environmental effects, socioeconomic, First Nation, Métis traditional, economic knowledge components, heavy reliance on remote system as well. GIS is incredibly important when it comes to environmental systems understanding and management.

You know, I was a consultant for 10 years during — between my periods of working for various mining companies, and I've hired dozens of people that are very highly skilled in mapping. And mapping of environmental components is helping us to understand things like climate change, which I want to make a comment on as well.

But it's so incredibly important for us to manage the environment, and I think that analysis of alternatives, the scientists that are currently working right now for federal agencies need to be set free to be able to properly understand environmental effects and complete their analysis of alternatives with the proponent so there's a shared understanding that can be taken to the public in a progressive process which is a two-way street. And I do feel that that process was taken on our project.

And I would ask anyone who's interested to go ahead and read the 8,000 page Rainy River EA which is currently posted on the federal web site. And it is the only EA which has been concluded in the province of Ontario, individual EA on a major mining project. And so I would encourage you to go ahead and go to the federal web site and review the sections of the EA which are pertinent to your studies or to those of you that are working or teaching in the fields and look at it as a case study example of real world environmental assessment that has actually led to the creation of 600 jobs in this province and the employment of 28 percent First Nations and Métis employment with a number of, you know, 600 being employed right now in construction.

This is a very direct, real world example. It's not esoteric. It is actually something which has happened and going on today, and can be improved upon, certainly. So I'd encourage you to have a look at that document, which is publicly available.

In the case of our process, we had a draft terms of reference. We had to go through a finalized terms of reference process which is all public. We had to issue a draft EA which is public for public comment, for agency comment, review those comments and come back with a finalized EA for final consultation.

Each of those steps included public consultations with both Aboriginal communities as well as the general public.

So it is a very rigorous process, and I think that proponents that take it seriously, it can be successful. And I want to reiterate that the media loves negative news, and we need to be mindful that there are good stories out there.

Mussel White(phonetic) Gold Mine, which was constructed in 1993, where I was environmental coordinate in the late '90s working with five First Nations, and I still know most of the negotiators there today almost 20 years later, is a success story. And it's not in the news because it's not a negative story.

So we need to be mindful of the media's role in how stories are told and whether we are getting the right information in terms of whether it's environmental effects or whether it's proper good governance in this country.

Increased support for First Nations and Métis to be involved with the EA process early. As part of truth and reconciliation, obviously I think most of us — you know, some of us have recognized for a long time that First Nations and Métis people have been marginalized for a very long time, have not been meaningfully engaged and I, for one, including, you know, our Board of Directors, took that very, very seriously, and I think that companies that do that have better outcomes because you have the opportunity to engage with these communities and understand their concerns and make real changes to the project.

And I think that the previous presenter gave an example of a copper project where they could have spent more time understanding where they could minimize their environmental effects and avoided costs if they'd just spent the time.

So I would encourage the federal government to increase support for First Nations and Métis in terms of their technical abilities to hire independent consultants that are not necessarily directly involved with the project so that they can increase their own level of understanding with respect to the environmental effects and engagement with the company to make a better project.

These are the sorts of things that would build communities in a better way and right now, in Thunder Bay, I can tell you as someone who's been back here for 10 and a half years — I'm originally from Burnaby and my wife's from here — I've seen how the public has been told a story which isn't true. And now there's a lot of backlash from people in the community asking, "What happened to this project? It's not going anywhere. It's the government's fault" and, you know, blaming Aboriginal groups as well.

This is not the right approach, and it leads to community disillusionment and backlash that we're seeing in many parts of the world, and I think it's dangerous. And I think that we need to avoid it by supporting communities properly,

providing support for First Nations and Métis communities and making sure that the public are actually told that if we don't have a proponent that's economic, projects don't go ahead.

You know, I would agree that the province is taking quite a long time to advance the Ring of Fire and make it something that can be assessed environmentally, but I think that, you know, a lot of academics are going to debate where are we going as a society and so on and, you know, are roads necessarily a good thing to bring development in the Far North.

Those are all discussions that need to happen, but if we don't have an economic proponent that could actually fund something, nothing's going to happen unless government makes a strategic decision through policy development, and I think those discussions are very important and they need to occur in a period of metals downturn, which we're in right now, which is probably not going to turn around any time soon given the Chinese government's decisions to move away from public infrastructure spending.

Number 4, increase support to scientific and experienced regulatory staff within existing federal organizations. Federal staff have incredible knowledge in science areas that need to be levered to improve projects and help proponents to improve and reduce their environment footprints in a collaborative manner.

Not all projects are going to be approved. You know, I've worked with a lot of different companies over the years, and everybody thinks we're going to make it, we're going to — a lot of projects don't make it, economically. They don't make it because the public doesn't like it, or for whatever reason, they just don't have the wherewithal to make it happen.

Good projects should proceed in a timely manner. Good projects need support from both the provincial jurisdictions as well as the federal side, and they need to be consulting with communities and get a decision which is timely. And I have to say, for us, we found the decision to be fairly timely.

In the end, we were able to coordinate fairly well with the province, with a huge onus on us to coordinate between the two levels of government. So I think we ended up with about a three-week delay between the provincial decision and the federal decision. The federal decision was earlier.

So we landed it pretty well, with a lot of scrambling, frankly, between the agencies at the last minute, which was very uncomfortable. A lot of time and planning was going to Ottawa and going to Toronto.

Number 5, I'd just like to talk a little bit about climate change and biological diversity. The "no net loss" principle is something with which the

Department of Fisheries and Oceans has held as an essential tenet of fisheries protection in Canada for a long, long time, and I think the no net loss approach is something that could be expanded to include — to be included within the environmental effects assessment process analysis of alternatives, specifically when you're talking about climate change effects and biological diversity.

As an environmental engineer, scientist, I certainly see climate change as a huge risk to society generally and our way of life, and I think we need to make sure that projects that are moving forward are doing what they can to reduce or eliminate their impact on climate change. And I think that with the, you know, announcement today with 2016 being the hottest year on record and for the third year in a row, this is something we need to pay attention to. And if we don't incorporate that approach into our environmental assessments effectively, then we're going to fail our kids.

So I think that's the main points that I wanted to make. And I wanted to thank you again for coming to Thunder Bay and wish you well in the rest of your consultations and look forward to your report, I guess, in January.

Thank you.

Johanne Gélinas: Thank you very much.

Tell me, based on your experience, how a 21st-century environmental impact assessment looks like.

Kyle Stanfield: I think it looks a lot like Rainy River. I do.

Johanne Gélinas: I haven't read the 9,000 pages, so just tell me the table of content, what is unique.

Kyle Stanfield: Well, I think what's unique is that, you know, we were thanked by the federal regulator for being transparent. You know, we didn't try to hide the fact that we're going to have impacts. There's going to be a big open pit there. There's going to be tailings waste. There's going to be mine waste. But here's what we've done to minimize our impact, how we went back and we redesigned.

I think that it needs to be more transparent for the public and, in our case, it was very transparent. I think that the federal government can do better with First Nations and Métis people in supporting them.

I mean, you know, the First Nations in the north have very little support. I've been to many of those communities, and I can tell you the infrastructure there is sorely lacking, and I think that our Prime Minister has identified that not only before he became Prime Minister, but currently.

So what does it look like? It looks like public consultation in a timely manner to support good projects so they can proceed or projects that are not good projects be rejected and be put back to the drawing board.

Johanne Gélinas: Have you looked, for example, at cumulative effect, and do you see that there's a role for the proponent to look at that?

Kyle Stanfield: Cumulative effects is certainly something which was included in our environmental assessment, which was a requirement, looking at the impact of other projects on our project and vice versa. Cumulative effects is certainly very important, and I think that it's overlooked currently in many areas, including urban development. You know, we as humans in our species, we don't necessarily look at ourselves as cumulative, and that's a problem. Our cumulative effect as a species is enormous, so I think the cumulative effects is vitally important when it comes to any sort of development.

Johanne Gélinas: And I'm asking questions because I heard so many things, and it's not too often that we have consultant or proponent coming and talking to us.

What about the social dimension of your environmental impact study? Have you covered that, in which way, Aboriginal, non-Aboriginal?

Kyle Stanfield: Yes, we covered the social and the economic side of it, both, you know, non-Aboriginal as well as Aboriginal working with our communities.

I mean, we have a number of what's traditionally called impact and benefit agreements that were concluded, but we now call them participation agreements, typically, because they involve very complex financial components as well as environmental assurances which are separate from and in addition to those which are public under the federal and the provincial process. So yes, extensive piece on economic and social consultation and assurances for communities, particularly on the Aboriginal side.

Johanne Gélinas: And your IBAs were signed before the end of the environmental impact study or in the course of or after?

Kyle Stanfield: Some were signed before, some were signed during, and some were signed afterwards.

In our case, we worked with 16 Aboriginal groups, including the Métis Nation of Ontario, and I think that we had the largest number of Aboriginal groups that we were working with of any mining — major metal mining project in the nation.

Johanne Gélinas: I have one last question for you.

You were with us for a good chunk of the afternoon. We talked a lot here about regional assessment. How do you see the role of a proponent being part of a regional assessment?

Kyle Stanfield: Well, I think the proponent's role is important. You know, the Ring of Fire — I hear all the voices, the scientific, the community groups, the Aboriginal groups, the government, provincially and federally, all talking about what do we do with development in the north, how do we handle this.

I think the regional approach is important, and I think proponents need to be a stakeholder in that, serious proponents that are actually looking at development. And I know that Norant(phon) has been there a long time as a company. I think they've taken a very good approach with community consultation, and a sincere approach. Glen Nolan is their environmental and community engagement person, and I think that he's done a very good job.

But the proponent, I believe, needs to be involved in that process to help the public understand, and the agencies understand, the role of the proponent and how they can come to the table in certain areas to facilitate.

I mean, government's not going to be able to do everything for us. You know, industry has a role to play, and I think if you look at Rainy River, New Gold has taken a very, very big role in the communities in helping in the development side and also in the truth and reconciliation side when it comes to helping Aboriginal communities move forward with all Canadians.

And that's a vitally important piece of resource development, and it's a very necessary piece, in my opinion.

Renée Pelletier: The question on your point about involving indigenous communities early on — and I think you mentioned that you thought for the New Gold project that that was done well. And I'm wondering if you can tell us about how early on in the process that you engaged — started engaging First Nations communities.

Kyle Stanfield: So the junior company that was engaged with mineral development in 2009 began to recognize that the old management team didn't have the right approach and, you know, there's still some dinosaurs out there in the resource sector. So when they hired me on, really, my focus was — and I'd worked with some of the First Nations in that district on the contaminated site of the business as a qualified person in Ontario, so I knew some of the people there. And we started to build a relationship around, you know, getting to know each other, getting to understand their concerns.

And in that part of the district, there's a lot of concerns around mining because of what's called the Steep Rock Iron Mine, which is right now an environmental liability for the province of Ontario, one of the biggest in the province, an

old iron mine that was started during the Second World War under the *War Measures Act*. Huge liabilities. So that was their experience with mining, and we had to work to help them understand how mining has progressed and how there are bonding — there's a bonding in place now so the company has to put money up in the beginning before you start mining that can clean up what's been started.

So if you start to dig your open pit, you've got to be able to reclaim that. The money has to be there if the company goes bankrupt.

So to answer your question directly, we started three years before the EA process was formally initiated, started the discussion, started the relationship development.

Renée Pelletier: And so that's pre-project description, then.

Kyle Stanfield: Correct.

Renée Pelletier: Thank you.

Rod Northey: All right. I guess I'm the one holding us back, but I have a few questions. There are some interesting things here.

One is the provincial EA. Was that a voluntary EA? Because normally the province doesn't apply it to mines.

Kyle Stanfield: We volunteered for the individual EA, correct.

Rod Northey: Okay. I'm just going to do these quickly.

The other thing I'm quite interested in is this idea of the conditions where the provincial list of conditions and the federal one were not, whatever we're going to say, harmonized, integrated, whatever. In this 8,000-page EA that you've invited us to find, can I find both of them?

Kyle Stanfield: You can find them on the federal web site. The federal web site will have the federal condition statement as viewed by Minister Aglukkaq, and on the provincial site you'll find —

Rod Northey: I have to find the provincial web site.

Kyle Stanfield: -- a separate — two separate.

Rod Northey: Okay.

Kyle Stanfield: Correct, yeah. For the public, it's very challenging to navigate as well, right.

Rod Northey: Just for the public. Yeah, I think it's challenging for everyone, but okay.

Alternatives. That's an unusual thing. I don't think I've ever heard somebody come forth so far in our consultation on the proponent's side suggesting the use of it. So what was it or what is it about that? I think you mean alternative methods of carrying out, not alternatives to a project. Can I just clarify that? Was it both, or is it alternative methods you're saying we should give more consideration to?

Kyle Stanfield: So the heart of an EA is valued ecosystem components analysis, so VECs assessment or valued social components assessment. And really, you're looking at the assessment of that alternative and the impacts on that component.

That approach is somewhat subjective. It can be more analytical, and the analysis of alternatives approach that's specifically used for tailings assessment under the Environment Canada regulation, metal mining and effluent regulation, which Rainy River is still subject to, obviously, it's a more analytical process.

And I think that one of the problems that we have with environmental effects assessments in Canada is there's a lot of subjectivity, and that leads to a lot of wheel spinning, both between the proponent and government and between government and the public. And I think that a more effective analytical approach where there are sub-components that are weighted numerically would bring greater efficiency and also identifying through the VECs assessment each of those sub-components.

So what I'm talking about is I'm talking about a matrix-based approach which is more scientific-based approach, which is numerical, where people can look at these numbers, have the debate, but the debate's kind of been had between the federal scientific community, the proponent's scientific consulting community and then take that to the public for discussion. And it's —

Rod Northey: So in this case, that's the question I was going to ask you.

So did your consultation on the framework for assessing alternatives — did the public or the First Nations see the framework before you came up with the results or did they merely see the results of your comparison?

Kyle Stanfield: Typically, it's the latter. Typically, it's latter the approach. I mean, the terms of reference sets out the key components.

Rod Northey: No, I understand.

And you've spoken about it for tailings. Did you apply that alternatives approach to road access, the whole range of things that made up the project, or merely certain prescribed elements of the project?

Kyle Stanfield: We applied it certainly for the road things where an alternative could be assessed.

Rod Northey: Right.

Kyle Stanfield: I mean, obviously in terms of the — you know, the deposit itself, we can't move it, but where we can look at a component that could be changed to reduce an impact, then we certainly looked at it.

Rod Northey: So it was open pit versus closed mine, that kind of alternative also on the table?

Kyle Stanfield: Correct.

Rod Northey: Okay. And then lastly, your — it was a statement. I'm not sure what you meant by it, but it was an interesting one. The federal scientists need to be set free.

Kyle Stanfield: Well —

Rod Northey: That was quite a statement. What do you mean, and — if you can elaborate?

Kyle Stanfield: Well, I think that there was a perception, and a real perception based on my conversations over the last number of years, that under the previous government, there was a real effort to limit scientific involvement with respect to resource development in the country. And I know that to be true from my discussions with officials within different agencies.

And I think that this government has certainly taken a more traditional approach with those scientists, which I think is better for public policy and also for proponents because I think that when you have scientific members of the federal community which are able to truly do their work and engage with proponents, you end up with better results, both for the public and the proponent, and you end up with less suspicion. And some of the things that we saw around the pipelines — and I don't have any experience in oil and gas, other than having met with some major oil and gas officials when I was working with the Tahltan in northern British Columbia, but they never decided to go ahead with what we suggested.

I think that, had the approach been taken to take a real — a hard listen to the opinions of federal scientists, I think that we'd be in a better place and

we'd have a better discourse with less suspicion towards some of the approaches that some proponents have taken. Just a more open dialogue.

Rod Northey: All right. Thank you very much.

Johanne Gélinas: Thank you very much. That will end our afternoon session.

In this room at 6:30 there will be the workshop session. I don't know if some of you have registered for that, but there's some people who were not here this afternoon who will join for this session.

Tomorrow morning at 9 o'clock, you are also invited to hear from the presenters in the indigenous presentation session.

Thank you very much for your presentation, and hope we see you.

