

**Expert Panel Indigenous Presentation Session**  
**Review of Environmental Assessment Processes**

**November 17, 2016**

**Best Western Plus Downtown, Winnipeg, MB**

**Expert Panel:**

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

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**Opening Remarks**

**Johanne Gélinas:** So good morning everyone. We will start right now so let me just, for those of you who were not with us yesterday, so let me just introduce the panel members.

My name is Johanne Gélinas. I have the pleasure to chair this panel on Environmental Assessment Processes in Canada and I am accompanied by Renée Pelletier on my right and Doug Horswill. Also on my left, Rod Northey. Renée?

**Renée Pelletier:** So before we begin this morning, we'd like to acknowledge that we are gathered on Treaty 1 territory as well as the homeland of the Métis Nation.

And we also wanted to recognize any chiefs, elders and community members who may be in the room. Thank you.

**Johanne Gélinas:** So just before we turn to you, Grand Chief Nepinak, I would like to mention that we are on our ninth week of our cross-Canada tour. We started on the east coast and we are slowly moving to the west coast.

In all locations where we stop, we produce summaries of our discussions so you have a summary of the one day public events and you have also a summary of our second day, which is our indigenous day event.

So thank you very much. Grand Chief? Please, welcome.

## **GRAND CHIEF DEREK NEPINAK, ASSEMBLY OF MANITOBA CHIEFS**

**Grand Chief Nepinak:** Miigwech. Thank you very much. Bonjour (speaks native language).

I've just introduced myself in a language that's been spoken here for many thousands of years. I'm Derek Nepinak. I'm the Grand Chief of the Assembly of Manitoba Chiefs and I want to welcome the panel to the Treaty 1 territory and thanks for giving us the opportunity to share a little bit about our world views and how we relate to the world in which we live.

The AMC is a political organization here in Manitoba representing 62 of 63 First Nations. We have a strong history of advocacy work, working on issues affecting our member nations. Included in our mission is the promotion, preservation and protection of indigenous and treaty rights for the member communities. We've done extensive work to protect the environment.

First Nations have inherent teachings and ways of knowing that ensure our survival, health and wellbeing through our deeply rooted relationship with Mother Earth and I'm sure that some of what I'm going to share with you today you've heard already in your cross-country tour.

What I found very interesting was the — and the general theme that might arise from my presentation is duelling epistemologies in terms of world views and how we acquire our knowledge. What you'll bring is a very western-based education system that oftentimes does not make a lot of space for world views that actually stem from very lengthy time living on the land that goes back many, many generations and actually forms a connection of spirit to the land that gives rise to who we are as the original people of these territories.

I've been in many different forums over the years in my capacity of leadership as a chief and as a grand chief where our world views are

oftentimes subjugated or relegated to, you know, a second thought in the application of western world views and western ways of knowing which, to me, is problematic if we're going to create an environment of reconciliation and equality.

So that is, I think, part of what my presentation is going to focus on.

Sitting here today is an exercise in sovereignty because we're here to share with you that our gifts and ways of life are very much alive and well here and, to that end, I've decided to display my bonnet, which is a representation of who I am in, including the colours, the many battles that it's been in and the many ceremonies it's been in with me, a representative of who I am here.

I just wanted to start with a quote from what one of our elders has shared with me and part of the reason why I'm here as well, from Elder Mary Maytwayashing, if we don't share, then how are they going to hear? And I think that's very important.

As I understand it, we're here today because the current environmental decision-making process is not legitimate and has failed to protect Mother Earth. Relationships between the federal government, our nations and Mother Earth are badly out of balance.

Standing in good relationships requires truthfulness, honesty and mutual respect. It involves listening to one another and considering each other's needs. It's only when the needs of all parties are met that relationships can become healthy.

Healthy relationships must be renewed periodically and require understanding. The more often we meet in a forum like this, the more we can learn about one another and I think the more we can create environments where people can thrive.

I wanted to speak a little bit about our methodology in terms of how we find ourselves in this situation today and how we've arrived here to be able to make a presentation to you.

As part of an exercise in creating relationships, I'll explain the process that was followed by AMC in its preparation for the four environmental reviews being conducted.

I want to provide this context as I believe there are fundamental misunderstandings about the importance of the way we do things as indigenous people, fundamental misunderstandings amongst settlers and indigenous people but also amongst our own people. As we are certainly in a day of

post-residential school, we are not in a day of post-colonialism yet but I do believe we are in an awakening process.

According to the elders, it is important to explain the way things are done as we cannot take it for granted that we understand one another. In order to coexist, we need to find a way to accept and respect each other and who we are. As Elder Mary Maytwayashing reminds us, elders know and understand what needs to get done.

The elders have played a fundamental role in helping First Nations people better understand who we are. They are the true leaders of the land. Although we find ourselves electing political spokespersons, I myself believe that the elders, as the wisdom carriers and the knowledge carriers, are the ones that give me the guidance that I need outside of the political influence, which can often, you know, be tainted because of political expediency and the popular politics we're engaged in which are not traditional forms of governance for our people.

Elders are our teachers and our wisdom keepers. They are the scientists and they are the experts in our nations. In preparation for its submissions about the review and the other three federal reviews, AMC sought guidance from a group of Anishinaabe, Cree, and Dakota elders, Dene as well is involved as well as Oji-Cree elders.

These elders include Florence Painter, from the Sandy Bay First Nation, Mary Maytwayashing from Lake Manitoba First Nation, Darcy Linklater from the Nisichawayashihk Cree Nation, Harry Bone from the Keeseekoowenin First Nation, Dave Courchene, Jr, from the Sagkeeng First Nation, and Dennis Whitebird from the Rolling River First Nation.

In their kindness, this group of elders agreed to provide guidance to the AMC staff and our legal team from the Public Interest Law Centre for our participation in the four federal environmental reviews.

The first important requirement was that all the meetings with the AMC staff, legal team and elders had to be held at the Turtle Lodge on the lands of the Sagkeeng First Nation. The Turtle Lodge is our example of a learning institution. It's a place for sharing ancient knowledge, wisdom and a way for us to understand our responsibilities to Mother Earth. It is being used by many people as a place for healing and sharing understandings, including federal court judges, international scientists, and United Nations delegates.

Most importantly, the Turtle Lodge is a place of spirit. Lodges like the Turtle Lodge are where we feel most connected to our world views and our laws. Proper protocols were followed by AMC staff and our legal counsel in seeking guidance from the elders at the lodge.

Important protocol that we follow is that tobacco is offered to the elders for their guidance and as a recognition of their expertise. Offerings were made for the food before it was shared. Ceremonies are integral to our laws and our way of life and all of our meetings at the Turtle Lodge with our elders were held in ceremony and creating the ceremony space.

Each day is begun with a pipe ceremony, water ceremonies are done in the language of our elders. Songs are shared, drums and rattles are used in the invocation and the prayers. Ceremonies guide the discussion, which usually last at least one or two full days. We don't set aside 10 or 15 minutes, we sit as long as is required based on what the elders give us in terms of guidance.

During the meetings, elders were asked to provide guidance about environmental decision-making from the perspective of our world views and laws. Everybody sits in a circle and discussions are led by the elders. Guidance provided throughout the sharing of stories, legends, dreams, prophecies and knowledge. One of the quotes from our elders, "Legends are not just stories, they are the law."

All the elders had the opportunity to speak and it's often done in their language. Florence Maytwayashing provided us with — Florence Painter, sorry, provided us with a quote, "How I speak with the Creator is in Anishinaabemowin. Our language is so precise and says exactly what we want to say."

Harry Bones says, "You have to know your language. When you lose your language, you have to use someone else's concepts to describe who you are."

Decisions are made on a consensus basis within the ceremony space. If and when there's disagreements, time is made for discussion until a consensus is reached. So it's not a popularity process.

The role of the AMC staff and legal time from PILC was to answer questions, providing technical assistance to the elders through the discussion. Meeting notes were prepared and summarized from previous meetings, orderly and in a written format upon request of the elders. The meetings have always ended in a closing prayer.

Ceremony and prayer are an essential element of our work when we sit with the elders. I share this with you as I believe fundamental misunderstandings exist is that ceremonies are done as a way of sharing our culture as a token display of our identity and that's not the case. They're fundamental and they give us the direction we need in order to be effective in the work we do.

"Every time we sing the songs and do ceremonies, we exercise our law" and that's a quote from Harry Bone from Keeseekoowenin. For us, ceremonies are inextricable from laws. Creator's law is the first law that we honour.

The process of ceremonies is an exercise of our law relating to environmental decision-making. When we invite you to ceremony, it's an opportunity for you to learn about these laws and our teachings and every step and everything you do within the ceremony space.

I'd like to talk a little bit about what is the problem or what is not working. And we're reminded by our teachings that it's important to learn to listen.

I appear before you today with an understanding that we are different but we are equal. Under western laws, common law and civil law, the concept of equality tells us that everyone matters equally. Based on my understanding of these rights, I presume that you, too, believe that we are equal.

As stated earlier, it is my belief that there are fundamental misunderstandings about who we are an original people, whether we are Anishinaabe, Cree or Dakota. The relationship between original people of this land and newcomers is badly out of balance. Indigenous people throughout the world are frustrated that they are not being listened to and that Mother Earth is being destroyed. The events and support of Standing Rock are evidence of this.

"I want to be recognized as peace makers." That's what — quote from one of our elders, Dave Courchene, Jr. Through the enactment of western laws, the federal government has attempted to legislate our identities and change who we are. It has also implemented laws which have damaged other living beings, the water, the land, the animals, the rocks.

When the environment is put at risk, so are First Nations as we are one with the land.

Part of the process has been the continued denial of indigenous laws and world views. A quote from one of our elders, Wally Swain, "We must respect and honour one another."

The federal government continues to want to engage with First Nations based on western laws, western understandings. For example, when the federal government said they would implement the United Nations' declaration on the rights of indigenous people, they said they would be implementing this declaration based on Section 35 of Canada's constitution.

For First Nations, the statement was a clear indication that Canada continues to deny the existence of indigenous laws and world views. It seems that Canada believes its laws and processes are neutral. This process which seeks to engage First Nations on the review of the Environmental Assessment Process offers a good example. The process for the review is not neutral. It's based on western world views and laws.

By assuming the neutrality of the process, Canada makes it impossible for First Nations to meaningfully participate and share our views about environmental decision-making. If the process was truly neutral, it would recognize the existence of our laws as equal.

I'd like to just provide a quote from one of our elders once again. "They have to understand our world view in order for environmental decision-making to make sense."

And I think that I'm going to just add a little bit more emphasis on this because I know that, for thousands of years, we have been able to thrive within our ancestral lands and within our territories. For thousands of years, we managed a relationship with the land in harmony and in balance. And throughout that time, not once did we create a situation where consequences would accrue to future generations the way we're doing it now, through land desecration, through heavy extraction, resource-based economies that are focused on exploitation.

We always balanced that in reciprocity and our ceremonies are a demonstration of that. Now, I can speak to this because I am a ceremony person myself and, before I came here this morning, I offered tobacco and I raised my pipe so that I could be an adequate spokesperson for this very difficult task at hand, recognizing the things that would be shared today will have implications for another generation of people that are coming into this world, hoping that there would be a harmonization of what we have to say and what we have to offer as original people with the laws that need to be recalibrated and rebuilt and applied from the central government.

As stated by scholar Erin Mills, "A fundamental challenge in the relationship between First Nations people and newcomers is the failure to recognize that not everyone shares the understanding that First Nations people and laws must fit within Canadian laws and courts." And I think that's important as well because, while we talk about western law, we also talk about natural law but within the realm of epistemology and world view, I think that there has to be a balance created as well.

Indigenous laws and western laws about environmental decision-making are different. Indigenous laws are not an external set of rules but rather an internal way of life that governs our relationship with all living beings, including humans and non-humans alike.

Dave Courchene, Jr., says, "So few know who we really are. We want to change the narrative." One of our elders, Wally Swain, who's a sun dance chief, "It's time for them to wake up. We have our own ways of doing things. We still stand firm."

The federal government has committed to working with indigenous governments on a nation to nation basis. The final Truth and Reconciliation

Commission report calls for the recognition of indigenous law. I challenge the review panel to think about how indigenous law and western law can relate to one another, rather than how one can fit into the other.

Dennis Whitebird, our former treaty commissioner, reminds us, "They have come here to experience our laws. For many years, First Nations people have gone to great efforts to learn foreign languages and have been regulated by foreign law." And just to elaborate a little bit on that, you know, time and time again when we go into our ancestral lands to harvest, harvest, whether that be berry picking, medicine picking or taking, taking animals for food, we are subjected to colonial legal systems that are used to subjugate us and keep us confined within the reserve boundaries or off the land for the — and the only thing that I can conclude from that is that, you know, the motivations behind that are to reserve rights of exploitation for somebody else's benefit and that has cost us, as the original people, gravely in terms of our standards of health, our standard of living, and causing us to fall well below other Canadians in terms of, you know, the quality of life index.

Today, AMC asks the same in return from this panel. It's time to shift the onus and demand that the federal government learn about our languages and our laws. AMC is asking the federal government and the general public to be recognizing indigenous laws on an equal basis within our environments, languages, world view and our legal traditions.

In order for the federal government to understand indigenous law, it's necessary to listen and join us in our environments. That includes perhaps making a trip out to our Turtle Lodge when we convene there tomorrow and we convene there in ceremony and to actually experience some of these things. It's a very beautiful event.

The interconnectedness of the process and the substance cannot be overemphasized. Ceremonies and language are much more than an expression of culture. They are an exercise of sovereignty and of our nationhood.

Difficult times to talk about nationhood in the context of the way we are currently politically aggregated and I mentioned this earlier on. That, within the colonized space, we live within a prescribed form of governance and that is chief and council mechanisms through popular votes for two-year terms. For the most part, that's how a lot of indigenous people are operating across Turtle Island right now on the Canadian side. And that is not reflective of our traditional forms of governance.

So, when we talk about nationhood, how do we realize nationhood with a colonized people living in a colonial state? And I think that, to me, is one of the ongoing questions that we're going to have to work towards answering. I've raised this time and time again with government, including the Indigenous Affairs minister as well as the justice minister to say how do we realize a nation to nation

dialogue within this state? And it's slow going and I think that the more we talk about it, the more we reveal the colonized state that we continue to live in.

So what does an approach look like? While indigenous laws are based on relationships, current western laws on environmental decision-making are based on managing, controlling and putting a price on Mother Earth. Non-indigenous people must feel and understand that current environmental decision-making, which is motivated by economic gain and based on managing the negative and positive impacts, is causing irreversible damage to our environment and to Mother Earth.

The elders and knowledge keepers see it as their duty and responsibility to speak for the land, to share their knowledge on environmental decision-making and to establish their leadership in this space.

The Great Binding Law can guide us in environmental decision-making. It tells us how to stand in good relationships, how to balance the relationships.

Am I doing okay for time?

**Johanne Gélinas:** If I was to leave you ten more minutes so that we can have an exchange, does that make sense?

**Grand Chief Nepinak:** Yeah. Yes. Okay. I was going to read the Great Binding Law for the record but what we'll do is we'll provide you with a written copy of it and we will not read it into the record but we will allow you to work with it as you see fit.

**Johanne Gélinas:** And it will be on our website also as this presentation will go on the web.

**Grand Chief Nepinak:** Okay. Miigwech. I'd like to speak briefly on AMC's specific recommendations with regard to environmental assessment and decision-making.

Indigenous laws about environmental decision-making must be considered as equal to western laws. This requires the CEAA review panel to recognize that indigenous nations have their own processes for environmental decision-making which cannot and must not be fit into a western process.

If and when indigenous laws are recognized by Canada, nation to nation relationships require the federal government to sit with and listen to indigenous people about how western and indigenous processes relate to one another. This process cannot be rushed and elders and knowledge keepers can guide us in this process.

This process of sitting with and learning from indigenous people must be done within our learning environments, in places like the Turtle Lodge

and I know that there are other lodges throughout the lands that are similar in nature that are built for the purpose of ceremony, that are built in harmony with the environment that they're situated in.

And just our closing slide here, we are having an event tomorrow at the Turtle Lodge and I believe that this is an important step in building healthy relationships is that opportunity to share within our own indigenous space.

So that concludes my speaking notes and I'm looking forward to a bit of an exchange.

**Johanne Gélinas:** Miigwech. Maybe one word about this event that you are hosting tomorrow, we have received an invitation. Unfortunately, our travel plans were made to finish our trip. As you know, we work on a very tight schedule ourselves that we don't necessarily enjoy but we have to deal with this reality, which is the timeframe of the mandate that we have but I would like to thank you very much for the invitation that was sent to us to participate and we wish you all the best tomorrow for this event.

Questions?

**Renée Pelletier:** I'll start. So Miigwech, Grand Chief, for your presentation. So I think you've raised some very important issues, obviously, in recognizing that our mandate is, unfortunately, limited to federal environment assessment. I think we are cognizant of the fact that our terms of reference have asked us to reflect on the principles of UNDRIP.

I will note that they've asked us to reflect on the principles of UNDRIP in an unqualified way so I know we've all seen government sort of response to UNDRIP about implementing UNDRIP as appropriate. That kind of language isn't in our terms of reference, which we've all taken note of but I want to talk about this — the idea of nation to nation relationship, which Trudeau's government has obviously talked about wanting and how we might be able to achieve that in environmental assessment.

And I know you've talked about respecting indigenous laws and I'm wondering if one way might be for indigenous groups to conduct their own environmental assessments. Like, is that one way that we can begin to achieve that?

**Grand Chief Nepinak:** I'm aware of the process leading to, for example, just by way of example, environmental assessment processes leading to a decision on Kinder Morgan expansion on Burnaby Mountain and I'm aware that the Tsleil-Waututh nation engaged the process early on, finding the process to be impoverished and not inclusive of their world view as the original people who have lived there since time immemorial.

They had then proceeded to create, within their own capacity, their own environmental assessment of the issue and there is a document that's been produced for publication. I have a copy of it myself. I don't know how widely

distributed it's been but the Tsleil-Waututh nation had demonstrated their sovereignty in the discussion by creating and doing their own environmental assessment based on the direction of their elders and we've looked to that example here in Manitoba through our alliance with the Tsleil-Waututh nation and the Coast Salish people and have worked with that to inform our process here as well so you will find some consistency in that across the land.

**Renée Pelletier:** So if that kind of a process of indigenous groups conducting their own environmental assessment could be given some real teeth in federal environmental assessment law, do you think that that is one step sort of in the right direction going forward?

**Grand Chief Nepinak:** Being that my responsibility as the spokesperson for the Assembly requires that I'm at all times protecting inherent and treaty rights and aboriginal rights of our communities, it would be inappropriate for me to speak on the matter of the content of any type of revised federal statute.

**Renée Pelletier:** That's fair enough. Miigwech.

**Unidentified Male:** I'd like you to talk more about your world view and your view — and your perspective on how the world views are different. I'd like to have more depth in understanding that.

**Grand Chief Nepinak:** Miigwech for that question. I will respond because tobacco has been passed to me from one of your panellists today.

I have been educated in western processes. I went to universities, I went to the best universities in Canada to be able to articulate myself in the English language and I've also done my own share of understanding how western science is done within empirical spaces and the scientific method and understand the limitations of that.

In light of the world view that I bring forward as an Anishinaabe man from this part of the world, the ceremonies that I've participated in have taken me to a place where I recognize that relying on empirical data, relying on western science is like trying to tie your shoe with only one hand. You need to have the capacity and the wherewithal to recognize that people who have come from other parts of the world to settle here are not equipped to fully understand the land that they've decided to live upon and the knowledge space that's needed is the knowledge held by those who have thrived here for thousands of years and that is us.

And that world view is designed by our language, it's designed by our ceremony. It's designed by our connection to the land and our ability to either speed up or slow down our consciousness in harmony with the land to really figure out what is happening out on the land and in the water and to actually reach a level where we can communicate with the land and the animals that are around us.

And I know that's knowledge or information that is not very commonly spoken of but I'm willing to share it because of the passing of tobacco and the observance of protocol here today.

And I'm not sharing this as someone who has read about these things but I've been on the land for much of my life. I have been without food and water on the land for five days and nights to be able to share some of these thoughts with you.

**Rod Northey:** Yes, so thank you very much for sharing. I'm trying to grapple with some fairly big points you made and one of the ones I just want to start with is you said repeatedly we have a gap of epistemology or knowledge systems and we've heard many things and I want to just come to a little bit where we've heard.

We've heard, even on the western side, many people remark that the scientific world view is limited and doesn't recognize living things. So even on so-called our system of knowledge, there's a recognition that science has not delivered or not done appropriately needs itself to evolve.

The question I have for you is, and I don't — you, I think, provide an integration, another one of the things you said that is also very important, it seems that you repeated it was not only the epistemology but the legal system or the law and the way they're integrated in your world view.

As a matter of respect towards First Nations and you're a spokesperson here and somebody helping us, what is our starting point? And we are providing recommendations. And one of the things that we're trying to work out is, going forward, because we're not, ourselves, doing an assessment, we're doing recommendations back to a government that's going to try and reform something.

One of the things we've been deliberating on is at this point, assessments often start with somebody presenting a project that they've worked out and everybody else reacts to it. One of the things we're thinking about changing that is that, instead of presenting a project in its detail early and initially before things start, and that's the trigger, that the trigger be there's an idea of a project and there is an initial discussion with those who are affected, to hear from them before the project is fully articulated and there is a working out in what we are calling a planning process with all people who are interested in this very broadly cast.

Is that a way forward?

**Grand Chief Nepinak:** I think that what I've observed is in the conception of a project or starting with an idea is that we aren't really at the table at the start of the discussion when it is an idea.

And an idea manifests, you know, as putting paper to pen and developing a project idea. Now, I think that part of the reason and part of the way that this is incrementally done is premised on the idea that there's free access to lands and, furthermore, that it's also premised on the idea that we can convert energy of the land into money for the benefit of somebody and I think those are two challenges that we must address.

And, when I talk about free entry into the land, I'm talking about the legal foundation that property rights and interests are built from and that is what I believe to be the doctrine of discovery. And anyone who has studied law, you know, recognizes that Canadian law is built on — Canadian property rights law are built on, you know, the premise of a doctrine of discovery as is the American example.

And that is a, you know, morally unjustifiable in today's world and I think that that has to be front and centre and I do believe it's been talked about in the TRC recommendations but it's going to require not just a conscious effort to change, it's actually going to have to become embedded in the psychology and in the consciousness of human beings to recognize that, if I have an idea that involves the land, I'm going to have to go to the indigenous people first to see if this idea is feasible.

And that's before presenting it as a project to somebody for consideration.

**Rod Northey:** All right. And so I'm not — I'm hoping I might be able to follow up with this. Another idea that has come our way from many sources is that pre-project, one of the problems with assessment is that a project is still too late and that, if one is going to look at the proper context in many parts of the country, the better idea to start with is a plan or a regional exercise before you get to a project so that you can look at the full context around you.

Now that, again, those are terms that we're using but we are calling the term that's used widely as a regional assessment prior to a project assessment. Again, not something in the system right now except optionally but, again, something we're being presented with and I align that with the idea of starting with notice and not much more and see what is there.

So, in that case, there would not be a project at the starting point and the things you've just described, which I'm not going to have a disagreement with, I understand what you've just said, would that — just to follow this dialogue — would that assist in some way? Would that be progress? To have that starting point, even pre-project, with the same idea of starting with notice and a discussion?

**Grand Chief Nepinak:** I may not be of value in responding to that because I believe a lot of what you're suggesting is premised on an understanding of that land/water error can be modified, you know, into something and I'm not from that space. I don't start out

my day from the space that would suggest that everything can be turned into value for somebody.

So I can't really answer you in that regard because I feel that your question is loaded and premised based on ideas that things can be converted into economic value for somebody and I can't contribute to that space here.

**Rod Northey:** Perhaps I can clarify. I don't think that's what a regional assessment is, is to modify everything. The idea behind a regional assessment is that some aspects of the environment or a region are unavailable. Some aspects might be available and the discussion is to try and figure out which parts of that region might be available so that some of those points — it's not a conception and, again, I'm trying to be very careful not to load the words, either, but it's not a conception that starts with the entire region is there to be modified.

**Grand Chief Nepinak:** Okay. Then I would have to ask for clarification available for what?

**Rod Northey:** Well, that's the question. There is certainly an idea, are some parts of it available for development? Are parts of it not available for development? Is —

**Grand Chief Nepinak:** What is development? I'm sorry.

**Rod Northey:** Well, development could be infrastructure which is commonly used like a road. It could be hydro. It could be a private project like a mine. It could be forestry. There is development, there's infrastructure, I think would be fair to say that the idea is what parts of a region are available for either or neither?

**Grand Chief Nepinak:** In its natural state, the land is already perfectly developed.

**Rod Northey:** All right. Well, that — okay. Thank you.

**Johanne Gélinas:** Yesterday, we had a presentation from Manitoba Hydro and, in their presentation, they gave us the example of the relationship they have built with indigenous communities as a good way to look at how to build a relationship as they go with the project.

I would like to hear from you if you think that there is something to learn based on the relationship that has developed with you that we can consider for the long run.

**Grand Chief Nepinak:** The Crown corporation of Manitoba Hydro has written the book on divide and conquer strategies within the current political paradigm and reality of First Nations people living within the Indian Act.

And when we have attempted, as original people on the land, to become involved in processes of challenging Manitoba Hydro's long-term development processes, we have seen strategic processes come forward which isolate and hive off small portions of original people behind the veil of contract law, behind the veil of nondisclosure agreements, and that's coupled together with a significant effort in messaging around, you know, equitable agreements reached for — whether it be new hydro lines or whether it be new dam projects in the north, I think they've written the book on divide and conquer economics of indigenous people.

And I know that, you know, we oftentimes have to work with duelling narratives about how things have happened here but there are long outstanding grievances that indigenous people hold with respect to the developments of Manitoba Hydro in the last half century.

There's a legacy of disappointment and heartbreak in some northern communities based on what Manitoba Hydro has done to flood lands and to subjugate people and that legacy plays itself out each generation and that legacy also plays itself out and manifests in some of the tragedies we see happening in some of our communities.

It's not beyond the discussion of the Manitoba flood of 2011 to implicate Manitoba Hydro in terms of its management of water levels in Manitoba prior to the flood. And that's something that I think, as some of the history will show, that, in the management of water levels, you know, you cannot adequately mitigate risk to natural events that might displace thousands of people.

And I think that's something that we have tried to raise but, of course, we're always facing duelling narratives and very well funded public media campaigns, you know, from the established Crown corporation of Manitoba Hydro.

So I can't speak positively of the Crown corporation. I believe that the infrastructure that has been built and the future infrastructure that's being built is being paid for on the backs of impoverished indigenous communities, primarily through social transfer payments that go through the Department of Indigenous Affairs and are used to pay for excessively high hydro bills in the communities. Some homes have bills that reach into the hundreds and hundreds of dollars through the winter months and that federal transfer that goes into the communities is then paid directly to hydro for those ongoing services and I believe that the infrastructure is being paid for by our communities.

So that, at the end of the day, a politician can say, "All of the power we sell into the grid, into the United States, has been paid for already by Manitobans." So it's a difficult and nuanced discussion but I cannot say that — and I would not, for the record, say that it's a good thing.

**Johanne G  linas:** Grand Chief Nepinak, Miigwech.

**Grand Chief Nepinak:** Miigwech. Thank you for your time today.

**Johanne G  linas:** Thank you.

I would like to invite Grand Chief McArthur — no, Chief McArthur, sorry. Good morning.

**Chief McArthur:** Good morning.

**Johanne G  linas:** You can start whenever you're ready, sir.

## **CHIEF IRA McARTHUR, PHEASANT RUMP NAKOTA FIRST NATION**

**Chief McArthur:** I will say good morning to the panellists and all the relatives that are gathered here today in taking an interest in the Environmental Assessment Process that's been ongoing, I guess, and also for being revised or potential for revisions.

I want to start off by introducing myself. My name is Ira McArthur. My Indian name is He Looks For Lightning. I come from the Pheasant Rump Nakota First Nation. I'm the elected chief of the nation and I come here today more as a messenger on behalf of my relatives, my elders, and my community members back home.

I've been having a lot of responsibility in regards to the discussions that take place around the pipeline projects that are happening across North America and my relatives back home, they have a lot of concerns and they want for the leadership to be able to bring those concerns forth in — not only in regards to projects that happen here in the prairie provinces but all across of North America.

With my First Nation, we have approximately 420 members. There's about 160 on reserve and a lot of our members live off of the reserve, across the country and into the United States as well.

Historically, we are — we form part of the Great Sioux Nation. We're a Sioux speaking tribe. We have a lot of relatives across North America by blood and by the relationship that we hold dear, which is the seven council fires of the Sioux nation.

We signed Treaty 4 in September of 1875. We had a land base that was reserved for us through that treaty-making process. Today, we reside in the southeastern portion of Saskatchewan and the Moose Mountain range of land formation. And we have a number of historical significant — significant historical sites within our First Nation lands and also within our traditional territory as well.

We have the responsibility as Assiniboian people, as a first peoples, as a creation to care take for these lands, for these sites that we consider to be holy, to be markers for our relationship with the Creator and we take great pride in the undertakings that we have as Assiniboian people to look after the land that we've been provided for by the Creator, whether it be the land base that we currently occupy or the traditional territory that we once held.

We look at the activities of our ancestors and the ways of life that we still carry on today, including hunting and fishing, berry gathering, medicine gathering and also the carrying out of traditional and cultural spiritual practices throughout our lands and, in our First Nation, we have a medicine wheel. They call it the Moose Mountain Medicine Wheel. For us, we have a different name for it and we utilize a lot of the ceremonial practices that came along with that medicine wheel. We have — we pay great respect to it and it tells us that — it indicates to us the health and the wellbeing of Mother Earth.

When I was a young child, a young man in my teens, that medicine wheel, it used to stand really high and it used to be well — clearly defined. You'd be able to see the rocks and all the various designs that were part of it, that formed part of it and, today, it's significantly disturbed, not by human activity or anything like that but more by what's taken place around the area in regards to the damage that's being carried out by resource development in the southeastern portion of that province there.

And we use that as an indicator for ourselves, to guide our prayers, the actions that we take, the ceremonies that we hold and how we go about speaking to the Creator on behalf of ourselves and seeking forgiveness, also, on behalf of all of the human race, you know, for the damage that we do to Mother Earth.

A large majority of my nation members, they are employed in the oil and gas development sector and that just goes along with location of where we are, you know? A lot of my members are very vocal in talking about the alternatives to resource development, to seeking different ways of producing power and we have a lot of elders that guide us, I guess, in the way that we try to express ourselves in opportunities such as today that we need to be able to communicate to our fellow man, the other races, the industry partners, governments and other people to be able to understand, you know, what it is that we're seeking when we talk about recognition of our rights as far as it goes toward environment assessment process and also with regards to the government's fulfilment of their duty to consult and accommodate First Nations people.

And I think that, when we get to an opportunity like today, you know, we come here and we — we come here not as an enemy or not as an aggressor or anything toward the process that's already established but more as an

intervener in trying to help the process to be reformed, to be more adequate to service the needs of all people that inhabit these lands today.

When we talk about the environment and the wealth, the health and wellbeing of Mother Earth, you know, it affects each and every one of us and it's going to affect our future generations, regardless of skin colour. And we have many friends in our area of the province that are non-native. They support us, they engage with us in discussions when we have proponents come to us and want to have open houses or want to have community discussions or community forums and we have a lot of non-native friends that join us, you know, and they raise their concerns as well, in regards to these developments or the proposed developments.

And, when we see that happening, you know, we see this more as a threat to humanity rather than just a point for Aboriginal or indigenous people to be able to, you know, strengthen our voice, you know? And I think, when we have that happening across the various racial backgrounds, then we start to see that the problem is more incumbent in a — of a human nature rather than just specific to indigenous people.

And, today, I come here because my elders have instructed me to say something, you know, in regards to the rights that we have, the rights that we hold as caretakers of the land and also for regards to the tradition of territory that we once held. We have many sacred sites, burial grounds, ceremony grounds that are distributed from this very place, all the way to the Rocky Mountains.

We have stone features, we have burial grounds, we have pictographs, petroglyphs that we've — our ancestors have created, you know? And they left these things behind for us to take care of them. And they're some of the things that my elders have advised me to make mention of here today, you know, in regards to Environmental Assessment Process.

There's evidence, you know, that we have — that we've occupied these territories and being first peoples, first occupiers, that we have to have a voice in what's going to take place with the land in the future.

So I just want to touch on some of the treaty and rights that go along with being a signatory to Treaty 4. Treaty 4 is a constitutionally recognized and protected agreement between the Crown and various First Nations, including my own.

It applies to the southern portion of present day Saskatchewan. If I turn to Treaty 4, Pheasant Rump agreed to share some of the benefits of their land with the incumbent settlers. In exchange, Pheasant Rump received certain payments and promises. Treaty 4 did not serve to extinguish our

aboriginal rights. Rather, Treaty 4 confirmed our rights and recognized our capacity to act as a self-governing nation, wishing to adhere to the treaty.

Treaty 4 confirmed our continuing hunting, trapping and fishing rights. These are rights which our members continue to exercise today and are vital to our culture and survival.

When we talk about the right to hunt and fish and gather, we exercise those rights. Many of our people still do that. We hunt. We also fish some of the streams that we — that are — we currently utilize to gather fish and also to gather plants and herbs along these rivers and streams, they are downstream from the present pipelines and future developments will seriously affect the ability of us to be able to continue to exercise those rights.

One of the main concerns that we have when we were first approached by proponents, you know, in regards to pipeline retrofitting or retrograding or installing of new pipe, replacements, one of the first concerns that came from the mouths of our elders and our community members was that we have to have a say in regards to how these assessment processes take place so that we can be confident and we can be knowledgeable about what exactly is taking place underneath the lands and especially in particular with these water crossings.

So those are some of the things that my elders had expressed at meetings that we've had. And we talked about the importance of the Crown's duty to consult and accommodate our rights, you know, and I've written a number of letters to the National Energy Board in the past and to proponents and to the government in regards to looking at taking into consideration our small voice that we have in regards to the effect that the potential damage and effects that are going to occur from having these pipelines continue, these projects continue in our traditional territories.

And the Crown has a constitutional duty to consult and accommodate Pheasant Rump about the potential effects of proposed projects on our aboriginal and treaty rights. Pheasant Rump sees the Crown's duty to consult and accommodate in respect of proposed development projects as distinct from the Environmental Assessment Process.

Pheasant Rump is committed to defending, protecting and advancing our aboriginal and treaty rights. This includes preserving and protecting the natural resources within our territory for both present and future generations. To fulfil its constitutional obligations, the Crown must consult directly with us about proposed projects and their potential effects on our rights and lands.

The Environmental Assessment Process is inadequate to fulfil the Crown's constitutional obligations. The Environmental Assessment Process, as it currently exists, is inadequate to fill the Crown's constitutional obligations.

Pheasant Rump has the following concerns with the current federal Environmental Assessment Process. The limit in consultation to Environmental Assessment Process makes it easier for government to avoid consulting aboriginal peoples on a particular project. For example, if a particular project does not trigger an Environmental Assessment under the Act, the Crown will often rely on the proponent of the project to engage in consultation activities with First Nations and we see a lot of that happening today with pipeline projects that are being proposed where you get a confusing message delivered from the government, either through the major projects office or by the proponent and sometimes they're both — they both say things that are conflicting of each other and they leave the First Nation in a grey area where we don't understand who it is that we need to address certain matters with. And consultation processes that do not involve the Crown undermine Pheasant Rump's nation to nation relationship with the Crown.

Limit in consultation to environmental assessment processes sometimes means that, by the time the EA is triggered, important decisions about the project may have already been made without any consultation with First Nations and that has occurred with the current pipeline projects being considered, with Irving Oil's major instalment on the east coast and that all, you know, took place prior to any environmental assessment process happening in the prairie provinces so it seemed like — at the time, it seemed like, you know, as an afterthought, we're brought into the process or we're being patronized by being invited to contribute to these assessments or reviews without — and yet, at the same time, the end project is already there, you know?

So it seems like an afterthought and it shows a great deal of disrespect for First Nations people across the country when that happens. And that we feel like, you know, it's going to go ahead without — no matter what we say and it puts us in a position where we have to sometimes be aggressive in the way that we communicate with either the government or proponents or other parties, you know?

Once these decisions have been made, our influence over those decisions and the decisions that follow it is often limited. To be meaningful, consultation must take place early and required at all levels of government conduct. The Canadian EA Act is limited in its ability to consider the cumulative effects of projects. The environmental assessment of a particular project must consider the cumulative effect of any existent or additional projects potentially operating within our traditional territory.

The tight timelines provided for in the Canadian EA Act mean that the consultation undertaken by CEAA is often hurried and representatives

often lack the required mandate to properly address and accommodate First Nation concerns regarding proposed projects. Again, meaningful consultation and accommodation cannot take place if government decision-makers are not participating in the consultation accommodation process.

Inadequate funding is provided for aboriginal peoples to participate in the environmental assessment process and, when funding is provided, it is often delayed. We do not have endless amounts of time, money or human resources to spend participating in EA processes. When funding is delayed, we are forced into a situation of deficit spending where we incur expenses and are later reimbursed for them. This situation is not economically feasible for First Nations.

In order to fully participate in the Environmental Assessment Process, adequate funding must be made available as early as possible in the process. Recommendations for the reform of the federal EA process, number one, ensure direct First Nation participation early in the environmental assessment process. Our First Nation, along with all others, must be engaged at the earliest possible stage of government decision-making respecting a proposed project before there is any possibility of the project affecting our aboriginal and Treaty rights.

Number two, where a project has the potential to impact Pheasant Rump's aboriginal and Treaty rights, a process that recognizes Pheasant Rump's jurisdiction to make its own final decisions about the project should be developed. Pheasant Rump has not surrendered its jurisdiction and authority to make decisions on matters that have the potential to affect our rights.

To exercise our inherent decision-making authority, Pheasant Rump must be directly involved in determining whether and how a project that has the potential to affect our rights should proceed to development. The federal government has now confirmed its full support for the principles of UNDRIP, including the requirement that indigenous peoples be consulted and cooperated with in good faith in order to obtain our free and informed consent prior to the approval of a project affecting our lands and other resources.

This model of decision-making recognizes the nation/nation relationship between Pheasant Rump and the Crown and allows us to establish a process for — decision-making process — for making decisions on matters of mutual interest and concern.

Number three, provide opportunities for First Nation regional land use planning initiatives to inform environmental assessment processes. Federally funded regional land use planning would enable Pheasant Rump to identify areas within our territory where potential development may take place and where development will not be possible due to the existence of important cultural, traditional, archaeological and other heritage values.

This information would not only help inform the environmental assessment of potential development and activities within Canada but it would also provide greater certainty over where such developments may take place.

Number four, incorporate traditional First Nation knowledge in the environmental assessment of a project. Pheasant Rump is intimately connected to and familiar with our territory and its resources and can offer valuable information about this area. First Nations should be consulted with on a project by project basis to determine what traditional knowledge is available to support a particular environmental assessment process.

Aboriginal traditional knowledge should be relied on in addition to western scientific knowledge.

Number five, provide adequate funding to promote capacity development of First Nations so that they can meaningfully participate in the environmental assessment process. Adequate funding on a timely basis is necessary for First Nations to meaningfully participate in environmental assessment processes.

Number six, provide for meaningful accommodation of aboriginal concerns. There are a number of strategies that Canada and aboriginal peoples working together can develop to address aboriginal concerns about a particular project. The federal government must be open to discussing the various possibilities.

Number seven, provide opportunities for sharing of benefits from economic activity, including through revenue sharing. Pheasant Rump has never ceded, released or surrendered its aboriginal title to its territory. Revenue sharing opportunities would enable Pheasant Rump to share in the revenues generated from the use of our lands and resources. These opportunities must be negotiated directly with government.

And I just want to also add that many years ago, we had — one of my uncles back home, he was quite elderly at the time. He used to tell us stories about ceremonies and he would share with us about a snake. And he would talk about this snake and how it affected people, like, how it affected man. And, at times, he would tell us that this snake would rear its head and he would come up and he would make a man do things that maybe he didn't think were good or maybe they negatively affected him at times.

And he would tell us, you know, that when this man speaks, he speaks really harsh words and he speaks with a greedy mouth. And when that happens, to not get mad at that man because that snake is the one that's controlling him, that's making him do that, making him say those things.

So when this process started, we — back home, you know, one of the elders had remembered, you know, some of those stories about this snake

and I wanted to share that with you here today, you know. There is not — we're all — when we talk about the environment and the health and wellbeing of Mother Earth, we're all on the same side. We all have to do the best that we can, as individuals, to contribute, to, you know, decrease our environmental footprint and make the proper decisions so that we leave a healthy world behind for future generations.

And whether that be through discussions such as these or what we do in our daily life as a human being, you know, just making that little bit of difference to make sure that we respect mother earth in such a way that she is going to continue to nurture us as people.

And I want to thank the panel members here for your time and your considerations, you know, the knowledge that you possess, the good efforts that you're putting forth, you know, for — in this process to review these — this environmental assessments. And I want to say that, you know, for myself, you know, we always look at the problems with an open mind. We'd rather resolve them. We don't like conflict. We don't want to have to make things nasty and ugly to solve a problem. We come here with kind words on behalf of my relatives back home, particularly my elders and my — the young people, too.

We want to be able to communicate a message of being able to — being willing and able to participate in these discussions and to come up with a process that's going to work for all of us in a respectful way. And, at the same time, strengthen the indigenous peoples' voices when we have concerns in regards to major project developments in our treaty and traditional territories.

So, with that, I just want to thank you once again.

**Johanne Gélinas:** Miigwech, Chief McArthur.

**Renée Pelletier:** (speaks native language) Thank you very much, Chief, for your presentation. I wanted to pick up on your comments about some of the problems you're seeing with the duty to consult and accommodate in the federal Environmental Assessment Process because one of the things that, as a panel, we're asking ourselves is how we begin to move away from the duty to consult and accommodate and get into things like free, prior and informed consent and communities playing a role in decision-making.

And so one of your recommendations was that the communities be able to make their own decisions about a project. And I'm wondering whether or not you've given thought to what that might look like. Does that look like a First Nation granting its own approval? Does it look like a First Nation making a joint decision with government?

You may not have thought about the specifics but, if you have, I'd love to hear what you have to say.

**Chief McArthur:** Well, actually, you know, we put a lot of thought into the whole duty to consult and accommodate. Now, I think one of the biggest concerns that we have right now with Canada's recent acceptance of UNDRIP, you know, UNDRIP can't be conditional. It has to be accepted without condition.

I know there was some statements made by the Minister of Justice in regards to the limitations that they were potentially applying to their acceptance and their embracing of the UNDRIP principles and declaration. And I think that, when you think of UNDRIP on a worldwide basis, you know, we — it was a document that's been developed to preserve aboriginal people's rights to their original environments.

But, when you break that down on a worldwide basis, you know, what it may mean for one particular tribe may not mean the same thing for another tribe. So I think that's very individual in how we — the government must accommodate and consult with various tribal groups across North America and I think that it's going to be a difficult process but I think, if Canada is committed to it, then they'll be able to do that on a basis that's going to work for each and every individual First Nation.

And, for a lot of major projects that are happening, when you look at the placement of First Nations, our current lands, reserve lands, some of us are affected much more than others due to downstream from, you know, waterway crossings and things like that and then the distance which we travel to hunt and fish and gather still in today's time. And I think that we have to really take into consideration what UNDRIP — what that relationship would look like between Canada and an individual First Nation.

For myself, with my First Nation, there's only five other — or, excuse me, four other Nakota First Nations in Saskatchewan. We don't have a separate tribal council. We don't have any sort of a governing body that kind of coordinates, you know, our stance or our viewpoint or our perceptions and in relation to us as Nakota people, specifically.

So when we participate in processes like this, I come here specifically for my own First Nation. And it's difficult because we are such a small First Nation. We have, at times, we feel like we've been left out of the process or out of the discussions on some of these major development projects that have happened and today, you know, I'm glad that I'm able to be able to sit here today and bring the message from my elders and my community members.

**Renée Pelletier:** Well, we're glad, too. One final question just on the topic of accommodation. Do you have examples of what accommodation means for your community?

**Chief McArthur:** Just in a hypothetical sense, I don't want to start naming any particular project or anything like that but just in a hypothetical sense, I think when you threaten the health and survivability of a community by a development project, then I think you really need to be able to — that proponent should be able to be held accountable by the government and made to accommodate that First Nation's concerns in as far as whether it is — in particular to the health concerns and also the environmental concerns that go along with, you know, exposing our waters and our lands to, you know, toxic and dangerous substances.

**Renée Pelletier:** Thank you.

**Doug Horswill:** Within your — I guess within our mandate, we have to look at coordination between the provincial and federal processes in relation to our recommendations for the federal side, your recommendations were very encompassing and quite precise relative to the federal side.

What is your perspective on the province and its duties and responsibilities and how we should think about that in relation to such matters as consultation and accommodation, decision-making, that sort of thing?

**Chief McArthur:** Well, I think — I mean, I hate to be the one to say this but Saskatchewan is still way behind in dealing with the systemic racism that exists within government institutions and government bodies.

They haven't yet developed an acceptable way of communicating or dealing with aboriginal people and the Saskatchewan government, they are way behind the rest of the country as far as acknowledging the importance or even the existence of aboriginal people in the terms of resource development.

**Johanne Gélinas:** Thank you very much for having taken the time to come and present to us this morning.

**Chief McArthur:** Thank you.

**Johanne Gélinas:** We'll take another — we'll invite another presenter before we take the break so I would like to invite Daryl Redsky. Please, sir, join us.

Good morning.

## **DARYL REDSKY, SHOAL LAKE 40**

**Mr. Redsky:** Good morning. First of all, I want to say thank you for the tobacco and offering of the tobacco. I want to introduce myself, who I am, my language. It's my identity.

(speaks native language) My English name is Daryl Redsky. I am from Shoal Lake, Band 40. Shoal Lake 40 is part of Treaty 3 territory, which is a pretty huge territory in Ontario and one of several Bands.

One of the things that I want to be able to talk about here is our history and our place here in this territory.

We are straddled between the Ontario and Manitoba border. Part of our community sits on the Manitoba side and a portion of it is on the Ontario side. So that, in itself, creates certain issues in terms of who we are and what we try to do in terms of existing in this land.

Shoal Lake 40 is in a very unique situation. We were once free to roam and exercise the rights, the responsibilities that were entrusted to us by the Creator. And, throughout our history and events in our history, we were encroached upon and this encroachment led to the separation and trisecting of our land.

Our community is separated into three parts. I cannot access two other areas of my lands without trespassing. This encroachment was — has resulted in forced isolation of my community. And the reason for this forced isolation is a result of everything that you see here in Winnipeg. This jug of water that you see in front of you, that you're enjoying, comes from my community. But, in order for that to happen, 3,300 acres of our land was expropriated and, when we talk about assessments, environmental assessments, we were never privy or part to any of that process.

And so, as a result, there has been an onslaught of events, hardships, that my people have had to endure.

There is a history that needs to be corrected, that needs to be reviewed, that needs to be assessed and that needs to be improved. There is some emotion, there is some passion when we deal with these types of issues. You're talking about a community with just a little over 500 people and perhaps 200 people in the community. The rest have had to leave because of the issues and the conditions that we have been forced to live with.

And, for the people that are living in that community that I work with and that I work for, I think I've shown and demonstrated a lot of resilience, a lot of strength, a lot of patience, a lot of kindness. When we deal with people, when we deal with governments, when we deal with organizations, when we deal with people on the outside, and just because of the stuff that we've been through, we're very humble people, strong, very tied to the land, very connected to the land and the water itself.

We have the only existing Human Rights, Canadian Human Rights violations in Canada. We have a building that has four walls, that have all the violations and this is just our community but that could represent any community. So

we know what wrong looks like but, at the same time, I think the community has dug deep, has dug deep to be partners and to move forward and to address the issues that need to be addressed when it comes to the land because we have a direct impact today of decisions that were made in the past. We live with them every day when it comes to the water, when it comes to the land and the trisecting of the land as I mentioned.

So we deal with those things. So, when we come to discuss these issues with people, we don't come just talking about the past, the injustices. Like I said, we have a museum full of that stuff. But what we do is come forward and come to any discussion with solutions, open that space for dialogue, create that opportunity and also be in a position to share and point out the duties and the responsibilities that have been entrusted to us.

Speakers before me, well spoken. They have touched on issues that we all face, that we all understand and respect. When you're — when you have been given the responsibility to look after the land, you do it with honour, you do it with pride. The land has been referred to as Mother Earth. And you would treat your mother the same way. You would look after her.

This is the thinking of our people and how we look after the land, with great respect, with much love. And, if there is anything that needs to be done in terms of the land, and then I think it's incumbent on everybody that's involved, have that opportunity to discuss any development that's coming or that's even being considered with the people of that territory.

I am not a politician. I'm a humble man that works for the community, that has a great duty and responsibility to protect and watch the land. That's my responsibility. And for that reason, I think that's the reason why I've been asked to come and talk to you about this. My chief has asked me to come here and speak on his behalf.

I am not an eloquent speaker like my leaders are but I can speak to the land and I can speak to the issues of respecting the land and protecting the land and the kind of work that needs to be done when we are looking at something like this.

Now, I respect what is happening here today. I think it's an opportunity for people in the communities to be able to bring forward the concerns, the ideas, even suggestions in terms of how development should move forward because, in the past, we have never had that opportunity.

We are, like I said, we are dealing with impacts today from decisions that were made in the past. We were never part of any process. We were erased.

So coming from me, I think this is a very, very important thing that you people are doing. And just for giving us an opportunity, myself, our small community an opportunity to be able to express and voice our concerns but also to come to you with at least an opportunity to move forward with us and with you.

With all the stuff that's happening everywhere now and you deal with the gentleman before me spoke of the pipelines and that's a discussion everywhere. We not only are charged with protecting the land but we're also responsible for protecting the waters. It gives me great concern when there is talk about expanding, retrofitting, further ongoing development with oil.

We have a pipeline, a natural gas pipeline that runs 10 kilometres from my community which is a grave concern for me because, if there is ever any incident, my community would be the first to be impacted by such an event. And then the city would be next. So even with that, there was no — we were left entirely out of that process when that pipe came through our territory.

When our lake was opened up to join the rest of Lake of the Woods, we were not part of that process. When the land that was stolen from us, we were not part of that process. When the lands on our shores, where I've hunted with my grandfathers and my uncles are now riddled with cottages, we were not part of that process.

So I think the work that's ahead here, that's taking place, needs to involve everybody. And, like I said, I can speak to the issues that were mentioned before me but I can't — and I think they were well said and well put and I agree 100 percent with everything that was mentioned.

But I come from a different place, a different space when it comes to dealing with issues like this. And the people that know me and that understand me in my territory, they're well aware of what those duties and responsibilities are and those are more along the line or in relation to traditional governance in terms of responsibilities.

Although I do work with the chiefs, the leaders of our nation, of our territories, I've worked with the grand chief of Treaty 3 for several years, 18 years and have had the opportunity to participate in the development of the resource law, which we call our — the word escapes me right now. (speaks native language)

And that's the resource law. This law was passed in ceremony and recognized by the elders and passed through ceremony and that resource law deals with any kind of development with any proponent within the Treaty 3 territory, within the Treaty 3 nation and recognizes and respects and understands the first people's law and perspective on the territory.

So that, I think, is one of the things that I would recommend if you haven't already done so, review or ask the — see if you can you review that process because that, like I said, that represents the Grand Council Treaty 3 territory of my nation and I think, in there, a lot of it deals with the issues that we're — that you're addressing or at least looking for solutions to and how to engage in communities and to move forward.

I think that's pretty much everything that I really wanted to talk about. I mean, I could talk about — we all know what's happening.

**Johanne Gélinas:** We would like — sorry.

**Mr. Redsky:** I think we all know what — I think we all know what the injustices of the past, the issues that have been in the past, the wrongs but I think we're at a place now where we need to move forward and start having some more meaningful human dialogue with each other and Shoal Lake 40 is there. Shoal Lake, Band 40 has always been prepared to participate in any discussion related to the lands, related to development. We are more than willing and prepared to sit and discuss and talk about these issues with anybody that's willing to work with us as well.

**Johanne Gélinas:** Miigwech.

**Renée Pelletier:** Miigwech, Mr. Redsky, for your presentation. I wanted to talk to you a little bit about — I am familiar with Grand Council Treaty 3's resource law and I think one of the things that we heard from the previous speaker is, you know, it came from a community where there is not necessarily a tribal council and so, in Treaty 3, you're obviously in a different situation.

One of the things that we're thinking about as a panel is, in involving communities, at what level should there be involvement? Is it community specific? Is there involvement at the Grand Council level? Or at the Tribal Council level? Do you have thoughts about that with your experience with your community and working with Grand Council Treaty 3? And I'll just stop there and see if you have a reaction to those comments.

**Mr. Redsky:** Well, in the beginning of the development of the resource law, everybody was involved. Everybody participated in the development of that but understanding and respecting each community has their own process and their way of moving forward on issues.

**Rod Northey:** I'm just wondering, I gather my colleague has seen the law. Is the law publicly available for us to review? That was not clear to me or whether that's held in confidence.

**Mr. Redsky:** The resource law, I'm pretty sure, you could probably — I think it's available.

**Rod Northey:** Okay.

**Mr. Redsky:** I think it's available, yes. Yeah.

**Rod Northey:** We will try and find it. Thank you.

**Mr. Redsky:** No problem.

**Renée Pelletier:** You didn't touch on this but one thing that I was wondering about is if you had thoughts on the issue of accommodation. So we've also been thinking, as a panel, about the steps that need to happen before communities can get to consent. We've heard a lot of different things about what communities view as a true accommodation. I don't know. I'm sort of putting you on the spot because you didn't really talk about this but if you have thoughts on that, I'd love to hear your thoughts.

**Mr. Redsky:** Well, we did have one proponent that tried to move into our backyard, let's say, and the only reason that whole issue was triggered is because that the only people that they contacted was the province and it was the province that communicated with us.

And we initiated an engagement with the proponent and we outlined our issues and concerns and it wasn't a — in my honest opinion, it wasn't a very positive first step in terms of the people that were coming behind our community. They had this mindset that they were just going to come in there and do what they wanted to do and that we were an inconvenience.

And we had set out our conditions, our concerns in terms of their development and that their development would impact the environment, the land and the waters, and these issues were — concerns were brought forward by the elders and, when the elders speak, we listen. And so those were the things that — and we brought those to the proponent and, ever since then, I think there's — we did bring the issues of accommodation to them but they just kind of left.

**Renée Pelletier:** And the province didn't address them, either? This was a provincial process, you said?

**Mr. Redsky:** Yeah.

**Renée Pelletier:** Yeah. And was there any uptake from the province on addressing any of your concerns?

**Mr. Redsky:** Well, I think when the proponent left, that was it. And the province was somewhat helpful to a degree. Yeah.

**Johanne Gélinas:** Thank you very much for your presentation.

**Mr. Redsky:** Miigwech. Thank you.

**Johanne Gélinas:** We will take a short break, ten minutes, and then we will be back for our two last presenters this morning. Thank you.

(BREAK)

**Johanne Gélinas:** I would like to invite James — no, Ernest Jamieson and councillor Roberta Jamieson.

So good morning to both of you. You can start whenever you're ready.

## **ERNEST JAMIESON AND COUNCILLOR ROBERTA JAMIESON**

**Ernest Jamieson:** (speaks native language) Unfortunately, our councillor is feeling a little bit ill so I might have to do all the talking.

So my name is Ernest Jamieson. I am Band manager for Ochiichagwe'Babigo'Ining. I'm also a Band member of Ochiichagwe'Babigo'Ining and I reside in Ochiichagwe'Babigo'Ining.

So just to, I guess, speak on the background of my community, Ochiichagwe'Babigo'Ining Ojibway Nation is part of the Treaty 3 nation. Our members hold and exercise our aboriginal and treaty rights in respect to lands and waters near present day Kenora, Ontario.

Ochiichagwe'Babigo'Ining members are committed to fulfilling the responsibilities to their ancestors and children to ensure that their lands and resources remain healthy and protected for future generations.

In 1873, Ochiichagwe'Babigo'Ining's ancestors entered into Treaty 3 with the federal Crown. The number of treaties established respectful, mutually beneficial relationships between First Nations and the settler populations.

By entering into Treaty 3, Ochiichagwe'Babigo'Ining did not cede or surrender title to its lands or its right to use this land and resources within it. Rather, the treaty confirmed Ochiichagwe'Babigo'Ining's right to hunt, fish and gather within their territory. Nor did Ochiichagwe'Babigo'Ining surrender its jurisdiction and authority to make decisions on matters that affect its rights.

Ochiichagwe'Babigo'Ining's intention in signing Treaty 3 was to share the land and its resources with the incoming settlers. Ochiichagwe'Babigo'Ining members continue to exercise these rights today. We are committed to defending, protecting and advancing our aboriginal and treaty rights. This

includes preserving and protecting the natural resources in our territory for both present and future generations.

Ochiichagwe'Babigo'Ining sees the Crown's duty to consult and accommodate and respect of proposed development projects as distinct from any environmental assessment process. The Crown has a constitutional duty to consult and accommodate Ochiichagwe'Babigo'Ining about the potential effects of proposed projects on our aboriginal and treaty rights.

The Crown's duty to consult with aboriginal peoples and accommodate our rights is grounded in honour of the Crown. While the Crown may delegate procedural aspects of consultation, the honour of the Crown cannot be delegated and the ultimate legal responsibility for consultation belongs to the Crown.

Ochiichagwe'Babigo'Ining expects that the Crown will do all that is necessary to fulfil its constitutional obligations, including the duty to consult and accommodate and justify any infringement of Ochiichagwe'Babigo'Ining's aboriginal and treaty rights prior to making decisions about proposed projects that have the potential to affect our aboriginal and treaty rights.

Ochiichagwe'Babigo'Ining has the following concerns with the current federal environmental assessment process. In particular, project does not trigger — if a particular project does not trigger environmental assessment under the Act, the federal government may avoid consulting First Nation on the project, instead rely on the proponent engaged about the project and its potential effects.

Consultation processes that do not involve the Crown serve to undermine Ochiichagwe'Babigo'Ining's nation to nation relationship with the Crown. There is also a view that, you know, the timelines are insufficient for our communities to review and comment on applications and supporting documents.

The Harper government thought the previous timelines and the CEAA process was too lengthy and burdensome for foreign investors and businesses to develop resources in Canada. Thus, they went from 90 day to 30 day comment periods. Without question, the 30 day period timeline isn't enough for a First Nation to review and comment on an application, given their decision-making processes. Thus, the CEAA should consider a 60 day comment period at minimum.

Participant funding is also inadequate for communities to do a thorough review of CEAA applications and supporting documents, especially when communities lack the technical expertise to review these complex technical documents. The government shouldn't rely on proponents to fund this work as duty to consult and accommodate rests with the Crown.

CEAA needs to provide additional and adequate funding for communities to review applications. A solution to this would be to provide increased

funding to PTOs and/or permanently fund environment assessment units at PTOs so they can do the work on behalf of their communities with the understanding that this wouldn't be relinquishing the other duty to consult and accommodate.

CEAA's definition of — or the government's formula for identifying impacted community is limiting and shouldn't be restricted to distance from the project. This is where a landscape or watershed approach should be adopted for CEAA process and would help identify impacted communities.

Speaking, like, for our community, we don't just view our community as the impacted community. We would look at the impacts that would impact other communities as well because, even though — if we are directly impacted, it's still going to impact other communities such as the pipeline. It would not just impact the communities that are directly within the distance but, due to the watershed, it will impact many communities, several communities, especially the way the watershed is set up. It's just going to create a cycle.

Cumulative effects assessments are weak or absent from most EA reviews. Greater consideration needs to be given to CEAA and EA and must consider small-scale projects that are not federally regulated aggregates forestry practices, et cetera, as well.

As a whole, a single project may not have significant impact on the local environment but collectively. Several small and one large project has significant impacts. Considering UNDRIP, the concept of a free, prior, and informed consent needs to be incorporated into a CEAA. This could be done by harmonizing Anishinaabe or other territorial law with CEAA. Often, CEAA recognizes the rights of an individual rather than the collective. For example, it only took two (indiscernible) communities to consent to the new gold project for it to get CEAA approval without consensus from the other impacted communities.

Recognizing our laws could prevent this from happening in the future but, again, this comes down to who is defined as impacted community.

This also justifies the need for increased participation and funding. Federal law should not trump provincial law. For example, considerations in mitigating impacts on cultural and heritage resources in federal regulatory processes may not have the same protection as provincial laws, as is the case with the trans Canada mainline. The CEAA process should be as strong or if not stronger in protecting cultural and heritage resources.

Some other factors to consider, you know, you need to respect and recognize the consultation framework for each First Nation as well as the Ochiichagwe'Babigo'Ining Nation of Treaty 3. This includes incorporating UNDRIP into

the CEAA process. No official recognition of an MAI or involvement of the Grand Council in a CEAA review process.

We often have to rely on individual First Nations to share project updates. The identification of impacted communities is not done in consultation with those communities or with Grand Council Treaty 3 who have a better understanding of what watersheds and overlapping land use areas. The 30 day time period for reviews is difficult for First Nations as often notices don't arrive in communities in time. Example is Eagle Lake only had two weeks to review their Goliath EIS.

MNDM is encouraging projects. There is often a misalignment and poor communication between CEAA officials and provincial ministries. Many permits and management plans are developed after approval or through provincial agencies, which makes it very difficult to assess the impact under CEAA 2012.

TEK needs to be explicitly integrated into value components from the beginning of the process rather than general concerns during consultation. Cumulative effects are very poorly assessed in the CEAA process. For example, the proponent does not need to account for all the impacts on fish population. The cumulative effects do not consider long term ecosystem impacts. For instance, to understand the long term impact of mercury in fish, it is important to assess current levels in (indiscernible) Lake with the levels that could be released from potential failure.

There needs to be a landscape base assessment that looks at factors such as habitat fragmentation. (indiscernible) and safety are weighted equally in alternative assessments under CEAA. And you need to look at scenarios and alternatives for land rather than for the company. The criteria for alternative assessments needs to be changed and best available technology needs to be assessed rather than least expensive technology.

We met with our youth last night in regards to this, you know, some of their concern is that there seems to be a what's more affordable approach than what — rather than what's best approach.

So some, I guess, recommendations is ensure direct First Nation participation early in the Environmental Assessment Process. Ochiichagwe'Babigo'Ining be engaged at the earliest possible stage of government decision-making respecting the proposed project before there is any possibility of project affecting our aboriginal and Treaty rights.

Where a project has the potential to impact Ochiichagwe'Babigo'Ining original treaty rights, the process that recognizes Ochiichagwe'Babigo'Ining needs serious (indiscernible) to make its final decision about

the project should be developed. As mentioned before, Ochiichagwe'Babigo'Ining has not surrendered the jurisdiction or authority to make decisions on matters that have potential to affect our aboriginal treaty rights.

The federal government has now confirmed its full support for the principles of UNDRIP which requires that the indigenous people be consulted and cooperated with in good faith in order to obtain our free and informed consent prior to the approval of any project affecting our lands or territories or other resources.

This model of decision-making recommends the nation to nation relationship between Ochiichagwe'Babigo'Ining and the Crown enables us to collaboratively establish processes, mechanisms for making decisions on matters of mutual interest and concern and provide opportunities for First Nation regional land use planning initiatives to inform Environmental Assessment Processes.

Incorporate traditional First Nation knowledge and environmental assessments or projects, provide adequate funding to promote capacity development of First Nations so that they can meaningfully participate in the Environmental Assessment Process and provide for meaningful accommodation of aboriginal concerns.

Mitigation does not equal accommodation. There are a number of strategies that can and aboriginal peoples working together can develop to address aboriginal concerns about a particular project. The federal government must be open to discussing the various possibilities, provide opportunity for sharing benefits of economic activity, including through revenue sharing.

And revenue sharing, separate from any benefits negotiated directly with the proponent of a project would serve to recognize the coexisting Ochiichagwe'Babigo'Ining Ojibway nation and Crown jurisdictions and would allow Ochiichagwe'Babigo'Ining to share in the revenues generated from the use of our lands and resources.

**Johanne Gélina:** Thank you.

**Renée Pelletier:** Miigwech for your presentation. I want to touch on your comment about your community having a final decision about a project and I asked this question to a previous speaker. I'm going to put you on the spot a bit and ask you whether you've had a chance to think about what that might look like. Does that look like a community does their own environmental assessment and then gives an actual approval at the end? Does it look like a community makes a joint decision with the government? If you haven't thought about those details, that's fine, but I just wanted to check to see if maybe you had.

**Ernest Jamieson:** I believe it would be similar to, like, a joint. As I mentioned before, like, respecting our processes, our community is unique in that we have a

governance structure that involves all of our people, all of our families. It's not simply something that's structured simply on our chief and council but as well as our family head system.

So, you know, we specify, you know, specifically on a nation to nation relationship and then, you know, that's what's — that's what the treaty is based on, a nation to nation relationship. So it can't be solely, you know, strictly on our First Nation. We can't simply expect or, you know, leave it to the government to, you know, solely make decisions. There has to be, you know, a nation to nation relationship and those decisions have to follow suit as well.

**Renée Pelletier:** Okay. Thank you for that. And then finally I think you raised some very important points about the difference between accommodation and mitigation and I think one of the things that the panel's been hearing a lot is those terms often used interchangeably when I think they do mean separate things.

But then also the accommodation from the Crown versus proponent. So you mentioned revenue sharing from government as one way that the Crown can fulfil its role of accommodation. Do you have other ideas or examples that maybe you've already dealt with, with your community or things that you might like to see in addition to revenue sharing that the government could actually be providing as a way of accommodating?

**Ernest Jamieson:** I can't really say that we would really have an answer right now just because of the history with the government. I mean, it's only now we're — the government is, you know, whether we know if having the duty to consult, you know, whether they're actually going to follow it but the harsh reality is in the history, you know? There's been a lot of decisions made for our people, you know, despite what's, you know, written in a treaty, you know, we're supposed to be sharing this land. We're supposed to be sharing resources. So it'd be hard for me to answer that when history shows that it hasn't happened.

**Renée Pelletier:** Okay. Miigwech.

**Doug Horswill:** Great, thank you. Actually, I had the question on accommodation as well. But I think I have the answer now in relation to that.

With the revenue sharing, is that aimed at the provincial government or the federal government? When you make that comment?

**Ernest Jamieson:** I guess it could be both but that's going to be largely probably on the federal government because that's who we have treaties with and that's who we have agreements with but —

**Doug Horswill:** True.

**Ernest Jamieson:** -- I mean, provinces come after the fact.

**Doug Horswill:** Sorry, resources are — in some cases, I understand it on a provincial level because there's royalties attached, often, to non-renewable resources — extraction and it's fairly clear. On the federal side, it's often a different revenue regime and I was wondering if you'd given any thought to how that might work on a federal — at a federal level as opposed to the province where it may be more clearcut.

**Ernest Jamieson:** I guess, again, like, it'd be tough to answer just because it's simply something that's going to be new. It's something that's, you know, if history tells, it hasn't happened so it's more or less something that has to be, I guess, thought about, it has to be discussed, it has to be, you know, answers have to be made.

**Doug Horswill:** Okay. And on your land use planning process recommendation, have you got any — can you elaborate at all on how that would work?

**Ernest Jamieson:** I guess more or less what our community sees on what to do with their land, I mean, there's — many First Nations deal with housing so, I mean, how we use our land with housing, even trying to protect our land with traditional land use areas, you know, just to be able to fish, to hunt, to trap. I mean, those are things that we are ongoing fighting. Those are our rights but we have to fight for that.

**Doug Horswill:** So it would be a process applicable to your entire traditional territory somehow defined or would it be a landscape-based issue based on watersheds or such? You haven't kind of — it could be either one maybe?

**Ernest Jamieson:** Or it could even be both.

**Johanne Gélinas:** Will it be possible to have copy of your speaking notes? Or at least the recommendations that you are making or the issues that you have?

**Ernest Jamieson:** Yeah.

**Johanne Gélinas:** Yes? So I would like to thank you both, Ms Jamieson and Mr. Jamieson, for your presentation. Thank you.

Our last presenter, and I don't know if that person is in the room, is Yuma Gill? Yuma Gill? So I understand that Diana Traverse would like to make a presentation? Is Diana in the room? Okay. Welcome, Ms Traverse. We are listening.

## **DIANA TRAVERSE**

**Diana Traverse:** Good morning. My name is Diana Traverse. My Indian name is — I have two Indian names. The first one is Eagle Day Woman, (speaks native

language). And the second one is (speaks native language). That means Thunderbird Woman.

(speaks native language) That's how you say it. And I'm from Lake St. Martin. I'm from Treaty 2, number 275 and I'm here as an individual.

**Johanne Gélinas:** Can you speaker closer to the mike, please?

**Diana Traverse:** I'm here as an individual. I have learned, over the years, growing up in Lake St. Martin, that my family had come to the lake in 1903. We originally came from Jackhead First Nation. I can't say the Indian word.

About five and a half years ago, my community was flooded out and our community does not exist. We are regarded as evacuees. There's over 2,000 of us that have been displaced from this flood and we continue to be displaced and it has cost millions of dollars to the federal and the provincial government to keep us in hotels, temporary housing.

Lake St. Martin, when it was originally flooded out in 2011, May 2011, there was three days. I remember those days very clear as it was raining. And we found out that the flood — that the provincial government told the media that they were trying to save the southern part of the province, the cottages and the agriculture lands. So they diverted the water into Lake Manitoba and into Lake Winnipeg.

A lot of this has been done behind doors, the discussions, but there has been no accountability or transparency from the federal and the provincial government.

Over 100 of my Band membership has passed since the 2011 flood. We have tried to go to southern chiefs, AMC, the Assembly of Manitoba Chiefs, regarding our plea of where — where basically we are homeless.

In 2012, August 2012, Minister Duncan had issued certain of our Band members to be cut off, saying that they weren't flood evacuees. And yet our membership is all displaced and our Band doesn't exist.

These are one of the things that I'm trying to bring out that our community doesn't exist, that we are all evacuees from Lake St. Martin. Because of this flood, it has caused the disruption in our lakes, the ecosystem, especially Dauphin River. They had brought in easement agreements for the First Nation leaders to sign and there were rumours but there's recordings of those meetings with the provincial government, the previous provincial government.

And these channels were built into Dauphin River. The spawning of our fish, especially the pickerel, don't exist in those areas. The fishermen

have been suffering. There's been algae in the lake. There's been a lot of debris, even to a point where we can say that there's zebra mussels all along the shorelines of Grand Rapids.

It's very sad to see that there's no accountability or transparency regarding these areas and that countless of our members have died since the flood.

A year after the flood, Calgary, Alberta, was flooded out. And it only took them months to clean up. Where are the precedents? We are Canadian citizens, regardless of where we are. They are denying us of housing. There was only 21 homes that were affected by that flood, 21 homes and yet our whole community was evacuated.

There were procedures, evacuation procedures in our community and it was never followed. Just recently, we found out that the flood was initiated by Manitoba Hydro and going to meetings, I have found out what Manitoba Hydro does to First Nation communities up north. When they want an area, they'll deliberately flood out our communities, our people. The Dene nation, the Dene, (indiscernible) Dene in the Churchill area.

It took the federal government over 50 years to realize what they had done by displacing that nation. Is it going to take another 50 years to come back to Lake St. Martin for the federal government to apologize for what they have done to us?

When we bury our dead, we bury them in water. The water is so saturated in our land, in Lake St. Martin, that it comes up when we bury them, even in the wintertime. And yet our pleas to the new government, to the provincial government and the federal government are — they're not being heard. That's why I sit here before you, to show you the damage that it has caused, Manitoba Hydro.

When they have studies placed before them, they only look at what is good for them. They don't — they cut around the edges. If it doesn't prove to them that it's good for them, they cut it out. Meanwhile our people are suffering. I'm a single parent with three children. I'm homeless. Last night, I slept in a vehicle to be here.

My home was burnt. When Minister Duncan issued that order in 2012 for our homes to be destroyed, they didn't properly assess our community to see what actually was done to our homes. Since that order of Minister Duncan in 2012, they burnt our homes, they demolished our homes, they even sold our homes, Chief and council.

There's no accountability or transparency. With the new government has been placed — they abolished that accountability bill of where it makes our leaders accountable. We continue to suffer.

A single person on her own at First Nation in Lake St. Martin only receives \$200 a month. I only receive \$400 a month. That's not enough to live off. And yet I can't find a place with only \$400 in Winnipeg here. I need a co-signer. It's just — it's a rippling effect.

I fight, I struggle to be on that street. I don't want to be on that street. Christmas is coming up and I've looked around. Where am I going to put my tree? You ask this review of the damages of this corporation, this Crown corporation in Manitoba, Manitoba Hydro, the damages that it has caused our environment, our people. As I sit here before you to bring this to you, it is very difficult for me to sit here to discuss this, to keep myself from crying.

There's a lot of drugs on our streets in Winnipeg here because people are so suppressed by what's going on. A 13-year-old, when we first got evacuated, she hung herself in the school, 13 years old, in this school. If you take a drive over to where Lake St. Martin, their elementary school, the windows are boarded up. There's no playground. This is in Winnipeg. The driveway is all dirty. This is in Winnipeg.

And yet we continue to cry to the federal and the provincial government for some type of assistance, for some type of housing to be brought into Lake St. Martin. The members do not want to leave Lake St. Martin. I was recently in the media because we were trying to make a statement. They placed us in a temporary setting on number six highway and, when my mom, she died July 6th, 2013, and I took care of here. And Manitoba Housing came along, after she died, she kicked me out of the unit. She kicked me out. Manitoba Housing kicked me out and, within this past June, we tried — there's ten homes are vacant and so we went in there and — to make a statement, to show them that there's ten units there, that there are ten families that want to move in there but we're not allowed to move in there.

And so, when we moved in there, I got thrown out last month. Again, I'm going to say, winter is coming up. I'm a single parent with kids that are still in school. They called me a squatter. I'm not a squatter. This is our land. This is our inherent right to be on this land and yet Manitoba Housing pointed to me and said, "You are a squatter now get out. I'm going to call the cops for you to be removed from this house. You have no right to be here."

A couple weeks after, they came back because I ended up being at my aunt's and they came to the house and said, "You need to leave this site." Where am I supposed to go? This is why I'm here, because of Manitoba Hydro, of what they're doing to our people.

You need to be made aware that there's a lot of discussions that are made behind doors pertaining to indigenous people. They need to be made aware and there needs to be certain policies implemented for accountability and transparency, especially with Manitoba Hydro.

I heard yesterday that they were here and that they were talking about how they got along with indigenous people. That's not true. They cut your hydro off on a long weekend or on a Thursday/Friday. You have no way of trying to negotiate to try and have that hydro reconnected, \$74 sometimes, they'll go and disconnect the home. They will not negotiate.

And yet they get the resources from our land and they take it down south where the rates are cheaper in the States and yet the phenomenal rates for northern Manitoba are phenomenal. These are things that your board needs to be made aware of and this is very hard and sometimes you can't — how are you supposed to pay your bills when you only receive \$400 a month? \$200 a month?

And you wonder why there's no employment. Our homes look the way that they do. We have no revenue to fix them up and yet the revenue is implemented but it gets stuck above and, by the time it trickles down to the grassroots, there's nothing left for us. We just get crumbs.

Education, employment, healthcare, it's staggering. It's very depressing and yet, when you go to these offices of the federal and provincial government, they will not listen. They filter your mail.

Then you're labelled as a troublemaker because you're trying to point out, you're trying to help people and then it's very sad.

I just — I have to say that the — regarding Lake Winnipeg, that the ecosystem has changed. The algae, the zebra mussels, the increased debris along the shorelines, and the increased water levels, it's causing a lot of effect, negative effect in our land.

As a woman, as a life bearer, so is Mother Earth. When you have — when you cause disruption in the family, it starts to crumble, it starts to deteriorate to the point where there's death and that's like our earth in Manitoba and Lake Winnipeg. And we have to stop Manitoba Hydro from what they're doing and how — to the point of where it's genocide. You can say it's modern day genocide to our land and to our people.

You can't assimilate our elders and our people from the communities. And something needs to be done. There needs to be a referendum in consultation with the people and there isn't. They say that there is but there isn't.

(speaks native language) That's enough. I want to say thank you. Miigwech. (speaks native language)

**Johanne Gélinas:** Thank you very much for your testimony. I'm a little bit speechless, to be honest. The one thing I think we should do is to give you the transcript of your testimony so at least that you can forward that to Manitoba Hydro if they are not here today to listen to what you have to say. Thank you.

**Renée Pelletier:** Sorry, I just wanted to say one thing as well. I also don't have any specific questions other than just to thank you for your openness and for sharing with us. Your words were very powerful and this panel has certainly heard you.

**Diana Traverse:** It needs to be revealed because you need to be made aware that our people are suffering. They're on the streets of Winnipeg and there's over 2,000 of us that are homeless and something needs to be done. Christmas is coming up.

**Johanne Gélinas:** So that will end —

(BREAK)

**Johanne Gélinas:** We will start in a second. You must be Mr. Sutherland.

**Mike Sutherland:** Yes, I am.

**Johanne Gélinas:** Good afternoon, sir.

**Doug Horswill:** Are you cold?

**Mike Sutherland:** No.

**Johanne Gélinas:** No?

**Mike Sutherland:** Absolutely not. (laughter) I trap so, after 40 years in the bush, your body is used to this type of climate. Actually, it's really warm for this time of year. (laughter)

**Johanne Gélinas:** So we are ready to listen to you, sir.

## **MIKE SUTHERLAND**

**Mike Sutherland:** That's a joke. I know I only have 15 minutes. (laughs)

**Johanne Gélinas:** No, you're wrong. You have 30 minutes.

**Mike Sutherland:** Awesome.

**Johanne Gélinas:** I would like to take 15 myself to initiate a dialogue with you so still you have 15.

**Mike Sutherland:** Okay. First of all, I'd like to thank the panel for allowing me this opportunity to present today and I put a lot of thought into this for the last while. There's so much things that I would like to talk about but I know time is limited and we will provide you the report.

Peguis has been only at the consultation table and environmental hearings only for a few years. I got elected council in 2011 and I built the unit, started building the consultation unit in 2012 but we've already had numerous engagements with the province, the feds, and so on.

So my name is Mike Sutherland. My traditional name is (speaks native language) which means Walking Buffalo. I am of the wolf clan and my warrior name is Brown Cougar Warrior.

Now my profession, I work as the consultation advisor for Peguis First Nation and I have been in this capacity since May of 2015. Prior to that, I was on council from — for Peguis First Nation. I was elected in March 2011 and I did — I spent four years on council and I didn't run in 2015.

But, since I built the consultation unit, the leadership brought me back to be an advisor and to be — to take a lead in this specific area for Peguis First Nation.

My background, I've had numerous jobs. I've worked for the RCMP for a number of years but my profession is the land. I grew up on the land. I've been trapping for 42 years and hunter, fisherman, farmer and now I teach our youth all the land-based skills and so I spend a lot of time outdoors. I've seen the changes in the environment over the years and I understand when people talk about climate change and we see our own version of climate change in the area where we live.

Peguis First Nation is 10,000 strong. We have numerous reserve areas in southern Manitoba and in the Interlake region here as well, we have about six or seven plots of land. Our biggest is in Peguis, which is — I forget the size of it but it's the largest First Nation right now in Manitoba in size-wise and population-wise.

Our traditional territory is huge. I've done a tremendous amount of research and — going back two, 300 years to Peguis and, before him, our migration route is to Red Lake, Minnesota; Garden River, Ontario; and up back around the Winnipeg river system to the Red River Basin and as far north as Hudson's Bay where we would travel up there to trade on the big boats back in the early days, couple of hundred years ago.

We have two trusts. We have a TLE trust, Treaty Land Entitlement, which we've been successful in fighting for 165,000 acres of land and 110,000 is to be private and 55, Crown. We also have an illegal surrender in place for when we were moved out of the Red River Valley or up into the North Interlake region of Manitoba in 1906.

We're part of Treaty 1 territory and, again, as I said, our traditional territory is vast and it's huge and Red Lake, Minnesota, as well as Garden River, Ontario, families have, up their family trees, connected them to Manitoba, to Peguis First Nation here in Manitoba.

Our participation in many regulatory processes has been numerous since 2012, peat mining, forestry, aggregate, Manitoba Hydro has a number of different projects, energy — I mean, Enbridge, the National Energy Board hearing last year, so we're not new to the table here any more. Even though we've been only at this for four or five years, I think we've gained a lot of ground in regards to, you know, providing insight and making statements and I think educating the different panels in regards to the use of the land and how important it is to us.

I have drafted a number of questions in points. I probably won't get them — get to all of them today but we will be providing a written report or submission before your deadline in December so that you fully understand, you know, Peguis and how big it is and how active we are.

You know, and I got all the information that I sent out earlier, I reviewed some of it, you know, and the terms of reference and so on and it's one of the first questions I have is the terms of reference, you know? It was handed to us. It was provided to us. And, to me, it's like we're being led down that path again as we always have been for the last several hundred years.

You know, I can't see why First Nations can't be a part of the development of that terms of reference and, if this is a joint effort, then maybe that should be something that could be looked at in developing the terms of reference, you know?

And I think that, in itself, at the very beginning or onset of this whole process will show that this whole process is meaningful. And out of all of our collaboration and participation in some of the other environmental hearings and consultations and stuff, that's one word that always seems to be left out, meaningful. And it bothers me every time we go before a panel.

People like what we have to say. The Indian Clean Environment Commission of Manitoba actually gave us a standing ovation at the (indiscernible) hearings a couple of years ago, something that that chair had never seen before in his life, you know?

But, with that being said, it doesn't mean things are going to go our way, you know? And I think change has to start from the beginning and, you know, and environmental assessment is a part of that but, even prior to that, if you're developing the terms of reference for that assessment and the process that's going to take place, I think it should be done in collaboration with the First Nations communities because, again, I feel like we're being led down that path by having everything already developed. The process is already developed before we get into it and you're going to hear what we have to say after these things are done.

For me, if it was a properly done process, then maybe there should have been some consultation done prior to the terms of reference being developed and asked with many varieties of First Nation, whether it be leadership, land users, elders, and so on, what they would like to see in that terms of reference and how it be developed.

Principles of engagement. As (indiscernible) I think for example the Environment Act here in Manitoba, it's being revamped right now. And, two years ago, a consultant friend of mine let me know that there was a consultation going on in a hotel here in the city of Winnipeg one morning at 10:00 a.m.

And I attended that meeting and I was the only First Nation or I was the only aboriginal person in that room. And, in Manitoba here, the Environment Act is the foundation for all licensing, for all projects that go on here in the province for all approvals.

And the Environment Act affects every First Nation and aboriginal community here in Manitoba because the projects go on within our traditional territories. But yet the province of Manitoba felt that we were not needed in the revamping of the Environment Act and that blows me away because it affects every one of us, every aboriginal person in Manitoba is affected by the Environment Act. If that's the foundation, if that's the governing body where licensing is issued through, then why weren't we involved?

And, you know, again, you look at engagement and, again, First Nations being left out of this whole process and it's frustrating and these are the complaints I've made over and over again at the National Energy Board hearing for Enbridge. There was a staff member from NR Can there. I spent about 15 minutes explaining to her, before we did the presentation, of some of the wrongs that I see happening and people not following protocol and not us. I'm talking about government officials, civil servants and so on and so forth.

So these things, you know, when we develop principles of engagement, it's not, again, one-sided. It has to be inclusive of everybody that's going to be affected.

How do we ensure that the (indiscernible) review is complete and decisions made about the project that is going to enhance First Nation participation during construction or life of the project? You know, I don't know how many times I asked this question but, when the Environmental Assessment is done for any projects, whether it be provincial or federal, in that assessment, there's always a traditional knowledge component, right?

But who does it? We don't. We're never engaged in this process. So if the peat mining companies east of us are going to be harvesting peat, they're applying for a licence to do so and, through that licensing process, an Environmental Assessment is done and, within that assessment, there's a traditional knowledge component so that the people issuing the licence can understand the activities of the First Nation and that. But, if we don't fill out that part of that EA assessment, then is it accurate? Every First Nation has some information, has a bio on the Internet and, more often than not, that's where the information is being gathered.

But who is hunting on that land? Who is trapping on that land? Who's picking medicines on that land from the local First Nation? Who is harvesting wood? You know, is there burial sites there?

So many issues, so many questions that could arise and have to be explained through this assessment is not even looked upon because this information is not there.

You know, we had a huge number of artefacts unearthed in a project site east of our reserve, along the shores of Lake Winnipeg. When we brought them to the Minister of Conservation, nothing was done. The artefacts were taken by a manager of the proponent, one of the companies, and they were burnt. A couple of the guys that found them from our community, they stuck a couple of the drum sticks in their jackets and they brought them back to the community and they didn't show us for a year and a half to two years because they were afraid to lose their jobs.

And, after they were let go, then they brought those things to and they showed us and they told us what happened. And we tried to take it to every level we could here in Manitoba but nothing was done because they said they're not that old. But if that's a burial ground, if that's a sacred site where you're putting your spiritual artefacts back to the earth, to us, that's very sacred.

And I said to the minister at the time, "If I desecrate a graveyard, I'd be in jail the next day with no recourse." Yet your proponents can go and do this to us and you're not even going to look at it? You're not even going to ask any questions?

And, under the environmental review process, if it was done properly, well, maybe this information could have been gathered and provided to the proponents and to the licensing branch but it wasn't.

So how many times has this happened, you know? Our First Nations, my First Nations brothers that were working for one of these peat mining companies, they were asked to shoot bears and beavers out of season so that our Treaty and aboriginal rights were being abused, you know?

And in reviewing those licenses after they're issued and seeing what's happening, nobody, none of these proponents follow them. There's not enough environmental police out there to ensure that the guidelines that are issued to them for the licensing through the environmental review process and so on, they're not being followed. Nobody's doing anything about the laws that they're breaking out there, provincial or federal laws, let alone the laws of our own people. Nothing is being done.

There's just not enough environmental police or not enough people in those positions to follow up and to ensure that those guidelines are being followed. The ones that they're given, they have to follow through their projects as they were issued the licences.

The licenses, the environmental processes here within the province that I've seen, and I've only seen with Enbridge, but they're weak. They're easy to break. They're easy to not follow or fulfil by proponents. And, by doing so, a lot of damage is done to the land.

You know, and we talk time and time again about proponents, about different environmental bodies, provincial or federal, about trying to leave as little footprint on the land as possible but it never seems to happen that way, you know? And that's too bad because, you know, we believe in progress, too. But we also, as stewards of the land, have to protect that environment.

I think mechanisms have to be developed to ensure information obtained about local First Nations communities, activities, and project areas will be used in a manner not disrespecting our First Nation community. We have worked with other entities. We've done research. We've provided documentation and information but, once they have it, they have to — they have to respect what's been given to them, provided to them. The information we've provided is not to be abused or used in a manner disrespecting, you know, the information we've provided out of that community. They can't use it in a manner to help, you know, increase the odds of them getting that licence, you know?

We're working in conjunction with a proponent, we want to make sure that that means not just to give you the information and it's done with, you know? There's follow-up and follow through even after, you know? And providing them

information, we expect them to use it in a manner that's respectful to the community and the people that provided them to that manner, you know?

And notification is often late, either federal, provincial, on project capacity, timelines, resource to participate, you know? Responses, learn about project, et cetera, is not even nonexistent or only available when the EA review and licensing process is happening, you know?

Talking to the different government departments, especially with licensing branch and so on, notification often comes out to our communities of a project but the environmental assessment is always done already. It's always after the fact.

And one of the things that I've found in the last five/six years in dealing with, you know, projects, licensing and so on is that the Section 35 consultation is always last. I mean, I know we're not here to talk about the Section 35 consultation but, in the traditional knowledge component, if the First Nations are engaged in that environmental assessment, that maybe there's no need for a Section 35.

But if we're not going to be involved in that assessment, then maybe Section 35 should come first. And, according to the Supreme Court of Canada, some of the cases that we've reviewed, they are. It is supposed to be. Supposed to be done at the onset of the idea or so on and so forth and we all know this but it never happens. It never happens.

And it's always last. The environmental assessment is done and the next thing you know, we're having — we're being notified of the Clean Environment Commission hearings and we have to prepare for that.

So where does the Section 35 fit in? If this was done properly and the Section 35 was done on the onset, then information would be gathered about the community, information that would — may require the environmental assessment to go deeper and the understanding of the community and activities of a project area. And with Section 35 information, the environmental assessment, the traditional knowledge component information, then the panel at the National Energy Board or Clean Environment Commission hearings will have more documentation to utilize in regards to the decisions they have to make, in regards to the licensing and whether it's going to be approved or not or conditions put on it, maybe for monitoring.

Maybe monitoring is an issue for the First Nation and so the proponent's going to have to work with that First Nation in regards to developing a monitoring process prior to, during and after a project is done. This will tell you if First Nations are involved and engagement is done properly.

Expert witnesses. I don't know how many times we apply for funding to bring in expert witnesses to support our traditional knowledge arguments and information being provided, whether it be the Clean Environment Commission hearing, National Energy Board, or the Section 35 Crown body that we're dealing with on a consultation. Yet expert witnesses are used to refute the information that we provide, our traditional knowledge information.

Why can't expert witnesses be allowed to be used by First Nations communities to support their traditional knowledge arguments in presentations that they provide? Every time we put in a submission for funding, as soon as there's expert witness, a hydrologist, engineers, climatologists, "Oh, you guys can't use them. You can't use those guys."

You know? Why? Isn't that of benefit for everybody if we support the documentation we've provided with expert witnesses? I've been on the land for 42 years. Lots of people come to me and ask me all kinds of questions, government people come and talk and sit with me. They ask me where I'm educated, on the land. But yet the information I provide them is used sparingly. Yet, if my neighbour, if my buddy that I grew up with, he's got a — now, he's got an honour's degree in Environmental Science and he's got all the acronyms behind his name, well, I guarantee you all his information is going to be used to the fullest extent.

So I ask this, does 42 years on the trap line mean anything when it comes to acquiring the knowledge of the land, the environment and so on? I think so. I'm only 54 and I've spent that much time in the bush already, fishing, hunting, trapping, farming. I think I've gained a little insight in regards to how the land is used and how it's changing.

**Johanne Gélinas:** I don't know how much time you still need because —

**Mike Sutherland:** You know what? I was just — I'm just looking for —

**Johanne Gélinas:** It's just that I'm sure my colleagues would like to —

**Mike Sutherland:** Yeah.

**Johanne Gélinas:** -- ask you questions.

**Mike Sutherland:** I guess one of the other things that I want to finish off, I guess, is a couple of myths that always happen, even before the assessment is done on anything is when the decisions are made about a project and who to notify, proximity is always an issue. Many First Nations communities get left out of notification about projects and project areas.

Wow, I mean, we've been left out numerous times. We've had to fight tooth and nail, sometimes use a battering ram to get through the door to

make our presentation, even pay our own way because we've been left out of the notification area.

And it's a myth. Our people were migratory. Well, you heard our migration route, how huge it is. And, again, it's happening today. Every project, some First Nation is being left out. Energy East, I've seen the list, dozens of First Nations are left out here in Manitoba. Dozens.

So there's got to be an understanding that we're not sedentary people. We are migratory people. We move all around. We went south for maple syrup. We came back east for wild rice. We lived on the banks of the Red to hunt throughout the winter and winter trade there, you know?

And the other myth is private land. If a First Nation, if I get permission to hunt on a farmer's land and I have been doing for 10 years or 15 years, isn't that — aren't I still exercising my treaty and aboriginal rights? We used to go down to Turtle Mountains to harvest moose, deer and elk, to bring back and feed the settlers of the Red River. There's still a couple of families today that go down to Turtle Mountain to hunt moose every fall and they have permission and there are three or four generations of them that have been doing that, following that old tradition. Still today.

You know, if you take a look at Treaty 1 and Treaty 1 states in there that we didn't give you the land, we didn't give up the land. We only ceded the depth of a plough, six inches.

So everything under that, our elders say that's still our land. That's still our land so the pipelines that are being put into the ground are within our traditional territories and that's what we firmly believe.

And because of that, again, we're always left out. And understanding your treaties, in Treaty 1, there's a clause in there called a non-extinguishment clause. So Peguis First Nation did not give up its right to hunt in any other treaty area in Canada. We still have that ability to do that and that's why we travel north.

We have 10,000 people living all over Manitoba as well as western Ontario — western Canada and they exercise their treaty and aboriginal rights still today because of that non-extinguishment clause.

But I'll leave it at that and I'll provide the rest of the information in a report before your deadline in December. Miigwech.

**Johanne Gélinas:** Miigwech. Just one quick comment about your comment on the terms of reference. That was before our time so we were not involved in the drafting of the terms of reference.

I would like to ask you the question about — you have mentioned that you have structure, your internal group, to do the consultation and get involved in EAs, as an example. Do you have a consultation protocol that you share with proponents?

**Mike Sutherland:** M'hmm. Yes.

**Johanne Gélinas:** Is this something that you can share with us, also?

**Mike Sutherland:** I don't have it here, yes, but I can make arrangements to have it forwarded to you. In 2009, Peguis was developed — we developed our own consultation policy and, in 2010, I believe, at a consultation forum out in Broken Head First Nation, we provided the province with a copy of that and they've had it ever since.

**Johanne Gélinas:** Okay. What did they do with your consultation protocol at the federal level, provincial level and when you talked to proponents with what you were expecting them to do in terms of consultation? What is the receptivity of that?

**Mike Sutherland:** Very few times they'll ever look at ours or even follow it. And, you know, that was another thing that was in here, too, that protocol, I guess, I think, from province to province and within government itself, department, everybody has its own understanding of how consultation is triggered. It's not consistent across the country at all. It's not even consistent within the government of Manitoba.

So that's another issue that, you know, we'll forward in there but, again, you see it day to day. So we have our policy and the different departments use it differently. Some of them will utilize it and look at it but the province has also developed its own consultation policy and that's the one they usually follow here.

**Johanne Gélinas:** I had another question, sorry, on traditional knowledge and traditional ecological knowledge. Yesterday, Manitoba Hydro was here and they talked about two different approaches that they have tried or implemented. One was to let you, an indigenous community, do your own traditional knowledge study and the other one was more done through their own process with some kind of integration.

Do you have any examples of where this kind of integration or standalone traditional knowledge study were done and were successful to your point of view?

**Mike Sutherland:** Well, we are working with Manitoba Hydro and, after a couple of years of roundtable discussions, they were able to provide us with some funding to do one traditional knowledge study for a project area here in southeastern Manitoba.

And I think, out of all the engagements that we've had so far with the different proponents, whether it be provincial or federal, this seems to be the

one rolling out the way we think it should be so we do — so we've done the study. Now the EA assessment has been drafted and some of that information has been used there and now they're getting ready for Section 35 consultation and the National Energy Board hearings.

That's the way we think it should be done and I hope that this model can be used as an example for other projects in other regions of Canada out there because, if you don't get all the information with your environmental assessment, your study is going to bring that to the table, right? It's going to bring that to the table.

Now, you have now three different formats of gathering information, your study, your traditional knowledge assessment within your environmental assessment, and your Section 35, which should provide the environmental panel with more than enough information to make an adequate decision.

Just to let you know, the study that was done in the southeastern part of Manitoba even blew me away. I used to hunt there when I was younger with my uncles but I didn't know the activities that were happening there were still huge, whether it be hunting, trapping, fishing, ceremonial activities, picking berries, medicines. It just blew — and, as a leader of the community and a member of Peguis, I didn't even believe how much activity was happening over there.

So you see how important these things are and the information that will be provided when it comes to the time to make the decision?

**Johanne Gélinas:** Thank you very much.

**Renée Pelletier:** Miigwech, Mr. Sutherland, for your presentation. I just want to pick up on that, your point about this particular study. You said that it's completed. Has it been used yet by Manitoba Hydro? Where is it in the process? Because one of — the kind of question I'm getting as it one of the things that we've been trying to get more information on is how these TK studies are actually getting integrated.

**Mike Sutherland:** Yeah. And they are using it, you know? But that's what — that's what we got to be careful about when we're going to use information like this. It's got to be done in respect of the First Nation that provided that information. So I think, before anything is going to be utilized, discussion or dialogue has to happen in regards to how it's going to be used because, if it's not used in a sense where it also benefits that First Nation, then it shouldn't be utilized.

We've done a lot of research, you know, and people — especially when it comes to the ceremonial, like, fasting sites, things like that, they're very personal so we got to be very careful how we use that information, you know, and other people have — may have significant sites out there, too, where they go and they do their own ceremonies, you know? It's not just in their backyard or specific places.

So information like that, when they're utilized, has to be done and the information that is gathered has to be used in respect of the First Nation that provides that information. I hope that answers your question but it's — yeah.

**Renée Pelletier:** Yeah. No, no, I think it does. Sorry, two other quick questions. Your point about follow-up, conditions to approval and you made some comments about how oftentimes proponents are just not doing the things they're supposed to do and no one's enforcing that.

If you don't have an answer to this now, maybe it's something you can reflect on when you're preparing your written submission but if you have thoughts on what needs to change in order for there to be proper sort of follow-up in enforcement and whether First Nation communities may have a role in that.

**Mike Sutherland:** Well, certainly, I mean, if we're the users of the land and we're still out on the project, you're already utilizing the land, you know? I don't think that opportunity for people to go — the environmental assessment part of the licensing branch or whatever go out and monitor it all the time. But if there are issues out there and their ministers or assistant deputy ministers are true to their word and they care about the environment, then, when we have issues, then dialogue has to start and enforcement has to start and it has to start with the province.

I mean, we've been pushing to have these peat mining operations stopped for four or five years now and what is it going to take? I mean, you know, it's an area, if you look on the map, over the Washow Bay peninsula, which is a huge portion of Lake Winnipeg and 49, 50 percent of that whole peninsula is water.

So one of the things you have to do with peat mining is take all the water out of there in order to harvest the peat but that also acts as a kidney to the lake so, if you destroy that peninsula, and they have — I've seen the documents of 77 years of operation and 80 percent of that whole peninsula is going to be harvested, so you've just destroyed the one kidney that Lake Winnipeg has, you know?

But, along with that goes along with the responsibility of the federal government, you know? You have so many things going on here in Manitoba that — where the participation of the federal government is weak to non-existent, the part of Churchill, Lake Winnipeg regulations, the channel that was built in the Interlake region here to stop the flooding of Lake Manitoba and there's two more to be built, flooding, climate change, these are all federal responsibilities.

Lake Winnipeg, Lake Manitoba falls under DFO's responsibility yet, when projects are happening, the federal government is not there, you know? So if you are not a part of this whole process then how could, you know, how could pressure be put on the provincial government? Who puts on the pressure of the provincial government for not following its own guidelines? Right?

So they are the ones issuing the licenses that are going to destroy that lake but that lake is the responsibility of the federal government. So is there no collaboration going on? Is there no, like, come on, you guys, you know, you shouldn't be doing that? It's not there. It's non-existent, you know? Environmental reviews from the federal government for a lot of these projects are not even happening. They should be because it's your responsibility.

Port of Churchill was sold for a dollar. There's dozens, well, you know, the whole community is out of work but half of them are First Nation people up there, aboriginal people, you know? And the sale of that, because it's an international port, shouldn't have been an environmental assessment done on that sale of that port? But nothing happened, you know?

Lake Winnipeg regulations, again, the same thing. This whole process went through and then there's been no report and no assessment done by the federal government and so on.

So I think, you know, there's a lot of things lacking here and if the environmental assessment is a part of this whole process, then, you know, you can see that there's a lot more work that has to be done.

**Renée Pelletier:** Thank you. Just a final question about — I think you raised an important point about funding and First Nation participation and the idea that you said that you receive funding sometimes but your participation is limited to things that would be considered "traditional" and I'm wondering if you could say a little bit about how frequently that happens? Are you often in processes where you are granted funding but you are told that you can only talk about TK, for example?

**Mike Sutherland:** Yes, all the time.

**Renée Pelletier:** All the time?

**Mike Sutherland:** A good example, Lake Winnipeg regulation, okay? Our community is flooded by provincial drainage systems south of our reserve, right? But the level of the lake has been moderately high for the last, say, let's go back to 2006 or seven, even before that. It exceeds their regulated heights of 711 to 715 and, when that water moves from the north to the south basin, the first thing it does is fill up Fisher Bay and it creates a wall of water on the Fisher River that runs through our reserve.

So, when all this water comes down, because we live in a basin, it floods us. 2010, July 1st, the water was flowing backwards up on the ditches on the east and west side of the reserve because it had nowhere to go.

And that proved right there that the level of that lake compounds the flooding of that community but, in order to prove that, there's not enough monitoring stations around Lake Winnipeg for us to get accurate information,

right? So we wanted to use a hydrologist and a climatologist to refute — I mean, not refute but support the information — the traditional knowledge and firsthand information that we were going to provide but the funding to use and to hire those specialists, those expert witnesses, was not granted. They only wanted to hear the traditional knowledge component.

Same as the peat mining, same as everything else. We brought in, we paid for our own biologist to walk that land with our own traditional medicine person and they found mountain ash there. Mountain ash is not found anywhere in southern Manitoba but it's there and it's a highly used medicine. But if we didn't have that biologist and the medicine person go and do that walk, they spent the weekend up there, we wouldn't have gathered that information but yet that biologist, they would not let us use him in our presentation for the hearings.

So it happens all the time, you know?

**Renée Pelletier:** Miigwech.

**Doug Horswill:** You mentioned, talking about Section 35, that it should come first not last but then you also said if we were conducting these things properly, we wouldn't need Section 35. Could you amplify on your —

**Mike Sutherland:** If you were what?

**Doug Horswill:** If we were conducting environmental assessment, I think you — I put the word properly, I think you meant with full First Nation engagement, you wouldn't need Section 35, at least that's what I heard you say. So I just wanted you to elaborate on what you really meant there.

**Mike Sutherland:** Well, sometimes the project could be small enough that it doesn't need that, like the peat mining, you know? We did a Section 35 but, if proper engagement is done and, you know, if you take a look at the assessment that they do, it all depends on the project, I guess. But if it's a huge project or, you know, it's going to be needed, right?

But a lot of the times, the environmental assessment is already done without our knowledge anyway, you know? But if you put it into perspective, like, you've got to gather information before the hearings are happening, before the decisions are going to be made.

So if there's going to be no Section 35, then you should have — the environmental assessment should have a good traditional knowledge component to it.

**Doug Horswill:** Let me ask the question slightly differently. If there was a mechanism in place for First Nation involvement early, you talked about the terms of

reference for our panel and the chair has mentioned — addressed that but say, with respect to what we'll call terms of reference for a project review, if First Nations involvement was early, is that going to go a distance toward the issues normally covered in a Section 35 consultation?

**Mike Sutherland:** It all depends if the government or the civil servants adhere to the terms of reference. I mean, what's being said in the region dealing with the civil servants, whether it be Manitoba conservation officers or the guys out on the lake, DFO officers or whatever like that, knowing what's happening doesn't necessarily mean that the minister knows what's happening, decision-maker, or whatever the minister or the premier of the province, statements that they make or — you have policies in place to follow, right?

But it seems, as it gets further down the line, nobody wants to follow them. Like I said, everybody has a difference of opinion when to trigger a consultation, you know? And I think one of the reasons being why I said that, you know, if there was a good component there that gathers all the information, well maybe you don't need Section 35.

But either/or, something has to happen, research has to be done prior to the Clean Environment Commission hearings and sometimes some projects won't even have that, won't even have a hearing, won't even have a National Energy Board hearing or Clean Environment Commission hearing.

So, if they don't have that hearing, the how are you going to base your licensing decisions on? So you have to have a Section 35, you know?

The environmental assessment, to me, is not adequate. If they don't have a proper component to gather all the necessary information about the First Nation and the use of the land, then you for sure, that Section 35 has to take place.

But even before Section 35 in these hearings, we get back to my issue of proximity, you know? We weren't on the list of Lake Winnipeg regs. We had to fight tooth and nail to get in there. We weren't on the list of bi-poll(ph) 3, we had to pay our own lawyer to get us in that hearing. We were on the list in (indiscernible) after we did those presentations, you know, and Lake Winnipeg regs, we got in there as well and we got funded but we weren't on the initial list because the province here, they have a mechanism, the consultation unit for the province, they have a list of, let's say, 18 or 19 questions that determines whether or not which First Nations should be entitled to consultation or not.

We've been trying for just about three years now to get that document, which they refuse to give up. Why? It doesn't, you know? But there's so many issues out there. The MMTP final report is being held back for CEC and NEB hearings. Why? You know? The Manitoba Minnesota Line project, you know? The

Line 3 study is still going on. I mean, why so long? Like, why is it — why are things dragged out?

Yet, when the project is started, boom, boom, boom. And then, after it gets started, it's too late for us because it has been issued.

We went through Section 35 consultation twice after the fact but they only did it just to make sure that it was done and our information was there and we did it to make a point, that it should have been done on the onset.

**Renée Pelletier:** Rod has some questions.

**Rod Northey:** Yes, I think you actually — your last bits have helped me but I just want to come back. You gave the example of the Environment Act getting reformed and that you had not — no First Nation had attended so I — and that was an interesting story and I just want to understand what then happened.

So you did arrive. Did this change things at all that you were there?

**Mike Sutherland:** Okay. So being the person I am, I like to speak last. And I did. I got the last spot in the room that day and everybody in the room were consultants, government consultants, KGS, AE Com, others like that, other different departments, the mines branch, Parks, you know, the different departments through any government organization.

But no First Nations communities. I didn't even see the MMF representative there if there was one. And so I spoke last and the first thing I asked was for the process to be halted until the First Nations communities were consulted and I explained to them why in regards to the environmental assessments and, you know, things that are done like that and how important the Environment Act as a First Nations people because it's the foundation, right? And how the licenses are issued.

What it did is it got me an audience with the Law Reform Commission and they gave me time to prepare a submission. And so, because of who's our Band lawyer, we prepared a seven-page document and, in that document, the first statement we made was cease and desist, hold off until consultation happens. And we explained why. But we went on to talk about many other things.

But, since then, I guess, there's — modifications have taken place and there's a draft out there. I have yet to see the draft and — to see if any of our recommendations were utilized there. But, again, no — there's been no consultation with any other First Nations communities or any other engagement at all whatsoever. And that's where we sit at today.

**Rod Northey:** All right. So just — and the other thing I just wanted to follow up is your examples of the denial, there being participant funding available and then — but not available for you to bolster your evidence with technical, was that applicable to both federal participant funding in Manitoba? Were most of your examples Manitoba? Just — we — there are two programs. I want to make sure that we understand what your statements are in both.

**Mike Sutherland:** Yes, I think we — I don't know if there's or two expert witnesses we wanted for the National Energy Board hearing for Enbridge but, again, it seems that all — the guidelines stated that we want to — if you're going to hear from First Nations communities, then we want to hear about traditional knowledge. Well, fine, you're going to get that but I found that expert witnesses are used to refute that, you know, whether it be, like I said, climatologists or engineers or whatever, you know?

So if that's the case, then why can't we use those guys to support our evidence, too? But, every time we include — and we even have sometimes a difficult time getting our consultant in there for the work that they do for us for the research and so on and so forth and that shouldn't be. Isn't it in everyone's best interests if we present you with the best argument possible so that you can look at all the avenues and also the, you know, you look at traditional knowledge but also the science behind it, you know, whether it be an argument from a hydrologist or biologist or whatsoever to support that information? Isn't that what these panels want to hear? What's there and how we support it and how it's going to be affected, you know?

I think so anyway if I was sitting on a panel, I would want to hear everything and any support information that would go along with it but, every time we apply, that's the first thing cut.

**Rod Northey:** All right. Thank you very much for clarifying.

**Johanne Gélinas:** Mr. Sutherland, thank you very much for your presentation. Very helpful for us.

**Mike Sutherland:** Okay. Miigwech. And, again, I thank the panel for giving me this opportunity to come and present today and I will, like I said, prepare a submission for your December deadline.

**Johanne Gélinas:** And if you can send us the consultation protocol before your submission, it will be appreciated.

**Mike Sutherland:** I will do that. Thank you.

**Johanne Gélinas:** Thank you.

**Mike Sutherland:** Who do I send it to?

**Johanne Gélinas:** You will talk to our colleague over there.

**Mike Sutherland:** Okay.

**Johanne Gélinas:** Thank you.

**Mike Sutherland:** Yeah, thanks.

**Johanne Gélinas:** Somebody will take care of that. Don't worry. I would like to invite Joanne. This one is easy for me to pronounce, Joanne Petiquan Moore.

Good afternoon.

## **JOANNE PETIQUAN-MOORE, WABAUSKANG FIRST NATION**

**Joanne Petiquan-Moore:** (speaks native language) I'm known as Star Woman in my community. I am not a chief right now but I guarantee you I'm a leader and a warrior and it's been a 25-year fight for me and my First Nation as a — first on council and then as chief and council, mother, grandmother.

So when you talk about where our territory is, if we take a look at our history, our Band members have been scooped all over the world but you could use it that way but we don't think that way.

It's been just a — really happy to be here today because it's been a long fight because our minimum standards that the government keeps telling us, minimum standards are not the same of our standards.

If you take a look in our — the camps, tourist camps, we're — (indiscernible) is a little community of, like, we have 100 people on First Nation. Most of them are children. And we're up — if you guys know where Vermillion Bay, Winnipeg, is, we have to drive to Vermillion Bay then you go up about an hour from there then we have 30 houses in our community, a Band office, health centre. We're on the cusp of all the mining activities in our area. We're on a cusp of three forestry things.

So we have a new relationship fund in our community. It's run by a biologist and his name is Ryan. And I would go back probably when we first started with these new relationship funds, are you familiar with that?

Well, it's a fund that we came out that we were to meet with our proponents to give us a chance. Prior to that, we had nothing but now we have — people are forced to meet with us so we have — our first closure plan is about how — we had — I didn't know what it was. They say, "Well, are you going to answer us on the closure plan?" And I said — so went looking for it. It's in a box like this, on our First Nation desk and none of us knew what a closure plan was at that particular time.

So that's how we started off. We started off trying to do our EA assessments. We developed the protocols for every — all proponents that comes into our territory and through our lawyer and that, we — and we — every time someone comes to us, and there's a lot, like, right now, we had a meeting yesterday and we talked about probably another 10 proponents that are coming into our community.

So we gave the protocols and then we try to work on getting IBAs and, first of all, we're trying to do traditional land studies. One of the issues is that our minimum standards from the government are not our minimum standards.

If you take a look in our area, if you — a few years ago, when you go driving down our territory, we see — in the winter, you'll see so many moose tracks all over the place. Now you go down, you're lucky if you see one moose track anywhere.

Then we have — I know this, it sounds funny, but bees. We need bees to — for our environment. They're spraying. They're always spraying. They spray the bees and they — you know, because they're spraying other pesticides and they say, well, it's not harmful. We go out and look at the sign and it says pesticide, right? So we're losing those kinds of things, like, they're even cutting down our trees, removing sand, that infects our territory in every way.

We find that a lot of the businesses can come in there, take our resources, leave us with nothing and walk — and then go back home, right? So that's — they don't have the same respect for our lands and I understand we're not going to go look at the past but, you know, we have to look at the past to go into the future. The tourist camps in our areas, this year, we sent every one of them a protocol because they have raw sewage going in the waters in our areas and they've been fined on it but, you know, so — they've also taken away our — the right to access our areas, like, they put — now they got gates up there so — and that was never there for us.

Even the roads, like, the Minister of Transportation, I asked him, what is your First Nation mandate? What do you have? What's your policy? We don't have to have it because we're the king's highways and I said, okay.

And a lot of them — what was going on right now, we're trying to set up our own Ministry of Natural Resources, our First Nations Natural Resources. That's why we have a biologist leading the area. We have people that are learning resource management and mapping for our areas. We want to — we're having a process, hard time trying to find out how we would do resource — enforcement when we get that kind of — when we get our — we're looking at doing our own licenses right now.

I was sitting in a meeting. I came into a meeting room after grassy narrows one time and they said — it was about a clearcut issue and the people

that were sitting there says, "Well, I don't know what their problem is, they can still hunt." And it's in a clearcut area. So I don't know how we got from this — there's absolutely no regard for our territory, for our animals, for our life, for our environment at all.

So that's why we've been hiring, we have two lawyers to help us with all this proponents coming at us all over the place. And one of the issues that I really wanted to talk about was, like, animals. Like the moose. We have asked for moratoriums on the mining and on the moose hunting because I'm sure, like, we have a community of 100 people and not much of them are very good hunters (laughter) so they couldn't have killed all the moose in our territory.

It's not nice by me but this is true, right? These are the kinds of things that I really — I am really hard of — I really study a lot but before — I turned it over to our lawyer there. He has all there — our — our water quality in our First Nations, do you think that just First Nations need water or is it — because I keep asking the governments, federal and provincial, can we get a task force happening here to take a look at our quality of our water? And I even, you know, patronize them, can you just imagine if you guys said, "We're going to do water." But that didn't work, right?

But, you know, it just keeps getting, like, polluted, you know? People are — their garbage, the — those camps are just putting garbage in our waters, all in our whole area of Wabauskang's first territory, it comes from — I'd say from (indiscernible) down to Eagle Lake. That's a long territory and as far as Manitoba down to (indiscernible) and Thunder Bay. If you really take a look at where our roots are, eh?

So I would be asking if you're going to be having a panel on water, that we could be part of that panel as well and I would appreciate that and, with that, we're going to be still fighting for our licence, for our livelihood, for our — for the — to get these protocols going with the tourist camps and every proponent that comes in here.

So how we do that, I'll just let Bruce tell you. Introduce yourself.

**Bruce McIvor:** Yeah, I will. (laughter)

**Johanne Gélinas:** You're allowed your time.

**Bruce McIvor:** Right. Thanks. So thanks, Joanne. I'm Bruce McIvor, M-C, capital I-V-O-R and I'm legal counsel for Wabauskang. You've also heard from several other of my clients today from Treaty 3 and Treaty 4.

So Joanne thought it might be helpful if I touched on a few of the points that have come up. And if there are — I've tried to record some of your

questions but if you thought it would be helpful to have a bit of a dialogue on some of those, we're willing to do that as best as possible.

So, as Joanne was saying, on behalf of Wabauskang and you heard from Pheasant Rump, from the dolls(ph), from Shoal Lake 40 and I'm sure you've heard this a lot and you will more across the country. To really revise the environment assessment process in a meaningful way, my clients' position is we need to get back to some first principles on these.

The process itself is deficient for numerous reasons but, unless we have common ground on first principles, our position is we won't end up with necessarily a better process. We might have a different one but that different might not mean better.

So you've heard from Treaty 3 and Treaty 4 today and more First Nations. We need to come back to the fact that there are two underlying facts of reality in history and the law for them. And, as you've heard, they exercise their own jurisdiction and they continue to exercise their jurisdiction outside of their reserves, of course.

And that's really important part of having a proper environmental assessment. Where does the decision-making authority lie? So there have been questions. Is it parallel? Is it a joint decision-making? The first, the beginning point is to recognize that it's there and what you hear across Manitoba, Saskatchewan, Ontario, most often from the provincial governments is that the treaties, the way they interpret them, are the sum total of the rights that are owed to indigenous peoples and they do not include jurisdiction.

They see them, to be frank, as surrender treaties in exchange for a small bundle of harvesting rights and some small reserve lands. Treaty 3 is a very good example of that. Treaty 3 rejects it. The trial judge in the Grassy Narrows case was very strong on the fact that that's not what Treaty 3 was about. Treaty 3 was about sharing the lands going forward, not just reserves, about sharing the lands and that means sharing decision-making over the lands and sharing the benefits from the lands.

So to have effective environmental assessments, sharing of the decision-making and sharing of benefits are two of the most fundamental principles. Whether that's shared decision-making, parallel decision-making, that is to be worked out with specific Nations. What frustrates my clients over and over again is when we meet with government officials, we raise this. The first response we get is, "Well, that sounds great but you know what? We can't fetter the minister's decision-making authority."

And there needs to be a real change of mindset around that because the response that my clients give is, "Well, you know what? We're not really tied up in knots about the minister's decision-making authority. Don't fetter our decision-making authority. Don't ignore it."

And so that needs to be a fundamental shift.

Second, and this leads into it, you'll hear a lot about consent and the response you get a lot from government and industry is veto. And it's important for the federal government to get its mind around the difference between veto and consent. Veto is not what clients are talking about. They're talking about a very different engagement process and it's based on government coming out and actively seeking their consent. It's not putting a proposal forward and saying, "What do you think about it? Tell us about what the effects would be on your harvesting rights, on your traditional practices and then we'll go off and make a decision."

This is about going out and saying, in a very preliminary way, "There's a suggestion to do X, you know? If that was going to go forward in some fashion, what would we need to do to get your consent?" That's a very different way of engaging with indigenous people. It'll be different depending, of course, on who you're dealing with.

And then the third point I wanted to make on that, and I thought Chief McArthur did a really good job of this, this morning on behalf of Pheasant Rump, he was referring to the need for nation building. If we're going to implement UNDRIP, F PICK, you know, the fact is, we're dealing with 150 years or more of colonization and I know this is outside of the remit of the panel but I think one of the takeaways for the federal government is to have effective environment assessments, they have to begin at a serious level to engage in that process of nation rebuilding with indigenous peoples so they can give effect to F PICK. So they can give effect to UNDRIP.

Because now we're divided up into these little Bands and you'll hear and you've heard from Treaty 3, you know, Treaty 3 has its resource law and they want to engage there. There needs to be support to engage on a nation to nation basis in that way. You heard from Chief McArthur. They're one of four Nakota Bands within Treaty 4, you know? If there's a willingness on indigenous peoples parts to reorganize themselves in a traditional way, to give effect to their own self-government, the federal government needs to support that, needs to encourage it. It's kind of a foundational aspect of these types of reviews.

So there's a lot more we've got but I know the panel's been hearing a lot and I could tell today there are some questions and if you wanted to engage on more of those, we're certainly willing to do that.

**Renée Pelletier:** Thank you very much. Rod?

**Rod Northey:** Yeah. I'm just trying to — so I'm just trying to get to this point of the four year ago event and how you've tried to build up your capacity. So has it all been funding coming from proponents or projects to get you to where you are from four years ago to today? Have you had any success from government supporting you in a different way?

**Joanne Petiquan-Moore:** Actually, the provincial government of Ontario was the first ones that brought out the new relationship fund to give out to First Nations and it — we got around \$90,000 a year. We still get that for — and we use it to get the proponents to us and we have made an agreement with — a couple agreements, one with Union Gas and one with Gold Corp.

So we've been successful in many ways except for we're just having a problem with the environmental assessments right now because the minimum standards. However Gold Corp did accept the higher standards that we put through. What we need more is, like, a level playing field where we're all on the same page for this environment standards.

**Rod Northey:** Yeah, sure.

**Johanne Gélinas:** You have mentioned that and, sorry, I'm maybe the only one that's understanding what it means but what is the difference between the minimum standard you're talking about and a higher standard?

**Joanne Petiquan-Moore:** Well, in government of Ontario, I believe — I don't know — I'm pretty sure the federals, too, is they will have their minimum standards that the mining companies or the forestry companies have to meet. They'll bring these things out and they're not compatible with what we know we need for our environment to sustain itself.

So that's where we're having problems. And we've had a point where we were at a crossroads between one of the governments there and we thought we had the Ministry of Natural Resources on our side. It was with one of the proponents and we said, no, that was — MNR, he said, "Well, you know," and I was so upset when he actually — he signed it off. I said, "Why did you sign it?" He said, "Well, they called me at home and I didn't like the pressure so I signed it."

But that was, like, three or four years ago and, yeah, that kind of thing we had to go through and we're still going through that right now. So that's why it's so important to us that we get the standards that are — that are going to be sustainable. That's what I meant by when I said there's the moose. Have you ever heard of moose hotels? Well, that's what they're expecting to — in our area, to put moose hotels, deer hotels and that's where — well, nobody tells the moose to stay in

these hotels so they could still live, right? And now we have deer in our communities, right?

So, obviously, there's some kind of standards that we missed that the biologists or somebody could tell us what — sorry, but that's the way I see it.

**Bruce McIvor:** That's good. Yeah. So just a bit more on two points there, as Joanne says. The standards of a lot of indigenous peoples are different from what the government will show up with. Wabauskang, unfortunately, is one of the communities that continues to suffer from mercury poisoning and so their experiences with poisoning, with poisons in the water and with the environment and just traditionally for themselves, they won't accept certain acceptable levels of pollutants and that's what government often does. It says, "Well, that's within the minimum standards so that's it."

The second point was, they have had some successes in recent years but, to be frank, it's consultation in the breach. They've largely had those successes because they've shown themselves willing to fight it out and so they've been to court a lot. And some of the examples Joanne has mentioned, that's because they've gone to court and they fought it out in court and then there, finally, the — most often the proponent will say, "Well, you know what, I think we have to step up and fill the gap," where the provincial is not, or the federal government is just not there.

And so that's, unfortunately, I think, something you'll hear across the country. It's indigenous people that have the fortitude and have the resources and will step up and fight that proponents, government, to a certain extent, will then provide more capacity for and that creates an unfair playing field.

**Joanne Petiquan-Moore:** To clarify the mercury in the water situation, that was in — we got — Wabauskang got displaced down to (indiscernible) at one point and many of our Band members got mercury poisoning there so now they're very conscious of all the poisoning that we're getting in our tourist camps area right now. Back at Wabauskang, it's a little difference there so I just wanted to clarify that.

**Rod Northey:** The First Nation territory is on both sides then, Manitoba and Ontario? Or is it all Ontario? Your traditional territory that you're interested in.

**Joanne Petiquan-Moore:** Most of that — Ontario.

**Rod Northey:** Okay. And so the issue then on — and all that — when you're talking about MNR, you're talking about the Ontario MNR, okay. So dealing with just the environmental assessment, Ontario's got a very puzzling process, at the best of times.

Are you saying, in terms of that, are you finding that you're getting any kind of consistent notice? Because there are different ministries that seem

to do different things. There's Ministry of Environment, Ministry of Natural Resources, which you were referencing, Ministry of Northern Development and Mines. Every project has different things going on.

Are you able to get, when you say — back to this minimum standard, is there one that you are aware of?

**Joanne Petiquan-Moore:** They all hide behind each other. They all hide behind each other, like, oh, the MNR, that's not our issue, that's MNDR issue, that's MNMF, they like to — and then, at the end of the day, they push the proponents out to come and meet with us, right, instead of taking the proponent, you know, grabbing their pants and saying, oh, okay, come on, come on, Wabauskang and proponent, let's deal with this.

Instead, they're just hiding behind each other and then they put the company up there. The company wants to do something because they got no choice. That's their business, right? In the meantime, they're doing the government's work for them.

**Rod Northey:** All right. So just one question. One of the things we're thinking about is the idea of notice being some kind of an electronic notice early and required. It's not something that I'm aware Ontario requires and it's not something — the feds have some system of it now.

What's your thought about putting that kind of a broad requirement out there before you even get to a detailed project or something? Would a notice be of assistance? And the reason I'm asking you this is we often here, "Oh, we have hundreds of notices piling up in our offices. We don't have the capacity to deal with them." But if you don't have any notice, you don't even know what you're missing. So I'm trying to — I'm interested to hear, you're a small First Nation, is notice what you would like or have you got a better way to start the process?

**Joanne Petiquan-Moore:** I believe that the natural — our biologist does get the notices now after the new relationships started but there are a lot of things that go on — we don't get them. But, yes, it would be nice to get notice. At the same time, step forward and do the protocols with us so we can get the funding to be on a level playing field because we could — we'll work together no problem.

**Rod Northey:** Okay. My final question. Do you get any assistance in funding? You've got I think what you just described as a special sort of fund that's come to you and it sounds like it's an annual fund which is important. Do you get any other kind of funding right now related to a specific sector, for any of these early engagements or does the only other funding you're talking about come from proponents in your negotiations?

**Joanne Petiquan-Moore:** We've been quite successful in some areas. We do manage to take proposals into the Minister of Natural Resources and Mining and they will fund some of our stuff but that's been a long fight to get that, right?

And most of it just comes from the new relationship fund. Proponents do, after they realize that they have to get it, but we're fighting with our protocols right now with the government as well. They haven't okayed them yet, I believe, right? And the proponents, if the governments are not going to back us up, hard for the proponents to do that.

**Rod Northey:** Thank you.

**Renée Pelletier:** So I'm wondering if you could say a bit more about your Ministry of Natural Resources that you're starting, your internal ministry?

**Joanne Petiquan-Moore:** So, within the last three years, we did a where are we stuck and what we don't have? Well, we have nothing so we started something arm's length from the chief and council and so we got Ryan, he's a resource consultant, he's a biologist, and we worked together with the community and we brainstormed what we need to set up our ministry of natural resources because so many times our people are being abused about their hunting and their fishing, you know? They get abused.

So we decided we're going to set that up so we started off doing mapping in our territory and so Ryan has — they have mapping, they have water quality and they're doing forestry and we're starting mining and we're hoping to do our own licenses right now, like, poor guy. Somebody wanted something, he gave me a VCR. I said, no, I said, you do a licence. Okay. (laughs)

So, yeah, we're at that point and we are expecting to have enforcement, if we're going to give a licence, like, especially for those camps that are doing raw sewage going in the water.

So that's where we take —

**Renée Pelletier:** So just to clarify, this would be licenses that you would issue not just for on reserve but for off reserve as well, for your entire traditional territory?

**Joanne Petiquan-Moore:** Yes.

**Renée Pelletier:** That's great. Thank you.

**Doug Horswill:** I would like to have you elaborate a bit on your — what I've got down as your third point, the nation rebuilding, that the government should support in the traditional structures and I guess what I need you to do is educate me as to — or educate the panel as to what you see as those traditional structures and how that

particular element relates back to environmental assessment and the conduct of same by the government of Canada.

**Bruce McIvor:** Sure. Thanks for that. So the first point is that it differs across the country. Where you are, what specific reality there is for indigenous people but the fact is that a lot of indigenous people have been divided up into separate Indian Act Bands and so they will often work together as tribal council or grand councils to exercise traditional decision-making authority.

It's at different stages across the country but that rebuilding of traditional self-government mechanisms I think is fundamental to get to these issues of exercising jurisdiction because who are you — who is exercising the jurisdiction? Is it the specific Band, Indian Act Band, or is it a larger nation?

We know, from the Supreme Court that rights or communal rights, title, aboriginal title is held in the nation. It's not necessarily held in individual Bands so that recreating of traditional authority decision-making structures is going to be key long term for any kind of acknowledgement of jurisdiction, of shared decision-making or parallel decision-making.

There is an example in BC. Once the panel gets out there, I'm sure you'll hear more of it. There was an agreement this fall with the provincial government and First Nations to work toward setting up a type of commission supported by the provincial government led by indigenous people to work towards nation rebuilding on their own.

**Doug Horswill:** Is there anywhere else in the country that you could point to examples where that is going on today?

**Bruce McIvor:** So it's going on in Treaty 3 is an example that you heard. I don't know about the level of support from the provincial and federal governments but the Treaty 3 First Nations themselves have been very active and very effective through the Grand Council, as you heard from Daryl Redsky today, from Shoal Lake 40. The resource law. So they exercise their jurisdiction through it.

They have respect for the individual nations, the First Nations, and they respect them and what they do but they act together. And so there's no one size fits all but the fact is, for this to work in a reasonable fashion, government needs to support it because that'll make for more effective environmental assessments.

**Doug Horswill:** One last question in the area. In terms of your particular case, setting up your ministry, creating a licensing program, that is being done within the Band as opposed to within one of these more broader tribal structures, is that correct?

**Bruce McIvor:** Yeah, that's correct but it's an exercise of that larger jurisdictional aspects. So it fits within the great resource law that Treaty 3 has, right.

**Doug Horswill:** Okay.

**Joanne Petiquan-Moore:** The reason it started in the first place is because we can't fit in MNR's little boxes that they want us to so we need laws that are going to protect the environment outside of them.

**Johanne Gélinas:** We are thinking of building, I will say, more an illustration of what it means for indigenous communities to deal with all the requests coming from all over to do EAs or to respond or to come and do EAs. Is it something that you could put for us on a one page or your own example? How many per year you get, what is the timeline that they are given to you and, on the other end, who are the resources that can help you to do that? And how much money, overall, you will have to respond to all that so that we can demonstrate some of the struggles that you are dealing with.

So very — something very simple. It can stand on a one-pager. You may include other communities but if you want to use only your case, that might be very helpful.

**Bruce McIvor:** That's — we can certainly do that but that follows up on a point that was asked by the panel before of do you have your own consultation process. And I work across the country and I've seen so many First Nations put a lot of effort and time and good will into developing those and Wabauskang is a good example and they don't receive any respect or credence from proponents or government. And so there needs to be some kind of serious enforcement that you will sit down and do these things because otherwise it just breeds distrust of the entire system.

And that's what you'll see across the country. It's unfortunate but there's a growing level of cynicism. I see so many wonderful engaged serious indigenous people get involved in the so-called duty to consult. They do that a lot through environment assessments. They do it for five or six years and they throw up their hands in frustration and they want to go back to the barricades.

And that's a systemic thing that we need to work to resolve.

**Johanne Gélinas:** And this is exactly the case that we would like to build with good examples. So this is why also we are asking to see some consultation protocols so that we get a better understanding of what you are asking for, now knowing which kind of responses you're having.

**Bruce McIvor:** Sure.

**Johanne Gélinas:** Rod?

**Rod Northey:** Yeah. Just one — I think our time's running short so I'll just — how does your consultation protocol relate to an EA process? One way of looking at it is it's merely a first step or it's totally distinct from environmental assessment. It's related to a duty to consult and that level of consultation but, in our — for our work, we're interested if your assertion of jurisdiction is also part of an assertion of environmental assessment capacity and interest. Meaning you don't just want to be consulted, you want to do an EA of the things you're being consulted on. Is it fair to say those are tied? Can you answer that?

**Bruce McIvor:** Yeah, that's largely what the Wabauskang review is like. At the end of the day, they want to exercise their own decision-making authority.

**Rod Northey:** Okay.

**Bruce McIvor:** And so they need information to do it and it feeds into how they will decide themselves. Each First Nation will do it differently but they do need that information, the support. A lot of it comes from the environmental assessment but, at the end of the day, they're making their own decision about whether the project should proceed or not and then on what terms, you know?

The reality is, most First Nations, at least that I'm aware of, the meaningful accommodation often comes between themselves and the company because these — I don't know how much you've heard so far but these so-called impact benefit agreements that are done, most are — or a lot of people think they're just about financial considerations.

The fact is, and Wabauskang is a perfect example, the bulk of those agreements is about the environment. It's about protecting the environment, what the procedures will be, the environmental monitoring, including them in long-term, short-term planning, doing all those things that they can't get with the government. But they get it upstream of the government with the proponent itself.

So that's the reality of where we are now. You asked a lot about accommodation. Not totally but a lot of the accommodation comes out of those agreements directly with proponents but you can only get them, one, if you have a sophisticated proponent that sees that it's a useful thing to do and, two, to actually take the individual First Nations seriously.

**Joanne Petiquan-Moore:** Can I just say one — I express concern about is when a company is coming back to you and say they have an old mine, Madison mine or something, they're trying to tell me, and of course — that it doesn't matter because it's already been in use before. And I said, "It's still affecting the environment." Maybe in our laws or something, we got to write down that, yes, this might be an old mine but it's still affecting the goodness of our change in our environment. So I just want to make sure that's there.

**Johanne Gélinas:** Thank you very much for your presentation and your patience. You have been with us all day long so thank you very much for that, too.

I would like to invite the (indiscernible) chiefs organization and the presenter, I think, is Michael Church.

As we get ready, would you mind to introduce your colleagues who are accompanying you?

## **MICHAEL JERCH, CHARLIE NELSON, MYRLE BALLARD**

**Charlie Nelson:** I'm Charlie Nelson from Roseau River.

**Johanne Gélinas:** Welcome.

**Michael Jerch:** Good afternoon. I'm Michael Jerch of Jerch Law, a practicing aboriginal for the last 20 years so I'm focused more on aboriginal law and representing indigenous nations and some experience with environmental law and assessment as well. And my colleague, Jessica Barlow, is at the table behind us so just to mention.

**Dr. Myrle Ballard:** Good afternoon, my name is Dr. Myrle Ballard and I'm from Lake St. Martin First Nation and I'm representing the southern chiefs organization and to talk about Lake St. Martin First Nation.

**Johanne Gélinas:** Thank you.

**Charlie Nelson:** Again, today, I have an opportunity to address our concerns regarding this environmental assessment review process.

I'm very concerned about our people who don't have — in our treaty, we understood that we gave the rights to the colonial people that came to our area right in a treaty. We said you have that much land that you can grow your crops and so you can — so that's — when the old man came from the mountains and looked at the farmers, he says to himself, he says, "You are practicing your treaty right."

We didn't sign off any of our natural resources. There's no provision or anything said that we signed off our natural resources.

So, when the government of Canada decided that they were going to have the Natural Resources Transfer Act somewhere in 1934 or something like that, it took away anything that we had in terms of our rights to the area, you know? We are co-owners of this area.

So if we were — we ought to be — have some kind of authority over the lands that we live in and people have destroyed our livelihood and

you can say the buffalo was pretty much killed off and so there was some things that we have to deal with.

I know that this was mentioned earlier, too, that the most, you know, those of us who are hunters, we are hunters, that's a lifestyle that we spoke for in the treaty is that we would have hunting rights.

And, in one of my dreams, the dream was about the moose being angry at Anishinaabe and I was thinking maybe because of the way we hunt, maybe we, as hunters, we need to expand or teach ourselves this natural way of doing things, you know, to honour the moose with a certain style of hunting. But it even goes further. The moose might be angry if we don't say anything on behalf of the lands where they raise their young.

The moose, it eats different kinds of plants and, if we don't look after those areas where he eats certain plants to make himself well and then we're doing a disservice to the environment.

There are a lot of structures have been put in place, forestry and they have maybe waterways and fisheries. You know, structures have been put in place to hinder what was naturally given to us to use. If we were hunting in a good way, you know, we should always have access, access, access. You know, I spoke to one of our uncles. I said, you know, "I wonder if we should put somebody in charge of this Petroforms so that we could have somebody that's learned, more learning can take place, a keeper of the site concept." And I said oh, then he says, "So long as I don't have to ask him permission to use the things that were given by the Creator for us to use." So that means access. We need access to things that we — if people put structures in our way, then that's going to —

We've had an opportunity to deal with a lot of institutions like health, like child and family. We've had structures before, you know, we've had customary care before and so those structures, after some discussion, how then we write it down. So we're creating this understanding about, you know, how do we deal with child and family matters or health matters or justice matters, you know? We ought to have that kind of authority.

When it's — when Canada comes here, he says he makes a law and the RCMP or the law enforcement gets paid by the Canadian government and they say, "Well, that's the law. I'm going to enforce the law."

So we ought to be careful, too, about, you know, about the law and the natural law. I know we can't abuse our privilege to live on this land, you know? We can just over kill the animals or the birds and we have certain structures, like, to protect our wild rice, you know? We ought to have — we ought to be concerned about those things, forestry, you know? They affect a lot of our environment.

I welcome the opportunity to have this take place in that, you know, in the old days, the government here would just go ahead and do it without even any environmental assessment, just get it done. They put a lock port here, a dam here, and then, on the Roseau River, they had another dam up there and so the sturgeon, that was our area. That was our livelihood. That spawning area was once so plentiful that when you — if you tried to cross the river, you wouldn't even touch the ground there were so many sturgeon there. That's the words of my dad.

And when the environment, you know, the ducks and geese would — the skies would darken, that's how much wildlife, the birds, that's how much we used to have.

I know things are different today but I'd like to — it would be hard for me to belong to — if I went to, say, a committee where they were having an environmental assessment panel or review and we're just there maybe advisory. I've been in advisory where the RD said, "No, we can't do it that way. We're going to do it this way." So then is the environmental assessment, is it advisory or has it got any teeth? Can it have any power to actually, you know, do we have power as a people?

You know, province said we have a power but, you know, when it comes to us, you know, duty to consult, they consult us and then they go ahead and do what they're going to do in the first place so why should we — so why should we participate?

We ought to have some power in dealing with things that affect our lives, the people. I'm glad some people stood up and said, "I don't want that farmer to plant his field there right next to — across the road from me because he puts all these chemicals and that chemical comes over in my yard." And she said, "No, I'm not going to have it."

So I'm glad our people are standing up to something and protecting some of the lands that we have.

That's what I would like to share. That's about what I would like to think about sharing at this time. Thank you.

**Johanne Gélinas:** Miigwech.

**Dr. Myrle Ballard:** Good afternoon. I'm going to be next. Like I said, I'm Dr. Merle Ballard and I'm an Anishinaabe from Lake St. Martin First Nation. And first of all, I want to acknowledge on the Treaty 1 territory that we're hosting the meeting and the hearings here this afternoon.

And I've got a doctoral degree in natural resources and environmental management from the University of Manitoba. For the last 20 years, what I've been doing is I'm conducting research on the impacts of flooding downstream

of the Fairford Dam, okay? So that's what I'm going to be talking about this afternoon plus I have a three-minute video I want to show as well.

So the reason I'm here is, like I said, I'm from Lake St. Martin First Nation and my community has been flooded over and over again since 1960. And I've seen the devastation of the flooding, the impacts of the flooding on my community, the loss of livelihoods where the elders spoke of a people with cattle.

We had lots of cattle growing up. One of the farmers had many hundreds and hundreds and hundreds head of cattle where the people said that you looked in the field and it looked like black islands all over. That's the amount of cattle they had.

And there's been two water control structures that were put in place, one in 1961 and the other in 1970. The first water control structure was the Fairford Dam and these were over-constructed by the province. The second one, 1970, was the Portage Diversion. And these water control structures were put in place to save the non-First Nation, the non-aboriginal population living on the other side of the water control structures and to save the city of Winnipeg from flooding.

Why I'm here is I want to demonstrate, show the impact of these water control structures, the impact of these water projects on the First Nation communities downstream of the Fairford Dam, my community especially, Lake St. Martin, where I'm from.

The recent flooding in 2011 has caused a lot of damage. I have personally witnessed the people dying because of the impact of the flood. The Lake St. Martin First Nation community, it has approximately 2,500 members and it's a signatory to Treaty 2. And, if you look on the map here, Lake St. Martin is in between Lake Manitoba and Lake Winnipeg. It's that little lake right in between those two lakes. It's just a little lake but the destruction and the damage that the waters from on this little lake has caused on the peoples is great.

The flood of 2011 caused a lot of damage. When the people were first warned of the floodwaters that were coming, they were given a 24 hour to 48 hour notice to evacuate. Most of the people left with just an overnight bag and they were told they would be gone just a couple of days, a week, a couple of weeks.

Five years later, the community is still displaced. We don't have lands any more. The community is gone. The community doesn't exist any more. The community of Lake St. Martin does not exist any more because we don't have a land base.

And the other communities that are situated downstream from the Fairford Dam are Lake St. Martin First Nation, which is my community, Little Saskatchewan First Nation, Dauphin River First Nation, the Pinaymootang First Nation.

And these are the four First Nation communities that are situated which is typical of water control structures. It's usually the indigenous peoples downstream of these water control structures. And this is the same for the Fairford Dam.

So, in May 2011, like I said, the people were told to leave their homes. As of today, November, 2016, Lake St. Martin First Nation still does not have a land base. They have never been consulted. They weren't asked to leave the community. The province bypassed the duty to consult, the federal government did not consult with them and the province uses the Emergency Measures Act in order to forcefully evacuate and displace the community.

People are still displaced and they haven't returned home because they don't have homes to return to. They don't have land to return to. In July 2011, the province built a channel that cost \$100 million. They found money to build this channel. It was completed by October 2011 and it was in operation after that date.

Another channel is in the works right now and this channel will be another channel that will be used to divert the water levels upstream to save the non-indigenous communities, to save the non-indigenous people from flooding.

Both these channels run through — run into the First Nations traditional territories. You've probably heard a lot of talk from previous people talking about that traditional territories. I'm not going to go into detail what they do, like, the traditional livelihoods of the people but are the same here.

And neither of these two governments consulted with the Lake St. Martin First Nation or the other three downstream First Nation communities because they told them that it was an emergency. We have to build this right away.

But I'm going to get to that when I get to the end of my presentation here. The environmental impacts of development from these projects, these water control projects have had a severe impact on the First Nations people's health. This is why I'm here, because I want the environmental assessment review to consider how the impacts on the First Nations people's health. This is not being done yet but it's so important.

Environmental impacts from development have a negative impact on indigenous people's health and I've done research. I've published research in various journals to document this as well. Plus I've had funding from the tri council, the CIHR, the Canadian Institute for Health Research, the social science — I don't remember the acronym but I'll give you the full name after.

Plus I do professional videos that are funded from the tri council and my work is out there. And this is all I've done for the past 20 years, documenting the impacts of flooding.

Since 2011, Lake St. Martin has had a sad — over 100 people that have passed away because of the flooding from depression, failed health, worsening health. Our people are finding the next week they get sick and then they die. It's really bad.

And they've had suicides. People are depressed, they're dealing with mental health issues on a daily basis. There's a lot of disease, new disease of people that were well before. They're getting sick.

Like I said, I have documented a lot of the issues with the First Nations. They talk about how we have lost a lot of love once already and that's not healthy at all. This is from an elder from 2015. And then another person said, "I keep — I see a therapist. I talk to people," and we have family gatherings for us not to fall into depression, not to get sick.

And the impacts are there. The cultural impacts, the spiritual impacts, and the economic impacts, physical impacts, food security, traditional activities, ties to land and destruction of livelihoods.

So I'm going to show a video now and then I'm going to go back to what I want the panel to consider. This is a trailer from Little Saskatchewan First Nations that is my recent project and these are the results.

(video plays)

"In 2011, the entire community of Little Saskatchewan First Nation was given 24 hours' notice to evacuate due to a manmade flood. The provincial government of Manitoba, did they ever warn us of this flood coming this far? They did not warn us. They knew very well that the downstream, they were going to damage and flood our lands.

The First Nations people on Lake St. Martin are without..."

**Michael Jerch:** Sorry, I'm not sure what's happened.

(video starts again)

"In 2011, the entire community of Little Saskatchewan First..."

(video starts again)

"In 2011, the entire community of Little Saskatchewan First Nation was given 24 hours' notice to evacuate due to a manmade flood. The provincial government of Manitoba, did they ever warn us of this flood coming this far? They did not

warn us. They knew very well that the downstream, they were going to damage and flood our lands.

The First Nations people on Lake St. Martin are without question the ones that have suffered the most by the high flooding. Some of those reasons are really around structural racism. The floodings were socially constructed, right? It's not a haphazard occurrence that those waters would go to that particular area.

My husband and I packed our stuff. We thought we were just going to be gone for just a few days. Community members have been displaced for over five years since 2011.

Community members are confronted with food that is high in sugar, high in carbohydrates and high in fat and they have no other resources. So their diabetes, again, is complicated.

Our houses are mouldy and some of them we shouldn't even be in the homes. We had a lot of bleeding mould and headaches and there were some blood clots coming out of my mouth.

People are dying, too. It's because they're homesick. They are really suicidal because they're tired of city life.

(song plays) They say they wounded my soul. They say this land is their home."

(video ends)

**Dr. Myrle Ballard:** Okay. So that's the latest video that I did that was with the next community, Little Saskatchewan First Nation, which is next to Lake St. Martin First Nation and they're only a couple of miles, just a couple miles apart and they are on the same lake, on the north side of the lake itself.

So, okay, for your consideration, a temporary exemption from the federal requirements was issued to build a channel to move the water into Lake Winnipeg. No environmental assessment was ever done. The channel was used again in 2014. Again, there was no environmental assessment done, no consultations with the First Nations that are living downstream of the Fairford Dam have been taken with these communities. No study done to determine the impact on humans, the health impact assessment on First Nations people living downstream of the Fairford Dam.

When traditional land studies, that they documented facts, impacts, land use practices have been done. No study on the fishery before and since 2011 has been conducted. Traditional knowledge has been ignored at every stage of emergency decision-making by the government.

The only studies that are out there are the engineering studies, which were computed by are no longer available to the public. Currently, another channel is being planned right now and, again, there has been no consultations with the First Nations. And there has been a lot of money that is on the table for the second channel.

For the first channel, the province, feds, they spent \$100 million, which was completed within a few months. The channel, they started construction on the channel in July of 2011 and it was in operation by October 2011, \$100 million. That's a lot of money.

And to date, the First Nations people, Lake St. Martin First Nation, where I'm from, has not been compensated. We don't have a land base.

The federal government is responsible for the lives of the First Nations people. The First Nations people are still dealing with the 2011 flooding and they're dealing with it on a daily basis in terms of their health.

There have been no health impact assessments done on First Nations people. This is very critical. The water control structures have created extensive damage to the livelihoods of my people. The flood of 2011 has created stress to the people. There have been over 100 people that have died since 2011 in Lake St. Martin alone and other neighbouring communities. We had a death yesterday as well in Dauphin River.

Where in the federal consultations, when it comes to projects like this, the province of Manitoba used the Emergency Measures Act to build that water channel to divert the water away from the city of Winnipeg and they sacrificed the First Nation people and they sacrificed people's lives.

The water control structure was built to save the non-indigenous population and communities upstream. The first water control structure, the Fairford Dam, was build and in operation, like I said, by 1961 and, for the record, there was no consultation with downstream inhabitants, which are the First Nations and the four communities that I'm talking about when the first one was built.

The second water control structure, the Portage Diversion, was constructed in 1970. And, again, they did not consult with the First Nations people. And this water control structure was built to save the city of Winnipeg.

Okay. So the province is saying that they didn't have time because this was an emergency and they used the Emergency Measures Act. They had 55 years, plus years, to consult with the First Nations people because the first time the first one was built was 1961. So, 1961, you know, to the present. That's 55 years.

But they used the Emergency Measures Act to flood out the First Nations communities and to build that emergency channel.

Where is the environmental assessment? Where is the joint panel? Where — and, lastly, where are the independent studies?

Miigwech.

**Johanne Gélinas:** Miigwech. Do you want to go, also, with the presentation that was given to us to finish your presentation?

**Michael Jerch:** Yes, we have one more presentation to do. I'm sure you've also heard from a lot of lawyers as you've been going across the country but one more, maybe. There may be a few more, maybe. I think Mr. Okuma(ph) is coming after me. I saw the agenda.

**Johanne Gélinas:** As you are getting prepared, Dr. Ballard, I don't know if you were with us this — for the morning session but we had Ms Diana Traverse, who came and illustrated other words the presentation that you have made to us.

**Michael Jerch:** Thank you. Good morning. I might take a moment, since I'm doing my presentation, I've switched my glasses on and off. Unfortunately, I can't read with my glasses on any more. It's a real hazard sometimes.

**Johanne Gélinas:** Join the club.

**Michael Jerch:** Yes. So Michael Jerch. Here with my colleague, Jessica Barlow, indigenous lawyer with my firm. And I've been doing aboriginal law for indigenous nations during my career. I'm also — I'm not here in that capacity but also have been chair of the National Aboriginal Law Section of the Canadian Bar Association. So my — where I've learned the most is working with elders in communities and learning Anishinaabe and Inuuk laws and that's where I draw from the most.

But here today, I'm here to speak for and assist, I guess, for Southern Chiefs Organization to make some submissions on the legal aspects that were informed to us and very recent. We put this presentation together very recently for the purposes of giving some broader outline of some of the legal issues that impact on some of the — as the delegates have informed us, in some of the 32 nations that are in southern — what is now southern Manitoba.

Of course, the borders are imposed upon the nations, the original peoples from Dakota, Anishinaabe and Inuuk peoples.

Just as a brief introduction, the SCO, as I'll call the Southern Chiefs Organization, understands that their purpose here today is to provide the EA review panel with an understanding of the circumstances of how indigenous nations, how the current model of environmental assessment is not appropriate at all for dealing with any proponent-based applications or government project approval. So that's the starting point.

As I said, we've had a short timeline to try and consult some delegates from some of the indigenous nations that are the rights holders, indigenous nations that hold the rights and so we're just trying to add some perspective to that that we'll then add in our written presentation that we'll submit by December 23rd.

We want the panel to know that the SCO does understand that it's here to review the current Environmental Assessment Act, CEAA, and that we hopefully will be making submissions as well on the navigation — I was almost going to use the former name — the Navigation Protection Act, Fisheries Act and the National Energy Board Act.

Today, though, I think what we want the panel to know is that it's paramount that the indigenous nations of SCO have inherent and treaty rights that — I should actually go to the first slide. I want to talk about jurisdiction.

And I think that's the starting point, that inherent and treaty rights must be recognized and respected in any processes that have the potential to adversely affect any of these rights. Environmental regulation in Canada right now recognizes basically that there are only two governing powers in relation to the environment. As the elder said, there are Anishinaabe Dakota laws that govern the nations and those are not being respected. It's basically you're looking to provincial and federal governments for their environmental processes and not to the indigenous nations, who are being left out of that, basically. Ignored is the word I would basically choose to use.

And what I'm basically trying to say is that the SCO First Nations believe that, in being left out, that there's no basis in Canadian law for them to be left out. Their law is a part of the customary laws of Canada.

It's not to say we don't understand Section 91 and 92 and where that comes from and the basis of all that. It's just, today here, in terms of discussing environmental assessment and whether we're discussing, you know, how CEAA should be tweaked or do we like 92 or 2012 or all that kind of thing, we're basically saying, no, let's assign something that's — whether we — whatever words we

want to use from the mandate letters, nation to nation, whatnot, but laws that respect the laws that the elder was raising earlier.

As I understand it, and I've worked much more with Cree or Inuuk elders than with Anishinaabek elders but I understand, as a non-indigenous practitioner, I understand some of the basics, what I've been informed of, that it relates to what we would use — as a non-indigenous person, maybe I would use the word karma, for example, of — in a sense that the damage that's done when indigenous laws can't be complied with, within the indigenous nations.

So I think the example that the elder used, I've seen that reflected in my work in other communities with what I've been informed of from other elders, that there is a damage from — to the members of the nation from not being able to comply with their own laws.

So you either comply with, say, the federal or provincial environmental assessment laws, and we're here to talk about CEAA, but, in the end, maybe you're not being able to comply with your own laws and I don't know how else to put that but that's the point, really.

So I am going to say on — I have — I think these are nine points that I want to cover before I make some recommendations. So I'll try and go through it as quickly as I can so I'm not taking up too much time on any of the topics and I'm not sure how much time the panel is allowing for the rest of our presentation. I know you want to ask some questions as well and probably, hopefully, more of the elder and Dr. Ballard.

So I'm trying to make the point that the current process fails to recognize and accommodate Section 35 aboriginal and treaty rights. It fails to account for the traditional laws of the nations and the inherent connectedness to lands and resources and the sharing of the land that was contemplated in the treaties.

So, again, a broader understanding of what's involved with, how environment and who should be talking about environment and who should be talking about protecting the environment, that all the lands in southern Manitoba, that there is Section 35 rights in all those lands?

So we can have a broader discussion of that and certainly a lot of folks out there that even have talked about this and know more about it than I do. But I know it's an issue in southern Manitoba because of the patchwork of everything that's — as the elder has mentioned, the patchwork of everything that's landed upon their territories, private farming land, highways, everything else. It's — what's left? But there are Section 35 rights that extend throughout that whole territory.

So I guess there's a conspicuous lack of recognition of inherent jurisdiction of indigenous nations and their laws if you're talking about the

regulation of resources and stewardship. And, again, in southern Manitoba, so if it's a federal project, talk to the indigenous nation about their laws and about getting approval through their jurisdiction not just how does it work with the terms of reference from a federal panel, if it even gets to that. But, anyway.

Just to make the point that I'm not saying in any of this that — my comments are intended to convey any type of position that southern chiefs are necessarily pro or against development only that there's a jurisdictional aspect here and that development must be done in accordance with indigenous laws, protecting the lands and resources and food security, really, for future use and benefit of future generations.

The implementation of a model, which can take into account each government's inclusive of indigenous governments perspectives may assist and provide with some better guidance for the future in this country in general in terms of the sustainability of projects and resources.

I'll make some comments about the current state of federal EA. Just to be brief, a 2012 CEAA had some radical changes which had a greater impact than perhaps was being impacted previously, fails to take account of the indigenous perspective in the current process and administration of that. It fails to provide adequate protections for inherent and treaty rights.

Will an improve EA, federal EA process incorporate greater recognition of indigenous perspectives and jurisdiction? Will that federal process allow for equal participation? And I think the elder that came before us talked about the equal playing field. So I think, I mean, it's not there and that's so any changes to CEAA or a replacement of CEAA, I think, an equal playing field has to be the foundation of that.

It's the CEAA agency's discretion that EAs are found to be satisfied by provincial process, for example, as well. Does not — definitely does not incorporate indigenous nations perspectives and jurisdiction. I should pose that as a question but that's —

Next comment I would make is in terms of any deficiencies with the scope of CEAA 2012. I think we have very specific triggers now with the designated projects schedule. Previously, the scope was a lot broader. The designated projects that are legislated under the CEAA regulations, if it's not included on a list, I'm telling you something you already know but, if it's not explicitly mandated, then there's no requirement for a federal EA at all and that's the current situation of how it ends up from the screening process and whether or not the agency determines a review is necessary.

Again, how far it is from what our delegates were telling us as far as the jurisdiction that indigenous nations need to have and the recognition of that jurisdiction that exists right now that is not being recognized.

Co-designing, co-governing, co-designing the environmental assessment process from the beginning, being at the table with the agency, perhaps, is another way I might put that. Why is the agency unilaterally in its discretion deciding — I know the elder mentioned the point that there's been a lot of improvement from what it was 30, 40 years ago, if that's the timeframe we might be thinking about, 1960s and '70s has been mentioned. We're still so far behind from where it needs to be in terms of a, again, why is the agency doing it on its own in terms of screening process?

A point that I can make related to that is that, well, the lack of an EA on non-designated projects, I think we just heard an example of it with respect to Lake St. Martin, what the impact that has. Health and social impacts is part of the CEAA process but we're not seeing that there was a CEAA review with respect to the Lake St. Martin impact of the changes in the water flow so in Lake Manitoba.

I have some more points. I'm just trying to not deal with too much so I can continue to our recommendations. Indigenous facts in science. I would say it needs to be clear that those are going to be incorporated. And I think you heard a presentation from Peguis First Nation earlier this afternoon talking about resource harvesters and his four years on the land and that knowledge that he has.

That needs to be on the same par with other science and I think we are all on that page. I think so but that needs to be there, that oral knowledge and it being weighed on an equal level with biologists and et cetera, et cetera.

Some points about the problems with the screening process and the review process. The screening process is different — I'm not going to talk too technical about CEAA because my experience is more with aboriginal law but, as I read it, CEAA 2012 does not take into account measures that are technically and economically feasible that would mitigate any significant adverse environmental effects of the project or any other matter relevant to the screening outside of what is prescribed by the Act.

So I guess you've got your — I guess that it was old CEAA seemed to provide for more in terms of comprehensive studies, alternatives, more of a — I think you heard about it talked about yesterday in terms of regional assessments. We definitely heard that coming from (indiscernible), why are things being looked at in a microcosm of you look within five kilometres, ten kilometres or whatever of a certain indigenous nation rights holder when you have treaty rights, indigenous rights exercised within a certain treaty area or a larger area even between treaty areas. Anyways, that needs to be there in terms of how CEAA is used.

So I guess that's just making the point that what the delegates were saying was that, from an indigenous perspective, you have to look seven generations forward and you have to — there is the initial screening, the review panel but also the monitoring of any licence that's issued and, as some of the nations were saying, that it doesn't — what you've done with issuing of the licence or after the review panel but then there's no monitoring afterwards and it's a continuing process that, again, is inconsistent — the way it's being done now is inconsistent with how the indigenous nations within (indiscernible) operate as far as how people look at how they're feeling the impacts long after the project's been licensed but yet everybody's — anyway...

Other deficiencies of EA. Cumulative assessment, regional plans, legacy assessment, the effects on future generations. I mentioned regional assessments. Okay. Capacity is something we heard about and I know the panel's been asking questions about that today so I won't go into detail but I've heard that from the panel. We've heard it from people from the nations saying we get all these notices sent out to us, we have 20 days to respond, it's sent out — I heard an example this morning so there's been some successes, it sounds like, in terms of where those notices are going to but a lot of folks in different nations are telling us that it gets sent out to the office and there isn't capacity necessarily in terms of having dedicated funding for a dedicated individual who can deal with these on par, on an equal playing field with any of the proponents or government officials within a provincial or federal department to be able to assess what to do next with these due to under-resourcing of the First Nation or whatnot. There's enough other things for them to be doing and whatnot that there needs to be enough education and training.

Where it's going to come from, I'm just asking the questions but that's a critical aspect of building capacity for training for — if it's GIS, youth studies, developing, you know, a consultation department within each nation. Again, defining nation, I'll leave that to the panel to explore that further but I'm just asking the questions.

Like, this is what we're being told of that is a major stumbling block for being able to receive information and being able to process information. We're being told that there's, you know, being dumped with a ton of information, some of which may be valuable but, you know, having to sort through it and having the resources to be able to analyze that information that's coming in and then being able to internally, within the nation, have consultation processes that they can use to vet that through the rights holders, resource users, those exercising the rights, for it to be meaningful.

So I was kind of dealing with the problems with the notice requirements, in a way, ties in with the lack of capacity.

There's been some concerns about how CEAA 2012, for example, delegates to — decides that a review panel is not necessary and relies upon

whatever is happening within the province in terms of its regulatory process. That's been a concern for a lot of the nations.

One point just to make on terms of the duty to consult being triggered by any government action that relates to the inherent rights and treaties. The point to be made here is that we know it's intertwined with an EA process but ultimately the lack of meaningful consultation, you find that the nation is being consulted maybe perhaps after the EA process, after the TOR is defined, after the process is well under way, perhaps there might — I think — my understanding is that usually there is a lack of involvement in the design of the EA which would be a recommendation to change but that you're basically having EA findings which are coming out which then you're going into the consultation process when you've already determined that there's not enough impact from the project to — for — not enough impact from the project to really trigger any further depth of consultation.

So I won't go into any more about the honour of the Crown and height of nation but that — a lot of the nations are feeling that's not being protected.

Recommendations. Indigenous law must be equally recognized and incorporated when it comes to project consideration, design, approval and monitoring. I just want to emphasize, again, the design aspect so that the EA is not coming again as a proposed process with a TOR and that people are just being invited as panellists or whatnot.

That the federal EA process incorporate greater recognition of indigenous perspectives and jurisdiction and not be satisfied by provincial process.

**Johanne Gélinas:** Excuse me. I don't know if you want to go through all your recommendations. I was not thinking that you were.

**Michael Jerch:** Okay.

**Johanne Gélinas:** Because it's almost an hour and we haven't had a chance to ask questions. We have a copy of your recommendations.

**Michael Jerch:** Thank you. You have them in front of you?

**Johanne Gélinas:** Yeah.

**Michael Jerch:** Thank you.

**Johanne Gélinas:** Thank you very much.

**Renée Pelletier:** Thank you, actually. So thank you, first of all, to all of you for the excellent presentation. I did have a question about some legal matters so your first

line about the — and you can go back to your first recommendation that you just went over.

**Michael Jerch:** Okay. Thank you. I got it.

**Renée Pelletier:** Okay. So the idea of — we've talked, I think, quite a bit today about recognizing indigenous nations' jurisdiction and then the idea of indigenous law and recognizing, of course, that we have a very — we have a limited mandate here to look at federal environmental assessment. I'm wondering if you can say a little bit more about how we can do that within the context of federal environmental assessment because I think a lot of these issues are fundamental issues, you know, the way Canada was created kind of issues that are probably bigger than what we can deal with. But to the extent you have thoughts for us, specifically, that would be really helpful.

**Michael Jerch:** I'm not sure I have some conclusive comments that I can give you, at least right now. Hopefully, I'll get some brilliant thoughts that we'll come up with as a group and after consulting with the chiefs for the December written presentation.

But I would suggest, from my experience with elders that I've worked with, is that the — I would say those laws that are within the nation, you have to look to the environmental assessment laws within the nation. They're in the language of the nation, for example. They're held by the elders. That can be brought forward. I would say that the government of Canada should put those on an equal footing with any CEAA agency review process. I think those need to be forefront and it's not being right now.

I really think that those laws, they're there and they can be brought out and the nations can bring them forward to Canada. So the environmental assessment process — there is an environmental assessment process within indigenous nations. That's basically the point that I'm making and there can be a process for that.

**Dr. Myrle Ballard:** Can I add to that? Okay. When we talk about environmental law as it relates to indigenous peoples, indigenous perspectives, and there has been a recent — recently (indiscernible) as seeing has come about and this was from the — my nation where it's recognized — it's both recognized the western plus the indigenous lands is to bring them into one and this lands will look at both indigenous plus the western.

So I think that's what we need to incorporate within this — within this — within the recommendations that (indiscernible) and when we talk about indigenous law and we talk about natural law and Michael kind of alluded to that, this is embedded into the language — the language because they have these laws within the land which we call it the natural law but within the language itself, we have a name for

them, for example, Michael was speaking of karma. We use the term (indiscernible) when we look at the environment and that word is really powerful because it regulates how we treat the animals, how we treat the environment and the elders that tell us (speaks native language) which means it's going to get back to them like the ones that are damaging the land and that's the essence of the natural law.

**Charlie Nelson:** You know that, in terms of, you know, like, we are treaty people, you know, and, I mean, treaty means we have a nation to nation relationship and we haven't felt this but we have to tell the truth about, you know, we've been a kind people and we've been a generous people, sharing. Now we have to tell the truth about, you know, we live in a third world country, you know?

Most other places, you have paved roads but, in our reserves, we don't have such things, you know? I bet you we could plan some more, better things than what is being left for us so I know that Trudeau there said we're going to deal with First Nations, nation to nation and I'd like to see that happen. I'd like to be given equal authority over the lands. If the province has some authority but we have just as much equal authority, we can govern ourselves according to this new understanding.

**Doug Horswill:** Thank you. I will take your recommendations as my co-panellists go away and study them carefully. They're a little too much to try and get into for all of my questions right now but one curious question for Dr. Ballard. On number five of your slide, the slide that said for your consideration, it said traditional land studies to document effects, impacts, land-use practices have been done.

All the rest of those were — those points were things that hadn't been done and I wondered what had happened to the traditional land studies that are covered or that were referred to there and did that, in any way, affect any attempts for redress for the community of St. Martin First Nation?

**Dr. Myrle Ballard:** Okay, there's a word missing there, have not been done. It should be not. Not. So I apologize. Land-use studies, traditional land-use studies, when I worked for the community, I worked from my community briefly after the flood, I think five months, 2011 to 2012, and, at that time, the province offered the community, I think, \$15,000 to do a land-use study. And this was way after the fact.

And this was after the flood from the first water control structure and the second and the flooding of 2011. What was the other question, I'm sorry?

**Doug Horswill:** The other question related to redress for the people of St. Martin's First Nation in relation to that and any other aspects that may be out there. I mean, you showed the premier as recognizing the issue but it sounded, from what we heard this morning, that not a lot has happened.

**Dr. Myrle Ballard:** Yeah. There has been no redress. The people are still scattered throughout the province, still living in hotels. There has been — the people have not been consulted. The province bought land from the farmers, which is adjacent to the existing flooded community and they never consulted with the people and that's where they want to move the community, into the flooded land adjacent to the existing flooded land and it's only about a foot higher. It's only about a foot higher in elevation.

So there hasn't been any redress and health issues, social issues, everything has been impacted. Environment totally destroyed, a way of life...

(BREAK)

**Johanne Gélinas:** Okay. So I would like to invite our last presenter, Mr. Okimaw. Yes, we are, sir. Now you can start.

## **MOSES OKIMAW**

**Moses Okimaw:** Okay. Well, thank you for having me here and I'm not going to do a technical, legal thing like that so I'm — my community applied to participate in this process and we did get accepted.

So this is one of our first participations and we still have to do committees and all that stuff that we need to do. And then we expect that we will — we expect to submit a written submission with recommendations later to expand on what I will say today.

So it's the end of the day and this is my second submission in two hours so my voice is kind of rough. So if you'll pardon me, excuse my voice. And coughing.

So I used to have one of these that I was given years ago, years ago and it — and I kept it and then I was talking to an elder and then he says — and I pulled it out of my pocket and it was all dry and all that and then it turns out that I had to renew it or something like that. And all these years I kept it in my pocket.  
(laughs)

Yeah. Okay. My name is Moses Okimaw, that's how we pronounce it, Okimaw. It's a Cree name and most people pronounce it the way it's written Okimaw. But it's Okimaw. It's a Cree word meaning boss of some kind, of some stature in the community.

But I — last June, we had elections in our community and I got elected to council so I'm a councillor and then I don't know if you have my bio, short bio. You'll see in there that I was chief of my community for eight years and I'm also a lawyer by profession and for some years.

And then I also went to residential school all my life except one year when I missed the plane. It was purely unintentional.

So I went to residential school. The records show that I was eight years old when I went to school in September, I think in 1955. So, yeah, I didn't know I was eight years old. I don't remember.

So all that time since when I left to go to school, I had lived with my mom and dad and my family at — which is God's Lake and then — it's a lake. I don't know if you've seen the map of Manitoba but where I live is at the mouth of a river. It flows out of God's Lake all the way down to the Hudson Bay. So that's where we're from. It's in northeastern Manitoba near the — it's near the border what they call — or they call it the far north. It's northwest Ontario and we're close to communities like (indiscernible), Sandy Lake and all that area so we're close to them.

As a matter of fact, a family goes — crosses the border to a place called Echoing Lake and then they trap in there. So it's very close to the border. That's where we are. There's a big lake and the river flows out.

And then, traditionally, long ago, I remember we didn't live in one place so we moved about. If you look at the map again, in the north, at the northeast side, the east side of God's Lake, the lake, and we moved about in different places. I remember living in winter at a place called Johnson Bay and then that the families that lived there fished on the lake and they trapped around the area.

And I do remember, again, living in another part — in an island. So what happened was that each family had their own spot and then each family had their own island, it was large families, extended families. So that's how — so we lived about, moving from spot to spot and we wintered in different places. And, in the summer, we moved to different places and lived like that all over our land.

We call that our land. In Cree, it's called (Aboriginal language spoken), askîy is land. (Aboriginal language spoken) is our land which could also mean — we could also say (Aboriginal language spoken) when I'm talking to a group of us, (Aboriginal language spoken). It's our land still.

But it's our land and then I've never known it to be — our land to be other people's land. So — but the land, our concept of land, our view of land is all inclusive. We don't say land and waters. We don't separate and all that so — the reason is that, when you're — the next time you're out on the land, when you're standing, if you look straight ahead, you see the horizon and everything in front of you and all that, even the sky, the horizon and all that. And if you turn around, again, you see what's in front of you, the whole thing, the land and houses, and all that.

So, you make a circle, you see all the land and it includes everything. So that's our concept, from where I come from, anyways, that's our concept of land, everything.

And the thing is that you're standing on that land so it turns out it becomes so that you are part of the land because you're standing on it. You're always on the land. You're walking around on the land, you sleep on the land and all that. So the concept is that you're a part of the land, we're a part of the land. That's our concept of land and land is — it's askîy, like I said. It means the planet, I guess, really because we're part of a planet where we are from. We know that and, when we look up, we're part of a universe.

So it's — we're here and it's over there and all that. So up and even down, so that's our concept of land and we've been on that land ever since, like, we've been here since the oldest person in our community remembers. So that oldest person remembers from long, long, long, long time ago and he remembers what he or she's been told by their father, their grandfather and so on and so forth.

So we've been here forever, I guess. Yeah. So that's the concept.

So that land and we've been travelling on that land, living off that land and, of course, how we lived on that land, how we used that land is — like, fishing, gathering, hunting, everything, every use of the land. And so we lived off the land, we're part of the land. So it becomes crucial, important to us that we keep the land as much as it is, as we found it, as we've been using it. Otherwise, if we destroy it, then we destroy ourselves and I don't know if you've heard of Lloyd Little Bear. He is a professor at Lethbridge and then he, in one of his writings, he says that the man are human, human beings, are the most dependent on the land than any other species animal.

If we destroy the land, then we destroy ourselves. If we kill all the moose, then there's no meat. If we kill all the beavers and then the fish and all that, then what are we left with? Nothing much. So we die.

So that's the explanation of keeping the land as we found it as much as possible. That's not — that's traditionally. That's the traditional economy. That is not to say that we cannot use the land for other uses, other than hunting, fishing, gathering and all that.

I can tell you in my community that the economy has changed. It's no longer hunting, fishing, gathering and all that. We don't — we cannot depend on that. An instance that the fur, the fur economy, the fur trade and all that used to be very — quite beneficial to us but we now know that we cannot do that now.

And, right now, there is no trapping as a livelihood now in our community where we live. It's, like, a hobby, really. Some people go out during the — in October and in the spring but not all the time. And all the traplines are not being used year-round like they used to be. So it's a different economy. There's still an economy, I guess.

Some people work at the Band offices and projects, school teachers and there's not too much other work. So there really isn't an economy to speak of today in our community.

So we have to do something else. And, in our community, we live in the boreal forest, like I said, in — where there's a lot of rock and then where there's rock, there are minerals. And all around us, our community and the other neighbouring communities in the northeast, we're surrounded by exploration companies. When one explores, one tears up the land, of course, and so we're fighting exploration companies.

But I say we're fighting. We're not fighting in the sense that's to stop the exploration companies — exploration, drilling and all that. So we're saying, in the sense, fighting in the sense that we want to be the developers, so to speak. When we speak of development in our area, we speak of our own development, not anybody else's, not mining companies, not the province, and all that.

So that's what we mean from our community, anyways, that — development means our own development. Nobody else's. And if our land is going to be drilled, then we want to do the drilling on our own terms so we can benefit from our land. See the idea? The economy, getting something out of our land?

We got something of our land by trapping, fishing and all that but to do it in such a way that we don't totally destroy the land or the land or the environment all around us. Remember what I said, we're totally dependent, we're the most dependent on the land, on the environment.

So that if there is to be drilling, then we want to benefit as much as possible. The point of us doing the drilling to our land, of course, but we'll do it in such a way that it doesn't destroy the land and then we — after we drill, we want to restore it as much as possible because we're not going to be drilling forever. And it might lead to a mine, we don't know what we find.

So, you know, some people call it a contradiction but not exactly. We're still benefiting from the land and then we see it as a way of getting out of the — of our poverty. When I told you that I'm councillor and land, environment, and environmental assessment is one of our — one of my responsibilities. The other responsibility is housing.

And, in our community, in one house, we have 20 people living in one house, 20 people. I don't know how many families is that. So — and I'm in charge of housing and people call me — call for materials, for doors, for windows, and drafty doors and drafty windows so — and we're not a rich community. We are a small community, a small Band and we're funded, as you know, as you've probably heard, we're funded with formulas and then our population is not that large, about 600.

And then our yearly capital funding is at \$350,000. We're supposed to build houses, keep our roads, and maintain our water treatment plants and our clean water — water treatment plant out of that money. And it hasn't changed ever since I remember so — and the formulas haven't changed, although we lobby for government to change the formula funding.

So, in any case, although we say keep our land and take care of our land and all that, we're sort of — we are forced to other uses of our land other than hunting, fishing and all that like we used to.

But, you know, development and protection aren't necessarily a contradiction, really. That's why there are environmental assessments, right? How can we do this development in such a way that it doesn't destroy the whole land, totally destroy it? Destroy the animals, the fish, and the clean air and the clean water? That's the purpose of assessments and whatever damage there is, then, you know, we think of ways to mitigate the damage. Again, that's part of assessment, I think, anyways, should be, anyways, okay? To bring it — to bring the land back to its original shape as much as possible.

**Johanne Gélinas:** Mr. Okimaw, sorry, I don't want to interrupt you but we have ten more minutes and we'd like to ask you questions.

**Moses Okimaw:** Yeah, okay.

**Johanne Gélinas:** So if you want to summarize.

**Moses Okimaw:** Stop me, okay? So, again, those are the general concepts that I wanted to bring to you and, like I said, we will be — as we complete our project, we will make other submissions and recommendations and all that. I just want to say one thing. I look at your and then I'm told that there's one aboriginal person, indigenous person. Well, I think there should be two more — one more so that there's an equal representation of Canada and indigenous. That's how I think of this land. Settler and indigenous. And that's the way I've learned how to look at the society, this land.

And then my question about is reconciliation is this. What exactly is to be reconciled? My feeling is that what is to be reconciled in the first place, first and foremost, is our land and Crown land. One of the elders told me that — how come our land became the Queen's land?

Anyway, I'll stop there. Questions?

**Johanne Gélinas:** Thank you very much. We don't know and probably you don't know, either, what will come out of your consultation but I would like to know if your Band have been exposed to some major projects where you have been involved in an environmental assessment?

**Moses Okimaw:** No, not right now. Well, we will be, actually. Like I said, we live in an isolated community. Well, it's not isolated because we have the Internet so (laughs) any more, unfortunately. Yeah.

And there is a road that's going to be built. We are isolated in the sense that we are — we can only go in and out by plane. We have an airstrip. We don't have an all weather road. But a road is going to be built, an all weather road.

I probably won't see it in my lifetime but the next step is an environmental assessment so we — and then the people that are working on that assessment is coming to our community on December the 6th. That's the first step. Community meeting. So we will be involved in an assessment.

And, like I said, we're surrounded by exploration companies.

**Johanne Gélinas:** Do they come to you, those companies? Or not even?

**Moses Okimaw:** No, they don't — well, one company did, Puma Exploration did. They're from Quebec. And one did but they came once and that's it. They don't come to us. We have to —

**Johanne Gélinas:** And in terms of capacity, if this project goes on, and you have to be involved in the environmental impact assessment, do you have the feeling that you have the manpower or the expertise or the knowledge or the funding to go through an EA?

**Moses Okimaw:** I think we do, well, like I told you, I'm a lawyer and I did — I studied the environment in my — when I was going to law school. There was an environmental course. But it was limited to a seminar, like, workshops and, in my workshop, my seminar was on the environment, funding of public participation. That was my topic.

That was years ago. But I know and I've been working with environmental groups and they're working with me. They help me do the application and I've been working with them for so many years. And I think that, I learn enough, I know enough what questions to ask and then to make recommendations and all that and then we have this environmental group that I'm working with that can help us along and then we have our elders and then the person that's spearheading the assessment process is a person that — he's a Ph.D. candidate from our community.

And he lived in our community and I know him very well so I'm working with him. So we have the expertise, I believe.

**Rod Northey:** So this road, I'm interested. Is it — who is the proponent of it? Is it a community road for you or is it a resource road or what's the nature of it?

**Moses Okimaw:** Well, it's mostly for us, yeah, but it's going to be authorized, it has to be certified, licensed, I should say, so that's the purpose of the environmental assessment. Licensed. Yeah. And the government has to licence it but it's for us to use all seasons.

And it's done in such a way that my argument is that we end up being the proponents, yeah. I don't know if that's good or not but —

**Rod Northey:** So will anybody else be able to use the road? If the mining exploration companies want to use it, what happens?

**Moses Okimaw:** Yeah. Unfortunately, yes, everybody can come into our territory now. We will not be able to say, "Don't come" and all that. So that's my argument against it, that we will be opening up our territory to all comers and all that. And our community owns a lodge and then one time I was working with the group that I mentioned here, I travelled to Wabauskang and there's a highway and then we were travelling up the highway and all along the highway, there's a resort over there, there's a resort over there, and over there and all that.

And I said to myself, that's what's going to happen when the road comes up. So we will be opening up our territory along with the evils. (laughs)

**Johanne Gélinas:** So thank you very much for your presentation and we look forward to have your submission.

**Moses Okimaw:** Thank you very much.

**Johanne Gélinas:** Thank you. So, with your presentation, that ends our presentation afternoon for indigenous communities.

■