Expert Panel Public Presentation Session

Review of Environmental Assessment Processes

November 21, 2016

Ramada Hotel Downtown Calgary, Calgary, AB

Expert Panel:

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

Table of Contents

OPENING REMARKS 2

ARLENE KWASNIAK 5

DALE FRIESEN, CANADIAN UTILITIES LIMITED 13

PATRICK MCDONALD, CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS 23

HELGA SHEILD, IMPERIAL OIL 32

CHRIS BLOOMER AND SONYA SAVAGE, CANADIAN ENERGY PIPELINE ASSOCIATION 41

ALAN HARVIE 50

GEORGE HEGMANN, STANTEC 59

MARTIN OLSYNSKI 68

BARRY ROBINSON, ECOJUSTICE 79

GINNY FLOOD, SUNCOR ENERGY 84

CELESA HORVATH 92

PETER DUCK, BOW VALLEY NATURALISTS 99

STELLA SWANSON 104

TRANSCRIPTION/TRANSCRIPTION
EVENT/ÉVÉNEMENT
Transcription prepared by StenoTran Services Inc. exclusively for Canadian Environmental Assessment Agency
Transcription préparée par les Services StenoTran inc. exclusivement pour Agence canadienne d'évaluation environnementale

DATE/DATE (of transcription): December 21, 2016
LOCATION/ENDROIT: Client Supplied Audio
PRINCIPAL(S)/PRINCIPAUX: Kelly McGee, Executive Director
Johanne Gélinas, Panel Chair
Doug Horswill, Panel Member
Rod Northey, Panel Member
Renée Pelletier, Panel Member
Arlene Kwasniak
Dale Friesen, Canadian Utilities Limited
Patrick McDonald, Canadian Association of Petroleum Producers
Helga Sheild, Imperial Oil
Chris Bloomer, Canadian Energy Pipeline Association
Sonya Savage, Canadian Energy Pipeline Association
Alan Harvie
George Hegmann, Stantec
Martin Olsynski
Barry Robinson, Ecojustice
Ginny Flood, Suncor Energy
Celesa Horvath
Peter Duck, Bow Valley Naturalists
Stella Swanson

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

Opening Remarks

Erin Groulx: Good afternoon, everyone. Welcome to the public presentation, public presentation session with the extra panel of the reviewing environmental assessment processes in Canada.

My name is Erin Groulx. I am part of the Secretariat supporting the panel before you.

But before they get started, just a few things. Emergency exit out the back of the room there or down the stairs and out the front the way you came in.

Also, please make sure you silence your cell phones. If you are presenting today, can you please make sure that you've checked in at the front desk with the members of the Secretariat so that we know that you're here. And if you have a power point presentation, make sure that someone has received a copy of it so that it's up and ready for you when it's your turn.

Also of note is there will be an auto recording of today's session. It's really just to help the Secretariat refer back to things that were said. And I think that is it for me.

So, Madam Johanne Gélinas, the Chair of the panel will be overseeing today's events.

Johanne Gélinas: Good afternoon, everyone. My name is Johanne Gélinas. I have the pleasure to Chair that panel and I am accompanied today with my colleagues. So on my right Renée Pelletier and Doug Horswill and on my left Rod Northey.

Renée?

Renée Pelletier: Before we begin, this afternoon we'd just like to take a moment to recognize that we are on Treaty 7 traditional territory and we'd also like to recognize any community members, Chief or Elders who may be in the room.

Thank you.

Johanne Gélinas: So today we are starting our ninth week. We still have four to go before Christmas. And we started on the East Coast and slowly we are moving, as you can see, away from the snow; more towards British Columbia.

So a few things that I would like to share with you before we start.

First of all, our mandate is to look at the three major processes, so the CEAA process, the NEB process — and I'm sure you're all familiar with the acronym here in Alberta — and CNSC process when it comes to environmental assessment.

The mandate that was given to us has three components.

The first one is to consider the goals and purpose of what we now call the modern day environmental assessment.

Second, to communicate and engage directly with a broad section of Indigenous People, organization, NGOs, industry and individual; and, finally, which is not a small task, to develop recommendations to the minister.

Those recommendations, which will be part of the report, will be tabled to her sometime early next year. So these presentation sessions are an opportunity for everyone, not only experts, to share their views on environmental assessment processes. Our sessions are open to all Canadians.

And now I will invite you, if you have an interest, to see what has been told so far during that consultation, to go on our website; you can have access to a lot of interesting documents, starting by the summary of each location where we went so far. You will also have access to the transcription, yes, and the presentations that were presented to us.

Talking about presentations, presenters have until December 23rd to submit their submissions. So you can come and talk with us and you will see that we often ask questions. So this is what we call homework. So you may want, as you go back to your offices, to answer some of those questions — no obligation but a little bit of pressure still.

(Laughter)

We also have, for those who cannot join us during those consultations, a way we call the choice-book which is basically a questionnaire with specific questions, open questions that we'd like people to answer and send it to us. So far we have received probably over 200 of those choice-book filled, which is something that we appreciate very much.

As to this concern, we have a full-day agenda. And I will ask everybody to respect the 15-minute time that we are offering you.

We have read all the presentations that we have received as of this morning. So we know what you want to talk about.

Please avoid taking too much time to present your company or your association. People in the room know pretty well who you are, I guess, and we also know. We would like very much to take let's say seven minutes, half of the time, to enter into a dialogue with you. If we don't go far enough, you can always come back tonight, where we have our workshop, which is roundtable like this, and we will go more into detail for some of the questions that are important to us. So we have from 6:30 to 9:30 to exchange.

So if you think that you haven't been able to express your view clear enough, you can always join us tomorrow — tonight.

Tomorrow it's our Indigenous Day. So it will be presentations again. And in the evening we have what we call the open dialogue session. It's a different setup but at the end of the day, it's the same objective, to have a dialogue with those who are willing to attend.

And Wednesday morning we continue with public presentations because we had a lot of interest in Alberta. So we will continue on Wednesday morning before going to Fort McMurray for the rest of the week.

So now you know everything about us. It's time for us to know more about you.

And I will invite our first presenter. And I won't pronounce your name probably. It's Arlene Kwasniak. I practiced.

(Laughter)

Johanne Gélinas: Thank you for joining us.

ARLENE KWASNIAK

Arlene Kwasniak: Yes, thank you very much for this opportunity. And thank you. I really want to thank you, the four of you, for all that you're doing for Canada and for environmental assessment law reform. It's a huge and significant undertaking. And I just think it's really fantastic that you're dong this.

Okay, so my title is "Regaining and Instilling Public Trust" because I think we need to go farther than maybe we were even before, from what we lost and instill more public trust.

I'm not going to take long. I'm a Professor of Emeritus at the University of Calgary. But I spent a lot of time in Ottawa with like the Regulatory Advisory Committee representing the RCEN Environmental Planning and Assessment Caucus which I've been on for 25 years. And I've — at this expert panel I represent myself as an individual but, also, the Alberta Wilderness Association who I represent on the Caucus.

Just a little word of wisdom from our friend Albert Einstein that no problem can be solved by the same kind of thinking that created it — so if there are problems with losing trust, I think we have to maybe go farther than just going back to what we had before, and maybe think of some new ways of approaching things.

I'm going to look at three topics today, what to assess harmonization, substitution and equivalency and quality assurance.

I'm really going to pretty much just go to my recommendations on the first two and talk, I think, the most about quality assurance. And I just want to say as an aside, I do support Sustainability Assessment as put forward by Doelle, Sinclair and Gibson. But I'll leave it to them and others to bring that forward to you and I'm sure — I know it has been.

Okay, so with what to assess. I think to restore public trust I think we have to start with an "all in and less out" approach, going from 4,000 assessments or more a year to just a few dozen has just really cracked the public trust pretty severely.

But then there's the question as to well how do you do that because I think going back to 4,000 or more is not realistic and there's probably not enough resources to do that. So I'm going to make a few suggestions as to how that might be dealt with.

I think we should start with restoring Section 5 from the 1992 Act-like triggers. I think we could do a lot more with the exclusion list. I know when I was on the RAC, we tried to reduce — I mean to add things to the exclusion list, it was very difficult to do that but maybe we could try a little harder and also make more use of model and replacement class assessments as we had under the 1992 Act.

With the replacement class assessment, if you're in that class then you really don't even have to do an EA. It's just more like a registration. I think that's a tool that should be used a lot more or could be used a lot more. If we used more strategic environmental assessment and regional environmental assessment, I think that could certainly reduce environmental assessment requirements for both the government and the proponents.

But if we do go back to having more of an "all in and less out" approach in the 1992 approach, we're going to have to put in assessment tracks again, which we only have two in the new Act of course.

And if we do that I would also suggest that we mandate a new legislation the Mining Watch Decision that says no down-scoping or slicing and dicing projects to get from — for example, take a comprehensive study and to put it down to a screening. And also I think rather than just going back, I think we have to review what we had there before. We would have to consider additional triggers. And one that I think we should consider is a climate change trigger.

And I just put up this slide from the case in the United States where a Judge in Oregon ruled that children — I mean youth can sue the federal government for climate change negligence. And whether that could happen in Canada, I don't know for sure, given the differences.

But we do have power, we have a GHGs, our toxic substances under the Canadian Environmental Protection Act. I think there is room there to put forth a regulatory trigger for climate change, perhaps for projects with GHG emissions — related emissions above certain threshold. And I think it's something that should be considered.

The next thing I want to touch upon is harmonization, substitution and equivalency. I'll do more of this in my written submission. But I just want to rely on this article that I wrote a long time ago, 2009 now, "Environmental Assessment, Overlap, Duplication, Harmonization, Equivalency, and Substitution, Interpretation, Misinterpretation, and a Path Forward.

And also I think a really nice piece written by Brenda Heelan Powell from the Environmental Law Centre on the "Constitution and Substitution and Equivalency.

And basically what we both argue is that there really cannot be full provincial substitution with the federal government fulfilling its constitutional responsibilities especially under areas of exclusive jurisdiction or even when there's shared jurisdiction. So you have to have that federal presence.

It doesn't have to be, you know, two tracks, two assessments. I think the one project, one assessment approach is definitely the way to go. And to go back to harmonization but to fix harmonization — because there obviously were a lot of issues with it —so some of the things that you could do is, you know, mandate better federal oversight and coordination of joint-reviews. You'd need, I suggest here, that there would be an independent, non-regulatory — or at least a non-regulatory agency to oversee harmonized reviews to get the federal family together. That's one of the complaints that provinces have in industry, that there may be too many federal agencies to deal with.

I think provinces have to cooperate too.

And just as an aside, I looked at all the power points from the provinces on your website, which was extremely useful. And I really didn't see any great law for substitution. Of course, B.C. likes what t has. But people, the provinces generally seem to be proud of the fact that they had successful harmonization experiences. I think that's a vey good thing and it really forwards cooperative federalism.

Okay, so with quality assurance — I'm just going to read this, I think it's probably the fastest way to get through this.

So environmental assessment involves the predictions of impacts it affects, taking into account mitigation measures. And then project approvals may consider to have conditions in them to incorporate these requirements, including

such things as monitoring, follow-up reporting and sometimes adaptive management provisions. And in joint-jurisdictional situations, obviously sometimes the federal government has to be satisfied somehow that provincial conditions will be carried out.

But we need to know whether our system works, that federal EA actually results in approved projects not having — as we have now — significant environmental impacts or if in the future perhaps achieves net sustainability so that mitigation measures are carried out and are effective and so on.

So how do we know these processes work? I think we can do this through quality assurance programs. But not just for projects but for other things that quality assurance might cover. For example, whether joint-reviews are working and what goes wrong with joint-reviews. I know that the Agency used to do some quality assurance and did some really excellent work. But I think it needs to be taken a step further and enshrined in legislation.

So what I'm suggesting is legislatively establishing a quality assurance agency which would be independent, sort of ombudsman-like, ombudsperson-like and not a federal authority, because I think if you're a federal authority — so now we're talking about the Agency. I think you just have too much invested in the process to maybe see yourself independent from it.

And then the legislation could give the agency, the quality assurance agency the powers necessary to ascertain whether environmental assessments are effective and predictions are correct. And to use the information to improve future EAs. It also should require federal regulators to ensure that the appropriate conditions are in approval so that the QAA Agency can do its work. And then there should be a reporting mechanism where the QAA has to report yearly on what's it done, on its work and what's been successful and what's been not. And I also think we have to figure out somehow to put a feedback loop in so there can actually be improvement.

And so that's really all I have to say. So thank you very much.

Johanne Gélinas: Thank you very much. And I understand that this is not your final submission. There will be another one coming.

Arlene Kwasniak: Absolutely, I'm going to do a written submission as well.

Johanne Gélinas: Okay.

Arlene Kwasniak: Thank you.

Johanne Gélinas: And you don't have to wait for December 23rd.

(Laughter)

Johanne Gélinas: If you can send it before, we will appreciate it also.

(Laughter)

Arlene Kwasniak: I will. I can't imagine — I'm sorry for your Christmases really.

Johanne Gélinas: That's fine.

(Laughter)

Arlene Kwasniak: Or lack of them.

Johanne Gélinas: Well, for once we know what we're gong to have under the Christmas tree.

(Laughter)

Johanne Gélinas: I just want to come back for a second on your QA. You're talking about an ombudsman and also somehow an Agency. Being myself, a former auditor, can we not see that also as a kind of internal audit function within an organization like CEAA, for example?

Arlene Kwasniak: Yes, I think so. So CEAA used to — you're talking about the CEAA Agency — it used to do quality assurance. In fact, they still might do some. But my concern with that is that CEAA is overseeing EAs now and the worry is that it's too close to the processes. So, like, if it, you know, determines that, for example, some conditions should be on a permit and it feels that these conditions will work and puts on monitoring conditions and all this — and it may be harder for it to review that in the future and say, well, that was a mistake. That's why I think it should be some kind of independent agency.

Johanne Gélinas: Most of the time an ombudsman will do inquiries based on complaints.

Arlene Kwasniak: Right.

Johanne Gélinas: But in this case it could be initiated by the quality control independent body within the organization outside organization. That's what I understand.

Arlene Kwasniak: Yeah, you're right. It's a more of an auditor/ombudsman.

Johanne Gélinas: Okay.

Arlene Kwasniak: Because it should be — I see the QAA also having the power to, you know, take public complaints and other complaints, industry complaints, anyone's complaints and then follow them through and see if they're legitimate and, yes, carry out studies.

Johanne Gélinas: Thank you.

Doug Horswill: That was actually the question I had.

Johanne Gélinas: Sorry.

(Laughter)

Rod Northey: Back to me.

I do want to follow-up a little bit on this Agency first. So we've heard a fair amount about concerns about monitoring and I have questions really for the galaxy of people that are following this very topic.

So this is one part of it which is how do you have some assurance what's happening from the EA forward.

But other issues that have been raised which are not addressed are transparency —

Arlene Kwasniak: Right.

Rod Northey: — the use of science for this and how a proponent does or does not participate in this kind of quality assurance. And the way you've put it here, it looks like it would be independent of the proponent.

And I'm just wondering how these things might be integrated. I don't think they're simple, but perhaps your submission could —

Arlene Kwasniak: Right.

Rod Northey: But what's your immediate reaction? Where does this fit in, in this array of things like science, transparency, proponents own work?

Arlene Kwasniak: I see with respect to the last one having a requirement in the legislation that that condition requires the proponent to report.

And in the larger submission, I'll try to hash that out a little bit more, how that could work in the legislation — maybe even having enforcement provisions, you know, for falling to report and to carry out monitoring conditions. I know we already, to some degree, have that with the 2012, but, you know, beefing those up.

And with respect to transparency, I think the requirement to report every year that QAA would have on all of its activities and then to make recommendations, I think will contribute to transparency and science. I'm generally of the view that I guess science should be done independently of the proponent — not to dis proponents of science — but I just read the submissions from a couple of the science agencies, the youth — I forgot the name of the organization — but the youth scientists and I found that quite compelling. And they were calling for independent science in environmental assessments.

Rod Northey: Just to follow-up again on another part of this. I know you've got a previous paper you were citing —

Arlene Kwasniak: Yeah.

Rod Northey: — which I was looking at.

Arlene Kwasniak: Yeah.

Rod Northey: Which is really focused on CEAA and adaptive management and some of the things that have or haven't happened under that.

But one of the other things that we're hearing about and it's very relevant to the mandate the Chair just described, is the relationship between the various three responsible authorities on this very point of monitoring and follow-up, NEB, CNSC and CEAA.

Does any of your work track differences or similarities or issues across the three? I know that CEAA '12 is very new —

Arlene Kwasniak: Right.

Rod Northey: So this is a novel question. But do you have any thoughts or views on where this goes, but across the three? Is it the same problem that you foresee or are describing?

Arlene Kwasniak: I wish I could answer that. I've actually made some inquires to try to find out, you know, what the specific issues with the NEB and the CNSC.

I have issues with — I think environmental assessments should be independent of the regulator. So I think it was great when DFO and other RAs' job went over to the agency. So that's good. But I do have some concerns with the NEB and the CNSC continuing to be RAs. I will put something in my submission regarding that.

With respect to your particular question, whether there are specific issues having to do with monitoring and follow-up, comparing the agency and

the NEB and the CNSC — I really wish I had that information — something like a quality assurance agency, that would be one of the kinds of things, I take it, it would be doing.

Rod Northey: Okay, thank you very much.

Johanne Gélinas: You worked a lot in your career on harmonization, also looking at the fed/prov role in environmental assessment. You talked a little bit in front of us about substitution, equivalency and joint-panel.

Arlene Kwasniak: Yeah.

Johanne Gélinas: We will hear a lot here in Calgary about overlap and I would very much like to hear your view and your submission about the pros and cons of joint-panel versus substitution and equivalency, if you want to.

Arlene Kwasniak: Right.

Johanne Gélinas: But mostly these two first ones.

Arlene Kwasniak: Okay. Well, overlap I think is not a — overlap just means that two levels of government are both considering one thing,

I don't see that's an issue because that's just the way our Constitution works. I mean, the federal government is going to be interested in water quality because it's interested in fisheries habitat and the provincial government is going to be interested in water quality for lots of other reasons because it generally regulates water quality for drinking water and other purposes. So I don't see — what can be a problem though is, you know, duplication if both the province and the federal government are requiring, you know, same or similar information at different times of the proponent. And I agree that has been a problem, though I don't know how well that has been documented and quantified. I think the agency was dong some work on that. And if I could find that work — I'm trying to find it buried in my computer right now — that found that a lot of these claims really haven't been that substantiated. But I think these can be addressed.

I think we can't give up Constitutional jurisdiction. But I think the problems with the federal family, you know, different departments requiring information at different times, I think those kinds of issues can be dealt with by the right kind of federal coordination, maybe having a more of a one-window approach on the federal side and, you know, just through more coordination and with the provinces and going back to harmonization.

Like I said, I didn't listen to the transcripts from what the provinces said. But from looking at the power points, I really, like I sad, I had the feeling that provinces are generally proud to have good harmonization experiences, although there were some complaints. But I think substitution is definitely — what would be

full-substitution which would be pretty much an abdication of federal powers, definitely not the way to go.

And then with the BC experience, that's fairly new and it's really hard to say how all those assessments would have turned out if the federal government were there, with having more presence than it had with those substituted EAs, so it's really hard to say how things could have gone different.

But we do have at least one case that Taseko is always mentioned as a case where, you know, the Taseko mine where the province of British Columbia kept approving it and the Federal Government turned it down twice. So I mean because they're both looking at different aspects of the project and from their own jurisdictional point of view. And I think I'm really for provincial/federal coordination, cooperation and I really see that as the future to regain trust in the EA. I think it can be done.

And maybe we should just get rid of all these words like harmonization and substitution and just come up with a new lexicon because they have such — yeah, there's bad stuff attached to them.

Renée Pelletier: Just on that note, one thing for you to consider perhaps when you're coming up with your written submission is one thing we've been hearing from indigenous groups on the topic of harmonization and potential overlap is the consultation burn out that they get from having to be consulted by two different groups and then also the lack of clarity around who owns the duty of consultation when there's both federal and provincial assessment going on. So perhaps to keep that in your mind when you're coming up with your written submission.

Arlene Kwasniak: Yes, thank you. I will do that.

Johanne Gélinas: So thank you for your presentation and thank you for your help.

Arlene Kwasniak: Thank you very much.

Johanne Gélinas: Our next presenter is Dale Friesen.

Good afternoon.

DALE FRIESEN, CANADIAN UTILITIES LIMITED

Dale Friesen: Good afternoon and thank you to the expert panel for making time to hear us today. We really appreciate it. We think — ATCO shares the federal government's vision to improve the regulatory processes and to ensure that they are fair, efficient, robust, and based on scientific evidence, traditional knowledge that

protect our environment and respect the rights of Indigenous Peoples and support economic growth.

I won't spend much time on this slide other than to just say that we see sort of three pillars for good policy; they support reliability of the system — this is regarding more for the power generation which I'll have as examples throughout — priced stability and investor confidence. And we see the key role and the work you're doing is really adding to the investor confidence within Alberta and in Canada.

So today the Federal Government announced the federal phase-out of traditional coal by 2030 and the policy goal to achieve 90 percent renewables by 2030. Those are admirable goals, they're big goals and 2030 isn't that far away. It's about — we look at it and say, yeah, so in the next 13 years we think, well, what does that mean? So if we look at in terms of just in the narrow focus of our Province of Alberta, the government proposed 3x30 — so 30 percent renewables by 2030. So 5,000 megawatts of primarily wind, solar, storage, hydro and an additional approximate 8,000 megawatts of probably most in natural gas, fire generation to backstop the renewables.

And there may be variations on that. But, essentially, we're looking at a build of around 13,000 megawatts just in Alberta over the next 13, 15 years. And so when we look at that, we see some challenges and opportunities. One is the opportunity to green the grid which we think is a tremendous opportunity and we support. The challenge will be the timing and getting it done in an appropriate time.

So this slide is just — we support the, like I said, the environmental assessment process and we think it's generally working quite well. But one of the challenges or opportunities I think before us is to achieve the environmental objectives of the federal government over the next 13 to even beyond. We're going to need to build a lot of generation. There'll be inter-ties, transmission lines, they'll be pipelines to support new gas. And one of the challenges will be the efficiency of the regulation and the timelines.

And one of the examples we had is we were looking at a natural gas combine cycle plant in the Saskatchewan area. And that plant was 350 megawatts. So bigger than the 200 megawatts that we're proposing. And in the past those would normally not fall under an EA. It would be achieving what was stated today for the government, 420 tons of GHG's per gigawatt hour would achieve that goal or better. And yet it was still determined to be eligible or require an environmental assessment, which could add one to two years.

So we're not against robust, you know, environmental processes. We think that's very important. But the caution or just the thought is if it's a project which is in line with the stated government objectives to help them achieve their

federal GHG requirements, I just want to be cautious about not adding a lot of extra time to build a project which would clearly fall within their objective. So the point of this slide is currently right now to build a new combined cycle from start to finish, we'd be looking at, say, anywhere from three to four years for environmental approvals, and then you'd be looking at another about three years to build it. So somewhere in the six year — five, six year.

If we add another year or two, you could be looking at somewhere from five to seven years.

And when you look at the amount of build that we have and the coal that's coming off and how rapidly — because we've advocated on how the coal — of a schedule to take the coal off and then you add new gas in and new renewables in. We'll start doing that fairly soon. So I just want to make sure that the timelines aren't unnecessarily extended for the approvals for theses new projects, whether they'd be natural gas or whether they'd be a wind farm or a hydro project. So they need to be robust and to be thorough.

I just want to be cautious on not unduly extending.

I think with the indigenous relations — I'll just go to my last or second last slide — is we think engagement with First Nations and Indigenous Peoples need to occur early. We think it's very important. You can't walk in and say we've got this great project and a great plan for your life. We think it's very important that we engage early enough that they have a very — a fair chance to be a part of the creation of a project if there is a project to be had at all and not just to come in at the last minute and say, we've got a project, we'd like your approval and we're in a hurry. We think that's not the right way to approach it. So it's just more something that I think we should continue to do and are to start doing in Canada more.

And also to focus on — we think everybody's voice — we're good that, you know, everyone has a voice and it's important. But they should be prioritized with those that have the highest impact and the most direct impact. Those should be weighted higher than those who have limited impact or limited impact to them or their communities.

So there's more to say but I would much rather take the time now to take your questions and try to provide answers to those.

Johanne Gélinas: That's concise. We like it this way. Thank you.

(Laughter)

Johanne Gélinas: That gives us time for questions. Can you elaborate a little bit on your last point of your last slide here where you're seeing aggressive — maybe we can put it back, yeah the last one.

Dale Friesen: Okay, so I will. Thank you. Aggressive transition to lower emitting generation planned for the electricity sector will benefit from an efficient environmental assessment process. And I think it really just goes to the timing. Like, right now, a combined cycle plant that meets the government's stated goals for natural gas performance standards as stated this morning through environment Canada — if they achieve those, then we would say do they really need to have another one to two year environmental assessment attached to it when it already achieves the stated performance standards for the government.

Maybe there's better ways to do it or more efficient ways. And especially when you're looking at simply the limited Canada –Alberta example of 13,000 megawatts by 2030, you know, keeping the timelines for the assessments as short as reasonably possible, we think would be an advantage to allow the build out of the renewables and the clean gas that's being required to achieve our coal phase-out objectives over the next 13 years.

So does that answer —

Johanne Gélinas: Yeah.

Dale Friesen: Okay.

Johanne Gélinas: I was wondering if it was somehow a fast track, but obviously it is, if you comply with some, in your example, national policies related to climate change as an example.

Dale Friesen: Yeah.

Johanne Gélinas: Okay.

Dale Friesen: If it's supporting the climate change objectives — and I hesitate to use the word fast track — but I think, you know, that would be great, if it truly is achieving it.

Johanne Gélinas: A less burdensome process.

Dale Friesen: A less burdensome process —

Johanne Gélinas: Okay.

Dale Friesen: — to allow us to achieve those objectives.

Johanne Gélinas: Thank you.

Doug Horswill: Great, thank you. I'd like to start off where you did. You mentioned the word “investor confidence”.

What's your view of investor confidence at this point? And what could you point us to that might help us to understand more about that?

And I'm talking about investor confidence as it is impacted by regulatory systems and processes in Canada today.

Dale Friesen: That's a great a question. I obviously can't speak for many, so — but just in general as a general comment, I think you do hear comments about it's difficult to get major projects built in Canada. We have observed that it is a challenge. And I think if you look at investor confidence, what we find for — investors can typically stand pretty robust regulation. What puts them off is if it's changing or if there's uncertainty about whether or not the regulation, as stated, will change or not.

So that uncertainty, whether or not a regulation might change with the change of a government both federally or provincially can create additional uncertainty for investors. Hindsight regulation can create uncertainty.

Doug Horswill: Do you have a perspective on how it is today? Or anywhere you think we can look to understand that?

You can think about it and come back to us.

Dale Friesen: I think we would like to think about that and get back to you.

Doug Horswill: Okay.

Dale Friesen: Because I think you ask a very important question.

Doug Horswill: Okay.

Dale Friesen: And we do talk a lot to our investors. And, you know, I think one of the questions we get a lot on is just the climate change. We know it is a file that there's a lot of energy behind. I just came back from Marrakech last night. We were there with COP22. And there's a lot of exciting things happening in the world of climate change and regulation and policy.

But if you were to look just at a high level in Marrakech, there was a lot of uncertainty created by the change in federal government in the States and what the direction will be and how that will impact Canada. And the risk is, you know, is there a risk that we get too far ahead or behind. And, you know, some of the national — countries are pulling back on their original commitments which creates uncertainty as to what it will look like over time.

Doug Horswill: Okay.

Dale Friesen: But we would like to take that on notice —

Doug Horswill: Okay.

Dale Friesen: — and get back to you with a better answer.

Doug Horswill: One other quick question on one of your slides that you weren't able to get to, it's the one on scope. You used the words “environmental risk profiles” as a trigger. Can you either now or subsequently elaborate on that for us?

Dale Friesen: So if I use the example of the natural gas combined cycle plant, which would be a very large natural gas-fired where they used the waste steam to generate electricity as well and replace coal in Saskatchewan — and it was triggered by the total amount of emissions from the project, which was largely a result of the size of the unit because it would have emissions roughly in the order of 50 percent lower than any comparable coal plant. So its emission would be far lower for base load power. But because of the size of the unit and the trigger was on total greenhouse gas tonnes per annum, that triggered the environmental assessment.

Now the project didn't end up gong ahead for a number of other reasons — not this — but that was a trigger. We are saying is that the right trigger when it was simply the matter of — it was a really big plant replacing a lot of coal and therefore it had higher emissions but those emissions were generally 50 percent less than any comparable coal. And in terms of performance standard on the tons of GHGs emitted by the plant per gigawatt hour were literally 50 to 60 percent lower than coal. So was it the right trigger?

Doug Horswill: Okay, thank you.

Renée Pelletier: I wondered if we could go back to your indigenous relations and consultations slide. I wonder if you could say a bit about point number 2 that I think you didn't touch on in your presentation, caution against about being overly prescriptive about requirements such that it hinders creative and innovative solutions. What do you mean by that?

Dale Friesen: That's a good question. I think that one is quite broad. I apologize, it's maybe a bit too broad. But maybe one example could be — even in the terms of how we engage with a community — you know, in terms of being really prescriptive is exactly how that works. We've often gone a bit beyond what the requirements are because we felt it was necessary to do that. And so it's just being careful that we don't get caught up — particularly with indigenous relations, and community relations, I would add — that we try to — each one is unique and has different needs and different concerns and that we have the flexibility around how we engage and it's not just, well, I’ve ticked this box and therefore it must be good. But just, you know, the companies have the flexibility to ensure they've met those needs.

Renée Pelletier: Sorry. Are you finding that now, though, that you are going above and beyond, as you say, and you're being told that you have to take certain steps

and being told that you should be doing something differently? Is that currently happening?

Dale Friesen: I think there's been some instances that we could point to where, say, the minimum threshold is maybe lower than what we choose to do. And so we're not advocating for — you know, that we need to change that dramatically. But I think we just want to retain the right for the flexibility that, you know, we want to make sure, first of all, that we meet the minimum requirements —it's very, very important — but also the flexibility to go beyond and to tailor solutions and engagement to fit the specific communities that we're dealing with.

Renée Pelletier: One other quick one, if I could.

Dale Friesen: Okay.

Unidentified female: Okay. Engagement needs to occur early and often. What is early for you?

Dale Friesen: Early would be ideally — and there's the ideal world and then there's a realistic world. And I think in Canada we're still in this sort of — you start developing a project in-house and then you get money. And then you say, okay, now we have money for consultation to go out and talk to the communities and see what they think of it.

And we think that's — although that's a traditional model, it's not the best model.

The best model is to get in the very front edge of thinking about, you know, we've got an idea for a project in this community. And, like I said, it's not always possible, but where possible, the earlier you can get in and you go in less prescriptive — it's like if I have my home and there's a fellow— I want to build a pipeline. I go up to him and I said, you know, we want to build a pipeline. And we're going to build it right through your backyard. And we would like you to sign- off on it and we're really good people so everything is great.

And they may not feel very comfortable with that. But if you go to them early and say, you know, we're building a pipeline from this place to that place. And, you know, one of the routes could be near you and here's how we mitigate it. And, you know, we have that conversation. It'd probably be an easier conversation with your neighbor than if you literally went there and said, you know, sign here because we are going to go through your backyard. And I think it's just really showing that respect for the traditional territories and that you respect their thoughts and ideas and you're not just coming in after the fact.

Renée Pelletier: Okay, thank you.

Rod Northey: First, just a very brief comment. I found your slide 6 — if we could pull it up — on the years and the project development — one of the most helpful slides I think I've ever seen on just how long it takes and what the order is. So thank you for giving us that.

Dale Friesen: Okay.

Rod Northey: Do you want to think about whether we should rely on that further, I'll just say I'll invite you to look at it. But it's a very helpful slide from my end.

But I have a big question for you which is, your presentation — you are a multisectoral project player in the energy space — and the question I have for you is — when we look at something like greenhouse gasses as a topic, going beyond a project up stream, we have regional assessments we've been invited to deal with and strategic assessments. And right now, not much of that is happening. And the question I have for you is what role do you, as a company — if we're going to talk about investor certainty — what would you see the federal government could do better, either at the strategic level of policy or at the regional level of how a whole system operates or system plan might work to improve certainty?

And I want to give you the context. Your example of the natural gas strikes me as a very problematic example because by the climate change objectives of 2050, that would be off side. So is this an interim strategy? If so, how does it work? And does it work as an interim strategy? Or do we need to get something further?

But we have no policy framework right now at the federal level to tell us whether an interim solution like natural gas really works or whether it's a problem.

In Germany the economists said a few years ago natural gas systems were being built and shut down the day they opened because they could not compete with the green energy alternatives.

So I'm really trying to figure out how we can get this thing to work in a better way, leaving project EAs and trying to create more certainty for investors. It's not a simple topic. But you're in the thick of it because you cover so much of the system.

Dale Friesen: So you raise a lot of very, very good questions. And I'm going to take the gas one fist.

Rod Northey: Okay.

Dale Friesen: So we think that gas plays an important role in the transition. We clearly understand the desire — and I think it was actually a stated goal to go from

coal to clean and to skip the natural gas piece altogether. And I think, to that, ATCO would say — and we'd be advocates for large hydro and even small hydro in the way that they can provide base-load power when the wind isn't blowing and the sun isn't shining — hydro is a great tool but it takes years to build.

In the case of — I heard a Manitoba Hydro Senior Executive, say a shovel-ready hydro project in Manitoba takes 20 years to build, to get it online. So let's say maybe it's 12 to 15 here; maybe it's more. But it takes time.

So in the meantime you need to have a plan. And if you're going to get to 2030 by phasing out coal, which can't have its cliffs — you can't have thousands of megawatts of coal coming off without a plan, because then you get into the trouble like South Australia this last year, where they had achieved 50 percent renewables, which is commendable -and we actually had the first cogen in Australia and it was in Adelaide – it's in Adelaide right now.

But they've struggled lately and they've struggled because they have only one tie line to Victoria. And they have — the power prices, the way they're designed were such that there wasn't enough motivational to keep the natural gas plants online. So they shut — they mothballed them; the coal had been shut down. And then the storms hit. And through a combination of events, which we'd be happy to send from the Austria Government and others who've analyzed what happened —they had a full blackout of the South Australia on the 23rd of September. And through the summer — our summer; their winter — they experienced huge power prices, huge spikes in natural gas price. And if you look at it, it was probably the opportunity is having a bit more back-up of natural gas during that time could have helped mitigate some of those challenges. So we think that gas plays a role.

And getting to gas we think, if you look a-synchronize versus synchronize — and I guess it's about frequency. And the frequency of your power, it's very important that it stay exactly at 60 hertz; not 48 or 59 or 61. It has to be 60 cycles per second.

Wind and solar aren't very good at providing synchronize power. They do a- synchronize. Large thermal plants with in situ– all hydro provides synchronize. And I'm not sure if you're aware but years ago, like 20 years ago, our in situ generating plant paid a premium for automatic generation control to help prove system frequency stability between here and San Diego.

And so frequency is very important. So we think that gas also and hydro provide that kind of frequency stability when you're bringing in a lot of renewables to avoid and provide the power quality we need.

So we think it plays a role. I think the challenge is and I think what you're alluding to, if you build 30-year assets — 30-40 year assets between now

and 2030, say, you built your last gas plant in 2030 and it's a 30-year asset, then there's a huge risk of stranded assets between now and 2050.

So I think that's what you're getting at. I think that's a very big challenge and it's one that we believe requires a lot of careful thought and planning. But we think it's doable, but we think it needs a thoughtful plan.

Rod Northey: All right. It's been a very fulsome answer and I appreciate it. But what part of EA should fit that?

Right now, we only have project EA. And I think the time is tight today.

Dale Friesen: Okay.

Rod Northey: We've been invited to go upstream on that.

Dale Friesen: Yeah.

Rod Northey: And I'd be very interested, in light of your examples, what the model is to go on best dealing with that long-term?

Dale Friesen: Well, I'd be happy to. The very quick answer, what I think part of the solution will be a conversation of some coal plants to natural gas, which they've mentioned today in the federal, 5.50 tons per gigawatt hour. And I think there may be some flexibility required around that. And I think that's probably the biggest opportunity, because f you can do that, you allow more time for the transition to clean and lower emitting sources. And you avoid the building of brand new, shinny natural gas combined cycle and gas assets. Or we believe you'll still need them but you'll need fewer of them. And there's the risk of stranding fewer assets.

So I think it's the coal to gas conversion is probably the opportunity that this panel could help with on that transition.

Rod Northey: Thank you.

Johanne Gélinas: Thank you very much.

We are already running late a little bit, so we'll have to be careful. Patrick McDonald will be or next presenter.

Good afternoon.

PATRICK McDONALD, CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS

Patrick McDonald: Hey, good afternoon.

Madam Char and other Members of the Panel, My name is Patrick McDonald. I'm the Manager of Oil Sands at the Canadian Association of Petroleum Producers or CAPP. I am also CAPP's representative on the Multi-Interest Advisory Committee that's supporting the work items that you've identified.

So CAPP welcomes the opportunity to provide our perspective on the review of federal environmental assessment processes. I will note that while I'll be speaking to overall positions on many topics today, you know, we will be providing a written submission that will go into more detail and justification and supporting evidence regarding these points.

I've also brought some hardcopies of an international comparison in environmental regulation that CAPP commissioned, a study that was conducted by WorleyParsons as well as some facts on the oil sands.

I won't get into it in detail today, but, you know, CAPP is undertaking to build upon that past work in order to try to support some of your previous requests in regards to, you know, looking at the EA in an international perspective. You know, we understand from major of our discussions with the Multi-Interest Committee that that was a — I'd say a piece of information that the panel would welcome and that you weren't quite able to get to where you wanted to be, so we'll try to help you out in that regard.

Okay. I would like to start briefly with just an overview of CAPP and our industry. It will be brief. CAPP represents the oil and gas sector. We have approximately 100 producing members and find and develop about 85 percent of Canada's petroleum resources. Our members export for develop and produce natural gas, natural gas liquids, crude oil and oil sands throughout Canada.

Our industry is the largest, single private sector investor in Canada, investing about 81 billion in 2014 and employing well over 500,000 Canadians. That being said, current marketing conditions have had a large impact on our sector over the past two years. And we're striving in all possible aspects to attract investment capital required to grow our industry.

It is imperative that Canada remain competitive with other jurisdictions in the sustainable development of resource projects and certainty around regulatory processes can contribute to the competiveness of jurisdictions, particularly when global opportunities for investment exist.

CAPP's been focused on three major principles related to how policy and regulation are carried out in Canada. These principles will drive a strong regulatory regime and as such a strong industry.

Accountability, transparency, balanced decision-making and inter and intra-agency coordination that minimize duplication are those three policies.

So federal environmental assessment in context, the decision whether or not to approve a project is a public interest decision. These decisions need to balance environmental, social and economic considerations of a project. The environmental assessment process is an important consideration of the decision. But it's not the sole consideration.

CAPP supports the changes that were introduced in CEAA 2012 to a definition of environmental effects that's focused on components of the environment that are specifically within the authority of the federal government. Focusing EA on areas of federal jurisdiction in 2012 was positive and should be maintained and does not result in any of the lost protections, because those environmental effects that aren't covered in CEAA 2012 are addressed under provincial environmental regimes very effectively. This was the key step to the federal environmental assessment process to respect the local authorities in their environmental assessment processes.

As project developers, our members maintain their supportive indigenous participation, taking place well in advance of regulatory project decision informed with substantive information about the project and its potential for impacts on the Indigenous Peoples and communities.

CAPP member companies acknowledge the importance of reconciliation in Canada and we're proud to endorse UNDRIP as a framework for reconciliation in a manner that's consistent with constitution and law.

By incorporating the unique knowledge about local environments, the indigenous committees can provide — significant efforts are being made to integrate the perspectives of Indigenous Peoples decision-making as a result of strengthened relationships and indigenous interests and aspirations.

So when our members are planning a project, they are really hoping and expecting that one environmental assessment is done as well — with the modernization of CEAA 2012 several changes that were made that CAPP believes supported the one-project, one-assessment concept; the ability to substitute a process of a province for an assessment under CEAA — you know, that reduced the overlap between federal and provincial environmental assessments is a great means of reducing duplication and support the one-project, one-assessment.

CAPP believes that this s a tool that could be greater utilized in the future. And, you know, an assessment onto why it has not been leveraged more recently in other provinces should be a part of the review.

Another area that could be used in a larger capacity that was part of the CEAA 2012 was the introduction of a strategic EA or regional EA process. Those have experienced — and those have been, you know, limited thus far and we feel that that is an area that we could build — that could be built upon in order to unburden some of the issues that come into project EA.

From a practical experience, further refinements to the process are warranted from learning since CEAA 2012 was implemented.

I'll go through a couple of brief examples here. So one being a specific area where we see potential for improvement is in the offshore petroleum boards. You know, there are pieces there on offshore development; there's a big difference between the scope and scale of exploration, offshore projects and production products. And those differences, you know, are one component that we feel could be incorporated in there, because right now the exploration wells which have to be undertaken in a timely manner in order to meet the licensed land 10-year requirements, you know, do not have as long-standing and as long-term impact as the actual production operations.

Another area where we, you know, feel that there's an appropriate overview of regulation is in regard to in situ oil sands. Rarely do these projects cross the manners of federal jurisdictions and they are handled effectively through provincial environmental assessment processes. If there is the case in unique circumstances where the projects have the potential to cross matters of federal oversight, it is well within the minister's purview to request an EA be conducted under Section 14.5.

The impacts of in situ oil sands projects are well understood and any given — and are being effectively managed provincially.

All stakeholders, including the public, proponents, governments, indigenous groups and other stakeholders benefit from a consistent, transparent and timely process. The existing process can work well when implemented. The proponent as part of the assessment and project design considers alternatives to the project, options for mitigating potential environmental effects and for post-monitoring programs to monitor for these effects.

CAPP is supportive of changes to the environmental review process that increase regulatory certainty which would help to ensure that Canada is predictable and would help us with our competitive business environment.

For decision and follow-up, CAPP feels strongly that decision-making authority for federal environmental assessment should be science-based and a-political. The ultimate decision on a resource development project is made by the local regulatory authority and is a public interest decision.

The environmental assessment is an important component of consideration of that public interest decision but, as noted previously, it is one component. Ultimately the local provincial agencies are the best place regulators for resource development projects and CAPP takes the view that provinces should have the decision-making authority, except for in narrow circumstances when the project is on federal lands.

In regard to public involvement in the federal assessment process, you know, the existing of both federal and the provincial provide important ways for Canadians to express their views and opportunities for meaningful engagement to participate in natural resource development dialogues.

CAPP is dedicated to making sure that these public consultations are meaningful and are as transparent as possible.

So in regard to coordination between federal and provincial jurisdictions, we support alignment of the federal and provincial EA processes to reduce duplication through the use of substitution. The substituted process gives federal agencies the opportunity to participate and ensure from their perspective within the terms of reference, the adequate items are included in the environmental assessment to meet their needs.

CAPP recommends that the federal government agencies enact this substitution process, you know, wherever possible to enable the provincial government to lead the review.

If the local responsible authority is unable or doesn't have the capacity to conduct the assessment, you know, in that case, it's definitely appropriate for the federal government to take the lead.

So here, again, is a summary of the key inclusions in the presentation today. I will not go through all of them. But as an industry, we'll continue to develop responsibly and with the commitment to continuous improvement under regulation that we will deliver the outcomes Canadians expect and are favorable for our country competing in a global context.

Thank you very much for the opportunity.

Johanne Gélinas: Thank you very much. Doug.

Doug Horswill: Great, thanks a lot. A great submission. I'm going to start where I started with the last — my first question of the last speaker, and that's the notion of investor confidence, global competitiveness.

You've talked about that. Rather than ask you for an answer today, I commend you to think about putting some dimensions around that in your forthcoming written submission,. Where are we; where do we need to be; how do we get there; what it all means? So if you could do that when you come back to us, I'd appreciate that or we would appreciate it.

Patrick McDonald: Absolutely, Doug, it’s something we're working on.

Doug Horswill: In your submission presentation, plus in your words, you talked about things like fostering public confidence. Can you give us the short form of what you think is required to foster public confidence?

Patrick McDonald: Absolutely. I think, it does get back to a transparency piece. I think, you know, as far as an understanding of the process, you know, with the public, if they're not completely clear on how a process is undertaken and that it's managed appropriately, there is gong to be questions. And so we, you know, as far as the public confidence, we feel that there is always the ability to improve and increase that in regard to resource development projects.

But, you know, we do feel that there is a great of the public that does support the industry and does have confidence in the processes. And so there's an ability for us to build upon that and improve the transparency of both the decision-making process, the follow-up and ongoing monitoring just for them to understand what goes on actually in these processes, you know, after the project decision is make. And we think that’s' likely an area of increased transparency that would help build upon that.

Doug Horswill: Okay, great, thanks. A couple more.

On the offshore boards, your main recommendation in that section, as far as I could see, was the notion of excluding exploration as opposed to production.

Am I correct on that?

Patrick McDonald: Yeah. Right now as it is considered as an exploration, while it's treated very similar to a full-scale production, you know, those exploration programs are very time limited in nature — you know, three to six months. And so they — you know, we do feel that those are a type of activity that, you know, doesn't merit having a full EA on it.

That being said, there is maybe an opportunity to increase flexibility in the process if it was to be included in so that, you know, with a differing scope or I'd say for the smaller type development projects that they're able to still be considered but move within the process quicker.

Doug Horswill: I'm sorry to interrupt you. But let me put an idea out there. The first speaker today talked about classes of projects.

Do you think that would be a method that might get at what you're talking about?

Patrick McDonald: You know, I think the idea of different classes of projects — so the project list, as it is currently, did provide a clear degree of certainty about what can and cannot be expected to be included in an environmental assessment.

I feel that — you know, as long as we have clarity about what is going to be subject to review, that is one key step.

Doug Horswill: Okay. My last question: you talked about timelines quite a lot in a whole bunch of different contexts. When we were in Toronto we heard from one gentleman, Professor Winfield, who made the point to us that there had been an attempt to streamline — that's what CEAA 2012 was in his mind — and then he went on to submit that it had actually backfired; that because of the timelines were put into it, but for various reasons they hadn't worked.

When you come back to us again, I'd like you to think about that point. Maybe look at his submission and think about and give us your view on how the timelines issue could be more effectively addressed both by industry and by reviewers. Okay?

Patrick McDonald: Okay, will do, Doug. Thanks.

Doug Horswill: Thanks, Johanne.

Johanne Gélinas: I will say including the decision-making process at the end.

Patrick McDonald: M'hmm.

Renée Peletier: I just wanted to pick up on one of your responses to Mr. Horswill's question where I believe you said that you think that there is already a great deal of public confidence in the oil and gas sector. I'm wondering if you would agree with me that with respect to Indigenous People, there's probably not that same level of public confidence. I think we are seeing a lot of court challenges.

You haven't — on the one hand, you say that you support UNDRIP but you're not recommending any major changes to the current federal EA process. 'm wondering how do we get indigenous support for your industry in federal environmental assessment in general.

Maybe I'll stop and ask you first whether you acknowledge that there is an issue with indigenous support?

Patrick McDonald: You know, as far as agreeing or whatnot, I think we can, you know, agree that there's definitely an opportunity that we can improve that public confidence. And there's definitely an opportunity that we can improve our relationships with the indigenous folks in relation to oil and gas development projects.

You know, I think one thing — and it was noted in the past presentation — is that we are getting to a point as far as, you know, with so much development, there s a little bit of stakeholder burnout on the amount of projects and the amount of things that are going on in consulting and provincial jurisdictions, federal jurisdictions on everything going out there.

So I would say, you know, maybe one opportunity that we could take to improve that and to build that is really just ensuring that we are engaging with indigenous communities and making sure that we have the time to engage with them and early, but as well as over the course of the project. So not just engaging overtop, you know, in advance and then as soon as the project decision is made, you know, okay engagement is complete, let's move on to the next. I think, you know, we're committed to making sure that it's an ongoing relationship and that it's not just after the project decision that we're trying to engage in making sure that we're generating those relationships that matter. It's over the full project lifecycle.

Rod Northey: Yes, thank you. I've got a few questions; I was just trying to figure out how to organize them.

But just dealing with the question of what's going on in an area where there are a lot of projects. We have been hearing a lot of comments across the country about the concentration of projects in certain areas and whether there should be some kind of EA that backs up behind a project and is a regional assessment.

And I know that there's some effort underway in Alberta to do that. Is CAPP supportive of regional EA applicable to its projects?

Patrick McDonald: So we do think that s one area that, you know, has been maybe under-utilized in the past. I think, you know, it was evident within Alberta — in certain areas there was some strategic level, provincial, federal pieces that were moving into what does regional assessment look like in conjunction with the lower Athabasca Regional Plant which is an area of quite significant oil sands development.

So we will touch on it more in our written submission. But as a concept, you know, we do think that is something that can be leveraged more and would be able to maybe move away from all of the project specific discussions that are happening, that when we are getting into a more of a higher level discussion and planning, land use planning specifically within the provinces, that it's a good opportunity.

Rod Northey: All right. So just to follow-up on that, we've heard also the comment that if you engage in a substitution exercise, you will lose the federal participation and you won't get them to the table. And we've heard the example in a few places that Fisheries and Oceans, for example, will not participate in a provincial EA. So that if you succeed in creating substitution, to put a provincial process first or a regional EA that's provincial only, you may get all your timeline gains lost in the backend when you try to get an authorization out of Fisheries.

So what is the model as CAPP sees it, because you have encouraged us to focus on substitution as opposed to harmonization.

How does CAPP see the backend of this working, to create investor certainty in timelines? It seems to me that's' a model for kind of the problems we've been seeing as opposed to a solution forward.

Patrick McDonald: Well, I think in regard to the substitution piece, you know, as far as when we're looking at harmonization, it did seem that unless there is kind of that direct substitution that there does end of being a lot of duplication in the process. So even if they are thought to be harmonized, there ends up being, you know, two different review processes and whatnot.

In regard to substitution for these projects, if we are focused n regard that the CEAA 2012 is focused on matters of federal jurisdiction — so there will be a couple items of federal jurisdiction in there. But largely if it's with a provincial undertaking, that they are the best placed authority to be making the decisions and to be managing the projects and are able to take amendment applications and cycle the project over the — and manage the project over the lifecycle.

You know, as far as uncertainty, I would really hope that if we do have those substitutions that would be an area of building upon, that we get the federal government at the table, and that could be recommendations in the process that, you know, if they aren't driven to participate, how can we maybe do that and get them to buy into that participation within the department.

Rod Northey: Okay, final question. Where do you think the question of greenhouse gas emission should be sitting in an EA?

Everyone think it's problematic at a project EA. Many people have very different views, whether it's federal at all. There are international commitments, there could be regional EA, there could be strategic EA. Really, at this

point, we have almost nothing except a promise from the federal government to do something and we have all these project EAs' coming down the path where everyone says it's inappropriate to apply greenhouse gas emission processes to them without a framework behind it.

So where is CAPP exactly on where that framework decision should be? Is it a regional EA, is it a strategic EA? Where should that whole exercise be done, in CAPP's —

Patrick McDonald: We do — you know, I can't make the position that we do not think it should be at the project EA. I think when we're moving through an environmental assessment for a project, our position is that that assessment should be comparing the project in terms of, you know, how does it align or consistent with policy; not be a mechanism in order to develop policies.

So that's definitely not at the project EA. Is there room for that and for those discussions at a more regional strategic piece, that would likely be a more appropriate place for it. But that being said, is the regional and strategic EA — you know, does that have the degree to which that can replace that policy decision, a government developing policy both provincially and federally and making sure that those are aligned. It would be a challenge. But like I said, I think it would definitely not at the project, it would likely more be incorporated at the strategic level if it was incorporated in an EA.

Rod Northey: Okay. Do I have any time for one more or are we done?

Johanne Gélinas: A short one.

Rod Northey: Yes. Just a quick question on offshore boards, because it's already fed/prov I'm just puzzled at the comment that it's a fragmented jurisdiction and duplicative. Who's duplicating what?

Patrick McDonald: So in terms of — so it's fed/prov, so there is environmental assessments going on that the offshore boards are undertaking. And so I think that's — and reviewing.

So if we're looking at who is the best placed lead authority, in that case we would see that the offshore board is the best placed lead authority in order to undertake those EAs, so really, you know, just given capacity and the ability to move through that.

Rod Northey: Okay, thank you.

Johanne Gélinas: I don't have time for a question but for homework.

(Laughter)

Patrick McDonald: Okay. I'm good with homework, Johanne.

Johanne Gélinas: I will be very interested in panel 2 I am sure to hear more from you about what we have heard a lot as we were going through the consultation process, the climate test. I would like to hear from CAPP how a climate test should look like at the EA project level.

Patrick McDonald: Okay.

Johanne Gélinas: And I thank you very much for your participation today.

Patrick McDonald: Okay, thanks for having me.

Johanne Gélinas: Thank you. Our next presenter is Helga Shield.

HELGA SHEILD, IMPERIAL OIL

Johanne Gélinas Good afternoon. Welcome.

Helga Shield: Thank you. Good afternoon. My name is Helga Shield and I'm here on behalf of Imperial Oil.

I'm a long-term employee there and I'd like to give you a very brief overview of who Imperial is and then really focus around some examples. I thought that might be quite useful to the panel versus talking in platitudes.

So I really want to build on, one, around balanced decision-making, so I'll talk about the Mackenzie gas project there. We'd like to talk about clear jurisdiction and agency coordination — one project, one assessment. I have both some good and some not-so-good examples here, and then talk about clarity and predictability for all participants around timelines and around when assessment is required. And I think that really leads quite nicely into —

Johanne Gélinas: Can you excuse me just for a second?

Helga Shield: Sure.

Johanne Gélinas: We don't have the screen in front of us anymore.

Helga Shield: Okay. So just to give you a brief overview of Imperial, I think most people in the room are probably familiar with Imperial. We've been around since 1880. We're a fully-integrated oil and gas company. Some of the assets you might be familiar with are Syncrude. We have a share in that, Kearl Oil Sands, Cold Lake, largest in situ operation in the world.

We have a chemical plant in Sarnia; we have refineries at Sarnia, Nanticoke and Strathcona, which is close to Edmonton. We also have a number of truck loading facilities and terminals and that sort of thing as well.

So we are across the full value chain, across the country, everything from drilling, exploration, upstream production, through to the refining of products.

We are very involved in research and always have been. So we do have our own research facilities in Calgary and Sarnia and we'd like to bring to the Panel's attention that we're a founding member of COSIA, the Canadian Oil Sands Innovation Alliance. So we are working together with 12 other companies to accelerate the pace of environmental performance improvement.

And, collectively, together, over a few short years we've shared 936 distinct technologies that we feel improve environmental performance of our industry and we have shared those things that cost over $1.3 billion to develop. So we are very interested in collaborating where that makes environmental improvement.

So moving into my first example, I wanted to talk through the Mackenzie Gas Project because we think it's really very important that decisions are balanced — and by balanced I mean there is the consideration of the environmental aspects of a decision but also the economic benefits it might bring and the social impacts. I think the Mackenzie Gas Project was the classic example of some really good decision-making here that was done with the Joint Review Panel and the National Energy Board.

This was a very large project. We consulted with communities for four years before we actually filed any application documents. We felt that it was necessary to do that. It was a big project. There were three fields up in the Mackenzie Delta, near the Beaufort Sea and there was about 12,000 kilometres of pipe that ran from the Beaufort Sea all the way down into Alberta.

We crossed land of four different aboriginal communities, the Inuvialuit, the Gwitch'in, the Sahtu, and Dehcho. This was a $16 billion project — and that's in 2007 dollars — and it was forecast to create direct employment for more than 20,000 workers over four or five years, so fairly significant.

The forecast of revenue to government was in the area of $50 billion when you looked at income taxes and royalties. What was really unique about this project was the participation of the Aboriginal Pipeline Group. This was a business that was created and owned by aboriginal groups in the Northwest Territories. They secured a right to own a third of the Mackenzie Valley Natural Gas Pipeline and it was really the first time in Canada that aboriginal groups were positioned to participate as an owner and a decision-maker in a major multi-billion dollar project.

The terms of reference for the EIA to do this talked about reconciling economic development, social equity, environmental quality and how that would achieve sustainable development. And when the NEB came out with their final decision, they said it was in the public interest and they concluded that the north would be better off with the project than without. So it was really a very good example of balanced decision-making. I think that's really quite important that it's not just a environmental decision we're making here, it's a decision about are we better off with it or without it?

Okay, moving on. I wanted to talk about our Coal Lake in situ project. Coal Lake is one of the largest thermal operations in the world. We've got about 400 employees here and up to a thousand contractors a day. We're producing about 165,000 barrels currently. There are five plants currently operating that look similar to the one on the left-hand side of the slide. And there are about 5,000 wells on multi-well pads.

We also have co-generation facilities and, of course, lots of aboveground flow lines to interconnect all those facilities together.

These leases were inquired by Imperial in the 1950s and we spent about 20 years doing pilot work to figure out how to get those oil sands out of the ground. This is the same formation as what you find in Fort McMurray, but it's much deeper so it's not possible to mine this.

In the last-1970s we did our first EIA at Coal Lake. At that time we called it the Coal Lake Mega Project and it was really the first big EIA of this type that happened in Alberta. And we began — there was a socio-economic consideration given at that time and it was an environmental impact assessment.

Since then, in the '90s and early-2000s we've done EIA number 2, number 3 and number 4 and we are currently working on our fifth provincial EIA for this project.

You might ask yourselves why we have done so many EIAs. Over the years technology has changed. We've learned more about the operation and we can now access resources that we never thought was possible in the past.

The scope of the EIA that's in front of the Alberta Government right now, it's about 4,000 pages. It does include socio-economic. It includes lots of discussion about traditional knowledge. It includes environmental impacts. It includes cumulative impacts. It includes the discussion of greenhouse gases. It talks about caribou and all sorts of areas of federal interest as well.

There are eight different regional planning initiatives that have guided this EIA. So there are lots of regional plans in Alberta and they are

considered an EIA, including in this one. It's important to note that EIAs like this are not the only time government looks at this project.

At Coal Lake we operate under an operating approval from the Alberta Government. We also have water licenses.

We submit 200 reports a year to the Alberta Government. Some of those are weekly, some are monthly, some are quarterly, some are annual. They're for everything from air to water to wetlands to wildlife.

We submit greenhouse gas reports every year under the specified gas emitters regulation to the province. So we feel we are quite well regulated.

Further, at Coal Lake in addition to the environmental monitoring and reporting we do, we also contribute under Alberta regulation, as required by the Oil Sands Monitoring Regulation, to a $50 million fund. Every year Alberta collects $50 million from oil sands operators and they do their own regional monitoring for environmental effects.

So we feel provincial oversight is in place for the in situ projects at Coal Lake. It happens all through the lifecycle, all the way from the beginning; all the way through to reclamation. And we have undertaken reclamation of some of the earlier phases at Coal Lake. And we feel it's quite effective.

Areas of federal interest like caribou and greenhouse gas are being addressed by the province here.

I'm going to take you now on this geographic tour up to Edmonton and we're going to look at Strathcona Refinery. This refinery has been in place since 1947 when Leduc number 1 came on at the very beginning of the oil industry up in that area. And this is a case of duplication. So we are currently in the process of considering a project to bring in a diluent recovery unit at Strathcona. It would be located in an existing parking lot in Strathcona which has been there for 70 years. There's an existing rail terminal. If you look on that slide over there, you can see there are some orange tanks. Unfortunately, the photo we put underneath it wasn't current enough to show you, but there is an existing rail terminal there where oil is shipped to other markets.

Right now, blended diluent at bitumen go into those rail cars and they are shipped, much of it, to the United States, where the diluent and bitumen are then separated and then the diluent has to be returned. So some of that diluent is making journeys of thousands of kilometres. What we would like to do — or what our proposed project would do, would be to separate the diluent and the bitumen at Strathcona Refinery and then we could return the diluent back into the market more

locally. So essentially we would forgo a journey of several thousand kilometres for that diluent.

Because this is co-located on the refinery's property, it is considered by CEAA that we are increasing the throughput to that refinery, even though these facilities are simply co-located. So we have triggered a CEAA PD for this project and we've also triggered an Alberta screening for the project as well.

So we completed our Alberta screening table. We've gone through that process and we've got word back from the provincial government that they do not feel an EIA is required. We've been notified we'll have to amend our operating approval which we will do. And when we do that, they will look at our air emissions and they will look at our greenhouse gas footprint and that will all be covered.

Going through the federal process, we've had discussions with CEAA back n February. So we've been advised we need to do detailed air emissions modeling, detailed greenhouse gas estimates. So we have now hired consultants to prepare these estimates and modeling for us. And we are many months now into preparing a document which is currently running around 150 pages, that's our project description, which we will submit to the CEAA Agency for them to make a determination as to whether or not an environmental assessment is required. We think that's quite onerous.

Okay. Moving into B.C. Again, this is another project we are in the early stages ourselves, an Exxon Mobile — in the early stages of assessing the economic potential for an onshore LNG plan on the west coast. The export of clean burning natural gas should actually reduce GHG emissions and replace fossil fuels that are being used elsewhere in the world.

We haven't made any investment decisions on this project yet but we are looking at it very carefully.

So we undertook a comprehensive site selection process. We took two years to do that, between 2011 and 2013 and we worked very closely with indigenous communities to do that.

We actually started out with a short list of eight possible sites and went through a very intensive constraint mapping process with local communities, looking at where they're harvesting animals, what are their travel routes, what knowledge do they have of this. And together we landed on a preferred location near Prince Rupert.

We've now filed a project description for this project, so that's gone through the CEAA Agency and we are aware we need to do an environmental assessment. So we're in the stages of preparing that application.

We were granted substitution through the BC process with the federal government. and it has been our observation to date that this process works very efficiently. It's quite transparent to us and I think it is to all the other stakeholders as to what — how the provinces and the federal government are interacting. And I think that's quite okay, because what it looks like to us, is it looks like it's one project.

Under substitution, we still have to consider all the factors that CEAA 2012 thinks is important, those are written into our terms of reference. The public is given an opportunity to participate, as if they were in CEAA 2012. At the end of the assessment, there will be two reports written, one by the province and one by the federal government. And the report is going to be made available to the public. So it appears to us, this is a very efficient way of dong this.

Johanne Gélinas: We have very few minutes left. So if you want us to ask —

Helga Shield: Okay.

Johanne Gélinas: — questions and I'm sure we're eager to ask you questions —

Helga Shield: Okay.

Johanne Gélinas: — if you could —

Helga Shield: I will talk as quickly and efficiently as I can.

Johanne Gélinas: Thank you.

Helga Shield: I talked a little bit earlier about Mackenzie Gas Project. There were some really good things about that project. But one of the things that wasn't so good were the timelines for it. When we engaged in this process, we knew it was going to be complex. There were many community groups involved, many levels of government. So the cooperation plan was negotiated at the beginning to determine what the timelines would be, what the responsibilities would be for that. The NEB committed and adhered to their schedule in the cooperation plan. They thought it would take between 57 and 62 days of hearing. They got it done n 49. We had an adjournment, they had another seven and we were done. So they stuck to their schedule.

The Joint Review Panel, on the other hand, didn't conclude their hearings. They planned on 10 months and instead it took 117 hearing days and it took 21 months.

After that, the GRP took over two years to write their final report. That's an activity which is really quite unaffected by other parties. At that point the panel was going away and doing their work. So it was two years to do that.

So all told, it took seven years between the time we applied for the project and the time we got a report. And you remember, I talked earlier, we had spent four years getting ready to bring that project forward.

These types of uncertain processes can really erode competitiveness.

And I thought I'd end with a positive example of early engagement and how that can work really very effectively.

When we acquired our Ajurak exploration licenses in the deep waters of the Beaufort Sea. we consulted with local people, the Inuvialuit, on plans to carry out 3D seismic. In 3D seismic, you actually drag very long geophones behind the boat and it can spread almost 10 kilometres, so it is this very large undertaking. And there were some concerns expressed by the community — this might impact beluga whales and bowhead whales and their traditional harvesting.

So we actually sat down together and we talked it through. We worked with DFO scientists, we worked with the communities, we brought in marine experts, we brought in sound experts and together we came up with a plan for how could we mitigate the concern. Chief to that plan was that we would have community people on those boats who would watch for the beluga whales and if we saw them, we would divert our path and we would shutoff the geophones. That process worked really well. I think we had good, collaborative work together. I think the community was satisfied with the result.

We don't believe we had any impact doing the work. So it was successfully executed and worked very well. It worked really well because we started that work early and together.

Okay, so just to summarize, I walked through the six different examples very focused on — we'd like to see balanced decision-making continue. We need clear jurisdiction between the provinces and the federal government. We need predictability about when we’re in the process. We need to be clear on what the timelines are. Doing that actually makes it more fair for everybody. It makes it fair for us because we know what we need to do when, but it also makes it fair for the communities because they know what to expect and when to.

Thank you.

Johanne Gélinas: Thank you very much. It was a very good idea to come with examples. It really speaks to the issue. Doug, do you want to start?

Doug Horswill: Yeah, I'm going to go into an area that you actually didn't quite touch on but you were scooting around in, particularly that last slide, in your relation with Indigenous People.

In Imperial's processes and so on, where do impact/benefit agreements fit? What do you see that — their use and do you make them public or are they confidential?

Helga Shield: The benefit and access agreements are typically confidential. But we try and do these early in the process. That's part of the first steps out to the community and about what are we planning on doing and what are their hopes and dreams and aspirations.

Renée Peletier: So I'll just follow-up on that question. Your example of the Mackenzie Valley Project and there being a true business partnership with the indigenous communities there, it seems to me goes perhaps beyond the typical IBA. Would you point to this as a best practice in terms of – the panel is obviously thinking about how we make recommendations that recognize UNDRIP.

Helga Shield: I think any time you can get people engaged in the game and they have some ownership in the game and they have some skin in the game, then you start to get some real dialogue happening.

Renée Peletier: Thank you.

Rod Northey: Yes, I just want to go back to your slide. I think it's slide 5 that has the heading “clear jurisdiction” and it's dealing with in situ.

So I'm not sure I followed the description in which you provided of the provincial side of it. But I didn't really follow the discussion.

Is the idea that this is clear jurisdiction because it's exclusively provincial? It sounded like that was your point. But then you said, but it took into account federal interests in caribou. I was a bit puzzled by that. And then federal interest in greenhouse gas emissions.

So what does that mean exactly?

Helga Shield: So the province clearly has jurisdiction here.

Rod Northey: Yeah.

Helga Shield: But in their terms of reference for EIAs, they do ask us to speak to caribou, wildlife, migratory birds, greenhouse gas, those sorts of things, which we do when we do our EIAs. Then when they follow that up with an amendment to our

operating approval to include new lands, they will typically put in monitoring requirements related to those things.

Rod Northey: All right. So in other words, then, clear jurisdiction for this is exclusively provincial, because you did allude to federal interests. I was kind of lost by it. So in you view or experience with this, there's no impact on any federal interest in this kind of a project?

Helga Shield: In our view, Alberta does an excellent job.

Rod Northey: That's not quite my question.

(Laughter)

Rod Northey: My question is —

Helga Shield: Yeah.

Rod Northey: — because what I'm trying to work through is if we go very aggressively to substitution and exclude the feds, do we — we may gain something. The Mining Association gave us a good submission in Ottawa about whether a timeline that's regulated really produces an overall timeline gain. And they had some skepticism as to whether they in fact have gained by this kind of aggressive substitution or process. So I'm asking a slightly different question. Is it better to exclude the feds or is it better to harmonize?

This example seems to me it is predominately a provincial project, but are there no backend issues with Fisheries authorizations or anything? Is that why it works for you? I'm just trying to understand better your position.

Helga Shield: I think it works for us because the province has the vast majority of jurisdiction here. The feds are always going to have jurisdiction over migratory birds, fish, caribou.

Rod Northey: Right.

Helga Shield: The province adequately addresses those to the satisfaction of the federal government.

Rod Northey: So does this project have any federal approval?

Helga Shield: Yes, it would, in our water intake at Coal Lake.

Rod Northey: Okay. And so where did the EA cover that part of the federal approval?

Helga Shield: That's existing, so we're not changing that when we're doing an addition.

Rod Northey: Okay, thank you.

Doug Horswill: On the Coal Lake example, you said you were on your fifth environmental assessment.

One of the things that we've talked and thought about is the notion of learning. What do you learn each time you go through? You don't need to answer it now, but if Imperial could give us a view of what they have learned going through that process and how things have improved, if they have, that would be useful.

Helga Shield: Certainly. I'm happy to do that.

Johanne Gélinas: One last quick question. You mentioned in your presentation that you are filing more than 200 reports to the Department of Environment or provincial government. Any of those or percentage of those that are public?

Helga Shield: All of them.

Johanne Gélinas: Okay, thank you.

Helga Shield: Thank you.

Johanne Gélinas: I would like to invite Sonya Savage and Chris Bloomer.

CHRIS BLOOMER AND SONYA SAVAGE, CANADIAN ENERGY PIPELINE ASSOCIATION

Johanne Gélinas: So good afternoon. We haven't had a chance to go through your submission, but you still have 15 minutes. So you have to pick and choose what you want to share with us, so that we can ask questions. Thank you.

And you may have more homework, but that we don't know yet.

Chris Bloomer: Absolutely. Thank you, Madam Chair and good afternoon, Panel. It's a pleasure to be here and I appreciate and understand the amount of work you're dealing with. So I want to keep this fairly direct. I look forward to your questions.

What we're going to give today is an overview of our thoughts on the EA process and so on as it relates to large pipeline projects that are transmission pipeline projects that are trans-border in nature. So these are the big pipelines, not the inter-provincial gathering and feeder systems.

We will have a very comprehensive submission later. But I want to discuss a few concepts and ideas that we're going to propose that may be helpful to think about initially.

But a very quick background, CEPA means Canadian Energy Pipeline Association. And we have — our membership are the 12 major transmission pipeline companies in Canada and they transport virtually all of the natural gas and liquids energy in Canada and into the United States.

I want to say that we are very committed to participating in this process and other environmental and regulatory processes. And my colleague Sonya Savage is here today and she'll participate in the question period.

She is a member of the MIAC committee, too. So we're very much involved in that — very supportive and looking forward to continuing to work.

The transmission pipeline industry seeks an environmental assessment process that is based on the science, evidence and facts. It must meet increasing demands for public engagement, be fair, transparent, timely and coordinated. Achieving this outcome can only be done in partnership with all levels of government, including indigenous governments and broader stakeholder groups.

To that end, there are two critical matters for CEPA that I will address today. First is our support for maintaining one project, one review. The NEB review process, including the EA under CEAA 2012 is one of the most rigorous and robust regulatory systems in the world and is based on the sold administrative legal principles.

Second is to introduce a new model for the NEB's integrated approach to environmental and socio-eco assessments. We believe this new approach will help build public confidence, create greater certainty for project proponents, enhance indigenous communities engagement and meaningfully engage the public.

That said, CEPA also believes that consensus for the modernization of project reviews under CEAA 2012 and the NEB should account for the fact that the public wants to be more involved in the very legitimate broader policy matters, such as climate change, upstream and downstream effects on projects, Canadian energy policy, indigenous rights as well as matters of personal, local and regional interest, but that they lie beyond the scope of 2012 or the NEB's mandate.

Prevailing frustration with the restricted scope of a project specific review, under CEAA 2012 and/or the NEB is well-founded. All too often, project specific reviews are the only public forum in which various interest groups can express their views on broader public policy matters.

Meanwhile, pipeline companies spend hundreds of millions of dollars to prepare complex root specific environmental and engineering assessments, undertake multi-year engagement with indigenous communities and stakeholders only to have these broader public policy issues remain unresolved.

If left unresolved, these issues can heavily politicize a project specific government decision. A decision then becomes a proxy for any and all unresolved policy matters. This results in longer reviews and significantly greater regulatory uncertainty impacting the ability of companies to invest.

To address this, CEPA is proposing a two-part review for major pipeline projects and will be advancing this concept more fully in the NEB modernization review. The reason we're introducing this today is because CEPA believes it would increase public confidence n the federal EA process and the NEB review process.

Moreover, it removes what is called extra freight by other stakeholders and provides a transparent and public venue to debate these broader public policy issues.

Part 1 of the review would be this type of sustainability assessment to determine whether the project is in the national interest. Undertaken at the federal government level, broader public policy considerations such as climate change goals would be considered.

For instance, the recent report from the Ministerial Panel for the Trans-mountain Pipeline Expansion Project conducted at the end of a lengthy two and a half year NEB process identified six high level questions that the panel recommended the government consider, if not resolve, before making a final decision on the project. These six questions align with the type of broad issues CEPA suggests be considered in part 1, climate change, national energy policy, indigenous matters including UNDRIP and FPIC, economic risks and rewards and reconciling public interest with regional interests.

Part 1 would take these issues out of the project specific EA and preserve the distinction between the policy making role of the government and the quasi-judicial role of the NEB. If this project is aligned with government policy and is found to be in the national interest, a governor-in-council decision with conditions from Part 1 would be made and the project would proceed to Part 2.

Part 2 would be an independent thorough project specific EA performed by the NEB as the best placed regulator with the experience and expertise to conduct specific reviews and retain its existing authority to impose conditions on the approval of the project. It would include the project specific environmental and socio-economic assessment, together with a detailed engineering assessment of the

proposed route. It would also consider project specific mitigation measures to address route specific issues raised by land owners, indigenous communities and other stakeholders.

To be clear, CEPA is proposing a two-part review exclusively for major pipeline projects. CEPA is not proposing that all NEB regulated pipeline projects be subject to a two-part review. In fact, further discussions about two-part review includes consensus for appropriate triggers, the scope of each part, participation, time and place for GIC decision-making.

CEPA will be addressing these ideas more fully in the NEB modernization.

In the context of this EA review, CEPA strongly supports maintaining EA responsibilities with the NEB as the best placed regulator, to conduct a coordinated and efficient through review.

Adding additional regulatory authorities or additional regulatory processes is inefficient, costlier and may involve fragmented consultations that will continue to frustrate the public and indigenous communities. Lack of coordination often results in delays and makes conflict between processes more likely.

The NEB has decades of experience considering potential environmental effects for pipelines. As a lifecycle regulator, it is familiar with the industries best practices for pipeline construction and operating standards and has the expertise to take environmental effects, their unique or potentially significant to pipeline projects into consideration.

Moreover, under the Pipeline Safety Act, unanimously supported in the last session of Parliament, the NEB has enhanced powers and tools to impose post-approval project conditions.

CEPA believes that if the broader public policy issues are taken out of project specific EAs and NEB reviews, the EA process under CEAA 2012, itself, will continue to perform effectively for NEB regulated projects.

In recognition of the strengths of the lifestyle regulator for pipelines, CEAA 2012 gave the NEB responsibility for conducting EAs of NEB regulated projects. This provided greater clarity for pipeline proponents. Previously pipeline projects often required an assessment from the NEB as well as other responsible authorities or other jurisdictions. This resulted in considerable uncertainty and duplicative processes leading to unnecessary delays, costs and complexities.

CEPA feels strongly that maintaining the overall process within the NEB, including project EA in one project, one-review approach holds the best

prospect for providing — for avoiding, sorry, duplication and adhering to predictable timelines, principles of procedural fairness.

In conclusion, our collective efforts in this EA review process should focus on striking an important balance between two objectives.

First, the most efficient in a regulatory framework that is one that is far, transparent, coordinated, clear, comprehensive, and based on science, evidence and facts. The review process should avoid duplication, outlining clear accountabilities and provide more meaningful public engagement in indigenous participation.

Secondly, CEPA member companies propose to invest a significant amount in pipeline infrastructure projects that would add jobs, growth and economic prosperity.

However, we understand that investment confidence goes hand-in-hand with building public confidence in regulatory processes that lead to sustainable outcomes.

We respectfully ask this panel to keep these two important objectives in mind as it consults with Canadians and makes its deliberations and changes to the Canadian environmental assessment process.

I look forward to your questions.

Johanne Gélinas: Thank you very much for your presentation.

Doug, do you want to start?

Doug Horswill: I was just trying to adsorb some of what you have just gone through.

(Laughter)

Doug Horswill: In your two-part review, part 1, your sustainability review, does it end with a go, no-go decision? Does it end with a decision with a bunch of conditions wrapped around it? How does that work?

Chris Bloomer: Well, Sonia can elaborate on those too. But in principle, what we're looking for in this first phase is to deal with all the policy issues up front so that there would be, lets' say, a government-in-council decision with conditions on it to proceed to the next phase.

What we're trying to avoid is companies proposing projects and getting into a long, drawn out processes where that could be avoided with policy considerations determined upfront and conditions can be applied.

Sonya Savage: I would just add that this would preserve the policy-making role for government and the quasi-judicial role for the regulator and EA process. And, basically, it would give enough certainty for pipeline companies to invest the hundreds of millions of dollars that they invest for project-specific review in engineering.

So, yes, it would find any major go, no-go show stopper decisions. It doesn't mean that there won't be a lot of mitigation and adverse effects in part 2 or other issues on earth. But, basically, it would take all the policy decisions that can't be resolved in project specific EA out of project specific EA.

Doug Horswill: What would it be based on? Would the proponent provide a conceptual document of some sort — obviously not a project description for a hundred million dollars but something somewhat less than that, I presume.

Chris Bloomer: Yes, it would be a project proposal whereby they would layout the overall — it would be in some detail –but it would layout the overall project concept, proposal, routing, volumes, those kind of things upfront so you could see where the areas of impact would be, how that would affect various policy implications and so on. So you could hash through those things upfront and then move on to the more, you know, directly NEB-related technical evaluation where you go into and the NEB deems the project complete and we move forward.

Doug Horswill: And would you have indigenous and public involvement in part 1?

Chris Bloomer: That's a strong benefit of doing this, this way because you would definitely have indigenous participation up front, it could be scoped and outlined in the context of the project and the various community aspects could be dealt with also.

And you mentioned earlier on about the learning potential of other projects and so on. Those could come into play and help build a more robust process. We mentioned the trans-mountain interim panel. They came out with some proposals that can be dealt with upfront also.

Doug Horswill: Okay. My last question: your position on the NEB continuing to conduct EAs and do that because of your position that they are expert. We have heard an awful lot of views to the contrary to that.

Can you put any more meat on the bone of why you take your position and how we should be thinking about the notion of the apparent lack of confidence on interveners part?

Chris Bloomer: We'll elaborate that on our final submission and we'll have more commentary on that.

But when we look at the NEB it has regulated the industry for 50 to 60 years. They have been approving projects even under the current environment very successfully. The performance record of the pipelines — I think on the transmission pipeline sector speaks for itself. And we're quite confident that, you know, a lot of the things that the NEB has been called out for have not really been in their mandate to deal with before. So that's why this two-part process could help out with that.

Rod Northey: Yes, thank you very much. We're scrambling to catch-up to you. So I just want to come to your list of the six issues which I guess is in your detailed submission at page 2, but it's also on your speaking notes at page 3. And the six issues, just to repeat them, are: climate change; national energy policy; indigenous matters, including UNDRIP, risks, economic risks and award, and reconciling public interest with regional interest.

The question I have for you is this: on two of them, the first two, climate change and national energy policy, I applaud your boldness in wanting that to happen separately from a project EA but at this point we don't have any national policy, period, on how those things work. Do you have any recommendations for us on how that would not get us into the Mackenzie Valley piece we just heard of a process going on far past anyone's expectations?

I'll give you an oral chance and if you have a written opportunity, I'm interested.

Sonya Savage: Well, I think that's one of the critical problems that the whole industry is facing is in the absence of some clarity on a number of these big policy issues, it's very difficult to invest hundreds of millions of dollars into project specific assessment.

This would be by pulling together a two-part review. We'd be asking for clarification of that particular project within an overall policy framework so that there'd be enough certainties to know that you can proceed with a project specific assessment without the risk of a veto at the end of the process. Basically, it would put that veto upfront if there was to be one.

Rod Northey: So let me just — I think you were here for my other questions — those two questions strike me as questions that apply to the entire sector. And so apart from recommending that there be a sectoral EA or something, how is it that we would improve the issue by moving down to a project level a bunch of questions that appear to be national policy questions? I'm not quite getting the gain. I certainly think there's a gain by trying to have something done at the national policy level, but

how does it improve by saying for a specific project we're going to look at climate change and national energy policy? I'm kind of concerned that's an apples and oranges problem.

Chris Bloomer: Well, I think, yeah, it's kind of the cart before the horse or what comes first.

I think that what we're proposing is the project would have to align with climate change policy —

Rod Northey: I see.

Chris Bloomer: — and national energy policy. It's not that it's going to be constructed within the first phase.

Rod Northey: I see. So —

Chris Bloomer: You would have to align with that upfront. So that other issue comes on the outside, but whenever we review the project, it has to line up with that.

Rod Northey: All right. Okay, so now then I go to your third one, indigenous matters and UNDRIP. If we follow that kind of path which is an alignment with federal policy, can you tell me how at a project level at that conceptual level you would have any idea whether you have UNDRIP level compliance or not? Because it strikes me that you would have engagement, but a very, very conceptual project. What do you imagine — and again, you may have some innovative tools that are not in these papers of how you would achieve consent on something that is way earlier than a project approval.

Chris Bloomer: I'll make a comment and then Sonya will correct me.

(Laughter)

Chris Bloomer: I think at this point we would go through the policy considerations and there's a framework for free prior informed consent —

Rod Northey: Yeah.

Chris Bloomer: — and UNDRIP. There could be recommendations that come out of the first phase for things that need to be dealt with within the second phase on that subject within an EA. It's not fully detailed in the first phase, but at least you identify those policy issues that you need to address within those constructs of UNDRIP and FPIC.

Rod Northey: Well, I think you've got lots of challenges. I look forward to the submission.

Chris Bloomer: Yeah.

Rod Northey: But I do applaud you trying to figure out how to get out of the project box. It's just you're revealing to me a lot of the challenges with trying to get out of the project box. So I look forward to seeing more. Thank you.

Johanne Gélinas: Do you have a question? Just a quick one. Maybe not that quick. What we have heard a lot so far — just to follow on Doug's question about NEB versus CEAA — is that CEAA could be the one who will do the review, the EA review. Considering all the expertise is still there, what will be your argument not to have CEAA doing that? Because we hear that over and over and over. I would like to get your views on this point.

Sonya Savage: Well, one of the things with the NEB is it's a lifecycle regulator and it regulates the project from its project description, right through its lifecycle, right to its abandonment. And they have the ability to impose conditions, they have the Pipeline Safety Act to further regulate the pipelines. They know the specific engineering and technical aspects of pipelines that no other agency does know.

The problem that we've seen with the lack of public confidence is all the issues that the NEB is not able to resolve, the larger, broader public policy issues, which we're saying to take out of that process so that we can go back to a more traditional sort of review process that we've had over the last 50, 60 years. And the NEB is by far the most equipped to understand pipelines from cradle to abandonment much more so than the CEA Agency. And we believe by taking a two-part — making a two-part test it would be by far more efficient than the CEA Agency.

Chris Bloomer: It's a really important point. And I think there’s a lot of perspectives on this around the NEB.

But we're talking about these major pipeline transmission systems. The NEB does regulate them from inception to abandonment. We have the Pipeline and Safety Act which is also involved with that too.

And the environmental assessment that the NEB does is wholly consistent with what the terms of a CEAA only-type of environmental assessment would be. So it's not something different, it's just conducted within the NEB. And this involves the whole specific aspects of pipelines, the specific operating conditions, the specific remediation conditions and so on. So it's a very specific thing. And it's a long-term kind of regulatory perspective.

Johanne Gélinas: If you are to prepare another submission for us, I will just invite you to look at some of the comments that were presented to us. One being the fact that it's the interveners are quite selective, well defined. So looking at the two processes and certainly propose some ways of improvement of the NEB process with respect to EA. That will be helpful for us. Thank you very much.

Our next presenter is Allan Harvie.

ALAN HARVIE

Johanne Gélinas Good afternoon.

Alan Harvie: Good afternoon. First, thank you kindly for the opportunity to make a submission to the expert panel. I am Alan Harvie, a Senior partner with the Global Law Firm of Norton Rose Fulbright and I have practiced environmental and energy law since 1989 from our office here in Calgary.

I've worked with both proponents and interveners in federal and provincial environmental assessments.

I wish to be very clear today that none of my comments represent the views of Norton Rose Fulbright or our staff, or especially our clients.

Before I get into my core comments on the environmental assessment process, I wish to remind everyone about what the expert panel mandate is and is not, as I understand it.

As I understand the mandate is to regain public trust and help get resources to market and to introduce new, fair processes. I've got some comments on that. First, there appears to be a presumption that the federal EA process is somehow broken and the public's trust needs to be repaired.

Well, I'll agree that some recent NEB decisions are troublesome. I disagree that the process, the federal process is wholly broken and that there has been a complete loss of public trust.

In my view, some people who claim it's broken and some who do so very loudly are the ones who are unsuccessful in convincing projects to be stopped and convincing CEAA panels of their side of a case. And I urge this panel to not be swayed by people who have lost and then claim the process is broken.

I think the process works well. My colleagues who work in the field think it works well, if not very well. And in many respects, has done so in the vast majority of cases for many years.

I also question the lack and loss of public trust. Although some Canadians in some cases may feel they cannot the CEAA process, such as those who were denied the right to cross-examine the witnesses in the Kinder Morgan review. I think that many Canadians do respect our EA process and laws.

Now it doesn't mean the process of CEAA is perfect and that there are no room for improvements that can be made. I'll get to some of those suggestions in a moment.

Back to the panel's mandate, I question if the panel is mandated to review when a federal environmental assessment is triggered. And I expect that this expert panel has received and will receive submissions to restore the previous CEAA triggers which triggered a federal assessment, such as those in the former law list regulations.

In my experience in environmental NGOs love that process because they are offered a way to get the feds involved in reviewing projects that otherwise only subject to provincial process. It changed the nature, in my view, of environmental assessment and, therefore, it changed project planning and development in several ways.

It led some persons who are opposed to a project to suddenly become very interested in fish and to raise fish habitat issues in order to trigger CEAA so they could eventually have opportunities to question the proponent and government departments about climate change or some other issue that have, frankly, little to do with fish.

It turned the Water's Protection Act — which I submit the original intention of Parliament was to protect navigation into an environmental statue. But realize the old CEAA process also indirectly led, in my view, to some cases to non-optimal environmental planning and decisions. A common mandate for an environmental lawyer such as myself; working for a proponent was to try to figure out ways to avoid the federal EA process altogether, hence to avoid the federal EA triggers, projects were reconfigured and redesigned not to make them better projects but to simply try to avoid the old CEAA triggers.

For instance, longer circuitous roads into an oil sands site were used to access a project for the sole purpose of avoiding having to build a bridge over a small, fish bearing stream and thereby avoiding CEAA but potentially causing greater environmental disturbance.

I recommend that an assessment of when a federal EA s required be left to another form, as you do not see such an assessment in this mandate.

I've got five man comments I wish to address, the thrust of them deal with the Canadian Constitution, the role of science, the role of a CEAA panel,

the vetting of interventions and alternatives to projects and the choice of the final decision-maker.

On Constitutional issues, I want to stress the importance of the Constitution. We can't throw out Canada's Constitution out the window because of CEAA. The federal EA process must respect the federal role in Canada and not encroach upon areas of provincial jurisdiction. The federal EA process can and should only look at federal issues.

Now in my experience, prior to reform in 20102, CEAA panels regularly and thoroughly crossed into areas of exclusive provincial jurisdiction and I always wondered why people didn't challenge that more. CEAA doesn't change the Canadian Constitution no matter how much some people want it to.

And as for science, I submit the federal EA process should be designed around generating and using the best science to aid decision-makers. It should be risk-based approach or potential consequences and the probability of those consequence materializing are assessed. The existing core process of asking the following questions should be retained:

(1) What are the effects of the project?

(2) Is an effect adverse?

(3) Is it significant?

(4) Is it likely?

(5) Can it be limited or mitigated?

I submit these questions are only answerable by good science. And how can we get the best science, you ask?

I suggest that instead of just relying on proponents to bring this science forward, that the CEAA process involve a much more inquisitorial review panel. This could be done by the panel having its own experts, appropriately funded to affectively peer review the proponents science and have the role to bring any relevant information to the decision-maker that's not brought forward by the proponent, government departments and agencies or interveners.

Some models that I'm familiar with that can do this is the Alberta Natural Resources Conversation Board, otherwise known as the NRCB; the Alberta Energy Regulator. These bodies have a staff of scientists who with the aid of other experts and their own lawyer acting as an amicus curiae, or friend of the court, cross-examine and present evidence at a hearing to bring out any evidence that has not ht the record. It can be effective, as in my experience, and it makes the proponent work

much harder to get the science right; to fully disclose that science; and very importantly it helps instills public confidence in the process.

What the public sees is the panel's experts and lawyer grilling the proponent with tough questions about the project. It's effective in instilling public confidence, in my view.

It can also directly focus more on the key controversial issues compared to the more passive process where the focus is on the key issues generally the proponent wants to be in focus. The model also improves on the role of government departments and agencies, as they may be often resource constrained, in my opinion, when you come to looking at the projects. They simply don't have the budget to do the type of work that's really necessary. But providing the CEAA panel with their own staff, decisions are not subject to those constrained government department budgets. An inquisitorial panel can also challenge the so-called science of some interveners. I've seen proponents who would love to challenge so-called evidence brought up by some interveners. But for strategic or reputational reasons, do not do so and then that evidence sits on the record unchallenged essentially.

My third point is dealing with alternatives. Alternatives to the project being assessed must be thoroughly considered. In my view, this has not always been well done, especially by interveners who only rarely present alternatives to a project — sorry, who only rarely present alternatives to a project, other than the alternative that the project not proceed.

Now, a valid alternative is the project does not proceed. But the consequences of a no-alternative must then also be assessed. So that if we're going to turn down a pipeline because of greenhouse gas emissions, pipelines can take oil to tide water to Asia, we need to look at what's going to happen without that pipeline. They're simply going to get their oil from somewhere else. We need to look at those emissions in the consideration of the alternatives. I have not seen anyone do that yet.

From the process side, I think what has broken down a bit is where organized campaigns, CEAA panels have been overwhelmed with interventions. For instance Northern Gateway, there was about 9,500 public submissions I understand and I would guess about 95 percent basically said the same thing.

I think a way to avoid this tactic of trying to overwhelm our legal system with something similar to some sort of denial of service campaigns is to have a much more rigorous process prior to a public hearing, whereby people who wish to intervene must register, fine, and have an opportunity to explain what evidence or knowledge, insider experience that they'll bring to the attention of the decision-maker that will not otherwise be before that decision-maker.

This could be accomplished through holding a more through pre-hearing meeting or an assessment that's made at the connection of the intervener with the project — we will call it the standing in Alberta — the relevance of the evidence and whether such evidence will already be before the panel.

In short, I think that a test needs to be put in place where an intervener has to bring something new to the table in order to sit at the table. Further, the intervention should be required to focus on the project in question. We've heard about this one already. CEAA should not be a forum where broader government policies are debated.

My last submission deals with the decision-maker and it's to get these important science-based decisions out of the hands of politicians.

In my view, public confidence in a process is lost when some politicians hold the final decision and then make that decision in a non-transparent, secretive process behind cabinet doors and without any reasons explaining their decision.

Why can't we have an NEB panel make its own final decision? Other bodies that hear evidence make their decisions.

The CRTC does; the Alberta energy regulator examples, as does the Canadian Nuclear Safety Commission under CEAA.

I'm very disturbed by the current apparent idea that decisions need to be taken away from an expert tribunal. For instance, some are calling for the National Energy Board to have less of a role in decisions involved in pipelines. And I think that, frankly, is ludicrous. Who else has more experience on pipelines? That's what they do, all day; every day is regulate pipelines.

So what would the alternatives be? Would it be some member of parliament who has never probably seen a pipeline? The mayors of Montreal or Burnaby, are they going to be decision-makers?

CEAA should be about getting the best science in front of the best experts and that expert body making the decisions.

Decisions about the science surrounding a project should be made by persons qualified by training and experience to make such decisions, because, in my view, that will result in a better decision.

But above all, there needs to be transparency in the decision. Having Cabinet make a decision behind closed doors, providing no reasons, I think, is wrong. If anything is going to destroy public trust in this federal EA process, it will be someone in Mr. Trudeau's Cabinet at the end of the lengthy CEAA process

before the National Energy Board make a decision in secret to deny a pipeline and provide no reasons and with the public wondering if the Cabinet even reviewed the NEB's report.

Thank you. Those are my submissions.

Johanne Gélinas: Thank you very much. I think I will start. You mentioned — you're proposing an idea of who should sit at the table to debate on a project.

And my question to you is where do you fit what I will call "community expertise, community science, traditional knowledge" in the overall picture?

Alan Harvie: Oh, well that's very much relevant, community science knowledge is —

Johanne Gélinas: It's irrelevant?

Alan Harvie: It’s relevant.

Johanne Gélinas: Okay.

Alan Harvie: It's very relevant, yes.

(Laughter)

Alan Harvie: Absolutely. It's some of the most important information that the decision-makers need to hear.

Johanne Gélinas: But my point is — as I was reading your presentation, I couldn't find where these people will have a voice where they will be able to express themselves.

Alan Harvie: Well, they could get themselves organized, show-up at the pre-hearing meeting and saying we have some community information which we would like to bring forward.

Johanne Gélinas: Okay. My other question — I was trying to read between the lines, maybe, so I don't want to have a misunderstanding of what you're mentioning — are you saying that CEAA should be a quasi-judicial tribunal?

Alan Harvie: Sorry, what —

Johanne Gélinas: That CEAA should be a quasi-judicial tribunal, so that they can make their own decisions?

Alan Harvie: Yes, I think they should. They should be able to make their own decisions after hearing the evidence. We should have the experts make those decisions.

Johanne Gélinas: Okay.

Thank you. Rod?

Rod Northey: Yes, thank you. A couple of questions. So I'm not sure I've got them organized the right way but making CEAA risk-based right now and you gave us the framework of the CEAA test and most people think a risk framework has some relationship between the seriousness of the effect and the probability or possibility of it occurring.

The framework you summarized has the only probability question is a likelihood of it occurring and if it's a possible effect, it doesn't fit the CEAA framework. So my question of you is do you think the CEAA framework, as written now, is a risk-based framework or are you recommending it get changed so that it does deal with the parameters of risk better?

Alan Harvie: It should address risk better, yes.

Rod Northey: All right.

Second question, you were saying — I probably should just assure you that we are aware our mandate does not include changing the Constitution, so I think we're going to observe those.

Johanne Gélinas: Really?

— Laughter

Rod Northey: Well, the Chair will have to work that out. But one of the things that you raised about panels or other things going well beyond what they do, I just wanted to throw your way, EA does have a complicated problem of having broad power to look at information to consider something and a narrower power to regulate something. So it does strike me — and I think in the old man case and a few others along the way have strongly emphasized a broad power to look at information as to what you consider — that doesn't answer the question of whether you can regulate something. Are you saying something different?

Alan Harvie: Yes, I think I am.

Rod Northey: Okay.

Alan Harvie: I think the federals should only be considering items under federal jurisdiction, instead of sending out information requests on clearly provincial issues.

Rod Northey: So you would narrow then the consideration to what they can regulate?

Alan Harvie: Yes.

Rod Northey: Okay. You realize you're at odds with the Supreme Court on a couple of cases? Yes?

Alan Harvie: Okay.

Rod Northey: Okay. Well, all right. Alternatives thoroughly done. My next question to you is do you think — people have commented on that in earlier versions of federal EA there have been prospects of being able to look at alternatives and need. The current CEAA'12 knocked out need and alternatives. Are you advocating a return to the question of being able to say whether something should or should not proceed at the outset?

Alan Harvie: Yes, yes. I'm saying we should look at the alternatives if it's not going to proceed.

Rod Northey: Okay.

Alan Harvie: We don't have that discussion currently. We simply hear, it should not proceed.

Rod Northey: Okay. Thank you. And I can't even read my own writing here, sorry. I think that's it. Thanks— oh, no, I do want to — sorry. "Inquisitorial, own experts." So Berger is a model of both in some ways. He has his own counsel present in 1977 but he allows all interveners to cross-examine everybody. So it's both the inquisitorial, by your description, and the adversarial.

The CEAA doesn't have either. In the CEAA process in front of a panel, even a technical hearing is all supervised by the panel alone, with no cross-examination. So which model are you advocating in a bit more precision?

Alan Harvie: Well, the inquisitorial and the adversarial.

Rod Northey: So everyone should have a right to cross-examine?

Alan Harvie: Well, they have to get past the — they have to bring something new to the table, that’s' what I said.

Rod Northey: If they get —

Alan Harvie: If they get —

Rod Northey: — through your intervention test?

Alan Harvie: If they're in, they're in. Yeah.

Rod Northey: All right. I'm going to leave the intervention test. I've taken a lot of time. But thank you, okay.

Alan Harvie: Okay.

Renée Peletier: I'm going to pickup on the intervention test. But first just to address your comment about public trust not being broke. I'm going to tell you that our cross-country tour so far would suggest otherwise. And part of it is tied up with this intervention piece. It may surprise you or not that a lot of the comments we're getting is that intervention currently is too limited.

And so I'm wondering, given your comments to Madam Chair's question about indigenous groups and the way in which a project might imp[act them, you see that as being very relevant. Who are the groups that you think are currently intervening that are not bringing forward anything of value that should be out?

Alan Harvie: Well, I think you need to have a test of standing, you have to say why would this project impacts you. You're not just picking up off a website and filling in a form and firing it in. You have to demonstrate that you've got some connection to the project.

Renée Peletier: What we're hearing currently is that that actually is what's happening now, that a number of people are saying to us, we feel as though we are impacted by a certain project but we're being given very limited intervener status. So at the NEB level, we're only a commenter; we're not a full intervener. So the sense that we're getting is that there already is that kind of a test in place. I don't know if you have a wording for a more stringent test that you would propose.

Alan Harvie: I don't have exact wording, of course. And I'm aware that there's been some problems with some of the NEB process and I think I admitted that in my submissions. Clearly there's some people who are not happy with the process and perhaps rightfully so if they're denied the right to cross-examination and a few basic other rights, I think we, as Canadians, should expect.

Johanne Gélinas: Thank you very much for having presented in front of us. Thank you.

We'll take a 15-minute break and then we will reconvene.

(BREAK)

Johanne Gélinas: Please get back to your chair. We will start over. Okay, so now we're ready. We apologize. So Mr. Hegmann, welcome.

GEORGE HEGMANN, STANTEC

George Hegmann: Thank you. Good afternoon and thank you for the opportunity to speak to you today.

Stantec is a multi-disciplinary consultancy of approximately 22,000 employees providing professional services ranging from engineering and architecture to environmental services. The environmental services group in Canada includes approximately 1,500 staff in 20 environmental specialties, including completion of environmental assessments.

We have four decades of experience conducting EAs for projects across the country. These include natural resource projects, such as mines, pipelines and oil and gas exploration and production, public infrastructure such as hydro-electric dams, electric transmission lines in roads and power generation such as thermal and renewable.

We are currently engaged in 14 projects under CEAA or CEAA 2012.

My name is George Hegmann. I have 22 years of experience as an EA practitioner. I was lead author and chief editor of the 1999 cumulative effects assessment practitioners guide prepared for the Canadian Environmental Assessment Agency and have advised the agency on the CEAA 2012 update. This presentation by Stantec reflects the views of and a joint effort by many practitioners in our firm across Canada as shown in the offices highlighted in the accompanying slide. Stantec will also present in Vancouver and we'll provide a formal written submission. Each presentation follows a theme. Today the theme is a practitioner's perspective. My colleagues in Vancouver will present under evolution and advancement of EA.

An EA practitioner's expertise comes from doing EAs versus academic observation or critical review. The practice of EA from a practitioner's perspective is born from many thousands of hours by thousands of people over several decades. That involvement is throughout the development of each project, beginning at the earliest stages of scoping and project design, to information gathering and analysis, filing of the assessment and participation in regulatory review, including responding to information requests and participation in panel or board hearings. We also support post-approval tasks such as permitting and follow-up and monitoring. Such direct EA engagement offers many lessons and informed observations.

Environmental consultancies engaged in project EA on behalf of typically industry or government. Clients are staffed by a diverse mix of processionals, many with advanced degrees and years of relevant experience who act in an objective and independent way. That independence is not compromised by the consultant/client relationship. Their work is subject to an unparalleled level of technical agency and public scrutiny. Many are regulated by professional associations.

In summary, our four practitioner key messages are as follows: process and practice, the practice of project EA in Canada is currently well advanced and supported by a robust regulatory process. While changes can offer improvements, we believe Canada fundamentally is a process that works.

EA in Canada is not broken, but could in some respects use a tune-up scoping. Environmental assessments should focus available resources on key issues. EA can only assess what is knowable. There are concepts many seek to assess that should first, through guidance, policy and other means be made clear so they can be effectively assessed and offer meaningful information. Examples of such concepts which we argue are not yet ready or are not suitable for project EAs, include social and cultural wellbeing, ecosystem health or integrity, systems approach and social license.

Knowledge, environmental assessment has always been based on good knowledge. It already is fact or evidence-based, certainly with science and increasingly with traditional knowledge. Insightful knowledge to support good assessment that then supports good decision-making becomes a larger hole with public and aboriginal engagement guidance.

Regulators, practitioners and other participants in EA need clear, comprehensive and unambiguous technical guidance while allowing for a judicious discretion to adapt to the relevant context for the project under review. All parties should be required to abide by defend process timelines within which the work can be reasonably accomplished while allowing reasonable and fair time for input from Aboriginal People and directly affected parties.

It is worthwhile to first reflect on what the current EA process is by law and what it is not. Project-specific EA as opposed to strategic or regional EA is a planning tool to a) decision-makers, administrative or regulatory authorities or Cabinet to scrutinized the merits of designated projects under the public interest test. And based on that, have the appropriate government representatives decide on the fate of that application.

Practitioners prepare project EA based on available information, supplemented by focus studies to improve the understanding of baseline conditions and then identify environmental effects and measures to mitigate adverse effects.

Uncertainties, assumptions and information gaps should be explicitly recognized and addressed in the context of effects and predictions. Conclusions on the characteristics and significance of effects are made first by the practitioners responsible for the EA. These are subject to critical review by government agencies, aboriginal groups and others. It is then left to the decision-makers to determine significance and acceptability under their mandate and similarly on the balance of the many issues involved. EAs have and should use factual information based on science and traditional knowledge but are not research studies or science projects.

While EAs do and should focus on project-specific environmental effects, both adverse and positive, they should also address how that project contributes to regional environmental and social sustainability as stipulated by whatever available technical guidance, standards, thresholds or policies and as required in the assessments specific information requirements.

However, project EA must not be the sole agent for the resolution of a larger societal issues for which the proposed project is or may be but one contributing factor. Examples of this include regional land use planning and the influence of a project on national or regional objectives to climate change. If projects are to be tested on such issues, practitioners will need a reasonable assessment context that is firmly understood and established. The hard lessons learned by EA practitioners is that the evaluation of environmental effects is limited by what can be definable and then assessable. This means practitioners must strive to evaluate cost-effect relationships in ways that are measurable and allow a defensible and rational means to assess. Indeed these qualities reflect the desire expressed by many for evidence-based decision-making and as demonstration of the practitioner's capability and integrity.

The limitations of science and environmental planning, however, must be acknowledged and transparent, so that the quality of the information used in decision-making can be understood. Meritorious intentions, such as aboriginal rights and titles and regional sustainability deserve to be addressed by society. However, they should be done though other means than solely by project EA.

Other administrative, regulatory and judicial processes provide mechanisms to address such matters which offer needed benchmark standards and information requirements that practitioners may refer to and assess by. Project EA should then demonstrate how they meet these standards and information requirements.

It should, therefore, come as no surprise that improved guidance or guidance at all is sought by practitioners to provide the necessary direction and certainty. And it also is no surprise that the issues most requiring guidance are those addressing large and complex information requirements, in some cases, when the issue arguably exceeds the reasonable and procedurally fair domain of project EA.

Three issues are top most, from our practitioners' vantage point, cumulative effects, greenhouse gas emissions and traditional knowledge.

Regarding cumulative effects, further clarification is needed to ensure that current guidance provides reasonable and achievable expectations for assessment of project contributions to cumulative effects, such as identifying future projects and regional thresholds. Project EA should not be surrogates for regional planning and strategic regional assessment. The distinction, therefore, must be clear where cumulative effects within project EA ends and where larger regional initiatives begin.

Importantly, EA projects is an agent of policy but not the means of developing it.

Regarding greenhouse gas emissions, better guidance and a federal policy is required in assessment of project contributions to greenhouse gases and climate change. The federal government should establish national thresholds or targets and work with provinces and territories to establish similar guidance in those regions. Project EA should then quantify specific emissions from that project, assess how this will affect the ability to meet appropriate targets and identify means to manage emissions.

Projects should not be required to assess external upstream or downstream effects. It is the responsibility of those industries and the appropriate government to do this outside the EA process.

Regarding traditional knowledge, Stantec has provided comment to the agency on the draft technical guidance for assessing current use of lands and resources for traditional purposes. As stated in our submission, considering such use by Aboriginal Peoples represents one of the most challenging areas for EA.

Aboriginal people want and expect EAs to fairly and accurately portray their traditional use of land and resources and assess how project environmental effects and cumulative effects may change their uses. We agree that project EA should do these things.

In conclusion, environmental assessment practice in Canada advance; needs to advance. However, any calls for a next generation of assessment must recognize the pragmatic limits of the possible that currently confine practitioners to a smaller space than many expectations demands. It is Stantec's belief that the confluence in the future of these intentions can be met if the messages we relay today are considered as part of that evolutionary progression. Let the future of environmental assessment in Canada meet greater expectations on the condition that greater expectations follow greater understanding. And with expanded and improved guidance

and issuance of appropriate policy to provide the necessary direction and context, that understanding can be reached.

Thank you.

Johanne Gélinas: Thank you very much. We have had very few practitioners presenting to us. I thank you very much for coming in front of us.

Two questions. The first one is something we have heard many times and you addressed it a little bit in your presentation which is the independence of your firm's as practitioner of EAs, when you do an EA for a proponent.

Some people were of the view that you are anyway too close to the proponents. And one way to address this issue for them is to have you totally independent from the proponent as you do the EA. One way being that you do the EA for an example, Canadian Environmental Agency.

George Hegmann: Yes.

Johanne Gélinas: I would like to hear your view on that.

George Hegmann: My first view is that professional consultants who work on behalf of industry/client remain with a degree of necessary independence and objectivity. It is, of course, true that we work very closely with our clients.

We must certainly on various matters, for example, in regard to at times working with them on the understanding in a time of improvement and modification of their engineering design. There have been times in which I have been involved and have resulted — as a result of our assessment efforts, dramatic changes to in some cases reduce waste effluent. And so it goes that way.

I understand why the view may be otherwise. All I can say from my perspective, personally and from the colleagues that I work with — and I believe it would be reasonably fair of me to speak in general on the consulting community — that with all the nature that we work with our clients, there is one overriding, dominant end result that we ensure, that the conclusions are ours — that's what we were hired for — the evidence is ours to defend because we will end up defending it. We must be ready for that.

And so certainly our independence and objectivity, in my opinion, is well and secure. I think that indeed through various means, there may be opportunities to provide a more fulsome understanding as time goes by as to the nature of that relationship.

Johanne Gélinas: And my other question might be answered by your colleague in Vancouver, so if so, I will pass. You have to deal quite often with two EAs' processes going in parallel, the provincial one, the federal one. How can we best address that?

George Hegmann: Most of my experience and most of my colleagues' has been — we've — it's been harmonized in a few cases. But in most cases it has ended up under a provincially led process. If there was a dual parallel process of so much which could be said in that regard — for the moment, the one comment that comes to my mind is the need to ensure a constant understanding and communication between the two reviews that they are not firewalled, if you will; that they understand what the nature of the scope is as per the terms of reference or guidelines which is the menu by which we are obligated to respond in our information requirement, notwithstanding other measures as well, and that we would seek as much as possible to ensure value that is meaningful information to the public, to the decision-makers, to all parties is as open, transparent and defensible as possible.

And if indeed there will end up being overlap — and one would be hard put to imagine that there would not be on some occasion — that the information requirements that we meet will meet all the mandate and statues and requirements under each provisional authority. And it would be a challenge. But it's one which I think is quite manageable.

Johanne Gélinas: Thank you. Rod.

Rod Northey: Yeah, I guess a couple of questions. A couple of things don't really get addressed and we've been hearing a lot about them and I wanted to hear your views on them.

One is moving from a significance-model of decision-making to sustainability. I'll start with that one. You don't say much about that. Do you have an opinion? Does your firm have an opinion about that shift, advantages, disadvantages?

George Hegmann: I think there is, notwithstanding the many challenges involved – and goodness knows, we have faced them in every single project.

Certainly we have – and those who have studied assessments know the challenges on arriving at a significance evaluation. But I believe that it remains to have substantial value in a project EA model, which is what we have right now under provisioning legislation.

The notions that have been floating for a very long time now in the debate on EAs' in regards to large sustainability objectives, I will admit I'm two minds on that. My heart practitioner stance, if it is to be so, tell me how so. In what fashion shall I provide proportionately, commensurately, useful meaningful information under sustainability — not much yet has happened in that regard beyond the notion of sustainability objects.

And as a consultant, it makes one very uncomfortable. I need something I can hold, I can pick up, I can look at, I can collect information on, I can have insight and data, I can evaluate, I can model, I can conjecture, defensibly. But if I have to pick up something that moves into an intangible, in our opinion, it's not yet ready. So that was one mind.

Rod Northey: Can I just interrupt you?

George Hegmann: Yes.

Rod Northey: Many people think everything you just said applies to the significance model. So what's the difference?

George Hegmann: The significance model, at the moment, in the way that it is met, created, developed in an EA is, on one hand, a relatively organized process of the assemblage and processing of information on top of a widely varying body of evidence moving from hard factual to that requiring professional knowledge and judgment. But in all instances, a project is proposed, it parachutes on the land, we look at that project and we say what does that mean and how does that ultimately unfold for the significance conclusion? And because of the effects of that project, what is happening under the sustainability notion is that that project is not necessarily anymore the only thing that is being tested.

What is being tested quickly becomes matters larger than just that project. And if I may provide a concrete example of that, the inclusion, for example, of the VC, a valued component that the project has no effect on. And yet — and understandably so by various interests — it is something of great concern to them. The project has no relevance to it. We can prove that as much as proof can ever be in an assessment. Sustainability wishes to introduce much. We may go there, but if we do the rules by which we do so need to be clear.

Rod Northey: Okay, thanks. Regional assessments instead of project assessment –

George Hegmann: Yes.

Rod Northey: Again, we're hearing lots to recommend it. What are your views?

George Hegmann: My first view, after spending more than 20 years both in academic study in advising government and in hard environmental assessments is that for many cumulative effects, understandably, which is what strategic EA ends up talking about, is an attractive notion. It's very appealing. Let's do a cumulative effects assessment. Surely we will solve matters in that regard.

If one has been through the process of trying to do one, it gives one pause. And the difference most starkly of which so much can be said, most starkly in my view. A project application under regulatory revision, project EA, is to test that one project and the outcome of that process will determine the fate under that regulatory mandate of that application.

A strategic regional assessment, "we will look at a region". Bring up a map, I'm gong to draw with crayon a very large area and that can happen for various reasons. And we will examine a multitude of matters within there, ranging from biophysical baseline right up to the interests of various users traditional use in the region.

But the outcome of that study – as right now the literature and the study and where this is going does not, in and of itself, dictate the specific outcome of an individual project application that may be caught spatially somewhere in that area. That will come with the project EA process.

What I believe everyone is hearing and saying is we're looking at a dual process, the retention with some changes, perhaps improvements here and there in project EA and adapting and more seriously concertedly with the necessary resources which are substantial to do a regional assessment. The ideal picture, regional EA comes in; we figure out what he heck is going on and where things are going. And then we bring in our project applications and we have an improved basis now to better understand the context of that project within that particular area.

Rod Northey: That sounds like an improvement then.

George Hegmann: Yes, it would be.

Rod Northey: Oh. All right, thank you.

Doug Horswill: A couple of specific questions on your paper. At the bottom of page 3 you talk about evaluation of environmental effects, it is limited by what can be definable and then assessable. Give us some examples of what you're talking about or — and even on the contrary, what isn't definable and, therefore, not accessible?

George Hegmann: So a classy example of which there's many is in the physical disciplines and so that would be neutrine loading, for example, into receiving water body, whether flowing or otherwise.

And the chemistry and the physics are relatively known. And certainly matters of precision accuracy come into play but nonetheless we think we have a good picture and a defensible means in order to understand what, for example, the additional input of certain nutrients may mean to the receiving ecosystem. That follows as much perhaps as we ever may yet image, that which falls into the definable and measurable.

However, alternatively, I had mentioned a few terms which I know are gaining interest and attention, if I may, well-being, ecosystem integrity, all speak to real understandable matters at an ecological level, for example, and the relationship with atmogenic disturbance — essentially, how down to from atomic to chemical to micro and macro nutrient scales and energy flows, and you cascade through all of these series —what they're trying to do is recognize all of this and work with that level of information.

But we have a gap here. We have at times rapidly reached a point when although we have a bit of information, we do not necessarily have enough information to allow that equivalent degree of defensibility that would allow us to stand behind our work and allow us to express the results of our work and ultimately driving to that significance conclusion. It would be difficult to do. I'm not saying it's impossible. There needs to again be the understanding that these notions, well intended, understood, speaking to very real concerns, however, from a practitioner's point of view, pragmatically, I can't assess it.

Doug Horswill: So just to interrupt you – sorry — but you mentioned the word well-being. Is well-being in the non-definable, non-assessable package then? I'm just trying to get — I guess I just should have asked the reverses question. I can understand what is definable physical, chemical science and all that stuff.

George Hegmann: Yes.

Doug Horswill: What is not definable in your mind? Just give us one example.

George Hegmann: Indeed. And thank you for raising well-being.

It is, in my opinion, while the social, cultural, traditional-use field is the far more challenging and difficult one and it is the one for which I believe there is the greatest need, notwithstanding all the issues we may have in ecology.

So there is absolutely everything meritorious about the notion of well-being. It makes absolute sense.

However from the practitioner's point of view, if I am asked an information-requirement for the project as proposed on proceed, and as a valued component, assessed effects and well-being, I don't know what to do with that. I can, admittedly, based on precedents and practice, exercise various means that I may at my disposal put to that. But I don't believe much of that will be satisfactory yet. It would be very conventional means. What is being sought is a deeper version of well-being, that which resonates more clearly amongst a wider spectrum of parties affected or potentially affected.

We have a long way to go that way, but it's a bridge I think that we can cross.

Doug Horswill: Thank you.

Johanne Gélinas: Thank you very much for your presentation, Mr. Hegman.

George Hegmann: You're welcome.

Johanne Gélinas: Our next presentation will be made by Martin Olsynski.

MARTIN OLSYNSKI

Johanne Gélinas: You should say it on the mic.

Good afternoon.

Martin Olsynski: Good morning.

Johanne Gélinas: Good morning.

(Laughter)

Johanne Gélinas: I don't know at what time you woke up for us it's good afternoon.

(Laughter)

Martin Olsynski: Yeah.

Johanne Gélinas: We had received your submission. We have read it very carefully. Thank you very much. I don't know how you want to proceed because there's a lot of information in your submission, but it's your choice.

We would like, though, to ask you some questions. So keep that in mind.

Martin Olsynski: Okay, fantastic.

Johanne Gélinas: Thank you.

Martin Olsynski: So what I propose to do then is limit myself to about five minutes, and if I don't get through all my slides, we'll leave it at that. And if I can use them to support any questions and answers that you have, then I'll go there.

Johanne Gélinas: Thank you.

Martin Olsynski: So thank you very much for having me this afternoon. I'll say again, so I'm a professor at the University of Calgary. I've spent the last three years there researching environmental and natural resources law.

I will add, as I did in my submission, that I spent the previous six years working as an environmental lawyer in the legal services unit at Fishers and Oceans Canada. So my perspective today is informed by that practical experience practising environmental and especially actually in environmental assessment law.

So in my presentation today, again, I'm not going to cover all the points. I'm happy to jump into some of that stuff in more detail in a question and answer. Essentially I just want to spend a couple of slides talking about CEAA 2012. I think there's been a lot of discussion about is it good or is it bad or what is working? I'd like to contextualize that with some information and some statistics.

And then I want to sort of focus on four of my main recommendations for future environmental assessment regime and then I want to conclude, just talking and stepping back a little bit from the nuts and bolts and talking about environmental assessment as a general exercise.

So in terms of the good — because I think it's always good to say something positive — I think that everyone would agree that centralization of EA at the federal level within the agency was a good step. Certainly from the perspective of coordinating the cacophony of responsible authorities under the previous regime, this was definitely a step forward.

In terms of the bad, I recommend to you any and all CSD reports that were written in the last 15 years. Because I think if even we just address the recommendations of those audit reports, we would go a long way.

But, of course, with respect to CEAA 2012, we have the auditor — the commissioner has picked up on uncertainty regarding selection of projects on the list, so the designated project list, opaqueness around section 10 screening decisions.

My colleague Shaun Fluker has written a paper where he picked up on inconsistency in the application of the directly affected test,

We have inconsistency in the application of the section 5, you know federal environmental effects. And then we have, of course, more and more projects in the last three years going forward and resulting in significant adverse and environmental effects.

And so here, I want to draw your attention to the slide on the left, especially — you know, this is kind of stepping back now from the nuts and boils, those specific sections — and just looking at EA generally in Canada and what has it

done. And without getting — you know, without building too much into this graph, what this graph shows you is that we, in fact, have more projects over time under the CEAA regime resulting in significant and environmental effects now than we did 15 years ago.

And so I think that raises a fundamental question about whether or not EA law in Canada is sending any kind of sustainability signal, which I think most people would agree that is probably a good idea — that would be an objective — or whether or not, in fact, it has become a part of development, business as usual, okay, sort of a routine step.

So I think — and I'll come back to that, I think, at the end of my presentation when I'm talking about sort of the nature of EA law.

I wanted to also pick up very briefly though on the section 67 requirement. I don't know if you've had any submissions on this. I know you've spoken with some of the regulators. As best as I can tell, section 67 has become essentially a dead letter. It is entirely meaningless. I ATIP to the departments, three departments — Transport Canada, DFO and Parks Canada — to get a sense of how are they implementing this regime. So I asked for their section 67 regimes or determinations. I have yet to hear from Transport Canada. DFO — we have gone back and forth with the ATIP officer. They can't figure out what it is that I want. There's no list clearly of their section 67 determinations. It seems to be that they've conflated that responsibility with their serous harm to fish regime.

Parks Canada did send me a list recently on November 4th of 12,000— 1,200, sorry, projects that it has assessed apparently in the last three years. You can glean nothing from this list. My colleague Professor Fluker who will be presenting on Wednesday as part of the Public Interest Law Clinic at the University of Calgary — they're going to focus specifically on Parks Canada and its EA process.

In terms of future regimes, you know, what I say in my submission is that really CEAA 2012 and CEAA '92 represents opposite ends of the spectrum, I think, in terms of the optimum number of environmental assessment. And so on this slide what I'm really just trying to convey to you is one example of a triage. It's not the only example. But it's something that I'm suggesting. And it hopefully let's you work this into a little bit about what's happening at the committee level in Parliament with respect to the Fisheries Act and the NPA. And so at the top, I suggest — you know, I think what I'm suggesting basically is a hybrid project-list trigger approach. You keep that big — that project list of major projects. I think it should be amended. It should be looked at carefully to make sure that the projects on there are there for a good reason. And other projects which may, in fact, have significant adverse environmental effects are not missing.

But then I think there's — and then at the very bottom, I think we can have a class of works. And now I'm speaking about the NPA and the Fisheries

Act. There would be no EA requirement but there is a need for streamlining and for regulations so that those departments at least have some knowledge about those projects. And in-between is the sort of the mid-size projects. You know — and if I have one major message about the current regime is that it is a black hole in terms of most of what's happening on the landscape and in terms of air emissions and that kind of stuff for the federal government. And so we need to create a regime, in my view, that first and foremost comprises information-gathering and transfer to those departments and to those regulators.

The question of regional EA came up. So I just want to spend a quick — at a previous conference in Cranbrook I sort of suggested that project-by-project EA is like a party. Every project is a big party where everybody has a good time but no one is ever stopping to sort of make sure — you know, if we're one a ship and we're having a big party and everything is under the deck there, people are grabbing stuff out and having a good time but no one stops to say, well, how much is there, should we slow down and make sure there are enough resources for the future, for our own benefit but also for future generations, for example.

And so the idea behind, you know — I think the logic behind regional EA is unassailable. We need to know what we have in order to develop appropriately. It's too late if you keep going — the idea of a project-by-project approach presumes an endless frontier with an endless supply of water and endless supply of wildlife and forests and all that kind of stuff.

In terms of the registry, I think the registry needs to be dialed into a modified — it's great that there is one now but it needs to become a project registry properly. And so instead of just EA documents, all authorizations and permits as well as all monitoring data and follow-up reports should be posted on the registry. It may be the case that a lot of this information is public by law but I can say that I've spent most of my time filing ATIP requests and FOIP requests to get my hands on those monitoring reports. And so it is not an easy process and I don’t think we can expect Canadians to do it.

I think this would be a huge bang for buck in terms of improving those monitoring and follow-up programs. The additional public scrutiny, the ability for anyone in the public — for academics as well — to access this information I think at a low cost would really improve transparency.

One of my hobby horses – well, just quickly, I guess — so adaptive management — right now 91 percent of the projects on the CEAA registry referred to adaptive management at some point. I did a — I've recently completed a research into the implementation of adaptive management here in Alberta. The paper is currently under review. I will try to provide it. I am hopeful that it comes out of review by the end of December and I'm able to provide it to the panel.

But long story short, this is a tire fire. Basically, proponents invoke adaptive management but they don't define it. And they often refer to as a general strategy. Of course, if you think about what adaptive management is, it's about experimenting in the natural world. The rigor required to do this right is incredibly high. It needs to be done carefully and rigorously. And that means paying attention to experimental design. So I have here referred to the six-step cycle. But you see that within that cycle even, three are sub steps. You have to define the problem. You have to identify management objectives. You have to identify indicators that will tell you whether you're meeting your management objectives.

When we go into EISs what I found — and I surveyed about 15 or 16 — none of that rigor is there. So, yes, we're going to do adaptive management and it's going to solve everything. And then it's gong to be fine. And then what we see is there isn't that rigor at the EIS stage. And then it's not really being done at the follow-up and reporting stage.

And so there's two things going on here as a general rule. There's a gap between what proponents say they're gong to do adaptive management for and then what regulators require. And then there's a further gap in terms of our proponents actually doing adaptive management. And I will say then in my review of – again, it's between 15 and 20 coal mines, oil sands mines and in situs. I didn't find really one solid example of adaptive management going from the EIS stage through to the regulatory stage, through to the follow-up stage.

And so my recommendations here are clear provisions, legislative rules around what adaptive management is, when it can be relied upon and what is required in that context.

So my concluding remarks really — and again stepping back really far — you know, we need environmental laws. The goal of environmental assessment, the point was made, it's about information gathering, it's about making better decisions. It can be a pain but that's the point. Right?

The idea is that we're not so great sometimes at thinking about certain kinds of risks and environmental ones fall in that context.

On that point, I would just urge the panel to think seriously about the procedural focus, the essentially exclusive procedural focus of EA. Right? The idea is that we identify environmental effects, we identify those that are significant. But at the end of the day, under the current regime and the previous regime, there's no red line. It's a political decision. And the idea is that by disclosing those environmental effects, the pressure is brought to bear on decision-makers to make the better decisions.

I think that my graph that I showed you at the beginning showing that the number of projects is going up cast doubt on that mechanism. I think the reality is political accountability and the amount of projects going out there also cast out on that mechanism.

I think that the timing of EA – of laws when they arose in the '70s also is very specific to that time when environmental concerns were of the very sort of predominant nature and that's no the case anymore on this graph.

I show just the number of environmental laws at the federal US and Canada over time. The bottom X axis there is, you know, the 20th Century. You see clearly around the '60s and '70s we have, you know, the Rachel Carson's, Silent Spring, we have the environmental decade when the US passed all of its main federal laws and then levelled out. And so I don't think it's safe to say now — environmental concerns are dominant and they are there and people care about them, but they're not the only concerns. They have to now find their way alongside other concerns around national security, around diversity, equality, economy. And so in that context, I don't know that it's reasonable to rely on political accountability.

And in my submission, I suggest to you that that's one reason to integrate some substantive standards into the next EA regime.

I'll just conclude also by saying that this Panel does have a mandate to hire experts to look into certain issues more carefully. I've flagged four of those. The application of ecosystem services assessment — and I'd be pleased to speak to that a bit. The relationship between proponents and the environmental consultant industry, I think that there are things that can be looked at there in more detail. The differences, if any, between the different kinds of EAs, that could be looked at. And then finally I think, you know, notwithstanding my work, more could be looked into on the subject of adaptive management.

So that concludes my presentation.

Johanne Gélinas: Thank you very much. Just as a segue from the previous presenters to your presentation, can you go back to your last slide please?

Martin Olsynski: Yeah.

Johanne Gélinas: You mentioned the relationship between proponents and the environmental consulting industry; what is your view on that? What should be done differently?

Martin Olsynski: So I don't know that it necessarily has to go — you know, the Agency necessarily has to hire — I agree that there needs to be a close level of coordination. Again, I need to — I've only started to think about this — but the analogy or the example I think that is worth looking at more closely is financial auditing and

accounting. There are some strict rules there. Obviously those in that case, that relationship also requires close collaboration and work. But at the same time there are certain things that can't happen.

Lawyers for the proponent, for instance, can't suggest to the auditing company, you know, how to comply with the law. That's an example. And then yet, I've heard anecdotally of those kinds of things happening in this context of environmental assessment.

So, you know, some clear rules around what is appropriate and not appropriate in terms of the relationship between proponents and the consultant community. Blind tenders might be another way. Because, of course, the concern is that if you have a very rigorous — you know, if whatever company it is does a very rigorous job that might — you know, at the end of the day in terms of the bottom line the proponent is gong to suffer there in terms of maybe taking on more obligations or something like that.

And they may, whether rightfully or not, may choose to not hire that same consulting company like going forward on a go-forward basis. So there's a lot of internal drivers here. And I'm not disparaging at all. I have great respect for the environmental consulting community. But I think that there are some inherent dynamics here that are clear and that should be addressed.

Rod Northey: Yes, lots of questions. So let's see where we go. If you could go back to your slide on the significance determinations — so I think one of your earliest ones.

Martin Olsynski: **Y**eah.

Rod Northey: Have you any theory — you've remarked on its implications for sustainability — but have you any theory on why we're getting more? And I had asked a previous presenter about some of these issues of what consultants and everything can do and certainty of guidance — whether significance is a model for transparency.

So I'd just like to say: (1) do you have a theory of why we're getting more; and (2) what are the implications of this increase you describe in terms of transparency?

Martin Olsynski: So on the first one, what I think I can permit is that — I think even in the early days of the CEAA regime there was probably a reluctance by panels to ever conclude significance. And this speaks to the malleability ability and the sort of opaqueness of it as a benchmark. So I do think it's conceivable that part of the explanation here is that panels are simply more willing now to make those significance determinations.

But, of course, the other very possible explanation is that there are more major industrial projects being proposed now then there were at that time. I didn't have the time to obviously go back into that.

But, you know, the idea, again, here is the CEAA is not seen as a barrier. It doesn't necessarily — it's not steering proponents to come up with and to propose more sustainable economic development. But, rather, it's just viewed as, okay, it's just another step and we'll minimize the adverse effects of our projects. But we don't have to fundamentally rethink business and our business plans going forward, right? So I think that those are the two potential ones and it would be hard to aggregate them.

You know, in terms of significance — you know, I'm not gong to — I, myself, have read about sustainability assessment. My understanding, you know, is that there needs to be some kind of — it would be good to provide some kind of concreteness to the significance exercise. And that's why actually I suggest regional EA as one way of doing that, because, of course, if you do regional EA and you've identified your resources and you've said here are parameters for aquatic — for water quality, for air quality. Well, then, significance becomes tethered to something concrete. It's not just an abstract concept. Suddenly, you can say, well, if it moves us towards that dial of beyond what the water qualities we want are, well, then that is a significant adverse environmental effect — all right — so the idea of providing some kind of concreteness.

In terms of, you know, going forward — this goes back to this issue of like is political accountability enough of a drag? Is it acting like — is it sending a signal to proponents that they should really try to come up with projects that don't have poor or are not likely to have significant adverse environmental effects.

I think this is where the merits of a sustainability test, not as a substitute for significance, but as a sort of next step. Okay, so you have decided than your project — if you come to the conclusion that there is significance — and I think it does have a lot to commend for in terms of at least it is the model that we've been dealing with. It is the NIPA model. There is a lot of established sort of practice around it. Then you kick into a second analysis, which is what the panel did in lower Churchill, which is saying, okay, now let's look at this from a sustainability perspective and we can decide whether, for instance, at that stage, only sustainable projects — only those projects that are deemed sustainable should go forward and the ones that aren't, aren't.

Rod Northey: A couple more. So just on that – and, again, related to that point, so one of the things in most of your slides you are talking about — I'll call it the regulatory endpoint of EA. And one of the things we've been hearing a lot about, again, is whether there should be more planning process, less formal whatever in the early going notification.

You haven’t' say much about that in either your paper or the slides before us. Do you have a sense of where the planning part in EA — does that fit within the framework that you see going forward? Or do you think it really is a regulatory tool principally?

Martin Olsynski: Yeah, so, I'm not sure if I — are you referring to the idea that this old saying that EA is a planning process to allow regulators to then, you know, plan like their regulatory permits and authorities?

Rod Northey: Let me be more concrete.

Martin Olsynski: Yeah.

Rod Northey: Some people are suggesting that in the regulatory EA you end up — you start with a project description. So all the details are fixed before the process really —as it starts with — that's all there and then people are wondering, well, why are you asking me now, you’ve already decided it all? So one of the questions that's been arising is, well, should EA start earlier before all the details are fixed so that we don't start with reacting to what's already there?

And that s an interesting contrast. We're trying to work through in our minds whether that is a valuable way to think about this. Is that more open, et cetera. There are a bunch of things, pros and con.

Martin Olsynski: Yeah. Yeah. So, you know, I can see issues going both ways. And so I think finding the sweet spot here is actually quite tricky, because, of course, the further up you move it, the more difficult it is to talk about — we get into this problem — what I fear is that, for instance, this idea that EA is about planning, that should be done early on, has become an excuse for panels to then say or RAs, well, we'll do the monitoring or we'll get you to do this study and inform the decision in the regulatory phase. You know, yeah, we don't know how this works but we'll get there once we have more concreteness.

We often hear from proponents that, well, at the regulatory stage this will be more concrete. And my concern there, of course, is that EA process is the most transparent one.

Now it may be the case that f the panel and if Parliament agree that, for instance, that we would open up this registry and make it more transparent throughout the lifecycle, then we have less of those concerns, because it doesn't just go into a black box, that, you know, Professor Olsynski has to ATIP to get some information about what's gone on there.

If we have cleaned up that transparency and that accountability, then maybe we can move it up earlier and not worry so much about

those kinds of issues, because, of course, I think the fundamental concern when that happens is that it does go into a black box and it's never resolved adequately.

Rod Northey: Thank you. I'll let my colleagues – and then see if I get more time.

Johanne Gélinas: Doug?

Doug Horswill: I'll go through two areas. The Agency notion, you support the Canadian Environmental Law Association recommendation for a permanent single agency. And then you go on to talk about an independent officer or ombudsman.

Do you see those purely as alternatives? Does one roll into another if — how does that all work?

Martin Olsynski: I mean, I guess I did throw it in there as an alternative because I wasn't sure — you know, it seemed to me that the suggestion that this would be an ad hoc, sort of a quas-judicial tribunal might be a bit much to ask at this time. So I was really hardened actually to see if the presenters before myself advocating that. And I do think that that would go a long way.

So I did suggest it as kind of a halfway measure, that if you weren't going to go there — and I do have some concerns, I guess, you know, to the extent that we are — you know, Canada is a large country and there's some benefit — there's some issues around whether or not this agency would be headquartered in only one place or whether it would have regional offices. And so those are questions that, you know, the more of those kinds of regional — when you consider those regional issues and those drivers, to suggest that, okay, maybe we can have, for instance, this ad hoc roster panel and an agency review and those kinds of things and at the same time as long as there is that ombudsman.

And the idea here really is, again, as important as transparency and accountability are, it's just there's too much going on. And so if you had someone who is dedicated to that role, to ensuring on a regulatory routine basis — just like the CSD does now, frankly. And, again, a lot of my ideas are really routed and reflect something that is currently working. And they'll be a week on that. I think the CSD has an amazing job of auditing past performance. And so it's just a question of why not have that sort of alive and working at the same time constantly.

And then it might be analogous to the amicus role that was being suggested by my previous presenter.

Doug Horswill: Okay. You talked about this quasi-judicial and I think that connects back to later on in your paper when you talk about decision-making. In the nature of the hearings or reviews or whatever this organization were to be formed would setup, one issue we've heard of before is the notion of — to keep the public interested,

you have to keep it simple. The more complex you make it and the more lawyered up it is, the more difficult Do you have a view of the nature of that?

Martin Olsynski: Yeah. No, I do, absolutely. And I think there are examples to draw on. For instance, I understand — because my wife used to work there — the CRTC, for instance, they are also a quasi-judicial tribunal but their hearings tend to be less formal, less lawyered up. So, you know, I think that the NEB probably represents the most sort of quasi-judicial sort of example. And you can go I think in gradients from there. There is a spectrum that could be looked at in terms of other agencies that have similar mandates but don't impose the same amount of rigor.

And, again, we're not talking about, of course — you know, I guess I'm not sure — there would have to be a decision in terms of, you know, which EAs go through these processes and which ones are subject to like that full public engagement and which ones might have a more curtailed, more streamline process. And I think that would be sort of –

Doug Horswill: Okay. My last question on a different area. You talk about reducing the discretionary nature. We heard quite a lot — when the provinces presented to us in Ottawa — as you may or may not have seen — the word flexibility — and it sounds quite the opposite to some degree of discretionary. How do we square that circle?

Martin Olsynski: Yeah, I mean, you know, spell it out, reflect on my time as a bureaucrat – I mean, as a public servant, sorry — I should say sorry. And I don't use that term pejorative. I didn't intend that.

(Laughter)

Martin Olsynski: Anyways, you know, discretion is kind of like crack for public servants and for the bureaucracy. It is an innate reflex to say we need discretion, we need discretion, when, in fact, oftentimes it creates delay, uncertainty, pressure points, that — you know, an example I'll give you – and, again, it's not worked perfectly – but, you know, SARA has very limited discretion. And so then departments can get on with implementing it. And then when they haven't the litigation has been pretty straight-forward, yes, no, you have to do this, let's move on.

And so, you know, as best as I can tell, those discretionary points — whether it was scoping under the old regime, around the scope of factors — this is where the proponent will try to bear and put influence on the decision-maker. Other groups will try to — if you streamline, if you give some clear benchmarks, some objective criteria about how these decisions are supposed to be made, you know, you will streamline, you will speed up the process.

Doug Horswill: Okay, thank you.

Johanne Gélinas: Thank you very much for your presentation.

Martin Olsynski: You're very welcome.

Johanne Gélinas: The next presenter is Barry Robinson.

BARRY ROBINSON, ECOJUSTICE

Johanne Gélinas: Good afternoon.

Barry Robinson: Good afternoon. Thank you for the opportunity to present to you this afternoon. I'm aware with Ecojustice, as you're aware — Ecojustice has made a number of presentations to you along the way on various topics. We thank you for that opportunity to do that.

I did submit a written submission and I trust that you have it.

Johanne Gélinas: Yes.

Barry Robinson: And, therefore, I'll keep my comments very brief. I intend to address only one every narrow question that is listed on the expert panel's website and that question is, what would a fair, transparent and trustworthy decision-making process look like?

And my briefest response to that question is it does not look like the decisions that we have had under CEAA 2012.

As you're aware, there's two significant decision points under CEAA 20912. First, whether the project will have significant adverse environmental effects, and, second, whether those are justified in the circumstances.

CEAA 2012 shifted the first of those decisions, whether a project has significant adverse environmental effects from the responsible authority to the minister and, in the case of the NEB, to the governor-in-council.

And then with respect to the second decision, whether those effects are justified in the circumstances, that was moved entirely in all cases to the governor-in-council.

If we look first at transparency — which is one of the questions that you asked — the shift in decision-making power to the governor-in-council has ended all transparency on that second decision of justified in the circumstances.

The Cabinet has routinely invoked Cabinet confidence over the documents that may have been in front of it when making that determination.

So, for example, in the Northern Gateway process where we did ask as part of the — in the Federal Court process — what documents were in front of Cabinet, Cabinet confidence was claimed.

So we have no idea if Cabinet received a copy of the Joint Review Panel Report, a summary of the report, a briefing note, whether they received the report on aboriginal consultation or had any other document before them when making their decision. So it's entirely unknown.

The decision may well have been made in a vacuum, given that the then Minister of Natural Resources indicated even before the process had started that he thought the project was in the public interest.

Unfortunately, Orders issued by the governor-in-council don't shed any more light on what was considered. As we see, specifically, the Pacific Northwest, the LNG Project, an example — but this also happened in Northern Gateway — is what you get from the Cabinet Order is the list of recitals followed by a conclusion that the significant adverse effects were justified in the circumstances.

There's no identification of which effects they were considering, there's no weighing of those effects against other factors, there's no articulation of the tradeoffs or the balancing that they may have made. It's just a conclusion that the adverse effects are justified in the circumstances.

So this is the very enthuses of transparency and trustworthiness. This is just a black box in which the public has idea what factors were considered or what tradeoffs were made.

Therefore, we would recommend, regardless of whatever body is rendering the decision, that, first of all, the decision-making must be transparent and open and all documents and information considered by the decision-maker must be explicitly identified and available to the public. And this likely requires an explicit statutory over-ride of Cabinet confidence if the decision is to remain in the hands of Cabinet.

Second, the decision-maker must provide fulsome reasons that clearly articulate and justify the tradeoffs that they've made in determining that the adverse effects are justified in the circumstances. And this will likely require something more than just an obligation to give reasons in the order because that already exists in the NEB Act and we still don't see anything that would stand up as reasons.

You know, the courts have in the past said that — the Supreme Court has said that recitals followed by conclusions are not reasons. And yet that's all we're getting now under CEAA 2012.

I also wanted to turn to a judicial review. We have in the Federal Court of Appeal Decision with respect to the Northern Gateway Project, the Court's interpretation that a privative clause and a reconsideration clause that is found in CEAA 2012 and in the NEB Act – we are also finding that at least for NEB regulated projects, the governor-in-council alone is to determine if the environmental assessment report has been prepared in accordance with the statutory requirements of CEAA 2012.

With respect, we disagree with the Federal Court of Appeal. Our client is currently seeking leave to appeal that matter.

The rule of law would suggest that any interested party may apply to a court for judicial review if some statutory requirement has not been met.

The Federal Court of Appeal Decision undermines about 20 years of case law in which environmental assessment reports which have not been prepared in accordance with statutory requirements have been subject to judicial review.

The question is, essentially, in my mind, a legal question and, therefore, should not be left to the governor-in-council to make that determination.

There's also some practical reasons for allowing for a juridical review of the environmental assessment report. One is, it prevents the governor-in-council or other decision-makers from making a decision on a legally flawed report only to then have that decision challenged on the basis that the report was flawed. And I've likened this to it.

It puts someone who has identified what they think is a legal flaw in the report and the position of having to lie in the weeds until the final decision comes out and then say, oh, by the way, there was something wrong with that report that you based your decision on. That seems to be inefficient on all fronts.

And the other angle is there's no mechanism to advise the governor-in-council that you think there has been some sort of legal error in the report, you know, that it has missed something, before the decision is made.

Therefore, a new environmental assessment act should have a clear and explicit provision allowing for judicial review or other appeal of the environmental assessment report before it goes to the decision-maker.

I think I'll end my comments there and take any questions that you have.

Johanne Gélinas: Thank you, Mr. Robinson. Doug?

Doug Horswill: Yeah, I'm just going to move this up from a JR which is an imperfect tool at the best of times. What do we do — do you recommend happen with the statue? So I think we've got lots of criticisms.

What are the simple points, if you don't mind telling us — and you can do it in your submission — that you think reform, so we don't have JRs as the solution to the problem and we have something better in the statute itself. What are you looking for?

Barry Robinson: I think two things. One is you make it explicit within the statute that the report can be reviewed, whether that is a JR or some other appeal mechanism. But I think the thing that simplifies it is that judicial review right now is a long and complicated process by the time we get something in front of the Federal Court or the Federal Court of Appeal.

So we have also suggested — I think in our written materials — is an environmental assessment review board, for lack of a better word. So perhaps another body that can answer questions not only — can hear appeals not only of was the report prepared in accordance with the law, but maybe deals with, you know, appeals on standing, appeals on did the proponent or some other party answer information requests, you know, adequately — those kinds of appeals could also be heard by an environmental assessment appeal board. Right now all those sorts of questions are ending up in front of Federal Court.

Rod Northey: Right. So just stepping back again from that — we heard even today, but we've heard it before this — and my colleague Mr. Horswill was referring to this — CEPA recommending that the panel might be a decision-maker, the NEB be a decision-maker. Is that where you are as well?

Is the EA to be a decision-making body or do you still like the two-step of the EA recommends something to a political decision-maker?

Barry Robinson: I'm a little bit torn and I know people like Bob Gibson and others have talked about keeping a decision as close to the EA process rather than having a separate decision-maker.

I think I lean, though, to having, as some courts have laid out, that EA, first of all, is an independent — you know, an information gathering process by an independent, unbiased party and then it's a political polycentric decision-making process.

And I think I accept that as maybe the better model, because we have things that are happening outside of the EA process itself, such as First Nations consultation and the adequacy of that gets dealt with outside of the process.

So I think, ultimately, it may be a political decision. And I'm okay, I think with leaving it in the hands of the political decision-maker. We elect them to make difficult polycentric decisions. But it has to be transparent. And they have to say what they considered and what the tradeoffs were that they made.

Doug Horswill: Go ahead.

Renée Pelletier: I just want to pickup on that. So some might argue that the adequacy of consultation is not always taking place outside of the EA process.

Barry Robinson: No.

Renée Pelletier: So I'm wondering in an ideal world, you know, if you had a quasi-judicial body, would you recommend that that body be assessing the consultation, be conducting the consultation themselves? Do you have further thoughts on that?

Barry Robinson: I do. You know, I think consultation, you know, really is a government to government kind of approach and I'm trying to see how that happens within an environmental assessment appeal body. But, you know, clearly what's happening right now is not working well. And sort of this parallel — you've got your EA going on, you've got the paralleled five-stage consultation going on. And according to the court in the Gateway decision, going on not well.

I don't know. And if throw into the mix UNDRIP and, say, do you actually have the First Nations decision-maker as well? I'm not giving you a good answer because I just don't know where that should all come together. But I think it's at a government to government level. So I think I would lean to keeping that adequacy of consultation question outside of the EA process.

Renée Pelletier: And then assessed by whom at the end of the day?

Barry Robinson: Well, I think ultimately we're showing it's going to be assessed by the court. But hopefully we get better at it so people do feel like they've been heard and accommodated rather than having to go to the court all the time.

Renée Pelletier: Thank you.

Johanne Gélinas: Any other questions? I'm sure you have one left? Yeah? No?

Renée Pelletier: No, I'm sure.

(Laughter)

Johanne Gélinas: That's okay. Thank you very much for your presentation.

Barry Robinson: Thank you.

Johanne Gélinas: Ginny Flood will be our next presenter.

GINNY FLOOD, SUNCOR ENERGY

Ginny Flood: Well, good afternoon. I just came back from Marrakesh. I believe you've probably seen Dale Friesen from ATCO as well. So I'm in a different time zone still, so hopefully we'll get through this okay.

So thanks for inviting Suncor to speak today. My name is Ginny Flood, I'm the Vice-President of Government Relations for Suncor Energy.

I think it's my previous experience that probably might be more of interest, both from a perspective of — I was Fisheries and Oceans, and I managed their habitat program which was environmental assessment, previous to joining the industry. I also worked with a multinational, Rio Tinto, which also had gone through a number of environmental assessments.

So from that perspective, you know, I'll bring a broad perspective on kind of being a former public servant managing the program and then coming out into the industry and seeing how it works as well.

So I really welcome the opportunity to contribute to this panel's review and really hope that the review will provide clarity, certainty and help build public confidence of the strength of the environmental assessment in Canada.

I just want to talk a little bit about who we are as Suncor. We are Canada's leading integrated energy company. We're operating in all parts of Canada as well as in other international space. We have different energy sources. We have wind, ethanol and of course we're the largest holder in the oil sands.

Suncor has a track record of delivering responsible growth and contributing to communities where we operate.

Suncor believes that there are three key priorities for this review of the Canadian Environmental Assessment Act.

We believe the Act needs to clearly articulate the role of the federal environmental assessment in a Canadian context with a clear understanding of when CEAA should apply and how it should integrate and add value to the provincial reviews. The Act needs to be accountable in serving the broader public interest and affected stakeholders. And the Act needs to be outcomes-based by focusing on desired environmental objectives and giving proponents the flexibility to meet them.

As CEAA legislation has evolved over the years, so have Canadians interpretation of its role. However, the original intent has remained the same. CEAA has always been a means for gathering information about projects so that environmental effects are considered in decision-making at a federal level. In other words, CEAA is a process to assess residual environmental risks in areas of federal jurisdiction.

Canada has a robust environmental assessment process that can often span multiple levels of government and agencies for one project application. And sometimes these reviews are examining different areas and contribute to stronger outcomes. However, they're often duplicating in review process with other jurisdictions, which do not add additional protection and can add years and cost a project application.

CEAA should abide by the principles of one project, one assessment. Priorities should be given to continuously enhancing the coordination, harmonization, equalivency provisions which recognize existing regulatory policies and mechanisms. A well-defined role will guide the implementation of the Act and contribute to the achievement of sustainable environment, economic social outcomes for Canadians, Indigenous People and proponents.

So how might this work in practice? In the area of federal jurisdiction, the federal government should set consistent standards to be met or exceeded by the province and project proponents. And then the different levels of assessment would apply, depending on the project. So the first type would be a provincial, local-led review. And this type of review would occur when a robust provincial or local review exists and meets all the federal standards in the area of federal jurisdiction. This would eliminate the unnecessary duplication.

The second type would be a screening for improved performance. In this case, proponents applying to make an environmental performance improvements to their existing approved project or facility would undergo a screening-level process only where there is evidence that the environmental improvements such as climate commitments are clearly demonstrated. This would allow proponents to apply environmental innovations to projects without being deterred or penalized by having to go through a full environmental assessment review.

An example of this would be in the case of replacing boilers for co-generation which would include reducing the GHG. This would also help with reducing the GHG which actually meet a federal commitment. If an EA was put on then that could delay that process by two years and reducing the impact of meeting our commitments.

The third type would be a targeted CEAA review. And this type of review would apply when a robust provincial or local review exists but one or

more components of the provincial process do not meet the federal standard and would be limited to areas where the federal standard wasn't met. An example would be the Federal Climate Change Strategy that assigns a federal standard on carbon.

Any province that is meeting this standard would have proposed projects in their jurisdiction exempt from the review of the GHG emissions. And this is the case when you're looking at oil sands where the Alberta Climate Leadership Policy has the cap. And if you're under that cap and you're part of that, under the provincial regime, you shouldn't have to go again for a federal evaluation as well.

And the final type of review would be the federal-led review. In this case, the proposed project would be in a federal jurisdiction. And CEAA or another federal agency would be the lead for the review process and would proceed with a full CEAA review.

The next key priority for this review is accountability. CEAA reviews must ensure the public interest is being served, while remaining accountable to three groups: the project proponent, Indigenous People in the surrounding communities; and other directly affected stakeholders.

We need to ensure that the CEAA process strikes the right balance to weighing inclusiveness and effectiveness.

And Suncor supports the federal government's commitment to reconciliation with Indigenous People through renewed and government-to-government relations that are based on recognition of rights, respect, co-operation and partnership.

To that end, CEAA review must ensure the crown is upholding its duty to consult and accommodate.

Proponents also have a responsibility to support the crown through direct engagement and partnership with affected communities by incorporating traditional knowledge into the application and by developing projects in a sustainable manner.

One example that I would use would be a recent partnership that we just announced with the Mikisew Cree and the Fort McKay where we actually have an equity agreement where they own 49 percent of our East Tank Farm. That is a good example of where we actually have a partnership and it's not an IBA — Impact Benefit Agreement — but it's an actual equity agreement.

One last point on accountability, as stated earlier, CEAA should be a process to assess residual environmental risks in the areas of federal jurisdiction. Ultimately, CEAA is a means for information-gathering to inform federal

decision-making. The review process is not the appropriate venue for debating broader public policies. However, CEAA reviews must allow those most directly affected by the outcome of a particular project the greatest opportunity to participate and have the voice in the process. Input from affected stakeholders can get diluted when the process is used for purposes other than gathering information about the specifics of a particular project.

Suncor's final priority in this review is that CEAA is outcomes-based. A well-designed CEAA process should foster an innovation culture. This means that CEAA should not take a one-size-fits-all approach to technology improvements and should not discourage environmental innovation.

The technologies needed for each project is different and depends on characteristics of the resource, the location, the assessment of the overall environmental net effects.

And as long as there is a clear standard for what environmental outcomes must be achieved, the proponents should be given the flexibility to determine the best technology to meet those standards given the necessary variation in each of the individual projects.

And to sum it up, CEAA needs a clear, well-defined role that doesn't duplicate existing processes. It needs to be nimble, scalable and fit for purpose. The crown has the ultimate duty to consult and accommodate with project proponents providing an important supporting role.

CEAA reviews are not the appropriate vehicle for a broader debate on public policy. CEAA should ensure that the federal government's environmental outcomes are achieved without being prescriptive about the process. And CEAA shares responsibility for fostering the culture of innovation where environmental technologies are recognized and encouraged.

Thank you for your time. I look forward to answering any of your questions.

Johanne Gélinas: Thank you very much. Who would like to start? Renée?

Renée Pelletier: Just a question on your last slide about the crown owing the duty to consult and the proponent playing a supporting role.

Recognizing that proponents are often in the best position to provide accommodation, say, by way of an Impact Benefit Agreement, I'm wondering if you could say a little bit more about how you see the crown's role versus the proponents' role. Just talk a bit more about that.

Ginny Flood: Yeah, so I'll just go back to when I was a regulator and then I'll move it into as a company position and in the private sector.

I think where I saw the most success when I was a regulator was those companies that were engaging far before they ever were looking for a permit. So they had started their consultations, their partnerships, their relationships with Aboriginal People many years prior to or sometimes it was many years often. What we saw in that is that when we got to the environmental assessment process and the crown had to go out and do the duty to consult and work with the aboriginal communities, it was a much easier process, because there was a better understanding, one, of the project — there was a better understanding of what the benefits and what the risks would be. And the proponents that did the best job, they didn't kind of sugar-coat it. They actually really worked with the communities so that they fully appreciated and understood. That way, when the crown did come in, it wasn't like they were defending a project or anything. It was really a conversation and where were the — in our case, it was usually around the fisheries side — and where were the areas that we needed to mitigate those impacts. And then that way, you could have a fulsome conversation also with the proponent. And so it was a much better conversation. So that's what I mean by the companies supporting the crown, because at the end of the day, the crown can't delegate that responsibility.

Johanne Gélinas: Doug?

Doug Horswill: On your technology issue, the process should not be prescriptive. You know our terms of reference refer to best available technology. I guess connect those to your comments here on that and what you're really getting at here.

Ginny Flood: So what I find often what happens is, as a project proceeds, there's often the best available technology but the way technology is changing right now, we're seeing that that technology can change very quickly. And if an EA process takes two to four years, if you're ending up looking at something new, then you're kind of prescribed to be staying with what you prescribed at the front end of your project. And so it doesn't actually — the process, in effect, what it does is it doesn't actually encourage you to look at while it's best available technology, the length of the process could mean that you're not actually assessing that best available technology.

The other piece around that is if you're actually looking at having an existing facility, where you're actually looking at trying to figure out whether you want to put some environmental improvements on it, sometimes that will trigger CEAA but if your window is that it's going to be a two-year process and it's going to be very costly, then that's actually not going to be very supportive for you to actually do some of those improvements that you might normally have done.

So it's really trying to figure out, how do you take the speed in which technology is improving and match that up with a process that isn't very timely at the moment and quite costly.

Doug Horswill: Thank you.

Johanne Gélinas: Rod?

Rod Northey: Yes. Thank you. A couple of places you reference — and I think the most expressed one is developing projects in a sustainable manner. I'm trying to align that with your roles of the federal government in your four-part — four classes.

Right now we focus only on avoiding significant effects in the federal test. And we heard from a previous speaker — and it's not the only submission we've heard — that that's not really taking us anywhere expressly to sustainability. It might be a happy coincidence but it's not directed at it.

Do you see there to be a role for the federal assessment process to more expressly, explicitly deal with sustainability?

Ginny Flood: So I think that the sustainability is key in how you succeed in all your projects. Certainly from a Suncor perspective, when we're looking at our projects, they are about sustainability.

We operate most of our mines 50 years plus. So you have to be able at look at this.

I think the key is sustainability and being able to make sure that you can adjust and adapt is extremely important.

So getting specifically to your question, I'd like to go back

and just think about it and how those two connect.

Rod Northey: Okay.

Ginny Flood: But for me, it has to be part of that whole assessment and the significance of effects. I mean, the other pieces, as time progresses and new technologies are adopted, there is absolutely an opportunity to actually reduce those significance.

And I'm worried that as we move into this process, we're not actually looking at it from that perspective.

Rod Northey: Well, you're going to head to my second question, which may be further on your homework.

In a technology process — and I understand — I think I understand what you're getting at — and it seems to me that it all drives on whether you have an expressed enough outcome that you can then pick the technology that best gets you to the outcome. But if you don't have an expressed outcome — and I have to say I'm not persuaded that significant adverse environmental effects is an outcome that drives us to the best technology — I'm trying to figure out where do you find — what's an example of an outcome that would get you to the kind of technology opportunities you support?

Ginny Flood: So I think that there's a few. I think one of them is as we're looking to reduce our greenhouse gases — you know, there are a number of technologies around that that we would be probably looking to adopt in our process.

I think part of — my experience working with environmental assessment from a regulatory perspective is a lot of times we want to be very prescriptive because we want to know what the outcomes are going to be. And part of the challenges when you're in a very innovative space and you're trying new technologies, you don't necessarily — you don't have all of the answers at the front end.

Another example would be around tailings management. We've done a lot of work on our tailings. And there's always new technology on that and trying to apply that new technology and moving that forward is actually a really important aspect.

But if you have to go though an environmental assessment every time to try these out, then that actually is not encouraging you to do what you want to do.

Rod Northey: I understand, I think, your point. I'm just trying to figure out what an example is of an outcome that's clear enough for one to then do this,.

Is it something, well, for fish habitat, no-net loss, is it a clear effluent standard in relation to a tailings pod and discharges where you say as long as you meet that —those strike me as clear standards, but f you can meet them, what's the incentive to improve over time? So I'm trying to understand –

Ginny Flood: Yeah.

Rod Northey: — how this works in the feedback-way you're describing.

Ginny Flood: So if you're looking at effluent discharge, I would agree. I would think that that is a clear standard. And as we move along — I mean, I think that this is a — when we're — I'll have to probably get back to you with a clear example.

Rod Northey: No, that's fine. I don't think it's a simple question to answer but –

Ginny Flood: Yeah. And I will get back to you in our submission on that.

Rod Northey: And my last – it is just a comment – in your four-part cling, on the second one, the screening tool, it's not clear to me that federal EA has anything to do with that kind of test right now.

So are you suggesting it should get into that? It strikes me right now, we have one all-provincial and four full-CEAA and neither two nor three and we're getting advocates for some version of three. And you're citing two. I'm trying to figure out where two even fits? So what is it that is an example?

Ginny Flood: Two is if you're doing a project where it would — in the current way CEAA is written — would consider that you would probably do an environmental assessment —a full-on environmental assessment. Whereas, if you can actually — if you're going to be doing something — if you're going to be implementing a new piece of technology — let's say you're going from a coal-fire to a co-generation, or you are wanting to do some co-generation. If you are doing that, that could actually trigger CEAA.

Rod Northey: I see.

Ginny Flood: And that, actually, there is no increased environmental footprint. There's actually real environmental performance benefits to doing that. Then it's kind of — when it goes back to the outcome is to reduce the GHG. When you're looking at the footprint of that, there is no — because it's an existing site. Why would you want to go through a complete environmental assessment process?

Rod Northey: That's very helpful. Now I understand exactly what you're talking about. Thank you.

Johanne Gélinas: We hear a lot from industry here and elsewhere that the EA review should be really focused in terms of the consultation on directly affected stakeholders. Easy to say, harder to define. What it is for you a directly affected stakeholder?

Ginny Flood: So I would say that in that regard it would be those stakeholders who, if the project proceeds, are impacted by that. And so that would be if you are within that region, that area. I think what we're seeing now is often the people who are mostly impacted, they are a silent voice because they feel that the EA process doesn't' allow them the space to have the conversation.

We would say that those are the ones who should have a really significant say on whether the project is going to impact them. And that I think would be — you know, I think you can define — and I know that we've been doing this through the AER process, looking at what are the directly impacted stakeholders. And so I would build on kind of what we're doing in Alberta already.

Johanne Gélinas: So that means that national groups, for example, concerned by climate change would not be considered as a voice to express their concerns and their view on some of your projects?

Ginny Flood: And I wouldn't want to say that they don't have a space. What I'm saying is, is that their space shouldn't dilute the space of a directly impacted, which is a little bit of what's happening right now.

Johanne Gélinas: Important nuance. Thank you very much for your presentation.

We still have three presenters before dinner.

Celesa Horvath is our next presenter.

Johanne Gélinas: We have them, yeah. It's a two-page document. We haven't read it, but we — it was given to us earlier.

CELESA HORVATH

Celesa Horvath: Okay, thanks. My name is Celesa Horvath and I'm an environmental assessment practitioner.

I have over 26 years of experience doing EA, writing them, reviewing them, managing them from small screenings to full panel reviews, from every stage from the beginning of issue scoping, through to the end of follow-up and monitoring. And it's that experience that my comments are grounded in today; my perspective.

So I'm not speaking on behalf of any clients or proponents or anything like that. There are, as you've heard; as we've heard today, many aspects of the federal EA legislation and process that warrant improvement. But in the interest of time today, I just want to focus on three key points that I think are fundamental to strengthening the process, improving it's outcomes and enhancing meaningful participation.

The first of these is capacity building. In particular there's a pressing need for training of all environmental assessment participants to ensure they understand the governing regulatory framework, the purpose and scope of EA, the standard methods that are used in EA, and the process by which EA is administered.

In my experience in adequate capacity in these areas has frequently led to shoddy EA that undermines public confidence in both the process and its outcomes.

First, let me focus on the need for training and capacity building among those who administer the process. Many civil servants who are tasked with administering EA often receive little or not training or education in EA, either in a regulatory framework in a process by which it's done or the methods by which EA is typically conducted. And often they also have little experience in actually doing EA, either in conducting EA or in managing EA. And this has a number of negative consequences.

First, there are times when incomplete or methodologically flawed EAs are accepted into the process. You know, what I most often see in my experiences reviewing EAs are things like errors and setting of temporary and spatial boundaries, incomplete assessment of identified potential effects. And that is effects that have been identified but aren't properly carried through the whole assessment, inadequate documentation and justification of the determination of significance and errors in cumulative effects assessment.

When the EA process administrator is not adequately versed in EA methods, such errors can be overlooked and this can lead to effects that aren't properly assessed or managed. And that, again, leads to a loss of public confidence in the outcomes of the process.

Another outcome of inadequate training and experience of administrators is inefficient process. This manifests, for example, in the information requests process of requesting information from proponents. And what we sometimes see are things like information requests that are inconsistent with the requirements of the legislation or with existing guidance, duplicative information requests, information request for information that are not relevant to understanding the environmental effects of the project or to the decision to be made at the end of the project. These inappropriate requests draw a considerable effort to address, effort that would be better spent on the material issues of importance in EA.

The final outcome of inadequate capacity on the part of the EA process administrators that I want to highlight today is the use of the generics or standard template for EIS guidelines. And these have often led to broadly scoped and poorly focused EAs that over tax the limited resources that are available to all EA participants by requiring the discussion and examination of so-called issues that are often not material to the project or the EA decision at hand. And just by of example, I worked not long ago on a project in Saskatchewan that the draft guidelines actually required us to assess the effects of the project on marine algae. So just an example of how a standard template just wastes effort, because we had to respond to that request and explain why it wasn’t required and so on and it chews up resources and distracts from the real issues.

Capacity building and education is also required for other participants in the EA process. Part of the reason there's so much disappointment in

the federal EA process stems from a lack of understanding of the purpose and scope of EA, particularly project-specific EA and how it relates to the broader federal public interest decision-making process. So it takes other factors into consideration.

Project-specific EA cannot meet the expectations people have for things like regional planning and regional cumulative effects assessment and nor should it. But effective communication of and education regarding the purpose and scope of EA, particularly project-specific EA, as well as the methods by which EA is conducted, would help to better equip the public to effectively and meaningful participate in EA.

Training of practitioners is being addressed through a number of initiatives from professional associations. So I won't get into that today, except to acknowledge that it too is necessary to improve the quality of EA.

My second key point pertains to scoping. Scoping is absolutely critical to getting EA right. Good scoping focuses the EA on those things that matter the most, both to people and to sustainability of the natural and human environment.

It's widely understood and accepted that it's impractical to assess ever effect of every project and tools have been developed over the decades to help us focus environmental assessment on key issues. Yet, many EAs still suffer from poor scoping that makes the process inefficient, wastes resources and reduces the relevance of EA to participants and decision-makers. And the example of the EIS guidelines, as I mentioned earlier, is an example of that.

EIS guidelines should be customized to the project to which they pertain, drawing on project-specific information about likely project environment interactions, the kind of information that's typically included in the project description. This would enhance the quality of EAs and make the process more efficient.

Scoping is also perhaps the stage of EA when it's most critical to get input from aboriginal groups, other stakeholders and the public about what concerns them. And it's critical that that input is demonstratively considered in a meaningful way, so that participants in the EA process can have confidence that the EA process will, in fact, address the concerns that they've raised, at least those concerns that are within the purview of projects-specific EA.

Recognizing that some jurisdictions, notably British Columbia, have begun to shift the focus of consultation and aboriginal engagement earlier in the process on the selection of valued components upon which the EA is focused. They are demanding strength and justification and rationale for that selection and a clear documentation of how aboriginal and public input has been considered in that process. And I think this would be very valuable in the federal EA process as well.

The previous iteration of CEAA, prior to CEAA 2012, explicitly addressed scoping. There were a number of several very important court cases that helped to further clarify the need for the purpose of and responsibility for scoping. I would encourage you to consider the need for greater emphasis on good scoping in your recommendations to government.

My third key point pertains to follow-up. And this is perhaps, in my view, one of the most important, yet most overlooked, elements of EA. We collectively and consistently fail to learn from EA. Monitoring and follow-up are supposed to verify that the effects, the actual effects of projects are whether they're better or worse than were predicted in an EA and to asses whether the mitigation is working.

It tells us whether we were right or did things turn out differently. Do we need to manage things differently and manage in the way we're dealing with adverse effects going forward.

But when we're conducting EAs, in many cases, the information for monitoring and follow-up from previous EAs is often not available publicly. There are some areas where it is but in many places it's not. And so it`s difficult to know what was said would happen with a similar kind of project or a similar kind of environmental setting, a similar valued components and so on, whether that actually did. So almost every EA is like starting from scratch and it's unable to build on the learning of what went before.

So, in my view, of monitoring and follow-up data should be made available publically, preferably on the registry. Typically the last thing on the registry for any project reviewed under CEAA 2012 is the decision statement and there's nothing that comes after that.

If the information from follow-up and monitoring were on the registry, EA process administrators, other regulators, practitioners, and the public all can determine what the actual outcomes were and apply this learning in future EA and decision-making. This would also inform better management of cumulative effects, of course, at the regional level.

So those are the three key points I wanted to bring forward. I have other — many other views on other important aspects of federal EA, with both the legislation and the process, and if I may, I'll put those in a written submission for your consideration later. Thanks.

Johanne Gélinas: Thank you very much.

Based on your experience, how much of a monitoring program or follow-up can be extrapolated to other projects? I mean is it that specific or there's a lot to learn — because some people have told us that all the monitoring

processes should be available on the web, that we can look at the result of the monitoring and learn from it for other projects.

So how much we can do in terms of learning from projects and use that for other projects, specific projects?

Celesa Horvath: I think quite a bit. Of course there are certain limitations. So certainly what you'll find the most value is within a sector, so other projects of similar type will find the most value in previous EAs of projects like theirs.

But it also goes along with mitigation. If you're trying to propose mitigation of a certain kind and you're able to refer to another project that used the same kind of mitigation, then that information has value to know whether or not it worked.

Of course, you have to take site-specific aspects into consideration. So that's the main limitation is whether what worked in that stream over there will work in this stream over here or what worked in that climate will work here. So there are limitations, but having some information is usually better than having none.

Johanne Gélinas: Thank you.

Rod Northey: Yes, I guess I'll start with your first comment on the capacity-building question. And I just wanted to try and relate that. Is that a comment specific to federal EA, CEAA -–

Celesa Horvath: No.

Rod Northey: Yes, all right. Because I was going to say –

Celesa Horvath: It`s in my –

Rod Northey: — we have only three RAs dealing with CEAA now.

Celesa Horvath: Right.

Rod Northey: You know, without really putting you totally on the spot, are you prepared to say whether these comments apply to the three RAs?

Celesa Horvath: I have not worked with the Nuclear Safety Commission so I can't comment on that directly. My experience is that the NEB generally has pretty good expertise in this area.

Rod Northey: What about CEAA?

Celesa Horvath: In certain cases, there have — in my experience, again, over the years, there are examples where the process administrators have not been familiar either with nuances of the regulations or the legislation, certainly not with the methods, like typical standard environmental assessment methods like valued components and how do you set boundaries and how cumulative effects assessment is carried out; that kind of thing. And it gets better over time. And certainly now that they're focused – like, one role and they're doing — their expertise is building.

And the other point I would make is that they're stronger in terms of capacity when they're assessing panel level and less strong in the regions with standard EAs.

Rod Northey: So just one further question and then I'll move on. So the question of how to customize the scoping— and as you commented, before we had all this guidance under the old Act and now we have mostly EIS guidelines that look very generic — have you got an example you could give us where you think the EIS guideline meets your expectation of how to be properly customized? It is an important comment but I'd like to see what you think demonstrates that.

Celesa Horvath: Yeah, and over the last couple of weeks I've looked at a lot of the panels that have been done under CEAA and the completed reviews that were done under CEAA 2012 for standard EAs, and almost to the letter, the EIS guidelines are almost exactly the same for all of them, which is unfortunate because there's a tremendous amount of information that's typically contained in a project description. Not only do they describe the project, but typically they're describing the environmental setting and a likely project environment interactions and even what the valued components are likely to be.

And that information could be used to customize the EIS guidelines to focus on those project interactions that are specific to that particular project in that place; at that time.

Rod Northey: So not a good example. Everything is falling into the category of not –

Celesa Horvath: Not great.

Rod Northey: — not great.

Celesa Horvath: Yes.

Rod Northey: Thank you.

Johanne Gélinas: Doug.

Doug Horswill: Same area. Earlier today Mr. Olsynski was talking about taking discretion out of the system. I think a good reference, discretion is the crack of public servants.

(Laughter)

Doug Horswill: You seem to be suggesting putting it in. Are those two irreconcilably different positions? Or is there some way of balancing?

Celesa Horvath: Well, I think there is an opportunity for balance. And like so many things, I think discretion in this case may be another term for experience and judgment.

So, for example, when I was speaking about information requests, particularly for more complex projects, there's information requests that are coming in from all the other federal departments, often the provincial counterparts, aboriginal groups, the public and so on. And it takes a certain amount of discretion on the part of the EA process administrator to look through those to decide what's relevant or what's not relevant to the project at hand and to exercise that discretion based on their knowledge of, again, the governing regulatory framework, the scope and purpose of EA, what the EA is supposed to achieve and to exercise that discretion to filter out what's relevant and what's not. And think it's very important to keep that discretion.

But there is an argument to be made that, in some cases, you want to be more prescriptive in terms of what's required. And I think there's a place for both.

Johanne Gélinas: Renée.

Renée Pelletier: Just a quick question about your comment that oftentimes you're getting IRs that are inconsistent with the requirements of the legislation. Could you give us an example of where there's actually inconsistency?

Celesa Horvath: Requesting an effect or an assessment of the cumulative effects that are not directly – like, to which the project does not contribute or that are unlikely. So in the language of CEAA, section 19, we are required to assess cumulative effects from the project in combination with other projects and activities that will be — blah, blah, blah — that are likely to occur, right? So there's these tests and they're there for a purpose. But sometimes we get requests for information that are outside — inconsistent with that.

Renée Pelletier: By inconsistent, do you mean that are broader so that, in your view, you're being asked to assess something that in your view would be unlikely?

Celesa Horvath: Yes.

Renée Pelletier: Okay.

Celesa Horvath: Or that are not connected to the project, to which the project does not relate, right?

Renée Pelletier: Okay.

Celesa Horvath: It doesn't even have an impact on it, for example.

Renée Pelletier: Okay.

Johanne Gélinas: Thank you very much.

Celesa Horvath: Thank you for your time.

Johanne Gélinas: Peter Duck is next.

PETER DUCK, BOW VALLEY NATURALISTS

Peter Duck: Is it okay to close away the technology?

Unidentified male: So we have no idea what you're going to say. I hope you're not going to ask for more transparency out of the process.

(Laughter)

Peter Duck: No, I did not submit anything –

(Laughter)

Peter Duck: — in advance. I was intending to get something on your plate but I got tied up in pulling together some investment in a whopping 18 kilowatt biomass alternate energy project over the last couple of days.

Let me thank you for the opportunity to come and say a few words in person. I've got some brief comments here. It will be quick. But as you've heard many times today, we'll be submitting some notes later on in the process.

Yeah, my name is Peter Duck. I am president of a group known as the Bow Valley Naturalists. And I will tell you what that is because I don't know how many people have heard of that organization. It's dedicated to the protection of ecological integrity and the sharing of information about natural systems.

Since 1967, we have been active in Banff National Park and the surrounding landscapes, participating in public processes and providing educational opportunities. All our members care deeply about protecting natural ecosystems and

our members include dedicated naturalists, scientists, natural history interpreters and even one or two environmental practitioners, environmental assessment practitioners.

We have provided comments on numerable environmental assessments over our 50 years of an organization as well as policy proposals and park management plans. BVN has been involved in the development of environmental assessment practice and regulation in Canada through our participation in the Canadian environmental network. We've participated — I've had the opportunity to serve on the Minister's Regulatory Advisory Committee and at one time worked on a project to develop a standard or a guideline for environmental assessment in Canada run by the Canadian Standards Association.

As I say, we are going to do or best to provide a more detailed written submission in December. I hope we can put that together. Our annual budget is somewhere around $1,000 so we do this on volunteer time and it's fair to say that I'm taking the pleasure of vacation time to come and share this afternoon with you. So I hope we can get something together in time.

I've got three things I want to say. The first thing is meaningful, public participation is essential. Opportunities to participate in a meaningful way in the planning of projects and activities that affect Canadians is an essential part of participatory democracy. Poor public participation frustrates and disillusions citizens. Done poorly on a regular basis it divides people, their communities and dulls the natural enthusiasm many people have for contributing.

And I think it's fair to say that many of our members are currently experiencing this numbing phase of public participation with respect to environmental assessment in our area.

Done properly, public participation creates many opportunities, opportunities to bring communities together under a common understanding, opportunities to learn about each other, to learn about ecosystems around them — we've heard some of that today — opportunities to learn about the technologies and practices that strive to make their lives better and protect the health of ecosystems.

Meaningful participation results in better planning, better projects and better communities. Providing the opportunity shouldn't be discretionary. It is our hope that your work will lead to an environmental assessment regime that requires meaningful public participation in projects and activity planning in Canada.

Point two: don't forget the small stuff. We've been hearing about some pretty big projects today. But medium and small project assessment, small projects and activities have environmental effects. Those effects can be harmful on the same scale as the projects but their effects can be disproportionately large relative to

the project activity or large as they act cumulatively with other projects — they can have significant adverse effects with.

It is caring about the small stuff that creates a culture of caring about the environment in Canada and produces tangible benefits at a level that people can understand. And I was just making a note there today on that point, that when I went through the online questionnaire, I kind of got a sense we are thinking big projects in answering those questions. It was tough to answer some of those questions with small and medium-size projects. And certainly the ones that I served as practitioner — I had difficulty with some of those questions.

And my third point — I hear you're on your way up to Fort McMurray — I would love to take you home tonight back to Banff and take you out in some of those natural ecosystems and help you understand why so many of the folks I work with are in a difficult place right now with the federal EA regime.

So my third point is National Parks must be fully included in the federal EA regime. There seems to be exceptions somehow that, well, they're National Parks after all. The people there know about protecting environment, trust them, they'll get it right. And I wish that were the case. But to quote Ian Tyson, wishing don't make it so.

Our members are well aware that National Parks are subject to all the same stresses on the environment and political whims as anywhere else in Canada, precisely because these are Canada's special places. They need to be subject to the most rigorous and objective environmental planning and assessment in a manner that involves all Canadians.

When that occurs, as has sometimes been the case in the past, we find that National Parks and their dedicated staff are capable of leading the way for showing that high quality environmental assessment process across a range of project types and scales is achievable.

We do not need an EA regime like the one that we have now that gives the Parks Canada Agency a – here's the word — discretionary pass to avoid difficult EA process elements when it suits the pressures at play.

We need a regime that requires and thereby empowers the Parks Canada Agency to hold up the environmental assessment bar in a way that leads and mentors others to do the same.

Thank you for the consideration of these points. We'll find some time to articulate in our written description later. And, indeed, I would like to thank you for all the time and effort you're putting in this process on behalf of all Canadians. And I certainly wish you luck.

Johanne Gélinas: Thank you very much. Rod.

Rod Northey: Mr. Duck, I want to apologize. I shouldn't have made light of where you were coming from in this and I gather from the organization of 50 years of involvement in the small stuff. So I take back the suggestion that — those are very important points.

So here are the three questions I have for you. We have heard about National Parks. We heard if you want to go — and thinking of your future submission, you should look to the federal authorities website or at least our conifer day, because what we heard is that the National Parks, through management framework, are doing the full integrated EA and management and thus don't need — they are the model now. So it would be valuable to hear in concrete detail what some of the concerns are with their current management framework and its relationship to EA.

Okay, go ahead. Sorry.

Peter Duck: Yeah, I don't know if I'll be able to remember if you go any farther than that, so let's deal with one at a time.

Our classic example is frustration is that for 50 years ski areas have been controversial in National Parks. They were required for a long time to develop long-range plans. That finally started to happen over the last few years, although we've been waiting for it since the late '80s.

Parks Canada collaborates with the private sector to develop the guidelines for a ski area. Lake Louise is the one that came up last summer. I'm sue they spent months working on how that plan would look. They come out with a 175 page or so, close to 200 page document and give the public three weeks to sit down and respond to that in a meaningful way — a very technical document — ecosystem science laid out there and we've got three weeks to respond to that in a meaningful way, after our day jobs. That's not public participation in a meaningful way. That's abuse. And then to add insult to injury, the public makes the effort, we pull together some of the scientists that are part of our organization and put together and well thought-out response. And I think we just heard the previous speaker, and so that goes into the black hole.

And with no other discussion after the end of the submission deadline, an announcement comes out and says things have been approved. If that's good environmental assessment; if that's meaningful public participation, then we're mystified. And that's where the numbing word comes into my presentation, why bother.

Rod Northey: All right. So just one question, and I'll turn it over to my colleagues. So section 67 of CEAA, we heard from Professor Olsynski about the weaknesses of that. And Parks Canada is one of the players that are subject to that process because it's federal land. If you had the chance, if you could advise on what it

is where the federal government is the land owner, the kind of assessment process that would be meaningful and cover the small stuff, that would be very helpful.

Peter Duck: I want to be careful about going back to pre-CEAA 2012, but in those good old days of the '90s and early 2000s, when we were following that process, things were working not too bad. There was a scenario where if a project came in Parks Canada's door, it would go through a notification process and be flashed around. And say, hey, we've received this environmental assessment and it's going to be up for review at some point and people can start getting their heads around it and respond to it in a meaningful way. That kind of thing worked.

There were a lot of small projects being assessed at that time. Parks Canada led the way in developing model-class screenings that could be used to assess theses projects in a meaningful way – the model-class screening for the town site of Banff, for example, was one that I worked with as a practitioner. That provided some reasonably good, efficient environmental assessment.

But then when we go outside of Parks Canada and we hear from all the other departments that there's far too many projects, it's just overwhelming and we ask them for further information on applying model class — you know, did you use a model-class screening to make it work for you? Did you use the tools available? We couldn't get any information from them.

So there's an example of a previous environmental assessment regime that had some tools in place, as well as, you know, the old where they list the inclusions and exclusions and sitting down together with industry partners and working that kind of stuff out and making a rationale decision was something that we all agree can be assessed or not assessed. Those kinds of things were working pretty well within Parks Canada in the before time.

Rod Northey: Thank you.

Peter Duck: But they've kind of disappeared now.

Johanne Gélinas: Doug.

Doug Horswill: I heard on the news as I was getting ready to come down here today that Banff has been awarded, I guess — they've been put on National Geographic's 20 best places in the world list. So congratulations on that.

I should know this, but I don't. Has there ever been a regional assessment of Banff National Park, and if there hasn't, should there be?

Peter Duck: Absolutely. Absolutely. Banff National Park is facing some serious issues now.

The population of Banff is exceeding the limits that it was intended to achieve. We now, with the recent transportation study that's gone on for the Town of Banff, you will see for the first time after 25 years of saying we will hold ourselves to these particular town site limits — we're going to have to build — where there's proposals on the table to build parking lots outside of the town boundary to deal with the transportation problem. That's unprecedented. For 25 years we've said, here's the boundaries, here's how high are buildings, here's our population limit, here's our commercial floor space. But the promotion of growth by Parks Canada and the tourism industries and to some extent the Town of Banff, that just sits — I don't see how we're are ever gong to address that. Somebody's got to sit down and do a regional plan and deal with the same issue in Lake Louise where on a busy summer day the traffic backs out onto a four-lane highway because there just isn't enough place to put the people.

How we got to that state without some kind of a regional plan that would provide some foundation for dealing with those problems in more than a panic situation, I don't know. Yeah, I won't take anymore of your time. I could go into one or two other comments.

Johanne Gélinas: Thank you very much, Mr. Duck.

Peter Duck: Thank you.

Johanne Gélinas: Our last presentation will be made by Stella Swanson.

STELLA SWANSON

Johanne Gélinas: Good afternoon.

Stella Swanson: Good afternoon. Hopefully you will find my presentation worthy for the last one in the afternoon. It's been a long afternoon for you, I'm sure.

Johanne Gélinas: The last one is as good as the first one.

Stella Swanson: Panel Members, lades and gentlemen, my name is Stella Swanson; I am an aquatic ecologist. And I've been involved as an EA practitioner first as a government scientist and then as a private consultant, first with large firms, and now for the last 10 years in a two-person firm with my son.

I have been doing them since the early '80s on behalf of a wide range of industry, Indigenous Peoples, NGOs, as well as government agencies across many sectors.

I am preparing a written submission. I wasn't aware that I was as on the list to be a presenter until Friday because I was on the wait list, so I

apologize for not having a written submission in advance. But I definitely will be producing one.

So the presentation in front of you is an overview of my thought process.

As an EA practitioner, actually, I migrated fairly early in my career towards using more of a risk-based approach and sort of try to embed risk principles within EA and that's where I'm coming from in my presentation today.

You've already been hearing and have had a number of questions on the issue of the determination of significant residual adverse effects. I'm not going to belabour the point except to add my point, my opinion, that down that road leads you to a very strong tendency to reductionist assessments of a series of individual judgments, one stressor and one BC at a time.

And I think it's one of the reasons why so many people find it deeply unsatisfying, because it's just not enough of a holistic approach. And I have in my career found that using a risk-framework can, instead of leading you down a narrow path, open doors and lead you into a more comprehensive series of analyses which encompass multiple stressors, cumulative effects and other issues.

So my framing argument is that environmental assessment fits within the broader system of risk governance in our country. And the purpose is that risk is regulated, reduced and controlled, in this case, environmental risk. But I further go on to claim that the decisions arising from environmental assessments often pose substantial risk governance challenges because the EA process lacks policy and methodology to address what is termed “systemic risk”. And I'll define that in a minute.

Further, I maintain that the assessment and management of systemic risk requires broad discourse, accountability and policy coherence. And we've heard about all of those three today. In particular, I'll make a few comments on policy coherence within and among levels of government,

And, finally, some risks will never be tolerable to the majority of people. In my career I've seen a number of these examples and I can give some, if you wish. These risks should be identified early to save us all a lot of time and money. And we are living through a couple of those examples again today.

So that's the framing argument for my talk.

So first of all, what is systemic risk? Well, it's risk which is complex, uncertain and unambiguous. Projects which represent systemic risk will by their very nature involve inter-dependencies, interactions, feedback loops and it will be among the ecological, economic and social relationships, i.e. the sustainability framework. You will have ripple effects, you will have spill-over effects, you will have

impact cascades — so many examples of proposed projects and human activities that have this complexity. And, of course, we always deal with uncertainty.

As a scientist, I am trained to deal with natural variability. I always aim to try and increase my understanding of the variability caused by phenomena such as weather or the natural life cycles of biota. But systemic risk also involves random or chaotic events, large spatial and temporal scales and ignorance. Again, as scientists, we're often guilty of not owning up to the fact that we just don't understand the complexity of systems, whether they be ecological or social, let alone the interaction among them.

Finally, ambiguity — and this is where in my whole career, I have found it fascinating to watch how different legitimate viewpoints come together and create all kinds of risk governance and decision-making difficulties. I'll go into that in a few minutes.

But, finally — I guess over the last 10 years, in particular, I finally came to the conclusion that I had been working so hard to produce the best possible assessments that my team and I could and I would still get to the point where no one believed us. And, in fact, in many cases, people were genuinely outraged at the mismatch between our genuine effort scientifically and what their expectations were of the assessment.

So I've been really thinking hard about why that is. And one of them is that the systemic risk that is often associated with large projects, just cannot be adequately captured by classic EA methods, nor by the classic-risk equation of likelihood times consequence. Likelihood times consequence in and of itself has layers and layers of professional judgment in it. Layers of uncertainty; layers of ambiguity.

The public know this; they intuitively understand that what they are trying to articulate and what they understand about all that complexity and uncertainty is just not adequately addressed by our current tools, nor is there often the time or usually the time to produce sufficient science to advance our understanding of the complex systems or reduce our uncertainty beyond perhaps a couple of years of baseline study. And then there's the ambiguity around our legitimate viewpoints.

So I learned the hard way, scientists are not the only legitimate interpreters of risk. And yet I keep hearing it must be evidence-based; it must be science-based. I'm strongly advocating that we need to get over ourselves as scientists and understand that we need other viewpoints as well and understand how to include evidence in science-based approaches with this broader approach to systemic risk.

I've found a quote the other day which I smiled at and it was "developers and government are still rather dumbfounded by opposition to profitable,

functional, safe and legal development." And that's because it's systemic risk. Systemic risk cannot just be technical issues with efficient solutions.

So, okay, fine, what do we do about that? And particularly in the last 10 years I've really been operating in this space, where I start with understanding the sorts of ambiguity around legitimate viewpoints, in other words, values and interests, indigenous values and interests, public values and interests. And then if we focus on those blue ovals, hopefully, and we also understand those values and interests that are the foundation of everything we do as humans, hopefully we can build or re-build trust.

The remainder of my talk will really focus more on engagement and effective science communication, but I don't want to lose sight of the incredible importance of accountability which you've heard about and policy coherence. I'm a scientist; not a policy person. But I am pleading for policy people to get much more upfront and involved.

Johanne Gélinas: Just to let you know that the downside of being last is that we have to reorganize the room –

Stella Swanson: Right.

Johanne Gélinas: — and we have to finish at the latest at 6:00.

Stella Swanson: Okay.

Johanne Gélinas: So what about taking five more minutes –

Stella Swanson: Sure.

Johanne Gélinas: — so that we can enter into a dialogue. Thank you very much.

Stella Swanson: I think that should be easily achievable.

So that the foundation of understanding of values and interests is really based upon, again, my experience, that if there is a violation of social or cultural interests and values, we destroy the trust in the system, in this case, the EA system. We can often create outrage and then we lose the chance to really have a meaningful dialogue.

So what do we do? First of all, we go out and seek greater understanding about all of those different viewpoints, on particularly loaded terms such as just and fair. I have learned that a lot of the time people come with a very different understanding of, for example, justice. Some have a view that justice allows unrestrained interactions between free individuals, the libertarian point of view. Others

insist that justice is what is beneficial to the most; distributive justice. Others insist justice must have benefits to the most disadvantaged or the most vulnerable.

Unless and until we actually understand, we're hearing from those three view points, we're going to get really confused, because we're constantly being accused of being unjust.

So I would like us to have those kinds of conversations and then and only then allow the scientists in and have them communicate their science much more clearly, please, and especially about how sure they are about their science and how sure they are regarding the true ability to have effective adaptive management. And we've heard that before too. And I won't belabour the point except to just say, I agree.

Credibility regarding adaptive management is a major area for improvement.

Then when we had those conversations, we've had some clarity around the state of the science, our understanding or not and what we might do if we're wrong around adaptive management. We can collaborate around how much risk we can tolerate, including the open and honest discussion around balancing risks and benefits and the tradeoffs we're going to have to make, because we always have to. And so what would tolerable risk look like?

Here are some points. On my experience, again, I would emphasize maintaining social and cultural values at levels that are acceptable to those directly affected communities; certainly equitable distribution of benefits. And you heard that in Northern Gateway, directly from the province of B.C. to the Province of Alberta, it can get that large.

Here are the requirements for consensus regarding tolerable risk. These are all — should be obvious, but they don't often all happen. And again, at the bottom there, the panel has already been asking about consistent application of government policy and coherence. Because I have dealt with many instances of joint processes, I can say that there has definitely been duplication but there have also been gaps. And I don't know how many of you have served on panels where you've heard for sometimes hours on noise. And there is huge gaps in policy and regulation around noise. And sometimes all you have at your disposal is municipal noise bylaw. So those are the kinds of examples where we look for policy coherence and completeness.

And, finally — and we've certainly seen this recently, haven't we — that there are some risks that just are never tolerable at a broad societal level. I now live primarily in Fernie, British Columbia. British Columbians simply never really could accept the basic concept of the Northern Gateway Pipeline. There was a strong consensus in that society reflected by the statements coming from their

government. And there's still some talk about trying to achieve the appropriate balance. But I would suggest that it's important to recognize some human activities and projects will generate intolerable risk and we need to recognize that earlier rather than later and move onto alternatives.

An example in my neck of the woods, near Fernie, there is a proposed mine for the Flathead which is literally sacred ground — not only for Indigenous People, but for a lot of people.

The province heard and has a moratorium on mining now in the Flathead. That is intolerable risk. So not wasting any more time with an EA for a proposed mine.

If an EA process has some provision for recognition of intolerable risks earlier rather than later, I believe it would increase the credibility of the process.

So, in summing up, good science is not enough when we're dealing especially with systemic risk; we also need good policy; we also need good process. If we have all three, good science, policy and process, hopefully we can start dealing with ambiguity, understanding it better, searching for that common ground regarding tolerable risk, establishing benchmarks for tolerable risk that address the complexities and uncertainties and different values, and just agree that some risks may never be tolerable.

Thank you.

Johanne Gélinas: Thank you very much. If I understand you well, what you are saying — and correct me if I'm wrong — is that the environmental assessment study is not enough, more has to be done. And if we go back to your circle, clearly engagement and transparency is paramount to build that trust that you're talking about, right?

Stella Swanson: M'hmm.

Johanne Gélinas: Other point of clarification, your last slide, are you clearly saying that Canadians can say no to a project?

Stella Swanson: Yes.

Johanne Gélinas: Okay. It wasn't clear.

Stella Swanson: Yes.

Johanne Gélinas: Thank you.

Doug.

Doug Horswill: It's an interesting set of propositions you've put to us. In a previous city we heard somebody refer to something called value-based science. We've heard about go, no-go decisions early on and we heard about some of that today. And it seems they're similar ideas.

Your ambiguity is like a normative analysis of a particular problem. And, obviously, normative analysis and politics go together when you make those tradeoffs. I think what would be helpful, to me for sure — and I expect my co-panellists — would be some very practical examples of where you think people have applied something along the lines of what you're laying out here and examples of where they haven't. You've given us the Northern Gateway and I guess it is still in play, obviously, as a project, or maybe there are other examples. So I think if you could take the presentation, theory and so on that you put out here and operationalize it for us, through examples in your subsequent submission, then we would get a better feel for it and would be able to put it in the basket with some of the other things we've heard along the same lines where you do get points of applying where one view and another view hard-held in society don't match up and you got to kind of come up in-between them or like the Flathead Project — I am very aware of that one — where a decision was made in a particular direction. So if you could –

Stella Swanson: I certainly will.

Doug Horswill: — operationalize it and give us some examples, that would be most useful.

Stella Swanson: I will.

Johanne Gélinas: Rod.

Rod Northey: Yes, I just want to try and see — to ignore my earlier question of Professor Olsynski about planning, because before you start putting a project description in that requires everyone to buy into the science, you might have a conversation about what's even proposed and you can get the people that are around the table to all talk. I'm seeing you're nodding. So is planning one way to try and get that early conversation and that early indication that you're talking about in the final slide?

Stella Swanson: Definitely. I would fully support the ideas that others have already brought to your attention in a conceptual level, engagement, where you can start, first of all, really understanding the different values and interests and therefore the source of ambiguities and the different view points.

Secondly, engaging in an early conversation about what tolerable risk associated with this proposal would look like. And it can be in a sustainability space, right. So fit this project within social, economic and environmental risks.

Rod Northey: Yeah, it is just actually — because one of your initial critiques was the significance and the fragmentation so-called of the — which is a very interesting point. But I then was going to ask you so sustainability — we've been asking all around different questions today — sustainability in at least your experience might be a way that is not subject to that problem. What's your thought about that?

Stella Swanson: Well, any of these is simply a construct, right, so we would have to make sure going in that we defined what we meant by the indicator of economic sustainability and ecological and social –

Rod Northey: Fair enough. Right.

Stella Swanson: — and consult on that, because that's one of the other things I noticed, is that folks will come up with their own sustainability indicators but they haven't checked in with the people who are actually affected that makes any sense to them.

Rod Northey: Right. Yeah.

Stella Swanson: But if you have done that; you've done some homework, I think, yes, I think that's the way forward.

Rod Northey: Thank you very much.

Johanne Gélinas: Thank you very much for your presentation, Ms Swanson.

So that will conclude our afternoon presentation session. At 6:30 for those of you who want to join for the workshops.

Rod Northey: Those who want? They all want to come back.

(Laughter)

Johanne Gélinas: Okay. So just raise your hand, who's coming tonight? Good. So you have half an hour to have dinner. I hope you know good spots. You have to look for one, for sure. So we'll see you at 6:30 for the workshop.

Thank you.

■