

# **Expert Panel Public Presentation Session**

## **Review of Environmental Assessment Processes**

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**Simon Fraser University (Wosk Centre for Dialogue)  
Vancouver, BC**

### **Expert Panel:**

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

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**Opening Remarks**

**Johanne Gélinas:** So good morning, everyone. Thank you for joining us this morning. My name is Johanne Gélinas. I'm the chair of the Expert Panel on

Environmental Assessment and I am accompanied by Renée Pelletier on my right and Doug Horswill, and on my left Rod Northey. So this is your Panel.

Few words about what is our mandate. So the mandate that was given to us in August covered three things: First of all, to consider the goals and purpose of modern-day environmental assessment. Second, to communicate and engage directly with a broad section of indigenous people, interested groups, individuals, organizations, companies. And third, to develop recommendations to present to the Minister. And we have had an extension, so our report will be tabled to the Minister on March 31st.

What we cover. In fact, we cover all the processes that exist. So it means that we look at the Canadian Nuclear Safety Commission, CNSC; the National Energy Board, NEB; and CEAA, the Canadian Environmental Assessment Agency.

It's our last week of a Canada tour which started last September on the east coast. This week we have two days in Vancouver and two days in Nanaimo, and then we're heading back home for Christmas, where we will start reading all the submissions that will be presented to us. We had received some of them, but obviously people will benefit until the last minute to refine their submissions and the last day to submit is December 23rd. So with all that in hand, we will start our report.

So I was going to say that we have gone through a cross-Canada tour. In each location where we went, we have produced a summary. So if you want to know what was said in other regions or other parts of the country, you can go on our website. You will also find there all our submissions plus two summaries of meetings we have had in Ottawa, one with the federal representative involved in the EA and also one with all the provinces to talk about harmonization or collaboration, cooperation between the feds and the provinces.

As today's concern, as you may know, yesterday we had a full-day presentation also. Today it's full again. Tonight we have what we call the workshop, which is a more — a different approach which permits to get more into the detail and have an open dialogue discussion. Tomorrow it's indigenous day event, so we will have formal presentation all day tomorrow from indigenous groups and individuals. And in the evening we have what we call the open dialogue session, which is a different set up but again it's to offer a proper environment for a dialogue and exchange.

So the rule for today: You have 15 minutes altogether, which includes your presentation and our questions. So the more you take for your presentation, the less time we have for dialogue. Your submissions, we can always read it; and we will read it, even though if you send it to us after your presentation. So

please keep in mind that the best thing for us is to be able to enter into a dialogue. So I will recommend that you come with your key messages and then that we can go through a discussion. And I will remind you when you will have five minutes left to conclude. So I hope that works.

**Rod Northey:** Can we just add in practically every previous day we have had more time to accommodate, but there's no way. We have 22 people due to speak today, so that —

**Johanne Gélinas:** Yeah, and moreover, I have to say that in most regions we were able to have a little bit in advance the submissions, which was easier for us to enter into a dialogue with you. Here we have received less. But those that we have received, keep in mind that we have had the chance to read your submission.

And on that, I will turn to Renée.

**Renée Pelletier:** Thank you. Before we begin, we'd like to acknowledge that we are on the unceded territory of the Musqueam, Squamish and Tsleil-Waututh Nations. We also recognize any chiefs, elders, or community members who may be in the room. Thank you.

**Johanne Gélinas:** And we'll start with Mr. Roger Emsley. Thank you very much.

**Roger Emsley:** Good morning.

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

## **Roger Emsley, Against Port Expansion**

**Roger Emsley:** Madam Chair, Members of the Panel. My name is Roger Emsley. I'm executive director of the Against Port Expansion community group, community group based in Delta, just south of here and in one of the richest ecosystems in North America, Roberts Bank. Our group has been in existence for better than 10 years. Our focus is Roberts Bank and the industrialization that is continuing to occur. It is an important area. It's an area of concern.

My recommendations for change to environmental assessment processes and regulations are based on a number of years of interaction with the Vancouver Fraser Port Authority, and in particular their proposal for a second container terminal on Roberts Bank, something that has been around for a long time and something that our group, comprised of hundreds of members both from Delta, across British Columbia, and also into the USA.

I have a number of recommendations which I will go through.

I do have a copy of the presentation, and it will be provided to you afterwards.

First recommendation: Restoring public trust — Canadian environmental assessment panel reviews and their terms of reference. Project proponents should not be permitted to dictate the terms of reference for a CEAA panel review. The Roberts Bank Container 2 Terminal [sic] terms of reference were influenced by the proponent. For example, the panel review was limited to the port footprint, thus avoiding a review of impacts from truck and train traffic, air pollution, noise and light pollution, traffic problems on major highways, and disruptions of local communities. Terms of reference need to be full and independent.

Second recommendation: Restoring public trust — Proponent as approving authority. Project proponents such as port authorities cannot be both the proponent of a project and the regulatory approval body, which is what happens today in some circumstances. This is like putting the wolf in charge of the sheep pen.

Third recommendation: Decisions to be based on science, facts, and evidence and serve the public's interest. Environmental assessments must be carried out by professionals totally independent and at arm's length from the proponent, thus achieving a higher scientific plausibility and credibility. It is essential that the assessment is impartial and complete, not therefore influenced by the views and wishes of the project proponent. This is not always the case today. There must be a full cumulative effects assessment for all projects, to include previous developments, the current project being assessed, and future projects that are expected. But our finding is that that is dodged; certainly the future projects that are coming down the pipe are often dodged today.

Next: Thorough environmental assessments and the economic aspects. Environmental assessments must include the economic aspects of a project, comparing the economic benefits to the potential for damage or degradation of the environment. All too often, the proponent promotes the economic benefits in terms of employment, for example, but fails to include natural capital. Natural capital, the worth of the environment in monetary terms, needs to be included in every assessment. Additionally, the assessment review by panel and public must include discussion and review of the economic benefits, with the ability to challenge and delve into the detail of the economic benefits and to look at alternatives, not just those selected by the proponent.

Protecting wildlife that relies on the rich habitat of British Columbia. The richness of our coastal ecosystems is not being properly recognized or valued. Roberts Bank is one of the highest important bird areas in the world. It is certainly the most important in British Columbia, if not the whole of North America. Millions of shore birds and other wildlife species rely on Roberts Bank. Wildlife does not recognize country borders. We live in an environmentally connected region. Western

sandpipers, for example, over-winter in Central and South America. Each spring they fly north to breed in Alaska, stopping along the way at key sites in Central America, the USA, and Canada to refuel and build their strength. It is Canada's responsibility to protect their Canadian habitat. Destroy or degrade one of these key stopover sites, of which Roberts Bank is one of the most important, in the name of industrialization and the chain of the Pacific flyway will be broken. Mitigation is not always the answer, although that's often proposed. Potential for ecosystem damage, species decline or extinction is often immediate, irreversible, and cannot be mitigated.

Madam Chair, Members of the Panel, I thank you for the opportunity to present, and I'm certainly open to questions.

**Johanne G elinas:** Thank you very much for your presentation.

Doug, would you like to go first?

**Doug Horswill:** Sure. In relation to Roberts Bank, is there a regional plan? Has one ever been done? Does it involved the community? Do you have a sense of that?

**Roger Emsley:** No, there is not.

**Doug Horswill:** Good short answer.

Second one, okay. On cost-benefit analysis type approach to economics, and you emphasized natural capital, how do you propose that be valued to be able to put in an economic model?

**Roger Emsley:** There are now a number of schemes for doing that. The David Suzuki Foundation has proposed a number of ways of doing that. In fact, they have gone as far to develop an interactive map where you can zero in on particular areas and get some kind of a value for natural capital. Much more work needs to be done, but this is the kind of approach that will help.

But it's much more than that. What we tend to do today is focus on the economic benefits without looking at the broader picture of what happens in an area if the ecosystem is degraded. Millions of shorebirds traverse Roberts Bank, some residing longer than others every year. But in addition to that, you have the killer whales, the orcas, you have the salmon, you have crab populations, eulachon, herrings, and I could go on and on. There are hundreds and hundreds of species that rely on Roberts Bank. And all we look at is what are the economic benefits of doing this. And I have to say some of these in terms of Roberts Bank are doubtful. What are the economic benefits of doing it, and we don't look at the wider picture in terms of the impact on the ecosystem.

**Johanne G elinas:** Thank you. Rod.



**Rod Northey:** Yes, I just want to follow up on that issue of planning. So it's obviously bordering a municipality. Is there any interaction with the Municipality of Vancouver? What's happening in terms of how those two interact?

**Roger Emsley:** The host municipality is Delta.

**Rod Northey:** Okay.

**Roger Emsley:** And they try to do as much as they can. Our municipal council is active, is certainly active on the project, and but there's no grand regional plan as such, either for metro or for British Columbia as a whole, although recognized as an important bird area, which is one of the international, if you like —

**Rod Northey:** Sure.

**Roger Emsley:** — organizations. Interestingly, part of that area, not including Roberts Bank, has attained a number of years ago a RAMSA designation.

**Rod Northey:** Right, okay.

**Roger Emsley:** Except the border stopped right where it shouldn't have.

**Rod Northey:** So what does the port authority plan that's supposed to exist — is there a port authority plan for the lands that it controls?

**Roger Emsley:** Yes, they have a land use plan. They've just updated it. And their plan for Roberts Bank is to put a manmade island one-third the size of Stanley Park out on the bank. This will disrupt the flow from the Fraser River, which is key to the environment and the ecosystem that they particularly — the birds feed on. They feed — and this is an evolving science — they feed on biofilm. Biofilm is critical, for example, to the western sandpiper. This is what gives them their fuel to go the next leg, which is all the way up to Stikine and into Alaska to breed. There has been a lot of research on that. Regrettably, the port is trying to brush that aside. We're trying to stop them. And this biofilm is sensitive. Magically, right at the time that the westerns are coming through, its quality goes up, and as it goes up, the birds are able to pick up the essential nutrients for them to build their strength. It's also impacted by salinity, water temperature, and so on. And it is our belief that putting that manmade island out there will change the whole structure and the interaction with the Fraser River and the estuary.

**Rod Northey:** Thank you.

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

**Roger Emsley:** Thank you.

**Johanne G  linas:** Our next presenter is Mr. John McManus.

**John McManus:** Good morning.

**Johanne G  linas:** Good morning.

**John McManus**

**John McManus:** You do have a copy of my speaking notes, so —

**Johanne G  linas:** Yes, and we read it. Thank you.

**John McManus:** I'm going to try and cut through some of the preamble and just get to the point.

I am the chief operating officer of Taseko Mines, but I'm here on behalf of myself and these are my observations.

As the chief operating officer of Taseko, we have a number of projects here and in the US. One of them is the New Prosperity, or previously called Prosperity gold-copper project in central British Columbia. It's been through three environmental assessments, one provincial and two federal. Both of the federal assessments were done as panel reviews. The second panel review and the outcome of it is before the courts. So I need to be careful not to speak specifically to anything which is before the court, and I'm going to try to avoid that if possible.

I'm also aware that I am speaking to an independent expert panel, and when I refer to panels, I'm not speaking about you. Okay? So please don't be defensive.

The goal of this panel is to develop — from your website — new, fair processes that are robust, protect our environment, respect the rights of indigenous people, and support economic growth. The point of my presentation is that the panel review process since the inception of 2012 has totally failed in reaching the goal of supporting economic growth. And I don't think it particularly represents the rights of indigenous people or anyone else, for that matter.

I did some research and I had some help from the Agency on how things — what is the scorecard for panel reviews. There's been 58 panels in total since 1995. There are 16 panel reviews which have proceeded under CEAA 2012, which came in in July 2012. Ten of those were transitioned from the previous Act, and six are new projects. Of that 16, seven assessments are still underway, regardless of legislated timelines; four are on hold or terminated at the request of the proponent, basically gave up; two were completed, deemed not authorized to proceed; and three were completed and deemed authorized to proceed. The only of the 16 projects which

are going under panel review that has moved forward to construction is BC Hydro Site C, which is a government project which is not really economic growth. It can lead to economic growth, but it in and of itself is not. So private investment in Canada has been completely shut out of anything which has gone to panel review since CEEA 2012 has been enacted.

So these are my observations of what the issue may be, why the panel process is not working. I've been through two of these, and I can tell you the panel process is divisive, very divisive for communities, both Aboriginal and non-Aboriginal. Panel hearings themselves are adversarial, combative, and emotional. Presenters take very strong or extreme positions in order to make a point to the panel. In Aboriginal communities, I've observed that First Nation leaders and others have convinced community members that the proposed project is a threat to themselves, to their way of life, and to their very survival, regardless of any evidence. Many First Nations members remarked how upsetting the whole process is to them with sleepless nights, illness, anxiety, tears, family tension, and arguments. This is an unnatural and foreign and intimidating process foisted on them by the federal government. In non-Aboriginal communities, non-local organizations with their own agendas also run a campaign of fear, untruth and half-truths to turn people against projects.

Two: Process fails as forum for public participation. Basically the public doesn't come. It's a platform for people to state their positions, and these are the people that feel strongly one way or the other, and the general public doesn't show up. They're not there. I observed that this was especially true in the hearings in the First Nation communities, and between the two panels we did I believe 30 hearings and communication in First Nations communities. Quite often the individuals in attendance at one community were the very same ones that came to the hearings at the next community.

These independent panels are not independent. The review panels are supported in their work by a secretariat made up primarily of CEEA employees, Agency employees from other ministries within government. These civil servants bring previously gathered environmental assessment experience, connections, and relationships, all of which introduces the potential of an institutional bias and casts doubt on the claim of true independence of the panel. The secretariat manages all of the work for the panel, including drafting the important documents up to and including the final report.

Panel members are not really expert. A mine is too big and too complex of an issue for three people to be expert in everything. Between the engineering, the social, the law, the legal, there's just no possibility for them to be expert. But they're labelled as expert, which makes it extremely politically difficult to go contrary to whatever the panel report is.

Process is unreasonably expensive for the project

proponent. All of the burden and none of the control is in the hands of the proponent.

Panel is not accountable to anyone. As soon as the panel has signed off on their report, the panel is dissolved and no longer exists. This makes a panel process essentially an abrogation of political responsibility, because there's nothing that can be done about it. Politicians and civil servants are held accountable for their work.

My observation, and this is the panels I've observed, not you, that they do not follow their mandates. They go far afield, way beyond what's required of them, and specifically they veer into — they veer federal decision-making into the jurisdiction of provinces and other authorities.

And there's no appeal process. There's no mechanism if there's something wrong with the panel report. It's final. There's no way to communicate to Cabinet before they make their decision. It's just a closed door.

I make two recommendations on the panel review process. Number one is scrap the panel review process. It just isn't working. And number two: Replace the review panels with an expert committee of government regulators and make them accountable. I think these are people that could then make this process move forward. Because right now it simply doesn't work.

Thank you.

**Johanne Gélinas:** Thank you very much for your presentation. It's interesting to have a proponent in front of us. And I'm very tempted to ask you that question, because we heard that a lot of times through our journey. There's an idea that the proponent shouldn't do the environmental impact study, but it should be still done by consultants but under the coordination and oversight of an independent body. What do you think of this idea?

**John McManus:** It would be very difficult for a consultant to take on an environmental impact statement of a complex project like a mine. There's just — we've spent \$130 million gathering the information that we've got on this project so far. I don't know how an independent consultant could do an environmental impact statement without at least, you know, taking guidance from the proponent about what the project is. Nobody knows it better than the proponent.

**Johanne Gélinas:** Just to clarify, the idea is not that the proponent is not involved, but the proponent is not the one giving all the guidance to the consultant who will do the environmental impact study. So to keep somehow an arm's length between the proponent, the consultant to rebuild trust and credibility in the process. Because what we hear, it's not only the panel which might be problematic, but the entire chain.

**John McManus:** I think if the proponent, the Agency, First Nations could all

agree on who that consultant is, it might work. The panel is truly an awful experience for everybody.

**Rod Northey:** Yeah, thanks for coming forward to explain your perspective on it.

So let me just start with some of the premises. So panels since 2012. Can you point to something you think is different about a panel since 2012 other than the previous basically 40 years of panels? They haven't really — it's not obvious to us that they've changed much. So I'd be interested to hear what the 2012 piece introduced to panels as you see it.

**John McManus:** I'm not really an expert —

**Rod Northey:** Okay.

**John McManus:** — on panels; I'm more of a survivor.

**Rod Northey:** No, no, fair enough. And I don't mean to diminish your point. But is there a contrast between panel 2 and panel 1 — panel 1 was under the old Act, and panel 2 is under the new one. What was different?

**John McManus:** Not a lot.

**Rod Northey:** Okay.

**John McManus:** Under CEAA 2012 there's supposed to be legislated timelines, which those were easily overridden and the clock was stopped.

**Rod Northey:** We've heard a lot about that.

**John McManus:** Yeah. And the hearings themselves were the same. There was — my observation — very, very little difference between —

**Rod Northey:** Okay.

**John McManus:** And I think it only goes back to '95, the original *Canadian Environmental Assessment Act* was 1992, and the Agency was formed in 1995, so it doesn't go back that far.

**Rod Northey:** FEARO —

**John McManus:** I might be wrong.

**Rod Northey:** — Federal Environmental Assessment Review Office did panels informally since 1974.

**John McManus:** Oh.

**Rod Northey:** So before that there were 20 years plus, and they had — their focus was panel reviews. But okay, so —

**John McManus:** All right, yeah [indiscernible - multiple speakers]

**Rod Northey:** — so the other thing, just to try and deal with this, is reading the report — I'm familiar with it. The focus was on federal fisheries jurisdiction. I'd like you just to explain to us a little bit — your comment was the panel waded into provincial jurisdiction. But my recollection of it is that the focus was on fisheries, First Nations, certainly, but fisheries was a huge technical issue. Can you just fill us in? I suspect you're not in agreement with what DFO did, but can you fill us in on what we see in a report and didn't work on the fisheries piece? Because it did strike me that was one of the critical issues if not the critical issue.

**John McManus:** Again, I have to be careful here. We are in front of the court.

**Rod Northey:** Okay.

**John McManus:** Our information is public on a court docket.

**Rod Northey:** Yeah.

**John McManus:** You can see it there. The fisheries issue — the province has given us an environmental assessment certificate. And it was overridden by CEAA 2012 and through the panel review, which we believe is a Constitutional issue, which is also in front of the court. So again I can't wade very far into this —

**Rod Northey:** No, and again, I wasn't trying to wade. I understand the complexity and I understand the challenge you've got right now.

**John McManus:** Simply and in both of the panels that we were in, the panel moved into what is actually a provincial permitting —

**Rod Northey:** Okay.

**John McManus:** — area and demanded information to a level that should be handled at permit level —

**Rod Northey:** Okay.

**John McManus:** — and made their decisions based on things where — the work hadn't been done yet in order to get a permit, and yet they made their decision based on work that was done to an environmental assessment level.

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

**Rod Northey:** Thank you very much.

**Johanne G  linas:** Doug.

**Doug Horswill:** Looking at your two recommendations and comparing it to things we've heard as we've travelled across the country, one of the big issues that — concerns that have been expressed to us is public engagement and its adequacy and sufficiency, and a sense that trust at least on the intervenor side is eroded because of a lack of effective public engagement.

Your recommendation says put it all in the hands of departmental officials. How do we address the public engagement requirement under your scenario?

**John McManus:** I think if you do it front of — that's a recommendation. I'm not expert on this either, on those processes and policies. But the panel hearing process itself where you have the proponent sitting in one corner, the panel sitting here, and other people coming and making presentations, and then a battle over the presentations where the proponent is — must then discredit the person who's coming up and being an opponent, and vice versa. And that becomes so difficult a process for people to be through, that I think by the end of the panel hearings everybody's mad at each other, nobody wants to see each other again. And if a regulator could come in and run a process sort of like you're doing here where you're not having the opponents and the proponent have this duel in front of the panel, it was — it's really — in my view, I can't see how you could carry on with that process. So does that — I hope that helps.

**Doug Horswill:** Yeah, I think that helps. So it's really the adversarial nature of that particular process that you're most concerned about?

**John McManus:** We completely agree that projects should be tested. They should be checked to make sure that the best project possible, that the mitigation that's proper has been put in place. But when it turns into just this adversarial proponent versus opponent in front of a panel who has got to try and sort out all this mess of stuff, it's bound to fail. Plus, at the end of the panel hearings, even if there's a positive decision on the project, it's raised so many hackles that the two projects which have been approved which didn't go ahead — one of them is Enbridge Northern Gateway. I mean, there's so much opposition to it and there's so much question about the independence of the panel that the project doesn't go ahead anyway, even if the panel recommends for it, so it's just — it sounds like a good idea, the panel reviews, but in practice, at least in current day — maybe it used to be you could do it differently, but not now.

**Doug Horswill:** Thank you.

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

**John McManus:** Thank you.

**Johanne G  linas:** Our next presenter is Glen Wonders.

Good morning, gentlemen.

## **Glen Wonders and Gavin C. Dirom, Association for Mineral Exploration**

**Glen Wonders:** Good morning. I'm actually joined today by our president and CEO, Gavin C. Dirom. We'll tag-team this. I apologize that it didn't seem to come through on the email that you got of the presentation, but we have it now in front of you and this is the relevant presentation. I'll defer to him to begin the opening comments. Thank you.

**Gavin Dirom:** Thank you, Glen. Can you hear me okay?

**Johanne G  linas:** No, press [indiscernible - speaking away from mic] —

**Gavin Dirom:** Okay. Very good. Thank you. And I'll just walk you through the slides here that you have in front of you, and we also have them on the screen here.

So good morning, and I thank you for this opportunity to present AME's views on the environmental assessment process. I would suggest that this is a very positive opportunity for industry and associations like ours to engage and to offer perspectives, in fact, in the spirit of, you know, improving the process, which I think is all in our best interests.

So with that I'll just quickly outline who we are so it's clear. We are an industry association established over a hundred years ago. We have well over 400 corporate members, some very small — one or two, you know, people running a small junior exploration company — to also very large, you know, multinational large companies based here in British Columbia and throughout Canada.

It's very clear that we're a not-for-profit association funded by industry, not by government, and that's important for us to have that arm's length from government. And essentially we are the advocates for socially responsible exploration being undertaken here in BC and throughout the world. And I think it's important to also reflect on the importance our members put on environment, health, and safety. It's a core value for our members and for our association and we're very proud of that.

We also have a conference every year we call Roundup based here in Vancouver. And perhaps another day we can talk about inviting you to that event, because it's a good opportunity to engage with a lot of the stakeholders that you've been hearing from and also take the discussion into a very practical realm and



learn about the — you know, some of the challenges, and it's a very open discourse and dialogue, and some of the opportunities for solutions. So I encourage you to attend Roundup one day.

So with that, just some background about the actual industry here in BC. We've had some challenges as of late in terms of raising money and funding the industry. But this slide represents that it does go up and down. As of late, we're slightly on the upswing. 2015, you know, was down to 272 million from a high of 680 million back in 2012. We're hopeful we see this movement back into this coming year and the upswing. The point is, though, there's a hundred exploration projects in BC that are quite active, and that represents the future economic development and potential mines of the future here in BC.

So in terms of the exploration projects and mining projects that are active in the EA process, there's 13 now mineral and coal development projects in BC that are either preparing or active in the EA process. These projects represent approximately 15 billion in potential capital investment into the economies of BC and Canada. Six of these 13 projects are pre-application stage, and seven are in the review stage, and two of the projects are in the substituted process, which is quite important to us. You'll hear more about that as we go through our presentation. In fact, AME was a very outspoken advocate for the substitution process many, many years ago.

An important MOU was signed, as you know, in 2013 between Canada and BC on substitution on environmental assessments. Since then, Canada has approved substitution for approximately 14 environmental assessment reviews in BC. One has dropped, so it's technically 13 underway. Substitution enables the CEA Agency and the BC EAO to effectively and efficiently fulfill their respective agency requirements without dual processes. AME is a strong advocate of retaining the substitution approach while considering opportunities for improvement.

**Glen Wonders:** And I'll tag-team in here. Thank you very much.

We believe that having a single review process that fulfills both the legal requirements of CEAA and Canadian federal authorities and the BC EAO can enhance the public and industry confidence in review processes. Overlapping and duplicative processes that do not result — don't generally result in better, more informed decisions. In fact, they waste limited resources and typically frustrate interested parties, communities, proponents, and reviewers alike. And I can speak to that very personally.

We believe that a single, coordinated assessment process results in a much more robust review of relevant project data and information. Some of these benefits include a focused conversation rather than multiple ones in different processes; improved consultation coordination between all parties and that level of confidence increase can be enhanced; and a more comprehensive assessment and consideration of all the facts while each level of authority retains their decision-making

abilities. We believe the substituted BC-Canada process is rigorous and effectively assesses potential significant effects of any project.

Further to this, that multiple review processes do create their own issues. They can create agency conflict and scope of project questions at critical EA stages. It requires extensive replication of information and data, which is costly, error prone, and time consuming. We believe that reduces the overall review effectiveness and undermines public and industry confidence and it most clearly frustrates both public and the proponents at times.

BC is wholly responsible for permitting mineral exploration development in the province and we're wholly supportive of that. We believe that the federal EA process could be improved by focusing on information needed for federal jurisdiction and permits. *Fisheries Act* authorizations, as previously referenced, are a prime example. Federal reviews should consider critical project elements and avoid other scope creep into other issues such as broader cumulative effects assessments. AME notes that mineral and coal projects are commonly assessed on matters well beyond their influence.

Additional improvements could include removing independent panels' reviews, which as previously noted are very confrontational at times. It can be logistically and technically challenging and they can often confuse and frustrate delivering an agency mandate.

We are strongly supportive of continuing to provide support to indigenous communities to meaningfully participate in environmental assessment processes. No question of that.

AME also supports evolving the substitution process and implementing the equivalency tool in the future. Equivalency, in our opinion, would further reduce regulatory overlap and improve public and industry confidence.

And that concludes our presentation.

**Johanne Gélinas:** Thank you. Doug, would you like to start.

**Doug Horswill:** Yeah. I was interested in the comment on the Improving EA Process slide: "Federal reviews should consider critical project elements and avoid scope creep into other issues such as broader cumulative effects assessments."

In our travels, we have heard quite a lot about cumulative effects, particularly as it pertains to smaller projects that otherwise escape review and a feeling that that's been a very important element or should be about planning and so on. So I'd like you to elaborate on what you're talking about here that says no, I think, to federal involvement in cumulative effects so that we can assess it against some of the other comments we've heard as we've travelled across the country. Thank you.

**Glen Wonders:** Thank you, Mr. Horswill. I'd be happy to do so.

I want to put it in the context that the development process of a mineral project is often 10 to 20 years, that from time of discovery of an initial outcrop of a mineral to when a project is being assessed is often in that timeline, between the technical matters associated with the mineral deposit and some of the other factors that have to be considered as it approaches consideration under an environmental assessment. Ten to 20 years.

In the meantime, particularly in BC, we see that the other resources industries such as forestry, oil, and gas, even linear infrastructure projects, be they pipeline, power line, highways, railroads — all are continuing on the land base and have very little regard or understanding of what we're trying to do on a mineral project. And then we get to the point where you have a very different landscape and one that's still evolving and changing as a result of other resource industries and parameters on the land base that the mineral industry that the proponent of the mineral development has to take account for. And that's extremely challenging when we have relatively little control or influence on what's going on beyond the actual boundaries of the mineral project.

There's all kind of landscape-level changes that are occurring. Some of these are, like I said, manmade through forestry, other types of resource developments. Some of these are really, you know, climate change and environmental related such as the mountain pine beetle has had dramatic effect through the interior of British Columbia. And it's changed even how mineral projects may be considered either to their benefit or not.

So things are going on well beyond the scope and control of a mineral development proponent and we have very little understanding of that at the time as we're developing the project into being ready for an environmental assessment. And we end up having to try to wrestle those projects — something that's well beyond the scope of the mineral development project itself.

**Doug Horswill:** Thank you.

**Johanne Gélinas:** Thank you. Renée.

**Renée Pelletier:** Yes, thank you.

I wanted to ask you about your comments around supporting meaningful participation of indigenous communities in an environmental assessment. As I'm sure you're aware, we as a panel are tasked with reflecting UNDRIP in our recommendations. And I'm wondering your views on the role of indigenous communities to participate in decision-making, which was one of the articles in UNDRIP.

**Gavin Dirom:** I'll start anyhow. On behalf of AME, I mean, it's critical and

we purposely put this in to emphasize it and make sure it's clear that we're very supportive of having meaningful engagement with First Nation communities in environmental assessment reviews and processes. With respect to UNDRIP and UN DRIP, you know, that's an evolving aspect that the association and our members are actively participating in and willing to work with. But obviously on a very, you know, practical, pragmatic way. And that's important for actually moving these projects meaningfully down the road and having a proper review of the various effects that might be considering or impacting and affecting a community. So we're supportive of having, you know, continued capacity in First Nation communities or support for that capacity to participate in these processes.

Do you want to add anything to that, Glen?

**Glen Wonders:** I'll simply add that as an organization, we have a very strong — an active committee and participation with First Nations. We support early and enhanced engagement between communities and First Nations — or mineral proponents. It's something we clearly advocate for. It's on our websites. We've actually produced an Aboriginal relations guidebook for our members that actually has gone right around the world in terms of the quality of its delivery, so we believe that the role of indigenous communities in an EA assessment is critical and we're supportive of that.

**Renée Pelletier:** Thank you.

**Rod Northey:** Yes, I'm just putting together several of your slides. I'm kind of trying to figure out why you are supporting substituted EA instead of joint EA. It strikes me that after the first slide I thought it was substituted because you said all aspects of EA get covered, but then in your subsequent slide you concede there's federal stuff that wouldn't get covered. So the model that has been existing before CEAA '12 was joint EAs, which would seem to bring all of the jurisdictions together. And I'm now puzzled why you're — what's the problem with joint?

**Glen Wonders:** I would say that the understanding of a lot of mineral development proponents in the first place was that where there's a more vigorous timeline, it tends to established around a substituted process, in our experience, that a joint process tends to have a broader decision-making matrix that has to be attached to it, having a single sort of opportunity for proponents and for participants in the EA process through the substituted process just is more efficient in our own experience and in the experience of our members. If you want to add to that. Okay.

**Rod Northey:** Okay, thank you.

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

**Gavin Dirom:** That's it. Thank you.

**Glen Wonders:** Thank you.

**Johanne Gélina:** Our next presenter is Anna Johnston.

Good morning.

**Anna Johnston:** Good morning. Congratulations on the extension. I'm sure you're very excited.

## **ANNA JOHNSTON, WEST COAST ENVIRONMENTAL LAW**

**Anna Johnston:** So my name's Anna Johnson from West Coast Environmental Law, a non-profit environmental law organization based here in Vancouver, Coast Salish territories. I also co-chair the Environmental Planning and Assessment Caucus of the CEN and, as you know, sit on the Multi-Interest Advisory Committee. I also organized, as you probably also know, the Federal Environmental Assessment Reform Summit in May.

I'm going to speak not to these principles specifically today, but not — I got my presentation in to you pretty late last night, so I'm not sure if you've had a chance to look at it, but I'm going to talk about a governance model for how to implement UNDRIP, how to have a strong federal role in EA, and how to really focus on the strategic and regional levels. And these pillars underpin that governance model that I'm going to be talking about.

**Johanne Gélina:** Just keep in mind that you have 15 minutes.

**Anna Johnston:** I know.

**Johanne Gélina:** And we would like to ask you questions. Okay?

**Anna Johnston:** Yes, I'm sure. Okay.

**Johanne Gélina:** So I will remind you after 10 minutes.

**Anna Johnston:** Thanks.

So as I've mentioned before, next-generation EA is an integrated package. You can't cherry-pick reforms and expect the whole package to work. We do expect that there needs to be a strong federal role with cooperative assessments being the ultimate goal. We don't think substitution works. There needs to be cooperation with indigenous governments that are designed on a nation-to-nation basis, which means that the federal infrastructure has to be flexible.

And then we'd like to move back to a triggering approach to EA, where much more environmental assessments occur and have triggering for

regional and strategic environmental assessments as well. And that triggering can also be based on when a regional or strategic environmental assessment is recommended by an expert advisory committee, by a review panel, by the public or indigenous peoples.

So we proposed a number of institutional bodies, although some of these actually are ones that we already have and are not quite actually new bodies, so this looks more intimidating than it really is.

So assessment councils would be the ones to do the regional and strategic EAs, potentially also project EAs if you recommend going to a government-led review rather than a proponent-conducted EA. They're temporary, they're ad hoc, they're people that already work for the federal, provincial, indigenous governments and outside experts appointed on an ad hoc basis for each EA. So they're not actually permanent bodies.

And then there's an assessment authority, which is the one central agency to conduct EAs rather than having the Agency, the NEB, and the CNSC doing it now.

Co-governance boards should be enabled in the legislation for those regions where, you know, vesting that authority from indigenous, provincial, and federal government is preferred. By "regions," I mean provinces.

Review panels, which we already have.

An expert advisory committee, somewhat different than multi-interest advisory committee. This would be expert-based, not interest-based.

And then an independent tribunal to hear appeals and to help with government-to-government negotiations.

And then decision-making should occur at the ministerial or Cabinet level.

So for the conduct of EA, as I mentioned, we've recommended assessment councils, right. So their job would be to compile and conduct the research, to establish baseline scenarios, to conduct the technical aspects of assessments, and to produce assessment reports for consideration by the reviewing body. That can be done at the regional, strategic, and project level.

The SEAs that are currently covered under the Cabinet directive should probably remain conducted by those relevant federal departments but then by reviewed by the assessment authority.

And then if project EAs in the new legislation are still done

by the proponent, there needs to be safeguards to prevent bias or even just the apprehension of bias, such as putting the burden of proof on proponents to prove their evidence rather than have a presumption that theirs is the most meritorious.

The body to review EA, as I said, should be done by one central authority. So this assessment authority would be like the Agency. So we already have one. It would collaborate with other jurisdictions to review and make recommendations on EA, conduct public and indigenous engagement, provide secretariat support to review panels and to government in its government-to-government negotiations. And then it would help develop policy, guidance, regulations.

As I mentioned, you know, in our work with indigenous communities, we've heard from some a preference for co-governance, and so in our review the legislation should enable co-governance boards where that's the preferred model by all of the relevant jurisdictions. And its job would be to uphold the jurisdiction authority and laws of all of the levels of government to do the assessment authority's work in that region. So reviewing and making recommendations on all levels of EA, conducting public and indigenous engagement, et cetera.

And then in our view, there should of course still be the opportunity to have review panels in all levels of environmental assessment, especially for the more complicated and contentious ones. The review panels can be much more trusted by the public and have that level of independence to handle the more complicated and contentious issues.

So decision-making. We've gone back and forth on this quite a bit, and in our view, in order for decision-making to be done on a nation-to-nation basis with indigenous nations, it needs to be vested in the federal government federally, right, for that collaboration on decisions to be made. And that goes for final and some interim decisions, such development of the terms of reference, like what's already been done. I'm not sure if you've been able to look into the Voisey's Bay EA, which was a collaborative assessment by the federal Labrador, Newfoundland, and then Innu and Inuit governments, but in that collaborative assessment, that final decision-making on the terms of reference and in the final result was done collaboratively by the governments. They jointly appointed a review panel. You know, and so I think that those final and interim — main interim decisions need to be done in — at the government level.

This expert advisory committee. We're basing it on COSEWIC, which under the *Species at Risk Act* has the job of making recommendations to the Minister such as when to list species for, you know, being at risk. And so in that same regard, we thought that it would be very helpful for the Minister to have this independent expert committee comprised of experts jointly appointed by relevant jurisdictions to make recommendations on, for example, when a

regional or strategic environmental assessment is necessary, help provide, you know, strategic and policy advice, develop sector terms of reference, and recommend scientific standards.

You've probably also heard quite a bit about the need to have a right of appeal in the legislation. We think that there needs to be an independent tribunal. This could be broader than just environmental assessment. It could be for all environmental legislation federally. But there does need to be this independent panel to — or independent tribunal to hear appeals. Also it could help mediate and arbitrate when governments aren't able to reach consensus around decisions and to provide quality assurance reviews of the federal environmental assessment regime.

So maybe I'll just leave it up on this, the very helpful and tiny printed diagram, and open it up to questions.

**Johanne Gélinas:** Thank you. Rod.

**Rod Northey:** Yeah, well, we'll see how many — I've got one I'm allowed so we'll see if I come back to a second.

Trying to work through the overall objective of EA and the governance model you've got, I'd just be interested — are we overall trying to improve cooperation, collaboration, independent decision-making — we've got lots of different thrusts. We get adversarial models, we've got cooperative models, collaborate — what's the overarching objective that you see of governance? And you can put the other ones subsidiary to it, but what's the overarching objective as you see it for EA in Canada at the federal level?

**Anna Johnston:** So with regards to multi-jurisdictional EA, the goal is collaborating —

**Rod Northey:** Well, just [indiscernible - multiple speakers] because I guess what we're trying to figure out is what — you know, what's the model we should have in our mind? You've got multiple bodies here.

**Anna Johnston:** Uh-huh.

**Rod Northey:** And I'm trying to figure out how these all work together into one thing. They seem to be going in multiple objectives, and I'm trying to figure out how these get pulled together.

**Anna Johnston:** So I think the overall objective of EA should be to make wise decisions that lead us down the path of sustainability.

**Rod Northey:** Okay.



**Anna Johnston:** Right? So the way that all of these bodies work together is you have at the very top the decision-makers. They need somebody to make recommendations to them. That's the assessment authority, the co-governance board, or the review panels. They need somebody to do all that work out on the field, right, on the ground, to do the information-gathering. And those are the assessment councils.

**Rod Northey:** And in terms of all the multi-jurisdictional parts of it, is the model cooperation, collaboration, what is it?

**Anna Johnston:** Well, cooperation and collaboration —

**Rod Northey:** Harmonization —

**Anna Johnston:** — are the — so cooperation is a bit of an overarching, and then you can have collaborative EA where they — everybody's going to have a different definition, but in my understanding collaborative EA is when all — there's one process and all the jurisdictions collaborate.

You can also have a cooperative EA model that's more like the joint model that was formerly used where you actually have two different parallel EAs with all of the timelines harmonized so there's one public participation process, you know, one EIS or AIR here in BC, or AI application, sorry. But you still have those two jurisdictions or three jurisdictions operating separately to each other.

So there can be a couple of different models for cooperation. I think cooperation should be the goal with collaboration being the gold standard.

**Rod Northey:** Okay, thank you.

**Renée Pelletier:** The final decision, these should be made by the Cabinet level, ministerial or Cabinet level. I'm wondering why that is. You know, what are your thoughts on having — if there's an arm's length kind of independent decision-making body, having that body be the final decision-maker and taking it out of the hands of government.

**Anna Johnston:** Well, I guess there are two reasons for that that both come down to UNDRIP; right. So I think it's very unlikely that a lot of First Nations are going to delegate their decision-making authority to an independent body. I'm not sure, but that's what we've heard from, you know, some of our allies here in BC. So if that delegation just occurred at the federal level, I don't — I don't think that's a nation-to-nation dialogue. If the federal government has delegated its decision-making authority to a board, then that's not two governments talking to each other, that's a government talking to a board.

**Renée Pelletier:** Even if there's indigenous representation on that board?

**Anna Johnston:** Indigenous representation can't speak for all First Nations; right? So for nation-to-nation to happen, like here in BC we have — you know, we don't have treaties, we don't have — so we have, you know, a significant number of different First Nations that want to be making that — that need to be making that decision-making — need to be making decisions on that nation-to-nation basis. And so one board isn't going to represent all those First Nations.

**Renée Pelletier:** Okay, thanks.

**Anna Johnston:** Which is why we put in the option of having the co-governance boards. Probably still, decision-making has to happen at the government — you know, the government level.

**Johanne Gélinas:** Doug?

**Doug Horswill:** In your spaghetti diagram there, and I guess that's not just institutions, that's process as well —

**Anna Johnston:** Yeah.

**Doug Horswill:** I haven't been able to really —

**Anna Johnston:** Yeah, yeah.

**Doug Horswill:** — feature on it. Where does accountability rest?

**Anna Johnston:** All throughout, but having that tribunal to hear appeals helps significantly. But accountability occurs in all sorts of ways. Like I mentioned to you in Edmonton the decision-making criteria — and I think you've heard it from some of my colleagues as well — having decision-making criteria rather than just the justification, the black box of justification. The significance test and then are those significant effects justified. Moving instead into a decision-making and trade-off rules model helps with that accountability considerably.

And I appended to my submissions a paper by Meinhard Doelle, who was on the joint review panel of the Lower Churchill EA where they applied just in — the panel applied decision-making criteria and trade-off rules to guide the decision. So in that paper that I appended, in the appendix to that, he lists out all of the decision-making criteria and trade-off rules, to give you an example of what those look like. I didn't think I'd have enough time to go through them.

**Doug Horswill:** Related to accountability, discipline. How does the system maintain a discipline that proponents can count on that they'll get to a decision and intervenors can count on that they'll be heard?

**Anna Johnston:** So to the second point, I think allowing the public to help

design participation processes will give them more comfort in how they've been heard. Also, you know, having decisions reflect public comments, right, and having — I believe as you have to do — having to say how you've taken public comments into consideration is very important.

As for discipline in the system for — presumably you're meaning timelines. I am not a fan of timelines. I've seen how they have made environmental assessments nearly impossible. I think you probably heard about the Site C EA up in Fort St. John when you were there. You know, we had 13,000 pages of information to get through in two weeks. We had two weeks to hire experts and to have them review the 13,000 pages of the EIS and supplementary information, to get them to analyze that and provide their comments on it. Two weeks. It was not enough time. It was not enough time at all.

And when you look back to the timelines of environmental assessments pre-2012, the vast majority of them fell within the two-year time frame anyways. And so the mandatory timelines is an arbitrary exercise. It's — okay.

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

**Anna Johnston:** Thanks.

**Johanne Gélinas:** Our next presenter is Dawn Hoogeveen. Hope I pronounce it well. We don't have a presentation from you, do we?

**Dawn Hoogeveen:** No, you don't have a presentation from me.

**Johanne Gélinas:** So good morning and welcome.

## **DAWN HOOGEVEEN**

**Dawn Hoogeveen:** Good morning. Thank you.

I'd first like to acknowledge that we're on the unceded ancestral territories of the Musqueam, Squamish, and Tsleil-Waututh First Nations. And I'd also like to congratulate the Panel on their cross-Canada tour. I'm sure you're ready to go home and sleep in your own beds for a few nights.

I'm currently a post-doctoral fellow at the University of British Columbia in the Institute for Resources, Environment, and Sustainability. And my presentation today will be followed by a written submission — by the 23rd, I believe.

So today I just would like to make two points, and I'm going to aim to do that in nine minutes.

For about a decade or so I've been looking at mining laws,

focusing on the property relations that underwrite the transfer of Crown land to miners. So in a regulatory sense, the way I see it, it's actually at this mineral staking stage where conflicts of a resource extraction and hard rock mining all begin. And as I'm sure you're aware, tensions over land use are often exacerbated during the environmental assessment process. So though today I'll speak to changes that I think might improve federal environmental assessment, I'd also like to just acknowledge that the root of many of these conflicts that happen in EA, particularly between miners and First Nations, begin well before proponents embark on an EIS. And they're not necessarily conflicts over EIS, but they're conflicts over land, property, and jurisdiction. So what we often see, as I know you're aware, is that First Nations have often not been properly consulted by the Crown over land use. So resisting a mine or pipeline during the EA is late in terms of meaningful consultation over land use that could have been initiated through state-based land use planning processes far earlier.

So given this context, my first point would be to ask federal policy-makers if they could change the framing of environmental assessment away from mitigation and towards one based in actual land use decision-making processes. In other words, asking whether or not a project should proceed instead of calculating the impacts. And I know this is something that's very familiar to you, it sounds like. So and I'm sympathetic for industry's desire for certainty and the elimination of red tape. Nevertheless, I see this decision-making framework as a duty of the Crown and the premises under which decision-making currently takes place in CEAA 2012 certainly doesn't seem to be functioning as well as it could be.

So this means putting clauses in environmental assessment legislation that expand timelines and allow for — and prioritize community-based land use planning initiatives. So my question would be how the panel can respect potential no-go zones. And this essentially includes, of course, indigenous and local collaboration and participation with a process that doesn't put as much pressure and heavy burden on communities that otherwise have activities that they might be wanting to go through apart from trying to seek legal and scientific expertise with often few resources compared to proponents. So there's I think an expectation that Canadian rules and regulations that govern resource development will be cutting-edge and — since they are known to be cutting-edge internationally. So in my opinion, a shift away from the language of mitigation towards decision-making would make Canadian environmental assessment more cutting-edge legislation. And it would be one that attends to the current power imbalance embedded in the decision-making process framed largely in terms of comparative impacts.

So I think that the consistent disappointment the public feels over environmental assessment processes is in a lot of ways because proponents are placed in the driver's seat, writing the environmental impact statement. So I would be looking at future legislation that provides communities with decision-making power and relieves the Crown from the threat of being sued for compensation, provides indigenous and non-indigenous communities the space, funding, and right to a better planning

process so that major conflicts over proposed projects are played out on a more even playing field. And I think with some creative thinking and hard work this can be accomplished.

As my colleague Dr. Rosemary-Claire Collard, who teaches environmental assessment at Concordia University, has suggested, this is already what the public actually thinks environmental assessment is for, addressing whether projects should go ahead or not, like a forum for public participation that includes rigorous scientific studies; it examines the interactions between humans and their environments and provides analyses on whether projects are a good or a bad idea as opposed to simply feasible.

So Collard and I see a move away from determining the mitigation impacts and argue there's a major disjuncture, and that practitioners and governments know that the mitigation lens and technical parameters of EA are much more limited than an ideal democratic decision-making process affords. So Canadians generally think EA is the saviour institution, but in the current reality, EA is largely about comparing impacts. But we don't see why this needs to be the case. And I think that perhaps looking at the EIS literature, a more appropriate framework would be a turn to the policy recommendations and literature that's pointing at the strategic environmental assessment model that, to quote Bram Noble, is "a multi-faceted and a multi-dimensional assessment process."

So this brings me to my second and last point, which is around consent. And I'm really pleased to hear that the Panel's taking UNDRIP and FPIC regulations seriously in their thinking. And I think that the right to say no and thinking about the project in terms of respecting these power dynamics that are latent in the process is really crucial, particularly because proponents have access to greater amounts of capital and legal resources just in general.

So there's — is there a way to strengthen the decision-making processes so that we can understand the property rights that's granted at the mineral-staking stage? Because I think that that, you know, just to go back to one of the earlier regulatory processes that lead to these conflicts during EA that really — it's very difficult to address during the EA process. So I know this is somewhat outside of the box, but it seems to me — just and I know I mentioned this in the beginning of my talk — that a lot of the conflicts that take place are going to persist until there's a more equitable way to make land use planning decisions. So this part of why EA essentially remains somewhat problematic in that land use designations have already been settled in a legal sense far before the EA process. So the right to say no to a project via overturning a property right would strengthen community-based decision-making and allow for no-go zones, which I think would also increase industry certainty.

So conflicts will continue to arise if First Nations are not given more decision-making power over their lands and the right to FPIC as legislated in

UNDRIP, but beyond that, the right to make informed decisions over their cultural and heritage sites. The Crown in Canada currently hasn't provided proper tools or financial resources for First Nations and communities to move forward with thorough land use plans. So in a paper written by [indiscernible] on international norms of consultation and consent, they write that Canada is sharply out of step with international developments and even domestic developments in the private sector over consent and consultation. [indiscernible] includes the move that groups, including the International Council of Mining and Metals and PDAC, the Prospectors and Development Association of Canada, have made in their voluntary, you know, PDAC's e3 Plus guidelines, which support the concept of free, prior, and informed consent. So I guess you're tasked with figuring out how that can be legislated in an environmental assessment.

So yeah, in closing, I've heard that this Panel is really listening and doing a good job at taking the participatory process seriously. So I commend you on that. And yeah, so I look forward to seeing how the report comes out when you are able to write it, after you've had some sleep.

**Johanne Gélinas:** We're not planning to have some sleep, are we?

[Laughter / Rires]

**Johanne Gélinas:** Who would like to start?

**Rod Northey:** I'll go.

**Johanne Gélinas:** You want to go?

**Rod Northey:** So let's just go back to your first point, to understand I think the idea that CEAA is focused on mitigation and should move back up the queue to land use. So I just — you heard probably the previous presentation. We were hearing about 10 to 20 years in mineral development. What's your sense of when the EA process, from your research, when does it begin in a cycle that has that length of time or do you have your own version of the cycle of developer, like the whole process to get from start to an approval, so to speak.

**Dawn Hoogeveen:** Well, okay, if I understand your question — just to — I missed the 30-year part, but —

**Rod Northey:** Not — 20 — I think he said 10 to 20 years to go from something to an approval.

**Dawn Hoogeveen:** Oh, right.

**Rod Northey:** And I was trying to understand in relation to your point, the EA starting late —

**Dawn Hoogeveen:** Yeah.

**Rod Northey:** — where is your sense of where it's starting, if you have some experience or information on that.

**Dawn Hoogeveen:** Yeah, well, I mean I think from my reading of some of the literature on strategic environmental assessment, it starts as early as possible as opposed to later in the game. So I think that — I mean thinking outside of maybe the EA process, but thinking about how First Nations are consulted over mineral staking projects. I mean, that's where I think meaningful consultations should begin, so that you don't have projects that are in EA with all of these unresolved issues that lead to the conflicts that John McManus was speaking about that can be quite divisive between communities and industry. So basically as early as possible.

**Rod Northey:** Can I just ask one — so just to follow up that, there's a general view that the provinces — unless the explorations in the offshore — have exclusive authority over that, so how do we as federal EA enter into that quagmire?

**Dawn Hoogeveen:** Well that's a really good question. I mean, I think that conflicts over jurisdiction — I mean, I don't think that Canada is currently living up to its duty to consult with First Nations on a nation-to-nation level. So I think that the provinces are, you know, in this position where they have authority that the feds kind of often — you know, and I've talked with bureaucrats at a federal level over conflicts over territory in BC where there's unceded territory. And it's — I'm embarrassed that my country would, you know, have a lot of people in technical senses that they don't — they kind of want to avoid the question as opposed to dealing with it.

So I mean, I've done some work in the Northwest Territories, and I think that the review board is also an interesting model for environmental assessment like — and you could look at MVEIRB, like the Mackenzie Valley Environmental Review Board, for that. But I think that in some cases, for example, the Drybones Bay mineral exploration case, it's like proponents are, you know, junior exploration companies of one sort or another are continually asking to develop the same place, which is, you know, a Yellowknife Dene First Nation burial ground. And so it goes continually back. So it's not actually a process where local First Nations are able to say, "Actually, this is a sacred site for us." It's more of a process that perpetuates more, you know, capital intensive investments and higher stakes for industry.

So from my perspective, the easier — the easiest way to mitigate that would be to start, you know, processes as early as possible as opposed to, you know, spending millions of dollars on a review process that maybe shouldn't have happened in the first place.

**Rod Northey:** Thanks.

**Johanne Gélinas:** Doug, do you have a question?

**Doug Horswill:** I'm okay.

**Johanne Gélinas:** Okay. So thank you very much for your presentation.

**Dawn Hoogeveen:** Okay.

**Johanne Gélinas:** Bye bye.

We'll take a short break, 15 minutes. So we are back at 25 to 11.

(BREAK)

**Johanne Gélinas:** So you must be Denise [MOO-len]? [MULL-en]? Thank you for joining us. And I will invite others to have a seat so that we can start.

So good morning.

**Denise Mullen:** Good morning.

**Johanne Gélinas:** The floor is yours.

## **DENISE MULLEN, BUSINESS COUNCIL OF BRITISH COLUMBIA**

**Denise Mullen:** [indiscernible - mic turned off] with the Business Council, so we represent over 250 businesses in British Columbia, ranging from everything from textiles to natural resource management.

**Johanne Gélinas:** Can you speak closer?

**Denise Mullen:** Oh, sorry, yes. So we will be making a written submission as well. I'm just putting the finishing touches on that.

I have been in the natural resource management sector for 30 years and I actually was an author, to the extent you can be, as a civil servant of BC's original environmental assessment legislation and as also a regulator who approved many projects and experienced the challenges, I believe, of CEAA staff and having to make difficult recommendations and trade-offs in recommendations to the Minister.

So my presentation today — so we start with the second slide. I just wanted to give some background for British Columbia because I think we're a bit unique. So since 2012, there have been 58 projects in BC that have needed a federal review. Some of those were exempt, but BC projects represent 37 percent of CEAA projects across Canada, and 58 percent of those require both federal and provincial assessments. And the approximate value of those, given a look at our major



projects inventory, is around \$340 billion in capital investment.

I think generally when there's a negative perception of EA there's a trickle-down effect to a negative perception of all permitting and licensing processes, federally and provincially. When we think about Canada and who we are, 17 percent of our GDP comes from natural resource sectors, mining, energy, and forestry. And energy itself accounts for 25 or about one third of the total non-residential investment in Canada between 2006 and 2015. And according to the World Bank, we rank 58th out of 189 in terms of ease of doing business specifically on obtaining construction permits, but 20th overall. And when you look at the United States, who we have a significant market connection with, they're seventh. So competitively, we're at somewhat of a disadvantage.

So I wanted just to address what I believe or what we believe collectively as businesses — what environmental assessment is. We believe it is science-based. It's an information-gathering process and planning tool, and it facilitates a discussion about environmental risks of a proposal for project development. It's also project by project, and that becomes relevant in the next question when we talk about what it isn't. And there is still an opportunity for yes and no, and I don't think either are predetermined, although there's a sense that somehow it is, I think, by some interest groups.

What environmental assessment is not is a form for resolving those kinds of conversations and trade-offs we have about environment, social, and economic values. That's really a place for legislatures and parliaments. So when we do have those — when we argue values and whether projects should be developed or not, in terms of what's in and what's out, I don't think that that — that is predetermined by a list, but it's not the place to then have that conversation on a project-by-project basis. They're either in or they're out.

EA also is not a permitting process. I think we've seen an evolution of EA towards becoming — there's a lot more compliance and enforcement embedded in the conversation, and really it's "whether to," not "how to." The "how to" comes when you get to permitting, because that's when you get down into the weeds about what it actually means to manage water or what kind of machinery will release what kind of emissions. And those things belong in permits.

In terms of the positive elements of the current EA system, as a business we like the finite timelines. I think that was a good addition. We like lists rather than triggers. BC has a list rather than a trigger. I think on triggers you have a broader, undefined, much more discretionary role for regulators in determining what's in or out, and what's in or out is better done with a list because then you know that if you have a certain type of project, you have to go through the process. We also appreciate the reduction in responsible agencies. We have arm's-length regulators who are arm's-length regulators for a reason. They avoid duplication and reduce uncertainty and

confusion. I think in the old triggers approach there was a lot more confusion about who was responsible for what.

We also support the idea of substitution, and I know that BC has the most experience if not the only experience with substitution. We like one process, two decisions. When I think back to my early days in EA where I had to coordinate under the old environment EARP, it was pre-CEAA, the coordination was challenging in part because there was not a strong regulatory framework on the federal side, but just coordinating between multiple agencies takes a lot of time, a lot of resources. Substitution is — you know, the federal government and province have a role and they make independent decisions. And I just mentioned the administration of process by an arm's-length regulator because it removes the politics or should, although sometimes that doesn't seem to be the case.

Some areas for improvement in the current CEAA. When we look at CEAA as an area where you have specific expertise, whether you're a project manager or a content expert, you really need to have a CEAA office and those other regulators staffed properly with experience and succession planning. It provides continuity of review. There's a corporate history around decisions and the way things were done in the past that carries through. Timelines stop-clock, I know that there is an ability to stop and extend, I think, that — maybe some conversations around limiting that, just because of the uncertainty that happens if you continually open up the process, stop-clock, change, continue. It reduces certainty and costs for both proponents and government.

I think it would be useful to have a rationale for project lists. In British Columbia, when we first developed our regulations list, we had very long conversations around what thresholds would be around projects and why and the rationale for that. And there was a revision to that a few years later and the same process happened.

The delivery of the Crown's duty to consult. A lot of that has been, for lack of a better word, downloaded onto industry. And industry can't be a proxy for government. Government has to have its role in its relationship with First Nations.

I think there's some — you asked some questions in your guidance document around TEK, and I wonder if there might be some ability to provide some more rigorous guidance around TEK and how it should be developed, what's included, much like we do guidelines for socio-economic impact assessment or economic evaluation.

Accessible and usable data for cumulative impact assessment. So the Act enables cumulative impact assessment. I think what's missing is shared data warehouses, data sharing agreements, common ways of gathering data, allowing it to be shared across platforms. Because at the end of the day, a proponent

can only be responsible, really, for the impacts of its project, not the responsibility for a broad area. And industry and companies can then use data which is accessible, as can other stakeholders, to facilitate that conversation about their particular project, and it can be used elsewhere.

I think having a certificate amendment process would be good. In British Columbia we have that. If things change over time and by agreement you need to amend a certificate, that would be useful for proponents and government.

Clear boundaries for public involvement and industry consultation requirements and expectations too. I wrote the first participant assistance guidance for British Columbia when we were just experimenting with what it really meant to have public involvement. I know it's evolved a lot, but I think still there's some lack of guidance or expectation around what industry's supposed to do versus what government is supposed to do.

Define the role for Aboriginal people that are consistent with Section 35 of the Constitution. I'm not an expert on First Nations. I will just say that if it's consistent, then — or it needs to be clearer, because right now a lot of the apparent conflict going on comes from that lack of clarity.

And accessible and readable plain language documents. I think when we think about science and evidence, it becomes quite complicated. Scientists speak their own language. Whether they're hard science or qualitative scientists, plain language, which means creating it in a way that you could read from Grade 8 to Grade 12, would help facilitate the distribution and absorption of information. And when you have 17,000 pages, for example, of documents, that's a System 2 — I don't know if you're familiar with Daniel Kahneman, but System 2 thinking. It's very difficult analysis that most people don't have the time or capacity to do. So how do we facilitate the absorption of that information.

So some "must avoids." Substituting more process for decision-making. I think in Canada we tend to think that if we add more process, that means we'll have better decisions. I'm not sure that's true.

Offloading government responsibility to industry in terms of both the cost and duty to address First Nations issues.

Duelling experts. Most experts are part of — sign a code of conduct. I don't think that they are deliberately going out to undermine their own membership in their organizations or to undermine the degrees that they have, and yet we seem to have this "I don't believe your expert so we hired somebody else to prove it."

Undermining and second-guessing regulatory agencies. So the whole idea that if we have an arm's-length agency and they make a decision, why

should it be continually reviewed? The whole purpose of arm's length is so that government can take that information and make a decision. The Minister can, under legislation.

And as I mentioned before, transforming environmental assessment into a permitting process. It duplicates responsibilities and confuses the purpose of EA.

And I think we need to stop using the term "social licence." It doesn't exist as a legal concept or principle, and it's not a stamp of approval or confers a stamp of approval. It's an ambiguous term that we've kind of adopted that doesn't actually help, I don't think, with moving on with project decisions.

So our conclusions. We don't believe that CEAA needs a fundamental overhaul. We've identified some things that we think are areas for improvement. Collectively, Canadians will benefit from an EA process. And I'll try to summarize this, that we encourage investment certainty and predictability. We reduce social friction. And by increasing understanding we enable management and evaluation of issues at a reasonable cost, not for huge amounts of time or digging into 15 decimal places worth of research. A clear delineation between discrete projects and that values conversation that happens at the parliament and legislature. Are we energy and mining developers or are we not? Is free of undue political and stakeholder influence — that's the arm's-lengthness of it. Enables appropriate public involvement. And one size does not fit all. So the guidance and expectations are important. Provides clear and consistent guidelines and expectations for all process participants. And supports the need for — public need for transparent, thorough process and confidence in that decision-making, and completed in reasonable time frames using the rule of law.

And that's just a little slide on who we are. I hope I was in my 10 minutes —

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

Renée, you want to start?

**Renée Pelletier:** Sure. Yes, thank you. Just on your comments of the need to not offload responsibility to address First Nations issues onto industry, do you still think that there can be a role for industry, though, in addressing some First Nations —

**Denise Mullen:** Absolutely —

**Renée Pelletier:** — concerns? I'm thinking by way of impact-benefit agreement, for example.

**Denise Mullen:** Yeah. And the Business Council has actually done quite a bit of work on that. And we agree there is a role for industry in relation to its

relationships with First Nations. We actually think it's a business role. So we think there are opportunities for partnerships with First Nations in development of particular projects, equity partnerships and the like. If not, then at least IBA in some form, although that's emerging. But the government does have an obligation, a duty to consult, reaffirmed by case law. So often we have felt over the last number of years that we're doing much of that work, and we want to push it back.

**Renée Pelletier:** Right. Okay, thank you.

**Johanne Gélinas:** Just on the same — along the same line, have you done some analysis or — yeah, analysis where IBA should fit into the EA process?

**Denise Mullen:** I'd have to go back and check and find out. I know I was — I've done surveys of our members where we were talking about instruments and what they should look like and what's wrong with them and how they can be fixed and where they belong. But at this moment I can't dig that up out of my mind instantly. But if you're interested, I can definitely go back and look at what our survey results say and submit some information. I could either include it — but I don't know if that's appropriate to include it in our submission or separately.

**Johanne Gélinas:** It doesn't really matter, because whatever you will give us will be —

**Denise Mullen:** Public.

**Johanne Gélinas:** — made public anyway.

**Denise Mullen:** Okay.

**Johanne Gélinas:** But what we would like get from the industry is certainly how they see IBAs fitting into the process and other things related to transparency with those IBAs and these kind of things, disclosure and —

**Denise Mullen:** Yeah, I guess just on the transparency issue, that's also a conversation with First Nations, because they may not want those terms and conditions that they've negotiated with companies to be public either for various — their own personal reasons, but —

**Johanne Gélinas:** Whatever is your —

**Denise Mullen:** Okay.

**Johanne Gélinas:** — position, we'll —

**Denise Mullen:** Okay.

**Johanne Gélinas:** — appreciate. Thank you.

**Doug Horswill:** At the beginning you described what EA was and what it was not, and you talked about the kind of value trade-offs of social, economic, and other issues. What we've heard quite a lot from a lot of different intervenors across the country is the notion of the decisions made in a black box. And it comes particularly clear with things like PNW, the projects where there was significant effects, and then Cabinet justified them and decided. That seems to be an issue for a lot of people. If you leave EA as you're describing, just environmental assessment, how do you manage to generate some public confidence in the decision?

**Denise Mullen:** Good question. Challenging. I guess part of it is whether we as Canadians want the kinds of projects we say we don't want right now for whatever reason; right? So if LNG and mining and energy are part of what we do as Canadians and are a contributor to our economy and our GDP, then some — then we have — then I guess we have to have a clear statement that that is true, because I don't know if we actually do that.

In terms of building confidence, off the top, maybe, you know, right now a lot of the consultation happens industry to community, industry to First Nation. And then there's the CEAA process, which also has a consultation-intervenor process. I don't know if there's a way of — I don't want to say expand it, but somehow a nuance around how CEAA interacts with communities and how their information gets incorporated. And maybe that goes to plain language documentation and how summaries are presented. The challenge is that ultimately it's the Minister's decision, so to some extent it is a black box. And unless the public is in the legislature debating it or in Cabinet debating it, I don't know how you break open that door to make it completely transparent.

**Rod Northey:** Yes, I'm just curious on your making documents more accessible. Do you have any views on whether there should be mandatory page limits on environmental assessments? Maybe not the appendices, but the assessment itself.

**Denise Mullen:** Maybe. I mean, I would recommend that the Panel go look at the plain — International Plain Language Association just in terms of how — the kind of language that's used to write. I mean, when we're speaking, we're speaking as not the general public, so we all have master's degrees and Ph.Ds, and so we speak in a completely different stratosphere, I think, than the general public who's trying to understand it on the ground in relation to their communities. So maybe page limits with some guidance on topics or headers, use of language. I think that we write a lot in passive — in passive language, and passive language takes a lot more space than active language. So some practice in communicating in a very Grade 8 to maybe Grade 11 level is an interesting challenge. But there is an organization, an international organization on plain language that helps a lot if you actually dig into the kind of work that they do and it all comes with design and sentence structure. I mean, it's not —

writing is not easy.

**Rod Northey:** Thank you.

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

**Denise Mullen:** Thank you.

**Johanne Gélinas:** Our next presenter is Emma Lui.

Good morning.

## **EMMA LUI, COUNCIL OF CANADIANS**

**Emma Lui:** Good morning. Thanks very much for — well, I just want to take a minute to thank you for being here and for doing all the travelling that you have done. I'm sure that's quite tiring. And just appreciating that you're listening to people's views and opinions and just really underscore the importance of creating the space for people to bring forward their views. So I just want to say thanks for that.

Just also want to recognize that we're on the traditional territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.

And just maybe a little bit about the Council of Canadians. So we're a social justice organization. We advocate for clean water, fair trade, green energy, public health care, and a vibrant democracy. We have 60 chapters and 100,000 supporters across Canada, and many of them have raised concerns about the lakes and rivers in their communities that are at risk from projects that are currently unprotected or at risk because of projects that are going forward and weakened legislation under the *Canadian Environmental Assessment Act*, the *Navigable Waters Protection Act* or I guess what would currently be the *Navigation Protection Act*, and other environmental and water legislation.

So the Council of Canadians has mostly focused on the changes to the *Navigable Waters Protection Act*, and though we know it was a trigger for some of the projects being reviewed under CEAA itself. Since the changes that the former Harper government have made to water and environmental legislation, industrial projects such as pipelines, dams, mines, and fish farms are moving forward with little or no scrutiny on their impacts on water. Many of these projects are also happening on the traditional territories of indigenous peoples and will have impacts on their cultures, ways of life, and economies.

And I know you've probably been hearing similar concerns as you've been going from place to place. We've recently put out a report called "Every Lake, Every River: Restoring the *Navigable Waters Protection Act*." And we looked at

specific case studies and how changes to CEAA and the *Navigable Waters Protection Act* impacted the waterways in many people's communities.

So Justin Trudeau had campaigned on restoring and strengthening many of the fresh water and environmental protections that the former Harper government had weakened, but the Trudeau government's recent approvals of the Trans Mountain and Line 3 pipelines as well as Site C dam raises serious concerns about his government's commitment to protect waterways in Canada. The Trans Mountain pipeline crosses and threatens roughly 1,300 waterways.

And so we know that oil spills can impact people's drinking water like we saw with the Husky oil spill this summer. We also know how costly oil spills can be, and we've seen that with the Kalamazoo River in Michigan, how they impact fishing, recreation, and navigation. Parts of the river and a nearby lake close to the Kalamazoo River were closed for two to three years because of the spill, so communities members were unable to access the river or parts of the lake because of the spill.

So the same week that the Trudeau government approved the Trans Mountain and Line 3 pipelines, Prime Minister Trudeau told Toronto elementary school teachers that we need to move towards renewables and engage in a robust transition off fossil fuels. Approving a tar sands pipeline is contrary to transitioning off fossil fuels, and the risks associated with fossil fuel projects and other extractive projects can actually threaten sustainable jobs.

In 2012, Mountain Equipment Coop presented a list of 40 recreational important waterways that are no longer protected under the *Navigable Waters Protection Act*. They pointed out that the outdoor recreation industry creates at least 6 million jobs in Canada. In comparison, there are roughly 250,000 jobs in mining, oil, and gas and logging combined, which makes up roughly 1.6 percent of the jobs in Canada.

So there's a big push for jobs in the extractive industry, particularly in the fossil fuel industry. But according to Statistics Canada, most of the jobs are actually in non-extractive industries. We see 12 percent are in retail trade, 12 percent are in health care and social assistance, another 12 percent are in manufacturing, and 8 percent are in educational services, for example.

So fresh water and environmental protections must be restored and enhanced in a way that reflects Canada's goal of transitioning off of fossil fuels. It's crucial that the federal government protect and expand jobs that are in sustainable and non-extractive industries. Specifically, we're urging the Panel to make these recommendations to the federal government, and we've asked that the *Canadian Environmental Assessment Act* and other legislation on fresh water and the environment be reinstated to the pre-2012 standards and to make improvements based



on that.

Protections must be put back on all lakes, rivers, and waterways, particularly by eliminating the schedule of lakes under the *Navigable Waters Protection Act* or *Navigation Protection Act* so that every lake and every river is truly protected. Federal scrutiny of pipelines and power lines under the *Navigable Waters Act* and requirement of a detailed information on waterways under CEEA must be reinstated and strengthened.

And I was just looking at the decision or the conditions that came with the Kinder Morgan pipeline decision and looking at the 192 conditions. And a lot of them seem strange to me that that information is being asked post-decision, like a lot of the information is about navigable waters or the impact on drinking water for the Cold Lake Reserve. And it's strange to me that that information is being asked after the decision. So it's been approved, but that information should definitely be asked before and part of the decision-making process.

We're also asking for strict safeguards for waterways within the framework of the United Nations recognized human right to water, that it must be implemented. We're asking for a new clause to be developed so that potential spills or discharge of harmful substances are assessed for their impact on navigable waters and on the surrounding environment. Right now, we see — or I see, anyway, a gap between the different pieces of legislation in that *Navigable Waters*, it looks at navigation, but it doesn't actually look at the potential spills and the impacts on navigation, how that could impact fisheries and so forth. And so really calling for something to, you know — and not just mitigation, because I know that's often the case. But you know, if there's going to be a potential spill or potential impacts of a project, that they really — that really be considered in the actual decision.

Applications for projects that abuse or pollute water must be phased out or denied, and a freeze must be put on fossil fuel's expansion and related infrastructure. And this is based on the premise that a lot of the water that is in southern Canada, the renewable water is disappearing. And Stats Canada has done a study and is coming out with the study early next year on that. And so most of the population in Canada is in southern Canada. And just, you know, some fairly big concerns about the projects that are happening in southern Canada and the threats that they pose to people's access to clean water.

The federal government must begin holding public consultations to develop a clear plan towards a 100 percent renewable-energy economy by 2050 and obtain consents from communities on this plan.

Free, prior, and informed consent must be obtained from indigenous communities so that indigenous treaty and water rights are respected and a nation-to-nation relationship is truly established. So we're asking for clauses reflecting

this obligation to obtain consent. And it's not just consultation. There's quite a big difference between consent and consultation. And that this must be incorporated into CEAA and other water legislation.

And we've heard from some communities, and I know there's the indigenous consultations tomorrow, but that people who are making the decisions don't know the land and really need to rely on indigenous traditional knowledge and oftentimes some indigenous communities don't hear about the decisions until after. And again, you know, looking at the 192 conditions for Kinder Morgan, some of that information is being asked for after the decision is made.

So we're also asking for a consultation process that fosters true collaboration between communities and government and regulatory agencies must implement community recommendations on an ongoing basis. So related to this and drawing from West Coast Environmental Law's "Twelve pillars of a 'next generation' of Canadian environmental assessments," CEAA must include a clause requiring consideration of the best option among a range of alternatives, and assessments must also include consideration of the "no" alternative. So we're asking for a clause to be developed that establishes a community's right to say no to projects that threaten waterways and empower risk communities to create low-carbon, sustainable alternative jobs that safeguard water.

So I just want to underscore I guess the importance of your role in that, you know, the Trudeau government made a lot of commitments during campaigning and actions do speak louder than words. So you know, in a lot of ways, because of the decisions that the Trudeau government has recently made, a lot of people are losing faith in the commitments that the Trudeau government has made. And you know, if there aren't significant changes to the *Canadian Environmental Assessment Act*, there is big concern that the — that a lot of people in Canada and in indigenous communities will continue to lose faith in this process.

So thank you very much for your time.

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

Who would like to start? You want to go?

**Doug Horswill:** On public participation in the process, elaborate your — any thinking about how that should occur and when, so on.

**Emma Lui:** So I think there's a — you know, a list of different things that would need to happen. So as I mentioned, the free, prior, and informed consent I think would be a priority in that indigenous communities that are being impacted, for example, you know, if it's a mine or an LNG terminal that is being proposed, that they — you know, that there's discussion. And I do agree with the past speaker or the previous speaker that it's the government's responsibility to do that. So oftentimes, you know,

there can be — it can be difficult for First Nation representatives to come to — you know, to public consultations. So going there and seeing, you know, the site and so forth is one step.

I think holding consultations like you're doing with this Act is important, holding them in different locations and just making it accessible to people. But also just I guess underscoring, you know, a broader view of the impacts on a project. And so sometimes it's communities are consulted that are directly impacted, but we also need to think about the broader impacts of watersheds generally. We know that lakes and rivers don't know borders, and so people downstream — it's also quite important to contact them as well. And just, you know, I think what's important is the idea of consultation and that it's important to get people's views, but I think in order to restore faith in the environmental assessment project — or sorry, assessment process that people actually have to see their views incorporated in the final decision. And I don't believe that's always the case.

**Rod Northey:** Yes, I'm just trying to understand a bit better the focus you've got on the navigation and the fisheries piece. Much of your stuff is talking about water quality and waterways, which would be tied up with the *Fisheries Act*, and yet I haven't heard anything from you on *Fisheries Act* but a lot on *Navigation*, which might not involve water quality but could be quantity. Could you just explain the priority of the Council on the navigation aspect or is it both or how does all this fit together?

**Emma Lui:** Yeah, I mean it's definitely both. And so we've looked at the way in which projects impact navigation, but obviously see a very strong link to — you know for people to be able to fish. It's something that we raised in the report. I didn't mention it so much because I know there was a lot of groups that are mentioning it. But it's certainly a concern for us. And we see a very strong connection between — I talk about, you know, clean water, but they're all related in terms of people being able to fish, people being able to recreate on waterways, people being able to drink the water. And so you know, definitely support legislation or the *Fisheries Act* being restored again also to its pre-2012 standards, and then going from there and having consultations on improving the Act from there.

**Rod Northey:** Thank you.

**Johanne Gélinas:** Thank you very much for your presentation, and we look forward to have your written submission; right?

**Emma Lui:** Okay, right.

**Johanne Gélinas:** Thank you.

Our next presenter is Mr. Stewart Muir.

**Stewart Muir:** Good morning. Thank you. Did you receive my —

- Johanne G  linas:** Yes.
- Stewart Muir:** — paper? Thank you.
- Unidentified Male:** [indiscernible - speaking away from mic]
- Stewart Muir:** Yes, I will.
- Johanne G  linas:** So just a quick reminder on the rules: Fifteen minutes.
- Stewart Muir:** Very good.
- Johanne G  linas:** And the shorter your presentation is, the more time we have to enter into a dialogue. So I will remind you when you will have five minutes left.
- Stewart Muir:** Thank you, and I will try to be much quicker than that, because you have the paper and I don't propose to read it.

## **STEWART MUIR, RESOURCE WORKS**

**Stewart Muir:** I've entitled this presentation "Toward Shared Understanding: Defining and Pursuing Responsible Resource Development in Polarized Times." And this concept is amplified in the 15-pager here.

Resource Works is a group that originated in Vancouver in 2014. We are a non-profit. We have a governance structure that brings us into contact with groups all across British Columbia, BC being our geographic scope for the most part, although we find ourselves involved in national conversations on our issues. We include community leaders, we have mayors, we have First Nations leaders, we have industry experts, academic expertise, multicultural groups who help to inform us in our work. And since we started in 2014, we've been conducting our research. I've taken one component of that for this today, which is the work we've done in the responsible resource concept, the definition of that.

Before I launch into that, I want to just frame the reason why this is for me a project that I've been deeply involved in with an academic background in environmental history, a conservation background in land conservancy in British Columbia, many years in news media as a senior journalist in some of the leading publications that circulate in this area, and laterally with an NGO group that is focused on these issues.

A few of the facts that I think are really important to understand is that the impact of jobs in natural resources, which we support, are some of the best jobs in the economy. They are amongst industrial groups, according to Stats Canada — and I'll provide the link with this background data, the number one paying job averaging \$1,505 a week compared to \$921 on average. So when we hear dismissal of

the importance of nature resource employment, that is a fact that must be considered. It's also worth considering that it takes up to six average-paying jobs or average jobs to equal the positive impact of one job in natural resources because of the GDP impact of these commodity-producing jobs. They're very, very important to the economy, even though sometimes the numerical size of some sectors is not as large as some other sectors, the GDP impact is potent.

Natural resources are BC's second-largest area of capital investment, second only to housing, year-in, year-out, whether you look over a five-year period in the past or over the last 20 years, we have discovered that this is something that reverberates through the economy because of how infrastructure investment trickles down through the goods and services supply chain.

In terms of land protection, British Columbia is more than twice the level or at more than twice the level of land protection from development as the United Nations recommends.

In a broad sense, in 2016 we can say that natural resources remain the engine of the British Columbia economy because they do the things that no other jobs do in creating an export income while also paying both royalties and taxes, quite a unique role. On a national level, natural resources are about 21.7 percent of the economy. Natural resources jobs create as much as five times as many other support jobs as other sectors of the economy. And finally, through our research we found that when the resource economy grows in British Columbia, 55 percent of the new jobs created from that occur in metro Vancouver, which means that natural resources in employment terms are as much or more than urban areas as a phenomenon.

So having established the great importance of natural resources and natural resource projects that you adjudicate in this, I think it's time to turn to my main paper, which is on the issue of responsible resource development. Between 2014 and 2016, we sought to define our role as a new organization in what we could see was an important public conversation space, and we think that our findings are germane at this critical moment for environmental responsibility and the human future of Canada. So we definitely do appreciate this opportunity.

We're covering three main issues in this piece. First, we're addressing how responsible resource development can be defined based on definitions used by other organizations and previous research we did. Secondly, we examine positions Resource Works might take in conversations about responsible resource development. And finally, we're proposing some discussion points that can be used in our future conversations and perhaps in your own thinking.

Now I'm going to skip towards the end here, because I think the essence of what I want to say is in the recommendations. When we look to define responsible resource development, we found that the — and I'm looking to page 14

here, the second-last page — the right definition really depends on our objectives. Taking a principle-based definition helps to support productive dialogue on resource development as opposed to what we've termed a criteria-based definition that drives towards judgments about which projects are or are not responsible.

Secondly, priorities on resource development cover a broad area, and experience shows that people have a broad range of priorities around resource development based on their perspectives and values, and these range from technical details of specific projects to broad concerns such as cumulative impacts and global environmental concerns.

Thirdly, public assessment processes suffer from limitations. Too many residents do, we believe, feel their concerns are not reflected in the public assessment processes, and this contributes to the loss of faith that so many others have noted in the process.

Fourthly, the temptation to advocate requires constant monitoring, and I think this applies to politicians and sometimes to processes. Those seeking to play a positive role in promoting beneficial infrastructure investments that are done right face a familiar quandary. Even as they desire to take on a detached educator-type role, one that Resource Works has been developing, public conditions can create strong pressure to engage in speaking up more directly for resource development. So those wishing to find a space in this conversation are strongly drawn in by these pressures.

And I think the final recommendation at the bottom of page 14 is that adopting a principles-based definition is the way forward. We think that through some community development work that we've expressed earlier in this paper, we have given an idea of what some of those principles can be that apply broadly to communities. They include Aboriginal inclusion, public engagement, environmental protection, health and safety, innovation, accountability, economic benefits, and long-term vision.

On that note, I would like to conclude my presentation.

Thank you.

**Johanne Gélinas:**  
Thank you very much, and we'll take the time for sure to read it carefully.

Who would like to start the question period?

**Rod Northey:** Well, you've — I'll start. I'm really — I'm trying to catch up to you here. So the final recommendation on principles — and I know we've got all kinds of stuff back here —

**Stewart Muir:** Uh-huh, uh-huh —

**Rod Northey:** — about principles versus criteria. Where do I find in the paper the principles part of this? Because I was flipping around and I've not got it.

**Stewart Muir:** Yeah. I have raced a little bit ahead. If you look to page 9. Sorry, it's a little cut off at the bottom of the page there.

**Rod Northey:** Okay.

**Stewart Muir:** The first page of section two, defining responsible —

**Rod Northey:** Yeah, yes.

**Stewart Muir:** And so if we want to unpack that little bit of — and thank you for the question — the initial finding we had was that the current understanding of responsible resource development was insufficiently defined. And we realized going into this that we needed to understand it better if it was to play a meaningful role. Principles-based is a broad, general description of the values and principles that describe responsible resource development. A proposed definition, as I mentioned, draws together elements — Aboriginal inclusion, public engagement, environmental protection, health, safety, innovation, accountability, economic benefits, and long-term vision, as I said —

**Rod Northey:** So, sorry, I'll just interrupt. So what does that mean? Does that mean that every development has all of those elements?

**Stewart Muir:** That in submitting developments to a test, is it responsible —

**Rod Northey:** Yes.

**Stewart Muir:** — that these are categories that we are recommending be considered. So how do they exactly meet those categories? Well, I think that has to be determined for each project. But those are relevant categories. If we leave out some of these, we are leaving out important — for example —

**Rod Northey:** Okay, so that's — that's in the —

**Stewart Muir:** — if we leave out the innovation piece —

**Rod Northey:** Okay.

**Stewart Muir:** Yes.

**Rod Northey:** All right, thank you.

**Stewart Muir:** Yeah.

**Doug Horswill:** Public assessment — so public assessment processes

suffer limitations. And I think we've heard that in many different hearings to date. Tell us in your view how public engagement should be incorporated within impact assessment, environmental assessment processes in order to get past those limitations.

**Stewart Muir:** Uh-huh. Well, I think we've seen in the recent past the idea of tweaking processes by adding a step later, after the process has been constituted, has been a difficult one to conceptualize and to sell to the public. And undoubtedly, that's known to the creators of this process, referring to the TMX late-stage process.

In terms of coming to a new way of doing this, I think we've been hearing from those who think that a light rinse is the thing needed, as well as those saying tear up the whole thing, start over. And I'm not inclined towards the tear-it-all-up process or idea simply because we do have an enormous amount of legislation which has been built over the decades to reflect the professional requirements of the work that has to be done of the legislative commitments of the elected people. To throw it all out at this point and come up with something entirely new, to me, would not serve public interest.

The way to I think include the public in defining responsible resource development is to frontload things more so that earlier in the process the efforts to bring the public into the process so that later it can't be said they weren't consulted need to be flagged better. You know, I think it's only in the last couple of years that some of the most prominent regulators whose decisions are so important have begun to explore bringing their activities into social media channels. And even now, I think it is fair to say that it's fairly rudimentary. There's many other ways to reach and engage with the public; that's only one example. But I think the initial process of ensuring that we're not leaving open our processes to appear to be this black box later on, after they have almost concluded, is a good place to start on that.

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

Our next presenter is Andrei Sobolevsky(phon). Good morning.

**Andrei Sobolevsky:** Bonjour, good morning.

**Johanne Gélinas:** Bonjour.

**Andrei Sobolevsky:** I don't have — can you hear me? I don't have a written presentation that I've submitted to you. I have my own notes.

**Johanne Gélinas:** That's good enough.

**Andrei Sobolevsky:** It's good enough.

**Johanne Gélinas:** Yeah.



## ANDREI SOBOLEVSKY

**Andrei Sobolevsky:** I'm an environmental consultant professionally. I've practised for 27 years. I have worked for industry, government, and First Nations. I've participated professionally in over a dozen impact assessments on both sides, industry and First Nations, and informally I've assisted local government and NGOs in reviewing about six environmental assessments. So I have some experience. And I want to present you my observations based on that experience.

I'll make four points. There is some overlap between these observations.

First is that I find that the process has become too political, or rather — it's not quite correct. What really I mean to say is that the technical assessment has become conflated with the political assessment. And I feel that the two ought to be separated. In a court of law you hear of evidence or of facts, but you don't hear of political opinions. There is a separation of the two. I don't see why this process could not be changed so as to separate the two.

I find that in many regards, the process has become unwieldy. When NGOs or local governments are asking me to review projects, proposed projects in the region, typically I'll go to the repository of — and discover the mountain of — voluminous mountain of technical documents. And there's no way in God's green earth that any single person can start reviewing all of that or never mind have the expertise to do that, which means that by definition the only people who can do that are organizations that have at their disposal a large group of technical specialists. That eliminates — that cuts off engagement, effectively. There has to be a process that simplifies some of the technical information and presents it in a way that allows engagement of the public. Otherwise, we lose trust in the process.

The third point: In my observation, anyway, there's a large mistrust of industry-sponsored studies. I think part of it — part of the problem is that there ought to be a way to vet the technical information by — and sort of present — make that information credible so that the subsequent discussion can be focused on the significance of assessment. I really am thinking of a way of separating the technical information and the follow-up discussion afterwards. But if there was a way of vetting the technical information, I think that could re-establish some of the trust in industry-sponsored studies. This vetting process ought to have some kind of appeal process or way of challenging, if somebody has good grounds for disagreeing on the conclusions.

The last point that I want to make — and this one is really, really important to me — we need to have on the side of government reviewers who have strong industry experience as well as technical expertise. In my own experience, I have seen far too often government regulators not having the requisite technical

experience and they fall back in extremely or I would call it excessively conservative positions. That is very problematic in terms of the review process. I've had first-hand experience with that. It's both frustrating, it's counter-productive, and in terms of rational resource development, we're at a deficit as a country by not having that sort of expertise among reviewers in government.

So these are the four observations that I've made over time. The recommendations that follow from that, the first obviously is develop staff with technical and industry experience. Government absolutely needs that. I find it's a hit-and-miss proposition at present. That needs to be improved.

I think it's important to recognize and to separate the technical from the political processes, though I feel both are necessary. On the technical side, I suggested that there be a process for validating or vetting technical information. And then on the political side, I think there ought to be a process, a mechanism to condense and simplify the technical information, make it available then to facilitate engagement, either through workshops, summary documents, or whatever, but convert that mountain of technical documents into something that's manageable for average citizens, and then have some engagement there as a separate process.

Last point is simple and obvious: This whole thing has legitimacy if it is transparent. If it's not transparent — and it's the same with courts — if it's not transparent, nobody trusts it. And that results in conflicted, protracted conflict.

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

**Andrei Sobolevsky:** That's all I have to say.

**Johanne Gélinas:** You mentioned that you have been involved in many assessments. Have you done either NEB assessment?

**Andrei Sobolevsky:** No — well, yes, Fraser Surrey docks, the shipment of coal from Wyoming through — in the lower mainland. This was an NEB process.

**Johanne Gélinas:** So we often heard that there's more rigour and technical expertise under the NEB or the CNSC process compared to CEAA. Would you —

**Andrei Sobolevsky:** I don't have enough experience to say.

**Johanne Gélinas:** Okay, so then that question doesn't count, I guess, so I will go with another one.

[Laughter / Rires]

**Renée Pelletier:** She sets the rules.

**Doug Horswill:** Wow, I like that rule.

**Johanne Gélinas:** Who should be vetting the technical information?

**Andrei Sobolevsky:** It's up to you to figure out. I can't — I don't have any good — I know it's important. I don't have a good sense for it, but I suspect it would be straightforward to figure it out, to come up with some ideas, anyway.

**Johanne Gélinas:** Yeah, we have some, but I wanted to hear yours. So Doug.

**Doug Horswill:** On the point that's very important to you, reviewers need strong industry and technical experience, and you said you have experience. I think I'd like to hear your example and how it — just, yeah, explain why —

**Andrei Sobolevsky:** Sure. I'll take the most recent. I'm involved in an environmental assessment; it's ongoing right now, so I won't give details. But I worked on behalf of industry. I was asked to develop a solution to mitigate potential impacts. This is my field of expertise. The comments that came afterwards clearly felt to me that people did not understand the material that I was presenting. The questions were, you know, at a Grade 10 or Grade 11 level, whereas the material presented was at university level. I mean it's just at a different level.

My thought was, Okay, well, why don't you hire some other people who are really experts in the field and review the material and pass a judgment on it. I'm open to that. But the staff themselves and the reviewers on behalf of First Nations or others simply were not at a level of technical expertise that matched to the task. And I can see now in the process that we're engaged in this is dragging on the thing. There are requirements that are made, there are alternative options that people are asking for that are going to kill this thing.

**Johanne Gélinas:** Thank you.

**Andrei Sobolevsky:** And that's — there are large consequences to that. I see it.

**Johanne Gélinas:** Thank you. Rod?

**Rod Northey:** I just want to follow up. I think this is an interesting aspect. So if the — you're on for the proponent. If the proponent were to make available either funds or whatever, some opportunity to government, I think you just said that they did, and I just want to understand who made the offer to have more experience over at the government side? Was it offered to be paid for? I'm just trying to get a sense of what was done to perhaps improve those who were reviewing, their access to expertise.

**Andrei Sobolevsky:** That was my recommendation to my client. They haven't followed up on it.

**Rod Northey:** I see.

**Andrei Sobolevsky:** Or maybe they have. I don't know what discussions they're having.

**Rod Northey:** Right.

**Andrei Sobolevsky:** But that was my recommendation. I've seen a couple of places where, for example, there was one mine, the NICO mine proposal in Northwest Territories, where there was some discomfort with a solution proposed at the end of mine life to have treatment wetlands to treat water at closure. And the solution was to establish a panel of experts to review the implementation of that solution. Other examples are the implementation of environmental monitoring boards, for example, for the diamond mines in Northwest Territories. These are mechanisms that compensate for the concern that — the residual concern that may remain while still the decision proceeded.

**Rod Northey:** Yeah, thank you very much.

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

One last presentation before lunch and it's Ward Prystay.

## **WARD PRYSTAY and SANDRA WEBSTER, STANTEC**

**Ward Prystay:** Good morning. On November 21st, one of our colleagues, George Hegmann, provided a presentation to the Panel in the Calgary session, and George spoke on the topic of environmental assessment from a practitioner's perspective. Today we're pleased to build on that presentation and discuss opportunities for the evolution and advancement of EA.

My name's Ward Prystay. I'm a registered professional biologist with the BC College of Applied Biology, and I've been working as an environmental consultant for more than 22 years. In the past 15, my work has primarily been centred on the practice of federal and provincial environmental assessment for projects in the oil and gas, energy, ports, transportation, and mining sectors.

**Sandra Webster:** My name is Sandra Webster. I'm also a registered professional biologist and have 10 years of experience as an EA practitioner. Since CEAA 2012 came into effect, I have managed two major projects subject to the Canada-British Columbia Substitution Agreement.

**Ward Prystay:** The first topic we'd like to touch on is information and evidence in the EA process. EA is intended to be an objective evidence-based planning process that helps government and proponents understand and mitigate unintended

adverse effects that would occur if a project was only subject to permitting. This process should be informed by experienced staff, sufficient natural resources, science, social science, and Aboriginal knowledge to allow informed government decision-making.

Across Canada, Stantec's environmental practice has 1,500 staff, and each of us take pride in conducting science-based work. Our team's education lays an initial groundwork for our ability to conduct defensible EAs. All of our professional staff have university degrees, including 505 with masters and 66 with doctorates. In addition to the strong academic training, we promote professional excellence through registration and certification with professional colleges and associations. Our work is governed by the ethics and policy requirements of our company and the professional associations we're members of.

Many Canadians have opinions about environmental issues, but the practice of EA is a profession. Strong practitioners understand the broad legal underpinnings and technical requirements of assessment and permitting processes. The quality of our human resources, our proven environmental assessment methodologies, and promotion of a strict quality-review program within Stantec provides the technical and ethical foundation for credible and reliable environmental assessment.

Stantec believes it is critical to understand the difference between information that informs environmental assessment process and information that informs an environmental assessment decision. During the scoping stage of an EA, it is important to collect as much relevant information as possible. This includes information on values, opinions, past experiences, science-based baseline data, and potential project-environment interactions. Today this information is commonly provided by Aboriginal groups, stakeholders, government departments, and practitioners. It helps both government and proponents understand the aspects of the environment that are important and where project-environment interactions are material. At this stage of the process, all information is relevant.

However, in decision-making it's important to recognize that not all information is evidence. Proponents and their professional consultants are required to meet a high bar in terms of defensibility. This encompasses the execution of baseline studies, identification of pathways for environmental effects, and selection of mitigation measures to reduce or avoid environmental effects. And this information is appropriately subject to rigorous review and must be defended.

Stantec recommends that this high level of scrutiny be applied to all information that informs an EA decision, be it from proponents, government departments, Aboriginal groups, or stakeholders. Today few intervenors provide evidence to support assertions of environmental risks and consequence, nor is it necessarily held to similar professional standards. And proponents, rather than the intervenors, are often required to provide evidence on the validity of these third-party

statements and claims. It is inconsistent to have a requirement for proponents to only submit defensible evidence, often by regulated professionals, whereas other participants do not have to meet that same standard of care. Stantec recommends the federal EA process evolve into a strict evidence-based decision process with all submissions subject to the same high standard of review regardless of its source.

The second topic we'd like to touch on is the assessment of effects on Aboriginal rights and title. In our view, the EA process is not an appropriate governance tool to address Aboriginal rights and title issues. This is the Crown's responsibility to undertake strength of claim assessments, consult, identify potential effects on Aboriginal rights and title, and accommodate. This responsibility requires input from a variety of professionals with a strong understanding of Aboriginal matters, including lawyers, traditional use specialists, and biologists. As this is a unique area of expertise, Stantec recommends that the government of Canada develop a single specialized team to support this role in EA across Canada.

It's Stantec's opinion that the Agency should not be asking proponents to make a determination of significance regarding the legality of asserted or proven Aboriginal rights and the effects of a project on those rights. This places proponents in a difficult position of being required to provide an assessment of and opinion on legal aspects of Aboriginal rights and title in an environmental assessment process, while at the same time they're trying to build positive relationships with the affected communities. Rather, assessment efforts by proponents should be limited to analyzing potential project-specific and cumulative effects to land and resources upon which the exercise of Aboriginal rights depends. This will inform and support the government of Canada in execution of its duties to consult and accommodate potentially affected Aboriginal peoples.

**Sandra Webster:** Our final topic is on clarity and transparency of process.

Aspects of CEAA 2012 have resulted in both increased and decreased transparency and certainty in the EA process for proponents and the public. The requirement for proponents to submit a project description with specific information prescribed by regulation has increased transparency by ensuring details of every designated project is in the public realm; however, the current EIS guidelines process has reduced transparency and certainty for proponents, regulators, and the public.

Following the submission of a project description, there's a screening period when the Agency determines whether or not an EA is needed. If an assessment is warranted, the Agency issues generic draft EIS guidelines for consultation at the end of this period. There is little evidence that the proponents' project description is considered when developing these draft guidelines. This results in EIS guidelines that are broadly scoped, not project-specific, and do not inform the public consultation process that ensues.

Because the EIS guidelines are generic, upfront decisions are not being made on what is being assessed or how it is being assessed. This absence of a proper scoping stage results in a poor understanding of the true environmental risks and is causing extended EIS review periods. This includes multiple rounds of information requests, or IRs. Quite often the IR process addresses issues that could have been answered when scoping the EA. And outcome of this is the use of stop-clock time to address issues which adds uncertainty to proponents' projects and increases costs to all parties participating in the EIS process. The use of generic guidelines is a good starting point to facilitate consistency in EAs being projects, but these guidelines should then be tailored to meet the specific demands of each project.

We recommend that the Expert Panel consider the opportunity to improve the clarity and transparency of the EA process by establishing a more robust and transparent scoping process for refining the draft EIS guidelines. This should clearly define the scope of the project and the scope of the assessment for each EA so that the key social and environmental issues and the methods for assessing these issues are identified early. This will assist all parties in understanding how a project is being assessed and what can be expected from the assessment process.

We further recommend that the Expert Panel consider measures to place some reasonable controls on the IR process and the use of stop-clock timing in the interests of process predictability and efficiency.

Additional certainty and efficiency of the EA process can also be gained through the identification of experienced and engaged EA administrators. An EIS is a complex document, touching on numerous disciplines and a broad range of environmental issues. Administrators should be impartial and able to effectively guide proponents, regulators, Aboriginal people, and the public through the process. Too often the administrator is not well versed or not sufficiently engaged in key technical topics to provide the necessary direction to keep a project on track. As a result, they tend towards actions that minimize risk and uncertainty for themselves while potentially increasing risk and uncertainty for the project.

Another aspect of CEAA 2012 is the ability to substitute the federal review process with a provincial process if that provincial process meets CEAA 2012 requirements. British Columbia is the only province where this has occurred, and there are a number of examples. Those substitutions have helped avoid duplication and overlap of the federal and provincial environmental assessment requirements, in many cases it has also resulted in the loss of regulatory certainty for proponents. Once a project enters a substituted process, the Agency largely removes itself from the assessment. In BC, this has meant limited comment and direction from the Agency on the value components document, the application information guidelines, and little or no presence of federal agencies at the working group meetings or open houses. This is viewed as a gap in the eyes of the public, who are looking for a greater level of federal engagement and is also a gap being felt by proponents who are not getting the

necessary guidance and lessons learned on federal approvals such as *Fisheries Act* authorizations and disposal at sea permits.

Stantec believes that enhancing the role of the Agency and other key federal regulators in substituted EAs can be accomplished in a manner that does not jeopardize the principles of one project, one assessment. In fact, we believe that increased federal involvement in key milestones associated with BC-led substituted EAs will increase certainty and public confidence in the reviews.

**Ward Prystay:** So we have some written conclusions, but you can read those in a later time.

**Johanne Gélinas:** You started your presentation with people working in the area of environmental assessment. Can you tell us how many indigenous people are part of your team?

**Ward Prystay:** Across Canada, we have three indigenous people as part of our team. It's a fairly small number.

**Johanne Gélinas:** And what is their role?

**Ward Prystay:** Archaeology, Aboriginal engagement.

**Johanne Gélinas:** Okay, thank you.

**Renée Pelletier:** I wanted to ask about your comments that the evidence — there should be an evidence-based process for all parties and subjecting all evidence to the same kind of rigour as consultant information. How would you see that applying to non-Western-based evidence such as traditional knowledge?

**Ward Prystay:** I see traditional knowledge as one of the lines of evidence that are used in an environmental assessment. And I believe it can be incorporated and used to confirm the validity of the Western science-based studies that are taken in preparing baseline studies. They work I think very well together and can be used together in understanding the existing environment before a project moves forward.

**Renée Pelletier:** Sorry, but to — its role is to confirm what Western-based science says?

**Ward Prystay:** I'd look at it as supplementary. Like I'd look at it as one of the layers of information that helps proponents and government understand the existing environment.

**Renée Pelletier:** Okay.

**Doug Horswill:** One issue that's come up repeatedly as we've travelled



across the country is a fear or distrust of proponent-led EAs from the point of view of potential bias between proponent and consultant. And the alternative posed in those discussions is often that an agency independent look after that connection. What's your view on that and what impact would it — what would it mean to Stantec?

**Ward Prystay:** Okay. I think there's two aspects on this that I'd like to touch on. First is when at Stantec we're working with a proponent through the environmental assessment process, the project goes through a lot of evolution based on the information that we find along the way in terms of preparing the environmental assessment identification and mitigation measures. The project changes a lot. I think removal of that from the process would actually make projects more harmful to the environment than they are today.

The second part of it is that the environmental impact statement federally or the provincial EAC application — those are information that's submitted by a proponent to the government of Canada and the government of British Columbia. The government prepares the environmental assessment report that actually informs the decision process; the proponent doesn't prepare that.

**Rod Northey:** Yes, I'm just trying to follow the idea of scoping. One of the things that has come up repeatedly is people not really knowing where the thing's going. I just wonder what your thoughts are of having the scoping process define if the ultimate test is significance or the ultimate test is sustainability, what exactly a no means before you even started the detailed assessment so that everyone knows what the answer is before we get started. It appears the practice is to just roll along for years with studies, and then at the end of the day say whether it is or is not significant, and by and large nothing is significant or not — everything's sustainable. How do — any way of fixing this?

**Sandra Webster:** That's an interesting — there's a couple pieces that you kind of raised there. And I think it's— to be fair, I think it's a bit unfair to say that nothing's significant, because I think there's definitely been evolution over time where you're seeing a lot more things that are coming out as significant. And that's definitely part of the process. The idea of the scoping is that at the beginning we're understanding what it is that everybody is looking at and what the key issues are so that the assessment stays focused, and then there's a spell of time where the information is being collected so that we can develop an answer to determine what are the impacts on that concern and how can it mitigated, can they be mitigated.

**Ward Prystay:** I think it's also important to recognize that we hear this a lot, that projects always receive approvals. But if you look at the number of projects that drop out of the process and incorporate that into those — like that overall body of numbers, not all projects are approved. And that's quite evident when you start looking at it. Most proponents, when it gets to the stage that their project won't meet the threshold of sustainable with non-significant effects, they walk away from the process

rather than continue to spend money and move through it.

**Rod Northey:** Thank you.

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

We'll take a break for lunch and we will be back here at 1:10.

Thank you.

(BREAK)

**Johanne G  linas:** So I think we are ready to start over. Let me just find my papers. So I hope you are Tony Crossman. Are you? Right on. Right on time and in the good room. So welcome.

## **TONY CROSSMAN, THE CANADIAN BAR ASSOCIATION**

**Tony Crossman:** Thank you. Good afternoon. My name is Tony Crossman and I'm here to represent the Canadian Bar Association.

The Canadian Bar Association represents some 36,000 jurists across the country. And one of their primary objectives is the improvement to the law and the administration of justice. I'm here representing a working group of the Canadian Bar Association's National Environment, Energy, and Resources section and Aboriginal sections. This was a large working group that spent many hours and days putting together their thoughts and ideas for the submission that is before you.

Mr. Chuck Birchall chaired and led this submission. Now, he's not able to be here today to make this presentation as he is in Ottawa, not Vancouver. So he asked me to make this presentation to the Panel.

The Canadian Bar Association agrees that the environmental assessment process should incorporate scientific evidence, protect the environment, respect the rights of indigenous peoples, and support socio-economic growth. And when I refer to "indigenous peoples," I'm referring to Aboriginal peoples of Canada as defined in Section 35 of the Constitution.

As a general comment, and you'll see this in the submissions, the Bar Association underscores the importance of the *Canadian Environmental Assessment Act, 2012*, as an important part of good decision-making in Canada and that sufficient funding and resources are required to have a robust and meaningful process, so in turn that will lead to good decision-making.

The Canadian Bar Association, or CBA as I'll refer to, committee focused on some key issues, and you'll see that in the submission. Those

specific issues include the purpose and role of the federal EA process, the scope of the process, regional studies and strategic EA, public participation, and the role of indigenous communities. You'll see the submission contains a number of recommendations for your consideration, and we thank you for the opportunity to make those suggestions.

Today in the time available, I wish to highlight just three issues in the submission. One, regional studies; two, public participation and funding; and three, the role of indigenous communities in the EA process.

First, regional studies. This isn't a new idea. This is something that has been talked about a great deal, but frankly our review shows little action. And we particularly draw the Panel's attention to the comment of the joint review panel in the Jackpine mine expansion at paragraph 32, and this is referred to at page 5 of the CBA submission. I won't read the entire quote there, but the important sentence is — and I'll read it: "The Panel" — this is the joint review panel — "believes that a more integrated and comprehensive approach is required to adequately address cumulative effects of mineable oil sands development." Now, the same could be said for other projects and other types of developments.

I think there's many who will agree that regional studies are an important tool for addressing regional impacts and cumulative environmental changes, particularly climate change. These regional studies are closely aligned with land and resource use planning and they allow decision-makers to consider regional implications and take a longer-term planning approach to regional cumulative impacts.

You'll see that our recommendations include, one, developing a list of triggers to require a regional study. We believe this will prompt some action. And also that there should be an independent and diverse panel that — or authority to carry out such studies.

Now, one of the challenges, of course, for regional studies will be funding. As a principle, though, the CBA believes that the panel or authority charged with these regional studies should be well resourced, because this should be considered an investment. It's an investment in the future because as a result of these studies, other decisions in the future will be made and will rely upon these studies.

There was discussion about how this funding could occur. And I think there are a range of options. But one of the things that the submission points out is that this is government funding for these regional studies, but then there may be contributions from proponents of projects or developments. But it should be borne in mind that the first proponent in that particular area shouldn't be the one to bear the full burden of such costs. There should be some mechanism for an equitable or fair-sharing of those costs.

The second issue I wish to address is public participation. The CBA believes that this is a key component of an effective, credible, and robust EA process; however, the sections that looked at this issue believe that the current opportunities under the federal EA are inadequate. The submission contains a number of examples, but I will highlight just one, and that, for example, is the challenge of these formal hearings don't generally suit members of the public. And nor is it the type of information they wish to convey in a public setting. The suggestion in the submission you will see is that the use of facilitators might get to the core of the concern or view of the members of the public which can then be summarized to assist all EA participants.

Now, I come back to the question of funding. That is another challenge in this area as well. You'll see in the submission that there's a suggestion of a tailored approach. And what I mean by that is that there should be — the recommendation is to streamline the number of parties involved, which would allow better and more appropriate funding for those actually involved in the hearing aspect of the process.

The third issue, the last issue I wish to address, is the role of indigenous communities in the EA process. You will see from the submission that there is a significant portion of the submission dedicated to this issue, and that's on purpose. It's because the CBA believes this is a very serious issue that needs to be addressed. And the sections took this issue very seriously. We believe that this is a unique opportunity for the Panel to address these important issues.

You will see in the submission that there are a number of significant sub-issues within this heading. One that I wish to highlight — well, there's a couple I will mention.

As to the duty to consult, the sections don't see that the federal authorities charged with conducting an environmental assessment are the appropriate authorities to replace the Crown in fulfilling the duty to consult. Now, there may be aspects of the EA process that are part of that, procedural aspects of consultation which could be used, but we don't see it as replacing the Crown's duty to consult. But to the extent that the EA process is used as a component of consultation, the CBA encourages that changes to CEAA should give full and meaningful expression to the duty to consult under Section 35 of the Constitution and to the principle of free, prior, and informed consent as set out in the UN Declaration of the Rights of Indigenous Peoples. And we know that neither of which was taken into account when the original CEAA was drafted, because they weren't around.

You will see the submission sets out suggestions on how this can be addressed, and that's at page 10 of the submission. I won't go into that in detail. One challenge, though, that I wish to raise, and that is the common theme of my presentation today which has been funding. Often indigenous people lack the human and financial resources to participate meaningfully in the consultation and EA

processes. The EA process is a technical and legal process that requires particular expertise. Regular program funding for indigenous communities doesn't usually have a line item for EA process. And the ad hoc funding that might be available often goes to addressing procedural issues in the process or to addressing the very obvious adverse impacts.

You'll see the submission at page 12 provides recommendations on how we might address those issues.

The Canadian Bar Association certainly appreciates the opportunity to provide these submissions to the Panel, and we appreciate the opportunity to provide this presentation today. We encourage you to read the entirety of the submission, remembering that this is the product of many hours of many people of the Canadian Bar Association, that represents some 36,000 jurists across Canada.

Thank you.

**Johanne Gélinas:** Thank you very much, and I will allow my two lawyer colleagues to ask each two questions. So that's their treat of the day. You agree Doug?

[Laughter / Rires]

**Doug Horswill:** Sure, why not. [indiscernible - speaking away from mic]

**Johanne Gélinas:** You will be allowed but only to have one.

[Laughter / Rires]

**Renée Pelletier:** Okay, thank you. So thank you firstly for your excellent submission.

I had a question about UNDRIP, and particularly the CBA's comment that the Panel should be encouraged to look at instances where communities are doing their own EA processes as a way of fulfilling UNDRIP and in particular Article 18 around the right to be involved in decision-making. I'm wondering in the CBA's view is there a way to stick with this idea of one project, one assessment, so having kind of just one EA that still addresses Article 18. Is there some way to do that?

**Tony Crossman:** I'll have to caveat all of this by saying that this is obviously a large group.

**Renée Pelletier:** Right.

**Tony Crossman:** And that the submission represents a collective thought. So unless I've heard the answers to some of these, I'll be restricted in my responses to you.

But, and again I think the submission says there are opportunities to go back to the committee, and if there are written questions, we'd be happy to respond as well.

In answer to your question, I'm not aware of the specific response from the committee on that issue, but I would think that would be consistent with the other things that I've said in the submission, particularly when it comes to federal and provincial EAs, trying to avoid duplication of processes. If we can have one process that covers all aspects of, say, different processes, that seems to make a lot of sense.

**Renée Pelletier:** So maybe this will be my second question, then, just to follow up to that. I'm wondering if you have thoughts, or maybe this can — is something that the CBA can come back to us with — on what that process looks like. I think what I'm struggling with is how do you have one EA process that allows indigenous people to be a part of the decision-making but also respects all of the other elements of UNDRIP that you've highlighted, so the right to have their own institutions, their own traditions. How do we incorporate all of those things and still stick with just one EA?

**Tony Crossman:** I'm happy to come back —

**Renée Pelletier:** That would be great.

**Tony Crossman:** — with a response.

**Renée Pelletier:** Thank you.

**Rod Northey:** Yes, I'm going to go onto one of the other topics, the regional assessments. So on page 2, you're making a suggestion about the purposes that we deal with a couple things. One is long-term regional baseline studies in your purpose amendment. Is that taken to be the same thing as requiring regional assessment?

**Tony Crossman:** I don't know the answer to that, but I can take that question back.

**Rod Northey:** And you then say somewhere else — just there's some ambiguity. I think you say in one of the recommendations you'd like to have definite triggers, mandatory triggers for assessment, but then you suggest that should not be up to us to recommend, but we should ask the CEA Agency to do so. Perhaps you should explain why we should ask the CEA Agency to do what is in our mandate.

**Tony Crossman:** I will get back to you on that question as well.

**Rod Northey:** Okay. Now, purpose 4(1)(h) sustainable development. I am sure you are aware we've been asked to consider sustainability and you're only recommending that they should explain the actions to promote sustainable development as opposed to changing the scheme of the Act. You're a very well-advised group.

Perhaps you could explain why you are not moving more fully into sustainability.

**Tony Crossman:** It's a challenging issue. And it was discussed, I'm aware. There is another reference to question about — I'll find it — to the socio-economic health and —

**Rod Northey:** Yes, I saw that. You want socio-economics in fully —

**Tony Crossman:** Health and betterment.

**Rod Northey:** Yes.

**Tony Crossman:** I think and the implication from those comments I think is that there was some movement towards this idea of sustainable development but not a full embracing of that idea.

**Rod Northey:** Okay. Those are my two.

**Johanne Gélinas:** Doug.

**Doug Horswill:** On public participation, on your who could participate, you suggested Prosperity case is the right way to go, which was restrictive. Can you explain why restrictive participation makes sense and how the two criteria that you have below could be determined before the participation has actually occurred. How do you know the information is going to be relevant? As opposed to the alternative, which we've heard often, which is everybody in.

**Tony Crossman:** I can't answer that question, but I will respond later.

**Doug Horswill:** Okay, thank you.

**Johanne Gélinas:** So I understand that you have some homework.

**Tony Crossman:** I do.

**Johanne Gélinas:** There's no real deadline for requests for more information, but if your group was able to come back to us before December 23rd, it will be very much appreciated. Otherwise, whenever you can, but we would like to consider that in our own analysis. And I would also like you to extend our thanks to the members of those two committees for the good work that you have done. Thank you very much.

**Tony Crossman:** Thank you very much.

**Johanne Gélinas:** Our next presenter is Kegan Pepper-Smith.

So I understand that what you're giving us is —

- Rod Northey:** It just came in, is that —
- Kegan Pepper-Smith:** That's it.
- Johanne Gélinas:** — is the wrap-up of all the presentations you have made?
- Kegan Pepper-Smith:** Oh, no —
- Johanne Gélinas:** No, just for you?
- Kegan Pepper-Smith:** That's the appendix to the written submissions that were submitted on Friday, yes.
- Johanne Gélinas:** Okay.
- Kegan Pepper-Smith:** And I just wanted to [indiscernible - speaking away from mic] to you. I also finished [indiscernible - speaking away from mic]
- Johanne Gélinas:** Okay.
- Kegan Pepper-Smith:** I'm not sure if this microphone is on or not —
- Johanne Gélinas:** You have to press —
- Doug Horswill:** There's a button.
- Johanne Gélinas:** Here.
- Kegan Pepper-Smith:** There we go.

## **KEGAN PEPPER-SMITH, ECOJUSTICE CANADA**

**Kegan Pepper-Smith:** Okay. So as you said, my name is Kegan Pepper-Smith. I'm an articling student with Ecojustice Canada. I'm here to present Ecojustice's fifth submission on the EA reform process. I'm here on behalf of Karen Campbell, a lawyer with Ecojustice who unfortunately suffered a skiing accident and was unable to join us today. So she extends her regrets for not being here.

So just to start, I just want to reiterate the sentiments of my colleagues that have come before me in that our general position is that the environmental assessment process in Canada is broken and it needs a significant overhaul and a re-envisioning towards an overarching shift towards a sustainably focused model. But more specifically, I'm here today to talk about meaningfully considering climate change in environmental assessments going forward.

So you've been provided with our written submissions on this



topic. So what I want to do here today is just briefly make the case for considering climate change in EAs and then just briefly point out a few important points that I think are worth emphasizing in the six guiding principles that we've submitted to you. I will also be doing this in taking you through a kind of a case study analysis example with an in situ mine project proponent, and then I'll be in the hands of the Panel to see if you have any questions for follow-up.

So in my respectful submission, the impetus for considering climate in environmental assessments is clear. Canada has made significant international and domestic commitments over the last few years, most notably the one in the Paris Agreement, and then most recently in the pan-Canadian framework for clean growth and climate change. We've also seen the federal government take a really significant step of incorporating upstream emission assessments as an interim measure to EA reform.

You know, in our written submissions we've provided these examples for the upstream emission consideration in terms of Pacific NorthWest LNG facility as well as the Kinder Morgan Trans Mountain pipeline expansion. While these were welcomed additions to the environmental assessment, we think if you look into those and look into the details of them, it will also reflect the inadequacy of the interim measures.

In terms of the Pacific NorthWest project, notwithstanding the fact that the emissions were considered "high magnitude, continuous, irreversible, and global in extent," the project was still ultimately approved. The same assessment could be concluded for the Kinder Morgan assessment that had a 1.5 greater times increase in upstream emissions than that of the Pacific NorthWest project.

We'd also like to emphasize the fact that nothing in the assessments considered downstream emissions, which if you look into publicly available assessments for those downstream emissions, they would constitute roughly eight to nine percent of Canada's total domestic emissions. So they were very significant in extent and they were totally ignored.

So moving from this background as an impetus for incorporating climate change into environmental assessments, I just want to go through the six guiding principles that we've submitted you here today and hopefully they will convince you to include climate considerations in the report for the federal agencies.

So the first guiding principle is that strategic regional or sector-based, or SEAs or REAs, should be meaningfully developed. You know, as the previous presenter notified the Panel, these types of assessments have been tried and — by and large unsuccessfully in the past. And so in our submission, it is a great opportunity to develop these emission-focused SEAs or REAs and really meaningfully develop a strong precedential framework for considering these going forward.

We've outlined significant benefits of these going forward in our written submissions. So I just want to highlight a couple of important points that I think are worth emphasizing.

The first is that these SEAs or REAs would help address overarching climate goals by setting out emission allocations per sector or per region. You know, taking into consideration all the cumulative effects related to every single project that's operating in that region. And then relatedly, they would provide the decision-maker with a basis from which to scope and assess individual projects in terms of those region or sector allocations for emissions.

So for our case study in situ mine, having a credibly developed and publicly available REA or SEA would turn the proponent's mind immediately to whether the project on its face in terms of an early assessment of its GHGs would be a viable fit for the region or for the sector in terms of the overarching current and future emission allocations and reduction goals.

The second principle that we just want to emphasize is simply this: More projects need to be captured by the EA regime. You know the case for this principle is clear. Climate change is the ultimate cumulative effect. The results of additional GHGs from millions and millions of individual sources collectively have a large impact on a global scale. So in order to properly account for this reality, we propose that the federal assessment needs to have a threshold or a trigger, you know, say for example 0.5 megatonnes of CO<sub>2</sub> equivalent per year, for the project to be subject to a federal assessment.

As the regime exists now, our in situ case study example would not be subject to a federal assessment notwithstanding the fact that in situ mining constitutes 80 percent of oil sand activities and has significant and considerable GHG emissions associated with it. Under our proposed regime, our case study proponent will know for certain based on the threshold whether they would be subject to a federal assessment and then immediately start considering ways to mitigate those emissions or consider offsets that might be — and no longer be exposed to the full federal EA.

Our third guiding principle is that project assessments must consider all related emissions. So there are a few points that are worth emphasizing here. The first is that there needs to be consideration of lifecycle emissions, that is upstream, direct, and downstream emissions from each project. If we look to our neighbours in the south, the Federal Council of Environmental Quality recently released a guidance memorandum which is provided for you at Tab 4 of the appendix materials that really provides a really great basis for considering lifecycle emissions in terms of each project.

I think the second important point to emphasize here is that any emission assessments need to avoid assumption pitfalls such as those — you

know, a project is simply replacing another GHG-intensive project, and therefore any increase is negligible or, you know, the go-to one that we've seen a lot of the times is that this transportation for resources is way better than this other transportation of resources in terms of safety and in terms of GHG assessments. If such a position is taken, it should be — the proponent should shoulder the burden of justifying and substantiating such a position and then demonstrate to the EA decision-maker that this particular project is the best option in terms of current and long-term economic realities as well as emission-reduction goals.

Finally on this one principle, I just want to make this really important point is that the emissions must be considered over the lifespan of the project. So we need to take immediate consideration for the fact that most extraction projects have a lifespan of about 40 years.

You know, to use our in situ case study example, the emissions assessment should be considered for the lifespan of the project under the assumption that each year, as Canada gets closer and closer to its reduction goals, the emissions from this particular project will constitute a greater and greater percentage of our carbon budget. So you know, in our example, the in situ mine now in this year may only constitute 0.5 percent of our carbon budget, but as we increase, as we go towards — our target year is 2030, for example, it inevitably becomes greater and greater percentage of our carbon budget as we reduce.

And related to this analysis, the next guiding principle is that alternatives and mitigations should be considered throughout the lifespan of the project.

I notice that I'm running out of time here, so I'll just make a quick couple points here is that we believe that the proponent should be required to thoroughly assess alternatives to project and the "no" alternative — the no-project alternative in light of current and estimated economic realities as well as our climate goals. And then report on these alternative assessments to the EA decision-maker.

The overarching consideration for mitigation is that high mitigation costs now should not be used as a justification for not taking immediate and ongoing measures to mitigate emissions to coincide with our achievable or our proposed current and climate goals — current and long-term climate goals.

Just moving to the fifth guiding principle. It is our position that there should be a change in climate assessment as well. Climate change — it cuts two ways. There is — you know, GHG-emitting projects contribute to it, but they also, in light of our current realities, are likely to suffer from it as well. So if you have an EA, it needs to include an assessment of the climate change's predicted impact on that particular project over its lifespan. You know, climate considerations have a — can have significant implications for the socio-economic realities of the surrounding region as well as the safety for a particular project in terms of flooding or any kind of increase

in forest fires that you may see in the region.

So if we look to our case study, the in situ mine, a similar conclusion was reached by the Canadian Environmental Assessment Agency in the Côté gold mine project in northern Ontario when they considered climate change impact on — having an increasing impact on the amount of water that's available in the region.

Considering in situ mining uses a significant amount of water, depending on the region, you know, we'd like to see the same sort of consideration in that project. You know, it's just the reality is that it's not unrealistic to say that new climate realities — droughts, receding glaciers, et cetera — will inevitably affect these projects given that they have 40-plus years lifespans.

The final guiding principle, and we think the strongest one that should be considered by this Panel, is that GHG emissions should be an adequate reason to reject a project. Climate change is recognized as the challenge of our generation. As such and given EA's role as a gatekeeper to project approval, EAs need to meaningfully consider emissions from a project and ultimately those emissions need to be a reason to serve as a basis for rejecting a project. You know, we have significant international obligations. We are increasingly feeling a steady and more severe increase of climate impacts here at home, and our role as one of the highest emitters in terms of GHG per capita in the world requires nothing less.

You know, in terms of our in situ project case study example, if the EA — you know, the EA decision-maker concludes that it's going to be — the emissions are going to be high magnitude, continuous, irreversible and global extent, as we saw in the Pacific NorthWest project, then that should serve as a basis for rejecting the project. In our respectful submission, anything less would be an affront to Canada's efforts to become a leader in taking on this challenge of our generation.

So subject to any questions from the Panel, those are my submissions.

**Johanne Gélina:** I will go with the first one. Yesterday we had a presentation on lifecycle analysis. And I just want to make sure I understand what you're proposing. Are you saying that for each project the proponent should do a lifecycle assessment of GHG emissions?

**Kegan Pepper-Smith:** We would like to see a lifecycle emission assessment. I think, you know, domestically we have commitments to reach, but also there's a moral obligation on Canada to do such assessments, particularly in terms of transportation projects where we're extracting a resource here domestically and then transferring overseas. Often you'll see a considerable increase in emissions when the resource reaches that external or the foreign jurisdiction compared to what it actually emits in the extraction process.

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

**Doug Horswill:** I want to ask you about one of your principles. Ultimately the cause of GHG emissions are people — consumers heating homes, driving cars, wherever they are in the world. So when you start talking about downstream, the notion that we are selling a product as a country into a market usually means there's somebody on the other side buying it.

**Kegan Pepper-Smith:** Of course.

**Doug Horswill:** Because they need it. They got to heat a home or drive a car or whatever else it is. And if they don't get it from us, they'll get it from somebody else. I find it difficult to understand why we would evaluate projects using gross emissions — in other words, adding it all up, the consumption of the fuel that's in the production — as opposed to the net, which would mean that you assume that the activity that was being fueled by whatever it is we're selling them would have happened, and therefore some other source would have been found. So I struggle with that.

**Kegan Pepper-Smith:** Right. And you know we'll follow up on that question for sure in our written submissions that we will be submitting to the Panel. But my initial response would be that I don't believe that we should focus on gross over net. I think that net should be considered, but it should be a meaningful consideration that considers alternative sources of energy and whether if we are in fact exporting these high-GHG-emission resources to this foreign jurisdiction, what does that really mean for them for — in terms of moving to our alternative sources of energy. Not necessary saying if we export oil to them, we'll be replacing coal always — we'll always be replacing coal. That always seems to be the argument that it comes back to, and we'll be immediately replacing a higher GHG-intensive resource — energy resource. So if that is the consideration, if that is the conclusion, then I would say ultimately there needs to be evidence to substantiate that, and that would be considered in the EA, yeah, for sure.

**Rod Northey:** All right. I'm going to try and link together a few of the suggestions and just try and understand something. So environmental assessment is information gathering and regulating. Taking — starting with projects, you want item 3 is to regulate — consider, rather, all projects. So that's your upstream/downstream; right? So you consider all of it.

**Kegan Pepper-Smith:** Right.

**Rod Northey:** All right. And then we look at that, and then there's a decision about the regulate, the yes/no. So it seems there are two different yes/nos. One is you'd like to say look at the best option to minimize the impacts. And I take it that would be limited to the project, because you can't regulate necessarily the upstream or the downstream. But you'd want to be satisfied the project is the least.

**Kegan Pepper-Smith:** Right.

**Rod Northey:** But then you have a second test, which is if it's inside a regional EA where the number doesn't allow it, you knock it out there. So you really want two tests of no and a broad consideration of info.

**Kegan Pepper-Smith:** We'll have to follow up on that for sure, but I think that in terms of the yes/no on the regional side, I think that the regional assessment would say like this is the sector — we've seen this a lot already — that this is the sector or this is the region's allocation of GHGs to fit within our carbon budgets.

**Rod Northey:** Yes.

**Kegan Pepper-Smith:** And it would be — the proponent would — you know, for the lack of a better word — it would inspire the proponent to say, Okay, this is the allocation. This is what's already being eaten up here. I'm going to come and propose a project, but I need to make account for this reality that there's only so much I can emit in this region and —

**Rod Northey:** Okay, keep going, sorry.

**Kegan Pepper-Smith:** And so in that circumstance, they would say, Okay, well, I need to make a proposal that's going to account for this and, say, you know, reduce emission intensity or mitigate some other way. So I don't know if that would necessary be a yes/no stage. It would be more of a justification. How do you get to the — how do you tell us initially this will fit within our region or our sector [indiscernible - multiple speakers] —

**Rod Northey:** Okay, and you said — your opening statement there was we're doing this a lot already. Where are we doing this?

**Kegan Pepper-Smith:** The region — sorry, the —

**Rod Northey:** This assessment of what the total budget is for carbon —

**Kegan Pepper-Smith:** Oh, yeah, I don't know if we would say we're doing it a lot. Sorry, I would say, you know, if we've seen in the Alberta oil sands, for example, the NDP government for Alberta has said, We're capping emissions — a part of this —

**Rod Northey:** At a provincial level, though —

**Kegan Pepper-Smith:** Exactly.

**Rod Northey:** — not regionally.

**Kegan Pepper-Smith:** Yeah, exactly. And so that would need to be fully developed

elsewhere.

**Rod Northey:** Okay.

**Kegan Pepper-Smith:** Yeah.

**Rod Northey:** Thank you.

**Johanne G  linas:** Thank you very much —

**Kegan Pepper-Smith:** Thank you.

**Johanne G  linas:** — for your presentation.

Our next presenter is Mr. Radhakrishnan. I hope I pronounced it as good as it can be.

**Harshan Radhakrishnan:** Hi. Yeah, you got it right, so full marks to you. Thanks a lot.

**Johanne G  linas:** We need that for the record.

[Laughter / Rires]

**Johanne G  linas:** Good afternoon.

## **HARSHAN RADHAKRISHNAN and GLEN PARKER, PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF BC**

**Harshan Radhakrishnan:** Good afternoon, esteemed Panel Members. My name, again, is Harshan Radhakrishnan. I am a professional engineer and I work as a practice advisor with the Association of Professional Engineers and Geoscientists of BC. And it's my pleasure to bring you the association's feedback on the Canadian environmental assessment processes for the Panel's consideration.

A little bit about APEGBC. APEGBC is the provincial regulatory body that is established under the *Engineers and Geoscientists Act*. We are responsible for establishing, maintaining, and enforcing standards of practice for its over 24,000 practising engineers and geoscientists and licensees.

The association takes an active interest in commenting on governmental legislation and regulations that are of interest to the engineering and geoscience community. Case in point would be commenting on the evolution of the BC climate leadership plan, the recommendations made by the panel put together by the government that came up with recommendations for BC government in the development of the plan. And the response is usually prepared with input from groups of APEGBC's professionals that are directly or indirectly involved in the activity. So this

response here has been developed with input from APEGBC's climate change advisory group that has been tasked with advising APEGBC's council on some of the strategic risks facing the association due to climate change, for example. APEGBC's sustainability committee has provided input to it, and we have a division of environmental professionals who have also provided input into it. These groups of professionals are directly or indirectly involved with the environmental assessment processes and their practice can be influenced by the changes that are being considered by the Expert Panel here.

So APEGBC as a provincial regulatory body has established position papers on the issue of climate change adaptation and climate change mitigation, because climate change presents new and evolving challenges and it also provides opportunities and risks to be considered not by just APEGBC members but by the association itself. The sum total of these papers — there's one on adaptation and there's a more recent one that the council endorsed in September 2016 on the issue of human-induced aspect of climate change. They state that APEGBC commits to raising awareness about the changing climate and to provide its members with information for managing their own professional practice. And APEGBC accepts the best available science on the topic that human activities, in particular the greenhouse gas emissions that are due to human-induced activities, are the contributor to climate change. And there's an expectation on the membership now that they have to consider climate change in their own work because they have the ability to influence greenhouse gas emissions through their professional practice and they also have an ability to incorporate a degree of climate resiliency into the projects they're working on.

And while having these established position papers will kind of make APEGBC known to the stakeholders on how it positions itself, without on-the-ground tools and resources, we are not really empowering APEGBC's membership. So APEGBC, because of its mandate to establish, maintain, and enforce standards of practice, ties up with provincial regulators, authorities having jurisdiction in developing professional practice guidelines. And we are making some real-world changes because of these professional practice guidelines.

And case in point would be now it is a mandated requirement to consider climate change in flood hazard assessments. The Ministry of Forests, Lands, and Natural Resource Operations have partnered up with APEGBC in the development of these guidelines. And APEGBC has funding from Emergency Management BC to develop floodplain mapping guidelines that will inform the standard of care in envisioning the floodplain maps of the future so that they are envisioned consistently, regardless of which professional prepares that.

The BC Ministry of Transportation and Infrastructure now requires highway design to address extreme weather resiliency. Professionals that submit designs to MOTI now must consider future climate and propose designs that consider flexible design approaches, robust design approaches, low- or no-regret type



decision-making. There's an approach that says we don't have to do anything, but even that is with the consideration of the future climate.

And the association is supporting the development of net-zero buildings. By developing energy modelling guidelines that will support the members in achieving the energy performance targets that are being made known by the Building and Safety Standards branch out of the Office and Housing Construction Standards in BC.

Now, other than that, we have a developed climate change information portal that houses more than 60 resources that helps members get up to speed on the International Panel for Climate Change — their fifth assessment, the American Society of Civil Engineers' white paper on climate resiliency and so on. We do *Innovation* articles such as what you can see on the screen, which is magazine articles that explains the risks due to climate change. And we do continuing professional development events.

So why I'm saying is, you know, tied to the input that we have for this Panel, first, we'd like to reinforce that the environmental assessment processes should include climate change impacts of projects and the climate change impacts on projects. Climate change impacts of projects — you can think of it as "What are all the greenhouse gas emissions from this project?" And impacts on projects would be "Is this project subjected to flooding or sea-level rise? What's the kind of habitat loss that is envisioned at the end of life of this project?"

We're also saying that to the extent reasonably possible, downstream greenhouse gas emissions should be included, whether or not they occur in Canada. And we're also saying that the environmental assessment process should empower project proponents to become stewards of the habitat or the natural landscapes in which the projects are located and ensure that there's no net loss of habitat or natural landscape over the lifetime of the project. And that would also, you know, include consideration of climate change impacts.

We've observed that environmental assessment processes can stall due to public resistance due to lack of trust in the approval process. Often this lack of trust is due to perception that the conditions attached to the approval are not adequately enforced. So it is imperative that the environmental assessment processes specifically address the issue of compliance and enforcement and require ongoing monitoring of environmental impacts.

Another issue that contributes to the lack of trust in the environmental assessment are resources on industrial sites that are inactive but are not adequately decommissioned or the restoration is not consistently completed. Ensuring that decommissioning and restoration of new as well as legacy sites will not only deal with future environmental impacts but will also go a long way in increasing public trust.

This may mean that, you know, we do a better job of restoring inactive sites as a part of the approval process for new sites. And fundamentally what we are saying is that we should provide for a single, comprehensive assessment that is multijurisdictional in nature and of course one which considers climate change.

And that's all we had in terms of feedback. I want to recognize Mr. Glen Parker in attendance today. He is one of the members of the climate change advisory group. He's been a global resource, retired from Chevron and he's one of the professionals that, you know, kind of contributed to the development of the APEGBC response.

Thanks and we'll take any questions that you may have right now.

**Johanne G  linas:** Thank you very much for your presentation. It's short and sweet, focused. That's how we like it.

So who would like to start with questions?

**Rod Northey:** He's an engineer, but I'll ask a question.

**Johanne G  linas:** Oh, maybe we'll have two questions, if he's an engineer in front of the engineer association.

**Rod Northey:** [indiscernible - multiple speakers]

[Laughter / Rires]

**Johanne G  linas:** Why don't you go, Doug.

**Doug Horswill:** I'm going to ask you the same question as I asked the previous speaker regarding downstream greenhouse gas emissions, with my preamble that it's people that really are the cause of it except maybe for flatulent cows.

[Laughter / Rires]

**Doug Horswill:** So you know the notion of meeting needs. So tell me why — and is it gross that you're talking about or is it net, related to particular activities that you want to have included?

**Harshan Radhakrishnan:** Well, I think we have to go on a project-by-project basis. But we'll have to consider the lifetime of the project and what's the total extent of emissions due to the project as well as, you know, if it's a pipeline project, how much of crude or, you know, refined product is, you know, getting out of the country. How much of it is being used up. So considering all of that over the lifetime of the project.

Glen, do you want to add anything to that?

**Glen Parker:** The other thing is that they would —

**Johanne G  linas:** Please.

**Glen Parker:** They'd need to be counted into our tally for the Paris Accord. You can't just say it's only happening in Canada. Those emissions we need to somehow include them in the Paris Accord. So you can't look at a project in isolation and say, you know, I've made it but somebody else is consuming it and it all — the onus belongs on the consumer. It needs to be part of the whole assessment process.

**Johanne G  linas:** Sure you don't want to have a second one? I have to be fair.

**Doug Horswill:** All right. Your single comprehensive assessment process. Can you elaborate at all in that? What are you — in that last slide.

**Harshan Radhakrishnan:** Yeah, for sure. Essentially what we have seen in the past is that sometimes these environmental assessment processes are kind of provided to the province, you know, and say, "BC government, you do it, and the result of that we'll consider in the federal environmental assessment process." And we know that back in 2011 or 2012 the province did their environmental assessment and the federal environmental assessment, you know, was at complete odds with what the province came up with in terms of results of the environmental assessment process. So it's those kinds of issues that we want reconciled through this review. And also we know that certain municipalities have been vehemently opposed to certain, you know, federal decisions that have come out in the recent past. And it's bringing together municipalities, First Nations groups, other you know non-governmental organizations, of course the provincial government, everybody together on the same page before the approval is provided on the assessment.

**Rod Northey:** Yes, I want to go to your slide on climate change and EAP and your third bullet, "make provision for 'no net loss.' " You've grouped that under a heading of climate, but it seems to me a much broader principle than that. So is — are you also seeking to address biodiversity with this and climate change? In other words, "no net loss" is a biodiversity measure. Is that deliberate?

**Harshan Radhakrishnan:** It is very much tied to climate change. We are talking about the sixth mass extinction here and that is precipitated due to climate change. The best thing we can do, make the project proponents do is to make them stewards of their — the habitat or the natural landscape in which the project is located, get them to consider what's the sort of biodiversity that is there. Can we do a good job of preserving that? Because we have the responsibility not just to make sure that that project is climate resilient and that that project reduces emissions as much as possible, but we have responsibility to make sure that that community in which the project is located — of course the biodiversity, of course the — you know, the fisheries and everything has to

be protected to the extent possible.

**Rod Northey:** Okay, thank you.

**Harshan Radhakrishnan:** Glen?

**Glen Parker:** When we were discussing that amongst the stakeholders, one of the issues that was discussed was you can set aside no net loss, but as climate change comes, what you had set aside for no net loss, if it's in, say, an estuary area, it will disappear. So that when you grant your environmental assessment process, you need to consider not only what a no net loss exchange would be at this point, but it has to incorporate future climate change so that it is truly resilient.

**Rod Northey:** Thank you.

**Johanne G  linas:** You talked about this transition period after Paris to have in federal EA consideration for GHG emission assessment. Do you have the equivalent at the provincial level? So for a project under a provincial assessment, environmental assessment, is there a requirement to do the GHG reduction or assessment?

**Harshan Radhakrishnan:** Not that I'm aware of, but —

**Glen Parker:** This again was an item of a lot of discussion with the stakeholders. And it was how much guidance do you give to the professional engineers about how do they do that. And in the end, what the guidance is is pretty loose, but it says that as an engineer, as a professional engineer you have an obligation to tell your client that there's various alternatives that have different greenhouse gas emissions. And part of the requirement now is that an engineer has to document that they provided that information to the client. Ultimately it's still the client that makes the decision, but the onus now is on the engineer to develop those alternatives and present them and document that they presented them to the client. And that now will be called adequate professional practice.

**Johanne G  linas:** And this is only in BC or to your knowledge it's across the country —

**Glen Parker:** Only in BC to our knowledge. Harshan, you may have more information on that.

**Harshan Radhakrishnan:** Yeah, the APEG council recently made a motion saying that, you know, the association must create guidance to enable professionals to achieve net-zero in their professional practice. And the guidance that we will develop will go a long way in considering what are all the provincial, you know, climate leadership plan objectives with respect to meeting the Paris Accord, and how can we enable professionals to meet those targets, and what are the tools and resources necessary and what's the education and training necessary to empower professionals to meet

those objectives.

**Glen Parker:** So when we were discussing the adaptation position paper, there was a lot of talk about professional liability. And if as a professional engineer you can see the information about climate change and see that the sea level is rising, for example, and you do not incorporate that into your design over the design life of the structure, and that structure or element fails due to climate change, you now are professionally liable because you should have known that the climate was going to change. So that it's the liability that's driving the professional practice. And you know, our lawyers and whatnot — and that's at a national level.

And so then extending it to mitigation, it gets a little fuzzier, but the principle's the same. You don't have to argue about the cause or who's done it or anything like that, but you know that the design parameters that you traditionally use for a structure are changing. And you as a knowledgeable professional should recognize that they're changing, incorporate that into the design. And if you don't, you're negligent in your professional liability.

**Johanne Gélinas:** So what it means is that not only the practitioner working for a consultancy firm, but also the engineers working for companies should recommend highly this assessment to be done. So we should assume that regardless of what it is in an EA requirement, that will be done. That's my understanding.

**Glen Parker:** Yes.

**Johanne Gélinas:** Okay.

**Glen Parker:** And it's not legislated, but Harshan alluded to it earlier, the BC Ministry of Transportation and Infrastructure, or MOTI as we call it, they have now issued an instruction and — or it's a practice — that no major — no infrastructure project in BC can proceed without a climate change analysis to see the impact on that infrastructure. And it is innovative in Canada, I believe. And that was why Harshan was pointing it out as significant. And there's a lot of compliments go to MOTI in British Columbia for stepping up and saying, If you're a consultant, if you're issuing a proposal, if you want to build a bridge to replace the tunnel over here or if you want to build even a culvert — a major culvert in our systems, you have to now look at climate change, predict — use predictions as to what the design parameter should be, and that's what your design is based on. It is a significant step that MOTI has made.

**Johanne Gélinas:** Can you point us to where to get that information?

**Glen Parker:** Yes, we can do that after —

**Harshan Radhakrishnan:** Absolutely. Absolutely.

**Johanne Gélinas:** It's on one of the slides? Okay. So that's fine.

**Harshan Radhakrishnan:** It's a technical circular that BC Ministry of Transportation and Infrastructure came out with that essentially says that engineers that submit designs to MOTI must consider extreme weather resiliency and impacts of climate change in the design.

**Glen Parker:** And then so how that ties with the association, we developed a professional practice guideline that defines what considering climate change is.

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

**Harshan Radhakrishnan:** You're most welcome.

**Johanne Gélinas:** So our next presenter will be Mark Freburg and Christian Baxter.

Good afternoon, gentlemen.

## **MARK FREBURG and CHRISTIAN BAXTER, TECK RESOURCES**

**Mark Freburg:** Good afternoon. My name's Mark Freburg and I'm the director of Permitting and Closure for Teck Resources. And with me this afternoon is Christian Baxter. He is Teck's director for Environmental Performance.

So we'd like to thank you for the opportunity to come and speak with you today. We have been watching your journey back and forth across the country with interest and are pleased we can talk to you.

We will be providing a written submission later this week, early next week, that will expand upon the points I'm going to talk about today. But today I wanted to tell you very quickly about Teck and then talk about five key areas which we think are important for your considerations as a panel.

I did want to point out that Teck was involved in the preparation of the submission you received from the Mining Association of Canada, and we fully support the recommendations that are in there. And we haven't attempted to repeat all of that for you. I think you — okay.

So Teck is Canada's largest diversified resource company. We have over 7,000 employees in Canada. I won't go through all the details and locations of our operations, but I think an important thing to note is that we currently have 29 formal agreements with indigenous people in Canada with three more under negotiation. And just last week the Fort Chipewyan Métis and Teck announced an agreement related to our oil sands project that we are very happy of, and that was the first formal one we have there, but we expect that more will be coming.

We've been operating in Canada for over a hundred years,

and we have mineral resources and assets and would cause us to believe that we're going to be around for at least another hundred years. So we've been in the game for a long time and we fully extend [sic] to stay there. We currently have one project undergoing a CEAA review, and that's our Frontier oil sands project, which is heading towards a joint panel review session meetings in the latter half of 2017.

So the five key areas for consideration I wanted to talk to you about. The first one involves clarifying the purpose of the Act. At the moment, CEAA 2012 identifies nine different purposes. And we feel that's causing some confusion and doesn't provide direction to involved parties on how to prioritize their actions and participation in the process. We think there's pretty broad acceptance that the real purpose of an EA is to be a planning tool that has both information-gathering and decision-making components. And I think I heard that type of phrase earlier this afternoon, and it comes up in many different times. And we would recommend that you examine how the Act's purpose could be refocused to make that sort of the explicit intention with the goal of achieving sustainable environmental outcomes and try to deal with some of that confusion that exists right now.

Further, the purpose of the Act should better address the jurisdictional overlap that exists with the provinces at the moment. It is referred to in the purposes, but it isn't clear. And that jurisdiction overlap leads, in our view, to inefficient and costly review processes at the moment. For example, despite the perceptions of reduced oversight amongst industries in CEAA 2012, mining projects continue to be assessed and robustly regulated under both CEAA 2012 and the provinces. In our view, there's been no change in the way we go through review processes because of the change in legislation.

Roughly half of the projects currently under review at this time are mining. Mining projects are generally included because they are triggered by the regulations designating physical activities. And those regulations don't provide a clear rationale for what's on the list or what isn't on the list. They're just there. In our view, there are projects captured by those regulations that really don't meet some of the other criteria specified in the Act, such as being in the national interest or crossing provincial boundaries. So we recommend that the Panel provide some recommendations to government on a clear rationale for the application of these federal EA review processes. And that rationale would then be used to develop triggering mechanisms for the federal processes.

A really important point in our view is that the current Act doesn't enable the concept or the idea of cumulative effects to be addressed in a very meaningful way. For example, the assessment of a mining project requires an assessment of the cumulative effects that that project could have, and considering all of the different activities that are occurring in the area now; however, the only ability for the CEAA legislation at the moment is to approve or not approve the project in light of all of those other activities, even though the project's activities themselves could be very

small in comparison to all the other activities taking place in the area that aren't subject to the Act. So we would say that CEAA 2012 imposes a disproportionate burden on projects under review without effectively addressing the cumulative effects that the project itself assessed.

So there's I guess two ways that this could be addressed. One would be to greatly broaden the scope of projects that come under federal review; however, we would argue that it would be preferable for Canada, the provinces, and indigenous peoples to find a way to address that issue together. We don't need to look at duplicative processes — three processes sometimes now — that we're starting to see. But that's really important for hopefully you to point the way to bring all the different parties together. And the previous speakers talked about multi-jurisdictional review processes; that's something we fully support the idea, and I'll talk more about that later.

Potentially that multi-jurisdictional strategic or regional EAs that I know you've heard about before could be a solution. And you will have received or will be shortly receiving a submission from the British Columbia Business Council that contains some really good text on that. And so we would point to that as a place where you can learn more about their views, which we would agree with on those type of strategic and regional —

**Rod Northey:** I think we got their oral submissions similar to yours earlier today, but I don't think we've seen the submission. So you're — okay. We can expect something more from that?

**Mark Freburg:** Hopefully so. I've read it and I assume they intend to provide it to you.

**Unidentified Female:** [indiscernible - speaking away from mic]

[Laughter / Rires]

**Mark Freburg:** Dealing with the enhancing federal-provincial coordination. We support the inclusion of timelines. They haven't been perfect under CEAA 2012, but they were a positive step forward. And that any proposed changes to legislation be analyzed to look at the impacts on those timelines. And that you continue to — that we, collectively as Canada, continue to work on timeline coordination with the provinces. And that a really important point from a project's perspective, timeliness isn't how long it takes to complete the EA, it's how long it takes to complete all the permits that have to follow the EA. And there are issues now that have been outlined in the MAC submission that we think there's opportunities from the federal side to better integrate the permitting processes that now follow the completion of an EA and have them occur within or overlap some of the EA processes. So we'd encourage you to look at that, because at times now, getting through some of the permitting activities is taking longer



than getting through the EA itself. And I guess in our view, that's not an acceptable outcome.

We do support the retention of the existing provisions of substitution/equivalency that CEAA 2012 brought in. I know that BC is the only province that has sort of moved forward with that. But we think it's a positive change and that we would look for the federal government to try to find ways to broaden the application of those provinces — or processes to other Canadian jurisdictions. Because we think if done properly, they could reduce some of that overlap that I've talked about and I know that you've heard from other speakers.

So the next area I want to talk to you about is strengthening indigenous peoples' participation and decision-making in EA processes. The majority of our operations are located within or adjacent to indigenous peoples' territory. And we're committed to building strong and lasting relationships that help us understand each of their perspectives. We actively work to achieve the free, prior, and informed consent of indigenous peoples when we're proposing new or substantially modified projects. And as I mentioned earlier, we currently have 29 agreements in Canada.

We support Canada's commitment to the full adaptation and implementation of the UNDRIP principles. As part of that, we think it is really important that any adjustment to Canada's EA processes are aligned with the government's larger goals around reconciliation. That is such an important aspect of Canada's future that it really needs to be established at a high level, and that guidance flows to multiple different activities, including environmental assessments. We're just one activity. What you're talking about is just one activity that needs to be coordinated in that fashion.

In particular, we feel it's vital that the consideration of the concept of FPIC, which seems to have as many definitions as there are people trying to provide them, be consistent with Canada's overall approach. The clarity and predictability that's required in the *Canadian Environmental Assessment Act* has to rely on an understanding of FPIC that's shared by the government, by industry, and First Nations. It isn't something that CEAA can fix. It has to come from a higher level and be incorporated throughout the government's activities.

Another area that I'd like to speak to are government-to-government agreements. In BC, the province and several indigenous agreements — indigenous groups, my apologies, have entered into strategic engagement agreements that set out processes for consultation and accommodation and in some cases provide for collaborative decision-making. We operate in two areas of BC where these agreements are in place. And while they aren't without challenges and frustrations for all of the parties involved, we think overall that they've been a positive experience and that have enabled all three groups, industry as proponents or actors in the area, First Nations, and the government to work more effectively together. So there are obviously challenges expanding that from a small provincial setting to a

cross-Canada thing, but we'd encourage you to consider the role that a similar model could play in the context of federal EAs.

Next I wanted to talk a little bit about compliance mechanisms. CEEA 2012 provides for a decision statement and enforceable conditions for projects that are approved, and we support that conclusion. Where we aren't as supportive, however, is the fact that CEEA 2012 does not provide any provision to amend decision conditions that are in the decision statements, which we feel is very problematic, given the extensive life of many of our projects and the reality that over time changes in technology, regulatory context, science that there may be a need to make some changes. Other provincial EA processes, including BC, have a rigorous mechanism that has to be followed to change a condition, but nonetheless it is possible to do that. And we think it's important that that mechanism be introduced into a future version of CEEA.

Finally, I wanted to talk a little bit about the post-EA engagement and transparency. One of your goals is to talk about how to restore public confidence in the process. And we think that having more engagement post-EA and more transparency around the outcomes of projects after they have been taken forward would be a step in that direction. So our recommendation would be to ensure that there are mechanisms in place for meaningful engagement post-EA for a project, but that they should be developed with the provinces to avoid duplication, because we're starting to see similar things happening from the provinces in terms of establishing review boards or ongoing public involvement, First Nations involvement in the outcomes of provinces — outcome of provincial reviews. And again, our view would be we need to try to avoid duplicating these important activities as much as we possibly can.

So thank you. I'd be happy to answer any questions or we'll try to answer any questions you might have.

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

Rod, would you like to start?

**Rod Northey:** Sure. So the slide — I think it was a couple of different points, but they struck me as perhaps linked. The concern that the permitting stage is taking longer and the support for substitution. The linkage that we have heard in evidence is that substitution means the federal authorities like DFO don't get involved in the EA, which then would explain why the permitting process that starts with DFO is longer. So it seems that they're a connected problem: substitution without ensuring full federal participation seems to be resulting in longer permitting.

**Mark Freburg:** So the examples I could point to where the longer federal permitting take place aren't in BC. Oh, I'm sorry.

**Rod Northey:** Your mic, sorry.

**Mark Freburg:** Yeah. The examples I could point to are not in BC, and BC is the only province that has substitution —

**Rod Northey:** Okay.

**Mark Freburg:** — in place now. So I think if you look into the MAC submission, there's some real examples of where that's the case.

**Rod Northey:** Not to disagree, but are you not — are you finding — we have been hearing — maybe I'll just ask, then. Have you seen a lack or a lessening or a lowering of federal engagement in BC projects where there's a substitution agreement?

**Mark Freburg:** We aren't directly involved in one. We had one project that entered into CEAA 2012, so I can't — I wouldn't want to comment on that.

**Rod Northey:** Okay, thank you.

**Mark Freburg:** I would be speculating.

**Renée Pelletier:** Yes, I wanted to pick up on your comments around the fact that Teck has a number of active agreements with indigenous people.

**Mark Freburg:** Yes.

**Renée Pelletier:** So it sounds like you're — you know, you're already doing IBAs. Could you say a little bit about whether or not you have views on if IBAs should have more of a — play more of a formal role in the EA process.

**Mark Freburg:** So that's a very good question. I guess our view would be that as a company we're committed, as I said, to working towards achieving a consent for activities. I do think it's important, though, that there would not be a regulated requirement for a company to include — conclude an IBA. I think there's a risk there from — in any type of negotiation, if there's a requirement that something, an agreement be reached prior to a project proceeding, that it makes it difficult. Our view would be that we clearly don't want to go forward without projects having achieved the IBAs, but that we wouldn't want it to be a regulated requirement that we couldn't go forward.

**Doug Horswill:** Public engagement has come up often as an issue. What is your view on a company's role — proponent's role in community and public engagement at large, and as a panel, when we're recommending processes to the future, what should we think about related to that matter of public engagement, company involvement, and Agency involvement?

**Mark Freburg:** Another good question. We believe it's really important to get into the community and talking to the indigenous people as early in the project as

we can. Our goal — and we're not there consistently yet — is to involve the communities in our internal decision-making process throughout about what a project should look like. It's far better to find out if there are challenges related to a project before you spend a whole lot of time and money trying to create the project and then go out and try to convince people you've done a good job. So I think the biggest thing is early engagement. I think from our perspective, the Crown needs to do the same. I know there's a challenge at times because proponents don't come with enough detail about what they're proposing for the Crown to get involved really early, but I think that the early, early stages should be driven by proponents getting out, talking, informing people and that the company should lead the way on that.

**Johanne Gélinas:** Do you think that companies involved in a region, having activities in a region should contribute financially to a regional assessment if one was to be done, for example, looking at cumulative effects in a region?

**Mark Freburg:** I think we'd want to know more about that concept. It comes down to figuring out the equitable way to pay for that in terms of other companies that might become involved, should they be required to pay or is it just the companies that are already there. Funding for regional assessments, I get, is a tough question. I don't think we have a hard opinion on that. We wouldn't be totally opposed to the concept except — but at the same time, I don't think I'm able to be in the position to say we would welcome it with open arms.

**Johanne Gélinas:** Let me ask a question differently, then. What will be an incentive for you to chip in to a regional assessment?

**Mark Freburg:** I think developing a better understanding of the cumulative effects from different aspects that are taking place and having some confidence that our projects won't have to be the only project fixing — this isn't perhaps the right term — fixing a problem.

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

**Mark Freburg:** Okay.

**Johanne Gélinas:** Very much appreciated.

One more presentation before the break. So Peter McCartney is next.

Good afternoon.

**Peter McCartney:** Good afternoon. Thanks for having me —

**Johanne Gélinas:** Welcome.

**Peter McCartney:** Thanks. So my name's Peter McCartney. I'm the climate campaigner for the Wilderness Committee. Is everyone ready for me to start?

**Rod Northey:** We're staring at one presentation. I don't think it's yours.

**Johanne Gélinas:** No.

**Peter McCartney:** Oh, that may be my colleague Joe Foy.

**Rod Northey:** No, I don't think so.

**Johanne Gélinas:** No.

**Peter McCartney:** No? Okay.

**Rod Northey:** Do we have a presentation from you?

**Peter McCartney:** No, you don't.

**Johanne Gélinas:** Oh, okay.

**Peter McCartney:** Yeah, so don't worry about that.

**Rod Northey:** We'll stop looking for it.

[Laughter / Rires]

## **PETER MCCARTNEY, WILDERNESS COMMITTEE**

**Peter McCartney:** Yeah, so I'm the climate campaigner for the Wilderness Committee. We're an environmental group, a grassroots organization that we participate in environmental assessment processes often and direct our members to do the same, help them through the process. In the time that I've been there, we've engaged with environmental assessments on Woodfibre LNG, Pacific NorthWest LNG, the Massey Tunnel replacement project, and you know, the NEB process with the Kinder Morgan pipeline. So we often direct our members to write in using suggested letter-writing tools. And as a climate campaigner, you know, the top line of our messaging is always the climate change concerns. And that's something that environmental assessments have done a very poor job in considering over the past years under the current CEAA laws.

So I think the biggest issue with the way that environmental assessments work in this country is that they look at this really myopic view of what a project is and not the relationships that it has to the rest of the environment, which I'm sure is something you've heard as a going theme in these panel reviews. And I think when you look at the climate implications, they're possibly one of the most important

environmental impacts that a project can have and so not properly assessing them is really a detriment to both the long-term sustainability of the communities that these projects operate in and to the future of having a safe climate on this planet, so.

I'm going to talk to you about three projects that we've organized and that kind of lend examples to where I think the environmental process is broken and where it can be approved.

The first one obviously is the Kinder Morgan pipeline. The climate considerations for that were added to the NEB process earlier in the year. And but they only took a look at the upstream emissions of the project. And before I get too much into that, I just wanted to mention that, you know, the Wilderness Committee's position is that this reform of the National Energy Board is not adequate and that the National Energy Board should not be reviewing pipelines, full stop. That is something that needs to be put back under the CEAA regulation. There needs to be an environmental review, and then they can assess the project from their perspective as well, but.

So and one of — the biggest issue with the Kinder Morgan pipeline and why it would have been off the table to start with is the downstream greenhouse gas emissions of the project. So CEAA only looks at — well, currently — the emissions that would result from the actual building of the pipeline itself and from the operations associated with it in the Alberta tar sands. But over 90 percent of the emissions associated with the project occur later on when the oil is burned. And you know, it may sound like this is — this radical idea of assessing the emissions that come from the end of the lifecycle. But other jurisdictions have already moved on this. And you know, I see it as an inevitability that this is how this is going to — this is how fossil fuel projects will be assessed going forward. So when we're reworking Canada's environmental laws, we need to realize that. So Washington, California, Minnesota, New York, and the EU already all evaluate downstream emissions for these projects. And as Canada is the fifth largest producer of fossil fuels in the world, we need to be assessing that.

And I think the — you know, one of the main reasons to assess that is when you're looking at the sustainability of a project, the long-term economic benefit that it could bring to a community is what needs to be the focus, not something, you know, that a temporary construction would bring, but whether or not this thing is actually going to support Canadian communities in the long term. And these projects need to be assessed in the lens of is this going to be viable in a world that meets its climate commitments. At the moment we have, you know, on one side we've committed to the Paris Agreement of 1.5 degree — limiting global warming to 1.5 degrees above pre-industrial levels, but our environmental assessments aren't reflective of that. So I think that's probably the best way to evaluate the downstream emissions of this is can this project exist in a world where we meet our climate goals.

The Pacific NorthWest LNG project mirrors some different concerns with the environmental assessment in that the emissions from that project, the bulk of them are actually here in Canadian jurisdiction. So the Canadian environmental assessment did review the emissions for Pacific NorthWest LNG and said they were significant adverse environmental effects, they were high in magnitude, continuous, irreversible, and global in extent. And we were all actually a little surprised that the review came to the right conclusion in that in that sense. But unfortunately, we saw the Pacific NorthWest LNG project get approved anyway. And the reason that we don't have a lot of faith in our environmental review laws is that when they come together and say that yes, this has significant environmental impact, that isn't being put into any sort of context to be able to evaluate whether or not this project should go forward.

And so one of the most crucial things in being able to evaluate these projects properly is we need an overarching plan for how much carbon emissions we can emit as a country before we need to be off of fossil fuels, and that plan needs to be in line with science. I know that that is probably outside of the mandate of the environmental assessments, but that framework needs to be something that is created, otherwise there's — how are you possibly going to assess greenhouse gas emissions when you don't have anything to compare them to in this carbon budget that we have.

So the other kind of portion to this is that these need to be looked at as the lifetime emissions of the project. And so for Pacific NorthWest LNG, a facility that would be burning greenhouse gases for — or burning fossil fuels for decades to come, the proponent needs to know that if that is out of line with where this country needs to go, that this project is going to have to be shut down before the end of its usable life. So we need to be looking at the full lifetime impact of these projects.

And finally, in projects like this, the argument is often about jobs versus the environment. And when we're looking at the long-term economic benefit of one of these projects, I think it would be valuable for environmental assessments to talk about these in terms of the tons of greenhouse gas emissions that they create. So is it creating 50 jobs per ton of greenhouse gas emissions? Or is it creating, you know, 0.2 on some of these projects. And that framework of looking at this is really — kind of bends us to we have a carbon budget and what are the benefits we're going to get for each amount of those greenhouse gases that are put out there.

The final project that I'm going to talk about was actually a provincial assessment, but in our opinion it should have triggered a federal environmental assessment, and in a proper environmental assessment regime, it would because it creates greenhouse gas emissions and those obviously spill over from jurisdictions. And that's the Massey Bridge replacement — or the Massey Tunnel replacement project, also known as Massey Bridge. The emissions that are associated with this project are 7 megatonnes over the 50 years of its lifetime just from the additional traffic that it will add and the induced amount when you build and expand a

highway, which, you know, may not be significant in comparison to some of the massive fossil fuel export projects that we have, but these projects are taking place all across the country and need to be reviewed in the lens of is there a better alternative.

And you know, the Massey Bridge project and the assessment that we've been engaging with is there's no option to say, Hey, we should be building transit instead. That is the obvious answer. It's the answer that the mayor's regional transit plan would have put forward. And so projects need to be assessed in — whether or not they're the best option to go forward. And from the beginning, if we can say we should be building transit instead, that's the route that we should be going down. And then that also — when you're estimating the greenhouse gases for the project — would have an impact in terms of it's not just the 7 megatonnes that the cars will add, but it's actually if we build transit, we can reduce the greenhouse gases. So we need to be looking at, you know, the full picture of when we're looking at these projects.

So ultimately, what would a good climate test look like? It would assess the entire lifelong emissions of a project from upstream to indirect to downstream emissions. If those were significant — and you can find the threshold for that — it would trigger a climate assessment which would initiate a federal environmental review. It needs to be put in the context of a scientifically credible plan to reduce greenhouse gas emissions and we can decide where we want to burn fossil fuels in this country and which projects are a priority for us in terms of our carbon budget. And then to look at the long-term economic benefit and the social and environmental benefits that would come from a project in that context of getting off of fossil fuels. And so what would actually provide a sustainable prosperity for a community. And it finally just needs to evaluate the alternatives to a project that, you know, if there's an LNG plant that's proposed, could something else achieve the same suggested benefits and possibly other ones through being able to meet those needs.

**Johanne Gélinas:** Thank you.

**Peter McCartney:** Thank you.

**Johanne Gélinas:** Who would like to start?

**Rod Northey:** All right. Thank you. So I had a similar question a couple before, but I just want to see what the answer is here. So you want to assess everything, the "consider everything" point. But the regulate, you acknowledge what? So let's say we go up and down and we go all over the world as to where the downstream is, as you suggest. What does that do for the decision-maker? What's the decision-maker supposed to be regulating?

**Peter McCartney:** It's the — I mean the full impact of those downstream emissions and whether or not that is significant in terms of the climate goals that we need. So you would assess that and the economic viability of building the project if that



1.5 degree target was to be made. And so the regulation should be can this project go forward, assuming the world meets its climate targets. That — is that what you're asking or —

**Rod Northey:** Yes, I'm just a bit confused, though, or puzzled. So if somebody was to export all of the gas to the US and the US is going to consume the gas, why wouldn't we say you can consider that as whether you approve the project in Canada, but the consumption of it is in the US. That's where that number should go. So the consumption number gets split because it's consumed in one jurisdiction and it contributes to their greenhouse gas problem and the upstream and what happens in Canada is part of our problem. I'm not following why they're the same problem. They seem to be different.

**Peter McCartney:** Right, okay. And the answer that I would have to that is that carbon emissions obviously don't — the environmental impacts of them aren't limited to a jurisdiction. And while, you know, some countries may consider their carbon emissions from consumption in their balance books, so to speak, we're looking at this as the long-term economic sustainability of a project. And so does it make sense to be building these projects if we can assume that the countries that they're going to be in are going to not need that anymore. So when you're regulating, you want to start from a process of is this going to bring a long-term benefit to the community, and assessing the climate impacts of the downstream emissions are one way to say, Hey, this isn't going to make economic sense in 20 years. We shouldn't be building it. This isn't a long-term sustainable solution.

**Rod Northey:** Okay, all right. Thank you.

**Johanne Gélinas:** Can you just repeat the project where the GHG assessment has been done and you thought that it was properly done —

**Peter McCartney:** Sure.

**Johanne Gélinas:** — regardless of the decision, of course.

**Peter McCartney:** So and I would clarify the — it was the Pacific NorthWest LNG project.

**Johanne Gélinas:** Okay.

**Peter McCartney:** And the assessment of the emissions that was done assessed the emissions from the plant itself and the upstream emissions, but it didn't take into consideration the downstream impacts. But they did a fairly credible job of measuring the upstream impacts of that project and the additional fracking that would take place and cogeneration and all these impacts. Yeah.

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

**Peter McCartney:** You bet.

**Johanne Gélinas:** Thank you.

Let's take a break. We deserve it.

[Laughter / Rires]

**Johanne Gélinas:** Quarter to three; 3:00 we're back. Thank you.

(BREAK)

**Johanne Gélinas:** I was a little bit too fast, because my colleague Renée is not here, but.

[Laughter / Rires]

**Johanne Gélinas:** Let's wait a few minutes. She must be on her way. Oh, here she is.

So now we'll welcome Ms. Candace Batycki for her presentation.

**Candace Batycki:** Hi. We do not have a presentation on the screen —

**Johanne Gélinas:** Just press the button. No, just — yeah, good.

## **CANDACE BATYCKI, YELLOWSTONE TO YUKON CONSERVATION INITIATIVE**

**Candace Batycki:** Okay, thank you. Okay. Good afternoon, Madam Chair Gélinas and Members of the Expert Panel. My name is Candace Batycki and I am program director BC and Yukon for the Yellowstone to Yukon Conservation Initiative. We are a transboundary conservation organization founded in 1993 whose mission is to protect and connect habitat from Yellowstone to Yukon so people and nature can thrive.

We are grateful that our federal government has engaged in a process to review and fix our weak and flawed environmental assessment regime, critical for the health of our country, including our economy, now and for the future.

We have a series of comments, and with each topic I will refer to a case study which I know you have been hearing a lot about, and that is the Site C dam here in British Columbia.

As you know, Site C is the source of much controversy and conflict and is being challenged by two First Nations in the federal courts. And as you

no doubt heard perhaps repeatedly when you were in Fort St. John, an analysis released by independent scholars hosted by the Program on Water Governance at the University of British Columbia has highlighted that the number and scope of adverse environmental impacts arising from the Site C project are unprecedented in the history of environmental assessment in Canada since 1992. There are 21 of these adverse impacts as identified by that consortium. This extremely unfortunate situation has far-reaching and long-lasting impacts that could have been avoided had a stronger environmental assessment regime been in place to guide the assessment of Site C.

So we have three key points, the first being the need for the incorporation of stronger science in developing environmental assessments. And we have (a), (b), (c), (d), (e), (f) — six subpoints under there. Number two is sustainability as a core objective, and we have wonderful expertise on this Panel on sustainability. And the need for meaningful consultation, engagement, and participation.

So the first under the overall heading of the incorporation of stronger science in developing environmental impact assessments. And the first is the burden of proof. To ensure that the impacts do not unduly affect future generations, the burden of proof on project proponents should be shifted to a more precautionary approach which more fulsomely addresses potential impacts so that we are not acting when risks are high and only moving forward when we are certain of — there will not be long-term impacts.

So the example of Site C shows that where the burden of proof shifted to be more in line with precautionary principles, it is hard to envision that Site C with its 21 adverse environmental impacts, truly, with eight related to — including eight which are related to Aboriginal use and cultural heritage, could ever have been approved.

1(b) Cumulative impacts. Effective environmental assessment requires placing a project clearly in the context of cumulative impacts on the rest of the environment. At Yellowstone to Yukon, we would like to see much clearer and stronger language to ensure proper consideration of cumulative impacts, including clear thresholds for all valued ecosystem components and processes.

In terms of Site C, we brought forward to the joint review panel an analysis that focused on the wildlife impacts of Site C written by Dr. Clayton Apps. We looked at the impacts of past, present, and projected future human influence, including Site C and its 83-kilometre-long reservoir on caribou, grizzly bear, gray wolf, lynx, wolverine, and fisher in the Peace region. Dr. Apps concluded that:

"The Site-C dam would negatively affect six mammal species that already are experiencing significant habitat impacts from industrial development including the W. A. C. Bennett dam and that the cumulative effects of

development in the Peace region, including the proposed Site-C dam, are so significant that some wildlife populations may not be viable or recoverable in the future."

These impacts are largely due to the loss of landscape connectivity resulting from Site C, which threatens the integrity of the entire Yellowstone to Yukon corridor. Additionally, the legal arguments made by the West Moberly and Prophet River First nations at the federal court of appeal are in the context of the cumulative impacts from industrial and resource development on their treaty rights. Finally, the UNESCO World Heritage Committee's reactive monitoring mission to Wood Buffalo National Park this fall is also a cumulative impacts issue since it resulted from the Mikisew Cree's contention that insufficient attention has been paid to the downstream impacts of Site C on the Peace Athabasca Delta.

1(c) Data transparency. Data which form the basis for environmental impact assessments should be shared freely. This is now the world standard to ensure transparency and quality of science. Hundreds of scientists have questioned the approach of leaving data analysis and modelling of environmental impacts to project proponents, calling instead for this work to be done by arm's length parties.

In the example of Site C, the potential impact of Site C on the Peace Athabasca Delta is an example of this, where in assessing changes to flow regimes the review panel had to rely mainly on assurances from consultants hired by BC Hydro.

1(d) Better baseline science. Here we are seeking increased science standards for baseline condition assessment as well as for remediation and restoration. So simply we need to know it is there to know what we stand to lose.

In terms of the example of Site C, in June 2015, the Biological Survey of Canada supported by Yellowstone to Yukon and the Royal BC Museum conducted a bioblitz on the Peace River. Participating scientists found several species not included in BC Hydro's submission to the environmental assessment of Site C, including spider and true bug species never before catalogued in Canada and bumble bee and snail species vulnerable to extinction. The president of the Biological Survey of Canada called these findings the tip of the iceberg due to the Peace being poorly known biologically.

1(e) Long-term impacts. We would like to see more accurate assessment of the long-term impacts of projects as current guidelines allow for the underestimation of lasting impacts.

In terms of Site C, we note the above-mentioned wildlife studies and the lack of fulsome analysis of the downstream impacts of Site C on the Peace Athabasca Delta as examples of the insufficient weighting of long-term impacts in Site C's environmental assessment. The long-term impact of the anticipated loss to inundation of thousands of First Nations' cultural sites has been called cultural genocide by Chief Roland Willson of the West Moberly First Nation.

1(f) Climate change. To ensure that Canada meets its climate goals, the new Act needs to incorporate mechanisms to explicitly consider current and future climate change, including through cumulative impacts assessments.

And in the example of Site C, the same academic consortium referenced above found that the difference between Site C's greenhouse gas emissions and the alternative portfolio put forward by BC Hydro would be at most one percent of BC's current emissions, using BC Hydro's own numbers. During environmental assessment, the federal and BC governments stated that the unprecedented number of adverse environmental impacts from Site C were justifiable in part because Site C would deliver energy at substantially lower greenhouse gas emissions than the available alternatives. This analysis has indicated this is not the case.

In September 2016 a major study published in the journal *Bioscience* confirms that reservoirs may be emitting up to 1.3 percent of global emissions in the form of methane, a far worse greenhouse gas than CO<sub>2</sub>. And the timing of Site C emissions is also germane as it will be concentrated in the years of construction and early inundation.

Number 2, Sustainability as a core objective. The development of clearly defined sustainability-based criteria should consider whether a project provides a net contribution to environmental, social, cultural, and economic well-being in the short and the long term.

Site C example: many issues related to Site C's impacts on short- and long-term environmental, social, cultural, and economic well-being have been raised. These include the long-term impacts of the loss of over 31,000 acres of agricultural land which agrologists have estimated could feed one million people. This is the largest withdrawal from the agricultural land reserve in British Columbia's history and it is especially short-sighted given the droughts being experienced in US food-producing areas. Economic issues include steep rises in electricity rates that will disproportionately impact lower-income families. Taxpayers and ratepayers will not only face inflated bills at home, but if they are homeowners could also face increased taxes to pay for the operation of local and regional facilities and utilities. Harry Swain, the chair of the environmental assessment panel, estimates that ratepayers will be left with a stranded debt of over \$7 billion due to the high unit cost of Site C's power. And the long-term cultural impacts on First Nations have been previously noted.

And finally, Number 3: Consultation and engagement. A new Act should enable meaningful participation for anyone who wishes to participate, as we are all affected. This should require collaborative decision-making with First Nations based on government-to-government discussions and in the context of Canada's obligation to secure free, prior, and informed consent as required under the United Nations Declaration on the Rights of Indigenous Persons. First Nations in British Columbia are developing environmental assessment frameworks that better reflect their interests. In going forward, these must be included and honoured.

The treaty chiefs challenging Site C in court have been clear that they do not consent.

Finally, in conclusion, overall the revised Canadian environmental assessment act should strengthen rules and criteria to encourage transparency, accountability, and credibility and to avoid politicized decisions. As you know, the language requiring consideration of the need for and the alternatives to a project was removed from the previous Act and is not addressed by the 2012 Act. These aspects are not precluded. Ministerial discretion of course remains. But their proper consideration requires appropriate policy guidance for use by all parties and should therefore be explicitly included.

We are thrilled that Canada's environmental assessment processes are being reviewed. We strongly hope that you will incorporate use of stronger science, sustainability as a core objective, and meaningful engagement. The future of Canada's environmental, social, cultural, and economic well-being hinges on ensuring that this tool works. And we thank you for this historic opportunity.

Thank you.

**Johanne Gélinas:** Thank you very much for your presentation. Who would like to start? Doug.

**Doug Horswill:** Yes. I wanted to go back to your point — keeping track with your tally here — point 1 science, and point (d) better baseline.

**Candace Batycki:** Uh-huh.

**Doug Horswill:** You referenced a body that I feel badly I don't know, but the Biological Survey of Canada. So it did the baseline study. Have I got that right?

**Candace Batycki:** Yes. And I'm wondering if I got that right. Should I be saying Geological Survey? No, it's Biological Survey. So it's not a federal agency, it is an organization, yeah.

**Doug Horswill:** And so it did a review of the area around Site C.

**Candace Batycki:** Yes.

**Doug Horswill:** Commissioned by whom or by — on their own initiative or how does that —

**Candace Batycki:** Yeah, on their own initiative. So these bioblitzes, as they're called, are cooperative projects that are done by whoever's interested. And in this case, we — the Biological Survey of Canada, they kind of gather up all the data and house that data and act as sort of the clearing house, organize it — slowly. And so we worked on that with them as well as with the Royal BC Museum. We've done bioblitzes in other areas as well, and they're quite a common tool now. And we had over 40 scientists participate in that. And so they descend on an area for, you know, two, three days. And depending on who the scientists are and what their specialties are, you end up with a huge amount of data. So we had people from the Royal BC Museum who are bug specialists, so we ended up with a lot of spiders and bugs. But there was also — there were plants discovered that were endemic to that area that were not previously known and, you know, all kinds of other things as well. So that information is now being collated. And I would also say that there was strong participation from West Moberly First Nation in that as well. So those results are all being collated at the University of British Columbia and we're happy to provide that if it's of interest —

**Rod Northey:** So where — just to understand this better, just for a broader point, then, so the organization is, as you described it, does it have a website? Is it informal? I'm just intrigued with this idea of an independent body, however informal, going out and canvassing an area and finding things that others have not found.

**Candace Batycki:** Uh-huh.

**Rod Northey:** So you call them bioblitzes. Is that on your website? Whose website would have a bioblitz description?

**Candace Batycki:** Oh, well that's a good question. I mean, we have the results for example of the bioblitz that we did for the Flathead area. If you go to the Royal BC Museum, because they are participants as well, they would probably have the proceedings on that. And I will look more into the Biological Survey of Canada, because I'm less familiar with how they operate. I know that it ended up sort of falling to us to speed up the collation of that data because it was taking a little longer than we had hoped for. But you know, it sort of speaks to the idea that when you take the time to really look deeply you find all kinds of things. And really it's usually just capacity constraints that prevent that from happening.

**Rod Northey:** Thank you very much.

**Candace Batycki:** Yes.

**Johanne G elinas:** Doug.

**Doug Horswill:** On the burden of proof matter that you raised the precautionary approach, that we should shift to that. Tell us how.

**Candace Batycki:** That's your job. No, it's my job. Well, I guess what we're looking at here is a bit of a shift of — in fact, it sort of goes to the sustainability criteria as well. It was felt that in the example of Site C there was more weight given to the economic advantages — potential economic advantages of Site C as opposed to the many long-term or cumulative disadvantages. So it's more looking at a rebalancing of that. Uh-huh.

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

**Candace Batycki:** Thank you.

**Johanne Gélinas:** Thank you. And we will get a written submission?

**Candace Batycki:** It's already been sent in.

**Johanne Gélinas:** Okay, thank you very much.

Our next presenter will be Chris Tollefson and Anthony Ho.

Good afternoon. So we don't have a presentation from them but we have this paper. Good afternoon.

## **CHRIS TOLLEFSON and ANTHONY HO, BC NATURE**

**Chris Tollefson:** Good afternoon, Madam Chair, Members of the Panel. Mr. Ho and I are with an organization called the Pacific Centre for Environmental Law and Litigation, an organization that's been established to provide opportunities for young lawyers and students to learn litigation skills through court actions and through regulatory work.

Our client today is BC Nature, an organization with whom we've worked over the last four years. Mr. Ho and I have represented BC Nature through various environmental assessment processes, including Northern Gateway, Trans Mountain, Roberts Bank, and they are actually British Columbia's oldest conservation organization and represent over 6,000 people here in British Columbia. The theme I want to address today is set out in the paper that we filed last week.

**Rod Northey:** This is what we're all puzzling about. What — where — called — is it the paper — which paper is it? We haven't got a paper from you. That's what we're puzzling over.

**Chris Tollefson:** Maybe I can ask Mr. Ho to address that.



**Anthony Ho:** BC Nature filed a written submission with the Panel last Friday. It is entitled "Science, the Law, and the Environmental Assessment Process."

**Rod Northey:** Okay.

**Johanne G  linas:** Okay . Anyway, continue.

**Anthony Ho:** Thank you.

**Chris Tollefson:** All right.

**Rod Northey:** Yeah, unfortunately I haven't seen it.

**Johanne G  linas:** You have it?

**Rod Northey:** I have not.

**Johanne G  linas:** No, we haven't seen it. So just continue your presentation. Yeah. We'll manage.

**Chris Tollefson:** The overarching theme of the paper is the need to restore scientific integrity to environmental assessment. And we see that as being something that can play a powerful role in restoring legitimacy to the overall exercise of environmental assessment. Rather than going through the paper in detail, I thought what I'd try to do is offer you a sense of the arc of the argument. And essentially the argument that we're making here has three elements. To restore scientific integrity, we need to do — firstly we need to revisit how science is generated and provided into the process. We need secondly to devise various means to supervise, to oversee the quality of the science in the environmental assessment process. We need better quality assurance. And lastly we need means — and these may well have to be substantive legal rules — means to ensure that science is properly integrated into both the assessment process as well as into the decision-making process. And so what I'm going to do is reprise from the paper that you don't have but hopefully you will have soon some of the arguments that we make in relation to those three themes.

Firstly, in terms of the generation of science, we have currently a model where the proponents basically provide most of the science for the process. They drive the process, they control the process in that regard. Our view is that we have moved too far in that direction. We need to move towards a model where there's greater independence in terms of the science provision process. We say that the proponent should still be responsible for funding and having input into how the science comes forward, but there needs to be a more arm's-length relationship between the science provider and the process and the proponent. And so that's recommendation number 2 in the letter that we provided.

Beyond that, we do have as well some submissions to make

in terms of quality assurance. In the paper, we note that the federal government is now moving forward to appoint a chief science officer, and we commend that move. We see that that office may well have an important role to play in terms of quality assurance in terms of weighing in where the science is contested in an environmental assessment. We would like to see that possibility considered.

Having been involved in both Northern Gateway and Trans Mountain, we were also very concerned about the importance of cross-examination as a tool for quality assurance in terms of science. In the Northern Gateway process, as you know, there was cross-examination. There were problems with how that ran, from our point of view; it's not traditional cross-examination, but at least there was an opportunity to ask questions of witnesses under oath. That mechanism was eliminated from the Trans Mountain process. And we say that the process significantly suffered as a result. The quality of the science significantly suffered.

We also think in terms of this goal of ensuring better quality science that it's important that the agency make a stronger commitment to ensuring that all of the information upon which they are making their recommendations — all of that information is put on a public registry and is well organized. And I can tell you that we've just gone through on behalf of a different client the Pacific NorthWest LNG process. And we have to say that that was not well handled from a public registry point of view. We're now in litigation over that. There are at least 4,000 documents upon which the Agency says it relied in reaching its decision that were never on the public registry.

Finally, in Trans Mountain, in lieu of — as a replacement for cross-examination, the board there decided to rely on an IR, information request process. We told them that that process would not work, and indeed it did not work. It was hopelessly flawed, and it allowed the proponent to simply avoid answering questions that were properly posed to it. We say that IR processes do I think have a role to play in terms of the quest for the truth and quality assurance, but that there needs to be stricter control of how IR processes work. And they should be much like a process of discovery and litigation. There has to be an obligation to answer the question. If there's evasion or other things going on, the board has to take that seriously and take proper steps.

Finally, I'd like to just offer some thoughts on the last point, which is how do we ensure that science is properly integrated into the assessment and into the final decision? How do we do that? And our recommendations 8 through 11 all address that question in one way or the other. Recommendation 8, you've heard this from other submitters, we support moving towards a broader form of assessment that looks at net sustainability outcomes, and we think that that would allow for more robust, more cutting-edge science to be brought into the process. We also support in recommendation 9 — and you've heard this as well — strategic environmental assessments, regional assessments, a renewed commitment to cumulative

environmental assessments. All of those are very important tools and I know that I'm confident that they will figure in your report.

The two things, though, that I do want to underscore that you maybe haven't heard from other submitters are these: one is that we need both in the assessment process as well as at the justification stage where Cabinet may down the road have the power to decide that significant adverse effects are justified in the circumstances, we need to have greater transparency and accountability in terms of how science is being used and relied upon. One of the things that we were very dismayed by in the report of the JRP in Northern Gateway was that in that whole report, the JRP never in a single instance never offered a footnote, never referred to evidence by name. And in that level of opacity, that level of generality in terms of their report I think really hampered the ability of the public to understand what they were deciding and why they were deciding that. So we say that there should be a requirement to attribute and to cite findings that a panel is making so that we can know what science is being relied upon. And that has a variety of benefits, I think most importantly to the legitimacy of the process. I think the same should be the case when other decision-makers are called upon to make a decision that they should be required to meet some at least modest level of attribution and citation in terms of relying on science.

And finally, I would just say this — I'll stop as soon as I make the point — there is a great need, I would submit, to revisit malfunctions and accidents under the CEAA 2012. In both the Trans Mountain and the Northern Gateway proceedings, the proponent took the position that because the catastrophe, the potential catastrophe was not likely, was not probable, that they did not have to — it was not mandatory under the CEAA to engage in a fulsome and robust analysis of the consequences of such an episode. And we say that is a perverse reading of the CEAA. But it seems to be a reading that in both cases the panel was persuaded by.

And I think at that point I would happily invite any questions that you might have and thank you.

**Johanne Gélinas:** Thank you very much. On that last point, do you refer an assessment of the worst-case scenario? Is that what you have in mind?

**Chris Tollefson:** That's exactly right. In most jurisdictions, in most kind of state-of-the-art environmental assessment regimes, that's a key feature. And it shouldn't be necessary to show that that worst-case scenario rises to a level of certain probability before it's incumbent upon the proponent to look at that.

**Johanne Gélinas:** Thank you.

**Doug Horswill:** Here's an engineer asking a lawyer-question to a lawyer. Hope I don't look too dumb. But anyway, the question is cross-examination — you said

it should be mandatory. We've heard elsewhere that cross-examination is a very difficult item for citizen participation, although testing evidence is important. Is it your submission that all these things — all the panels should be cross-examination and quasi-judicial or are there a variety of models that you might consider?

**Chris Tollefson:** I think that's a very important distinction for you to be focused on. Our position would be that there should be — that the process should be segmented to ensure that the public is allowed to participate and ask questions or at least given some level of input into the process, but that at end of the day true cross-examination with witnesses under oath — that should be reserved for those issues that rise to the top in terms of being uncertain, being critical to the outcome, being critical to the assessment. And we would certainly be content with restrictions in terms of time and topic. But at the end of the day, I think that if the assessment does not have some level of cross-examination, then that really does deprive in many cases the panel of the means to resolve what are often irresolvable conflicts in the scientific evidence.

**Renée Pelletier:** So I also had a question on the topic of cross-examination. If your earlier comment around the need for arm's-length science, if that issue gets addressed, do you feel that that alleviates the need for cross-examination all the time?

**Chris Tollefson:** I think that these work as a package. So that I think cross-examination will still be necessary even if we have confidence that the science is coming from an independent source, impeccable source. There can still be uncertainties. Reasonable people can disagree. And it's through cross-examination that some of those things can be sorted out. And in fact I think that it would be — there'd be a potential to employ innovative forms of cross-examination and questioning, like expert hot-tubbing, which is basically bringing a bunch of experts together and having them ask questions of each other. So we're not wedded to Perry Mason style cross-examination. We think that there needs to be, however, a commitment to the idea that that has a place in these processes.

**Renée Pelletier:** Thank you.

**Rod Northey:** Well, we're all going to stay on one theme, because I'm trying to work this out as well. So it's not merely that the public has issues. Indigenous communities have issues.

So in the model of a panel, we call it the inquisitorial model where the panel stays in control of most of it, including the questions back and forth. If the panel is very rigorously involved with it, that almost amounts to a cross. But we've heard of many panels that are not so rigorously involved. And I won't call out any particular examples, but I think you've already alluded to some. So in this, it's very difficult to figure out at the end of the day if one adopts I'll call it a rights framework about EA and a hearing, then of course you know you're going to have to have

cross-examination, because the rights are getting asserted. But that will have a huge cost on who participates, the resources to participate, the length of the hearing. It's very hard to see — put all that into this side and say that outweighs something that may be less involved.

So some of it seems to be a very difficult balance, and I think it's come up earlier today with panels being around for 40 years and yet we seem to be now in a process where the panels are in themselves under question. It's odd that the arc of this has got so acute. Do you have any theory of why the last five years have seemed to put a question into question the panel process? Because I just want to say community hearings, technical hearings have been part of panel reviews since the late 70s, and yet the controversy of what is happening in the last five years — I don't recall any previous example like this. What's your thought?

**Chris Tollefson:** I think there's a variety of explanations, maybe some of them specific to the pipelines cases that we've been involved in that have focused these issues in the acute way that you're talking about. My view is that we do need to appreciate the resource implications that are associated with moving to an adversarial model. And I think some of those can be dealt with, as I've indicated, by having an IR — a real IR, robust IR process that allows for issues to sort of be focused as they should be in any kind of litigation or adversarial process. And then, through that process, the board will hear submissions as to which issues really rise to the top of the list in terms of scientific uncertainty, in terms of integrity of science, in terms of other information that the panel feels they don't have and they need. And I think for those issues, then, you know, you allow for groups to hire a lawyer or lawyers to provide that service pro bono. I mean we do want this to move swiftly and efficiently, and lawyers can do that if they're given direction.

**Rod Northey:** Right, now just — and I don't — not to minimize your suggestion. That's very interesting. So the other part to this is not merely the participation of indigenous but the whole issue of indigenous knowledge and how you test it. And Trans Mountain had a very puzzling novelty to that that the only witnesses that got cross-examined were those offering traditional knowledge, which certainly seems unusual. But when nevertheless the more importance one gives to indigenous participation, the more one needs to have a process for people to be able to understand what they're doing and encourage the participation but get out so that — I mean where it may be that the answer is that the indigenous part of this has raised issues that for the previous 30, 40 years did not have such importance and we're still grappling. So I guess I'll leave with a questions and suggest if in the course of your work you have some thoughts as to what these novelties could contribute, you can see we're interested. And we would be very appreciative.

**Chris Tollefson:** I think that — happily, we'll be back tomorrow representing a First Nation as client, the Tahltan First Nation has hired us to make submissions to you. And maybe tonight we will confer and come back tomorrow with some more thoughts on

that topic.

**Rod Northey:** Thank you.

**Chris Tollefson:** Thank you.

**Johanne Gélinas:** Just before you go, you refer in your presentation about those documents that were not on the CEEA website.

**Chris Tollefson:** Uh-huh.

**Johanne Gélinas:** Have you made a formal request? And if so, what answer did you get?

**Chris Tollefson:** Well, we made various requests through the processes before the recommendation and the report was issued. And you know, I think the Agency was doing its best; it was clearly under-resourced. And this was run not as a panel review, this was a standard EA, which is a remarkable thing. So I'm not faulting the Agency. The systems just weren't in place. I can tell you the reason that I know that there are some 3,000 or 4,000 documents missing is that I've been told that by a federal Crown with whom we are now engaged in litigation, and that's become a problem because they are — it's their responsibility to provide the record for the judicial review that we've brought. And because those records are not on the site, that is taking a lot longer than it would normally. So I think that putting things in a place where people can find it and easily review it pays a range of obvious and less obvious benefits. And I think even federal Crown might even agree with that.

**Johanne Gélinas:** So thank you very much and we'll see you tomorrow.

**Chris Tollefson:** Very good. Thank you.

**Johanne Gélinas:** Joe Foy is our next presenter.

So I'm told your last name is Foy, but in French it's "Fwah", so sorry about that. We're happy to have you here this afternoon.

## **JOE FOY, WILDERNESS COMMITTEE**

**Joe Foy:** Well, I'm very, very happy to be here myself, Madam Chairman and the Panel.

My name is Joe Foy and I represent — I work with the Wilderness Committee as the organization's national campaign director. So we've been around since 1980. We're an environmental organization. We have something like 60,000 supporters, volunteers from coast to coast. Our head office is right here in Vancouver, with field offices in Victoria, Winnipeg, and Toronto.

And what I want to talk about today is our organization's experience with the public involvement part of environmental — of a particular environmental assessment process. And I have a recommendation that I would like to present for improvement. I have on behalf of our organization been involved in a number of environmental processes, including the one on the Site C dam.

But this today I want to talk about how starting in 2010 the Wilderness Committee engaged in the EA process for the Prosperity mine project and then the revised New Prosperity mine project. And this project is located west of Williams Lake in Tsilhqot'in Nation territory. And I was the lead person representing the Wilderness Committee, and we were concerned about the impact that the mine projects would have on Fish Lake, a very productive and beautiful area on the plateau, and on the Tsilhqot'in Nation communities that rely on the surrounding lands and waters of their territory for food and cultural practices. So these were our concerns.

And we wrote submissions, we attended hearings, and most importantly, because we have a lot of supporters and it's sort of what we do, we engaged our supporters and asked them to make submissions, their own submissions to the environmental assessment public process. That's what we do. We do it because we believe that when the public is given a fair opportunity to participate in land use decisions they can understand better the kinds of information that go into the final decision by the leaders of the country, and they're more likely to feel that they've been treated fairly, that their information has been part of the decision process. So that's our part. That's the part we play, and we think it's an important part. And we work very hard to engage our supporters in these processes.

However, in this instance, as a direct result of our participation in the New Prosperity EA process, the mining company proponent, Taseko Mines Limited, served us with a notice of civil claim on March 1st, 2012. And they stated that we had made defamatory statements on our website while encouraging our supporters to participate in the environmental assessment process. And in my submission that I presented I provided a link to that 2012 notice of civil claim.

And after we were issued that notice, sometime after, we issued a news release and we said basically that this threat of court action by Taseko Mines is aimed at silencing critics such as the Wilderness Committee — we felt it wasn't just aimed at us, it was aimed at Canada — from speaking out in the debate over protecting Fish Lake area from the company's proposed New Prosperity mine. And we said at the time this court threat eats away at the very foundation of democracy and free speech that our society is based on. And I still hold that opinion today. And I've included a full link to that news release in this submission.

What followed was an extremely time-consuming and expensive court process. We were served those papers in 2012 and our trial took place over the course of a number of days in January, March, and April of 2015. The

judgment was handed down January 25th, 2016. And I provided a link to that judgment. And in the judgment, Taseko Mine Limited's claims against us were dismissed with costs and special costs awarded to us. But as I sit before you today, Taseko Mines Limited is appealing the judgment. So in effect, we are still involved in this long, drawn-out court process through no fault of our own except that we chose to participate in the EA public process and to encourage our supporters to participate in this process.

Consequently, I'm here before you today to propose that EA legislation needs to be improved so as to provide protection to participants who may be attacked by what's commonly known as a SLAPP suit or a "strategic lawsuit against public participation" for simply heeding the call of the EA office to submit public comment. Public participants should be protected by anti-SLAPP legislation or given similar powers MLAs have in the legislature not to be sued for what they say or write about a proposed project. I note that Australia has removed the ability of most business incorporations to take citizens to court for defamation and that may be a direction that Canada needs to go to protect people that participate in the EA processes as well as other forms of speech. I believe that the failure to provide this protection results in important information not being heard in some EA processes because of the legitimate fear of some members of the public that they could be sued by the project proponent. And that the EA office would provide them with no relief or protection.

The Wilderness Committee, the organization I represent, is currently paying significantly elevated insurance costs because we participated in the New Prosperity mine EA process and were subsequently sued by the proponent for what we had written to our supporters. Continue to pay. It was difficult to get that insurance, and in the period we were having a hard time getting the insurance, we had to ask ourselves would we continue to say what we really believed to our members and supporters about projects.

Sadly, I am aware that the very same thing could happen to our environmental organization today if some deep-pocketed company decided to take us into court again for what I have written to you and spoken to you in this very submission. This is not just a problem for the Wilderness Committee. This is a problem for all Canadians which, as I had said back in 2012, eats away at the very foundation of democracy and free speech that our society is based on.

Thank you for allowing me to make this submission.

**Johanne Gélinas:** Thank you very much. Would you like to ask a question?

**Rod Northey:** Sure. And thank you, Mr. Foy. You mentioned you have offices in several provinces, and I'm from Ontario and I'm aware that Ontario has some legislation that they passed in the last couple of years to deal with that. Have you reviewed that by any chance?



**Joe Foy:** I have, not in depth. I'm also aware that Quebec has legislation. I'm aware that British Columbia for a very short few months had legislation in 2001. And all of these would be a great improvement of what we have now.

**Rod Northey:** Okay. That was going to be my question if you had any thoughts on its utility to the problem you're raising. Okay, thank you.

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

**Joe Foy:** Thank you.

**Johanne Gélinas:** Our next presenter is Oni Milne(phon).  
Good afternoon.

## **ONI MILNE**

**Oni Milne:** Good afternoon. Thank you for giving me the opportunity to be here now as a Canadian citizen to offer comments to a government that campaigned for real change during the last election.

I am here now as a Canadian citizen to show up, speak up, and stand up to defend my home, my common heritage, and our native land, a supernatural place filled with magical creatures like southern resident orca, the Kermode bear, and wild salmon, and magical places like the Avatar Grove on Vancouver Island and the sacred headwaters in the interior of BC.

In September of 2016, Chris Hall, the host of the CBC radio program *The House*, interviewed Rona Ambrose, the current interim leader of the Conservative party, to ask what her plans were for the upcoming session of Parliament. And one of the questions he asked her was "And what are your feelings about the Kinder Morgan pipeline?" Her response was, "Of course it should go ahead, because it was approved."

So my question to you, esteemed Panel, is what does "approved by the federal government" mean when the National Energy Board, which seems to be a rubber stamp for corporations and their projects, did not allow concerned citizens to offer their comments, did not allow intervenors to ask questions, and did not apparently have to present necessary data to back up their claim?

So what does "approval by the federal government" mean when construction permits for the Site C dam were issued on a Friday before a long weekend so there would be limited public and media interest or awareness?

What does "approval by the federal government" mean when after the Mount Polley mine disaster, where the tailings pond broke and contaminated a

lake and killed fish, that it was allowed to reopen, even though the federal government is responsible for protecting fish and fisheries habitat under the *Fisheries Act*?

What does "approved by the federal government" mean when the Lubicon Cree, who live close to the Alberta tar sands, seem to be collateral damage on the way to corporate profits as the tar sands continue to operate and expand?

What does "approval by the federal government" mean when "in the national interest" always seems to be that our common heritage and First Nations treaty rights are worth less and worthless in comparison to corporate interests? There is no reconciliation here, even though Canada is signatory to the UN Declaration for the Rights of Indigenous Peoples because at the basis of that declaration is free, prior, and informed consent and government consultation seems to be, appears to be "this is what we will do, and this is how we will do it."

What does "approval by the federal government" mean when Norwegian corporations that killed the fisheries in Norway were granted permits to operate open-net fish farms in BC?

What does "approval by the federal government" mean when government decisions have consequences far beyond our borders?

On November the 23rd, there was a news item that the temperature in the Arctic was 20 degrees warmer than usual.

So I'm asking you at this time to use your mandate to change the current game. I'm asking you to ensure that there is a robust and effective climate test to evaluate all the proposals. I'm asking you to ensure that cumulative effects of projects are considered. I'm asking you to ensure that the right to a healthy environment are included in any new legislation. I'm asking you to not only restore but to increase the protections in the — for the *Canadian Environmental Assessment Act*, the *Fisheries Act*, the *Navigable Waters Protection Act*. And I'm asking you to disband the current NEB process, a process that seems to be filled with corporate lobbyists, to answer one of your questions in regards to why there seems to be such a difference now as compared to in the past, and to create a new evaluation panel filled with accredited scientists and citizens who have the needed expertise to evaluate a project.

In Paris in 2015, Justin Trudeau said, "Canada is back" to indicate that Canada is now going to be a full partner to combat climate change. His statement "Canada is back" is meaningless as he and his government continue to approve major energy projects. I suggest that the world is not interested in more rhetoric from Canadian governments that sign treaties and agreements and then don't honour their commitments. I suggest that the Prime Minister is wrapping a fossil fuel noose around our economy and our society as he continues to move forward with the

energy projects even as other nations are moving forward to bring about renewable energy economies. On October the 25th, the *Guardian* newspaper published a report about how much renewable energy has come forward and how many economies have brought it into their systems. Even China is part of a growing renewable energy economy as it tries to combat the horrible smog issue in Beijing.

Fossil fuels are bad business and bad for business. A growing petro divestment movement is a testament to that with 688 institutions, 76 countries, and \$5 trillion as part of the divestment movement. And those institutions include Bill and Melinda Gates Foundation, the Rockefeller Foundation, and as of November 16 Simon Fraser University. What are they telling us? What are they telling you?

Fossil fuels are bad business and bad for business. Insurance companies are now having to pay increased costs because of damages created by climate change: storms, fires, floods. And this will only increase as the effects of climate change increase. So how many Prince Albert oil spills are acceptable before you press the stop button? As of November 12th, only 80 per cent of that oil spill had been cleaned up, and Husky has walked away saying they have done their job, they are no longer responsible. How many Nathan E. Stewart tug accidents are acceptable before you say stop? It took one month for the tug to be raised because of bad weather in that area. And what spilled from the tug was diesel. It was diesel that damaged the clam beds of the Heiltsuk Nation, not bitumen from the tar sands, which would be even worse. And even 20 years later, after the Exxon Valdez oil spill, apparently there is still oil washing up on the shores of Prince William Sound. So how many Fort McMurray fires, Nova Scotia floods, BC floods are acceptable before you say stop, enough?

I'm asking you to change the game, to use your mandate here and now to change the game, to offer us a new economy that fills us with hope and with pride. Citizens are ready for that change. We have signed petitions. We have sent emails. We have sent tweets and letters to MPs. We have shown up for rallies and marches. Citizens are ready. Workers are ready. They have outlined a new plan to move forward for a new renewable energy economy. They are ready and willing. The only link missing is a federal government ready to move forward for a new economy instead of the same old fossil fuel economy.

Mother Nature doesn't care about future dates set aside to deal with climate change. Big Momma — our big momma is letting us know now loud and clear that she is reaching the limits of her boundaries.

So I am asking you here and now to be the leaders that we need to lead us forward to a healthy and sustainable economy for a healthy and sustainable future.

Thank you.

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

**Oni Milne:** Thank you.

**Johanne Gélinas:** Somebody would like to ask a question?

**Renée Pelletier:** Yes. You mentioned you think that what's needed is — one of the things that's needed is a panel with scientists and citizens that would be reviewing projects. I wonder if you could say a bit more about specifically what you think the composition of that panel should look like and what is the composition that would give you as a citizen faith or trust in a decision that that panel might reach.

**Oni Milne:** Well, I would think — well, for me, it would be someone with credentials. I see people like David Suzuki. That's the only name that comes to my mind, but people with credentials who do not appear to be corporate lobbyists, because that seems to be the issue that it is an automatic rubber stamp for energy projects because of corporate interests. And that's what I as a citizen and that's what other citizens are tired of, and that is what we don't want. And that is what we don't need.

**Renée Pelletier:** Thank you.

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

**Oni Milne:** Thank you.

**Johanne Gélinas:** Eric Swanson is our next presenter. No? He's not here?

And what about Carrie Brown?

Good afternoon.

## **CARRIE BROWN, VANCOUVER FRASER PORT AUTHORITY**

**Carrie Brown:** Good afternoon and thank you for the opportunity. My name is Carrie Brown and I'm here to represent the Vancouver Fraser Port Authority. And I'm going to provide you with a short presentation, a bit of an overview about the port as well as some of our key thoughts and recommendations. We've also provided a submission a few hours ago. Not sure if you've had a chance to review that —

**Johanne Gélinas:** We haven't read it, but we have it.

**Carrie Brown:** Okay, thank you. So we have several comments and recommendations in that submission. So I'm going to highlight a few of the top ones that we have.

So very briefly, the Vancouver Fraser Port Authority, we're created under the *Canada Marine Act*. We have a mandate to manage federal lands and waters to facilitate Canada's trade. And we're to do that in a safe and efficient manner while protecting the environment and in consideration of the local communities. We have a job to balance the port operations with environmental protection. We're the largest port in Canada, we're financially self-sufficient, and we're accountable to the federal Minister of Transport. We are required to provide marine infrastructure to support Canada's trade and our nation's role in the global supply chain, but we do not decide what gets to be traded through our port. We ensure that that process is there to move goods safely and in an environmentally sound way. And I acknowledge that many others here have commented on the downstream impacts of fossil fuels.

In terms of regulatory context, we are governed by the *Canada Marine Act* that came into effect in 1998 and the Port Authority's Operations Regulations came in in 2000. Under the *Canada Marine Act*, it gives us the ability to — or gives the governor and council the ability to make regulations regarding safety, security, good order, and environmental protection of the port. We are also governed by the Port Authorities Operations Regulations, created by federal Cabinet, pursuant to the *Canada Marine Act*. The Vancouver Fraser Port Authority is a port authority as identified under that Act and we are — as a port authority, we are a federal authority under the *Canadian Environmental Assessment Act*, and the regulations designating physical activities apply to us as well as Section 67. So we have a dual role in that we are reviewing projects that are non-designated projects, and we are also at times a proponent of projects that go through — designated projects that go through various federal reviews, primarily overseen by the Canadian Environmental Assessment Agency and sometimes some of the projects in our jurisdiction are overseen by the National Energy Board. As a federal authority and a Canada port authority, we also have the duty to consult with Aboriginal peoples. We are an agent of the federal Crown and we've been delegated the authority to manage federal lands under the *Canada Marine Act* and therefore we conduct Aboriginal consultation on behalf of the Crown.

The Port Authority has developed a process that is called the Project and Environmental Review Process. And that's the process through which we review our non-designated projects. So whether the project is led by the port or whether it's led by other tenants or proponents, that review is — those projects go through that project and environmental review process. The process allows us to evaluate the projects on their potential environmental effects and any other proposed project effects, and we make decisions or a determination, and we must make a determination before making any decision that would allow a project to proceed. We submit an annual report to Parliament and annually we conduct over 200 environmental reviews. In 2014, we undertook 265 determinations, 212 in 2015, and this year we're on track to review over 200.

The Project and Environmental Review Process creates four project categories, A through D, that are commensurate to the scale and potential

impacts of a project. Each has its own prescribed steps and timeline that include public, stakeholder, and Aboriginal consultation where appropriate. We have introduced more transparency on our website, so all of our guidance documents and our process as well as — and the outcomes of those projects are all included on our website. And we also have a continuous improvement program. And in 2017 we'll be introducing additional guidelines around compliance and monitoring.

So from our perspective, the Act generally works well; however, we do see that there is greater opportunity for enhanced guidance, greater transparency, and appropriate resourcing. We think that the *Canadian Environmental Assessment Act* could benefit from more guidance in a central location, appropriate resourcing including capacity and training for the Canadian Environmental Assessment Agency or for those supporting the administration of the Act, and greater transparency. We believe that the current designated project list has been working well, and we like the flexibility under Section 67 that allows us to tailor our environmental review process to meet our mandate and our operational requirements.

We, however, would like to see a reinstatement of the registry, the CEEA registry. So under the former Act, 1992, the project — all screening-level projects were posted to the Canadian Environmental Assessment Registry, and we feel that for additional transparency there would be benefit to reinstating the requirement for large, complex, high-profile non-designated projects to be posted to the registry. We also see that there would be greater — we also call for greater support from other federal authorities when requested for non-designated project reviews. This is a requirement already for designated projects, but that's not available for non-designated projects.

And we would also like to see a new regional interagency multi-stakeholder collaborative forum. The port has been an advocate for the former integrated interagency multi-stakeholder groups that were formed here over the past 20 years, formerly referred to as BEEP and FREM. We would be supportive of such similar frameworks, anything new that would be set up to provide such an advisory role and that would be inclusive of municipalities as well as Aboriginal groups.

We would like to see clear mechanisms for initiating, implementing, and funding regional cumulative effects assessments. So the Minister is able to call for regional effects assessments, and we would like to understand and see better mechanisms for how that could take place. We believe that it would have benefit, particularly for many non-designated projects that aren't required to have cumulative effects assessments undertaken, but it could be of great benefit to a region, especially could help to build the trust and could help to include meaningful Aboriginal traditional knowledge in that process. And we recognize that it would take considerable time and be quite complex, but it would be beneficial for a region.

We would also like to see continuation of coordinated Crown

consultation and proponent engagement. So we realize that through many consultation processes there is a tendency for sometimes duplicated or overlapping engagement, and this can lead to consultation fatigue. So some coordinated consultation through the environmental assessment process as well as into continuing permitting processes would be beneficial.

And enhanced requirements for monitoring, reporting, and enforcement would be beneficial, primarily from a non-designated projects perspective in particular. We would like to see more guidance tools and tools would need to be developed.

Another interesting piece is that ports do not currently have the ability to issue monetary penalties for enforcement, unlike most other federal authorities. And so therefore we can issue permits and authorizations that include environmental conditions, and compliance oversight activities could be enhanced if monetary penalties were added to port authority toolkits.

There are also several other comments that we have made, in particular relating to capacity and the need for additional resourcing for the Canadian Environmental Assessment Agency especially. We have provided comments for harmonization and the need for the continuation of inter-jurisdictional cooperation, coordination, substitution, and equivalency. They're fundamentally important to the success of environmental assessment, especially in terms of efficiency, effectiveness, and public trust. We also believe that science facts and evidence need to be paramount. We believe that those decisions need to be based soundly on science, facts, and evidence. And public interest decisions, so those decisions that are made in the public interest, we would like to see additional tools as well as transparency around how those decisions are made and how and what information has been included in those decisions. And greater guidance around best available technology, so introducing more stringent requirements for proponents to provide information about project and site-specific technical and economic feasibility. So especially the feasible measures — economically feasible measures need clarity.

And that's the end of my presentation. Thank you.

**Johanne Gélinas:** Can you give us examples of projects which will occur on the port authority land which will not be a designated project? Just to get a flavour of how big these projects can be —

**Carrie Brown:** Sure. So our most — one of our more recent complex projects has been the introduction of a new grain terminal on the north shore called G3. And the property exists. It's an existing terminal that would be converted to a grain terminal. And it would include additional rail traffic as well as new silos and all new construction on an existing terminal. And it included many layers of consultation as well as several studies to support some of the potential environmental impacts of that

project.

**Johanne Gélinas:** Thank you.

**Doug Horswill:** When there's I guess a presumption that the Port of Vancouver's management likes to get bigger, that the more through the port, the more, you know, the more power, the more whatever it would be — it seems that it's quite easy for the public to come to a perspective that if you are both the proponent and the overseer/regulator, that there might be an inherent conflict. What's your reaction to that?

**Carrie Brown:** We've developed our Project and Environmental Review Process in order to create more transparency around how we make decisions. And we distinguish ourselves in terms of — or arrange ourselves so that the business interests are clearly separated from the permitting or the review process. In addition, we have — we're not unlike a municipality who also makes decisions around projects that it may gain revenues and taxes from. So I —

**Doug Horswill:** There's one very specific and big, important difference between you and a municipality, and that's that we vote for the councillors. Do you think it's sufficient? I mean, Chinese walls are leakable things.

**Carrie Brown:** Uh-huh. We believe that we've developed a process whereby we can demonstrate that we are making impartial decisions and that those decisions are clear, transparent, and based on science and evidence.

**Renée Pelletier:** I guess just your comment about your current inability to impose fines. What do you currently do to ensure compliance?

**Carrie Brown:** We currently have lease agreements in place with those proponents who are operating on our lands, and that is our — through lease agreements, that is one of our tools that we use to ensure enforcement. We can put a tenant on notice if they're not in compliance. So we have a graduated or we're a graduated process for alerting a tenant to when they are not in compliance. And if it escalates, we continue to go up the escalation scale.

**Johanne Gélinas:** Do you report on non-compliance of your tenants publicly?

**Carrie Brown:** We report to our board, but we do not publicly report at this time.

**Johanne Gélinas:** Okay, thank you.

**Rod Northey:** Yes, I'm just trying to get a handle on the interaction between the port management plan or land use plan you do, Section 67 determinations. So if somebody comes forth with a change in their lease or it's a new tenant, is that a



Section 67 and a review of compliance or compatibility with the plan?

**Carrie Brown:** The time that the Section 67 is triggered is when it's a physical work or activity, so which — the leasing of property is not reviewable in and of itself, but the compatibility of that applicant or proposed tenant is something that is reviewed under our land use plan and their — you know, the business interest would also be —

**Rod Northey:** Okay, so sorry, that's interesting. So we have a lease. Then you come up with a proposal post-lease. The proposal, before you give it approval, gets a Section 67, and then you give it land use approval? That's the sequence?

**Carrie Brown:** Well, initially when a proponent comes to the port to want to do business with the port, they would come forward with a plan and a proposal. And if it's a new tenant, then the review of the compatibility with the land use as well as the Section 67 if there was a new project they wanted to undertake, a new activity on that terminal, then it would be considered in parallel. So the project would be going through a project and environmental review process so there would be a Section 67 trigger because we would be receiving a new physical work or activity. And then in parallel, the proponent would be considered for a lease agreement.

**Rod Northey:** Because we heard this morning some concerns expressed by I guess the neighbouring public about a Roberts Bank expansion, and I'm just puzzled. They were concerned that there were no no-go zones on your lands. Is that an overstatement? Are there zones where no one can develop, for example, where migratory birds are. Is that clearly marked out in the plan and that's how it works, so there are in fact zones where you can develop and zones where you can't? Just as a first question.

**Carrie Brown:** Uh-huh. Under our land use plan we have many different categories of land uses. Environmental considerations are appropriate in any of the land use designations. Most of our lands and waters are designated for port or terminal use, but there are specific areas that are set aside as parks, for example, Maplewood Flats as well as CRAB Park, our park areas. We have incorporated habitat classification zones into our land use mapping as well. So whether a property or a shoreline has a high potential or high habitat value, then those areas are largely not developable, but most of the port lands are in fact available for port use.

**Rod Northey:** So okay. All right, thank you.

**Johanne Gélinas:** Thank you very much for having taken the time to present to us today.

**Carrie Brown:** Thank you for the opportunity.

**Johanne Gélinas:** I will look at my colleague in the back. Are we still

expecting — no? So we — it's a no-show? Because it's not 4:30 yet.

**Unidentified Female:** [indiscernible - speaking away from mic]

**Johanne Gélinas:** Okay, so it's finished for today. Okay.

So we have heard all of those who have registered for presentations today.

We have our workshop which will start here at 6:30 — looks like it, 6:30. It's an open event, so everybody is welcome to come, and usually we finish around 9:30. So for those of you who are interested, see you tonight; otherwise, you can also come tomorrow for the indigenous presentations which will take place all day long.

Thank you.

