

# **Expert Panel Indigenous Presentation Session**

## **Review of Environmental Assessment Processes**

**October 4, 2016**

**Halifax Marriott Harbourfront Hotel, Halifax, NS**

### **Expert Panel:**

Johanne G elinas, Chair;

Doug Horswill;

Rod Northey;

Ren e Pelletier.

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**TRANSCRIPTION/TRANSCRIPTION  
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PRINCIPAL(S)/PRINCIPAUX: Presenters:

Roger Hunka; accompanied by Joshua McNeely and Jessica Seward, Maritime Aboriginal Peoples Council; Jennifer Copage, representing Sipekne'katik First Nation;

Melissa Nevin, Mi'kmaq Rights Initiative; Ann Pohl;

Panel Members:

Johanne Gélinas, Panel Chair;

Doug Horswill, Panel Member;

Rod Northey, Panel Member;

Renée Pelletier, Panel Member;

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Review of Environmental Assessment Processes Halifax Indigenous Presentations

**OPENING REMARKS**

**Kelly McGee:** (inaudible – off microphone) Indigenous presentation session for the Expert Panel on the Review of Environmental Assessment processes. My name is Kelly McGee (ph). I'm with the secretary that's supporting the Expert Panel. We have other secretary at staff here in the room and staff at the welcome desk if you have any questions. Please don't hesitate to speak to them. I want to note that the Expert Panel is an independent non-governmental panel and is not part of the Canadian Environmental Assessment Agency.

I also wish to note at this time that there are emergency exits around the room on three of the four sides of this room. And before we begin today, I would ask that you make sure that your cell phones and electronic devices are on silent. And there will be an audio recording of today's presentations and following that there will be a written transcript prepared of that audio recording which will be posted on the panel's website.

Presenters today have a total of 30 minutes to present and take questions from the panel. So I would encourage you to leave enough time in – in that block of time so that

the panel can engage in a discussion with you. If you are presenting today, I know you've checked in so thank you very much. Madame Johanne Gélinas is the Chair of the Expert Panel and will oversee today's discussions.

**Johanne Gélinas:** Merci Kelly. Bon matin et bienvenue. I'm the Chair of the panel. My name is Johanne Gélinas and first I would like to introduce you to my colleagues who also sit on this panel: Renée Pelletier, Doug Horswill and Rod Northey. Renée?

**Renée Pelletier:** So before we begin this morning, we'd like to acknowledge that we're on Mi'kmaq traditional territory and recognize any chiefs, elders or community members that may be in the room.

**Johanne Gélinas:** So the panel was named by the Minister of Environment and Climate Change. Minister McKenna was directed by the Prime Minister to achieve three things through this review process: regain public trust; help get resources to market; and also introduce a new and fair process. The panel's mandate is to consider the goal and purpose of modern day environmental assessment to communicate and engage directly with a broad section of indigenous peoples, interested group, organization and individuals, and finally to develop recommendations to the Minister.

These presentation sessions are an opportunity for everyone to share their views on environmental assessment processes. We look at the CEAA process. We look also at the National Energy Board process and also the Commission of Nuclear Safety – Canada – Canadian Nuclear Safety Commission. Our sessions are opened to all Canadians, indigenous organisation groups, community and individual are encouraged to participate in these indigenous presentations to the panel. You do not need to be an expert to share your view.

The panel website also offers detailed schedule information on how to register for events and many other options for sharing your view with the panel. And I may highlight the fact that soon we will have on the web what we call the Choicebook which is also a way to address questions to Canadians and throughout your communities if you want to spread the word and share that information so that individuals can respond directly to some of our questions it will be more than welcome.

So we are holding public hearings through the country. We have started three weeks ago and we will be traveling until mid-December and wherever we go and you have the full schedule on the web wherever we go we have kind of two days session. One day is public events and the second day is devoted to indigenous communities so we have presentations like yours today and during and in the evening we have what we call an open dialogue session which will take place here tonight. So thank you, welcome, the floor is yours.

## ROGER HUNKA

(Indigenous language – no interpretation) Bonjour and good morning. Thank you very much for the introduction. Yes, thank you very much that we are on the traditional ancestral home of the Mi'kmaq People as well as the Maliseet People and in my presentation I must apologize I spelled Maliseet the old antique way “cite” instead of the modern way, but it's still Maliseet.

Anyways, with me is Joshua McNeely. He's the Executive Director of Ikanawtiket which is a charity working to promote indigenous knowledge and traditional knowledge as well as world views, and also to my far left is Jessica Seward. She's the merged Secretariat which is the Mi'kmaq Environment for Resources Development Secretariat. And so we multitask as well.

I have presented the – the presentation to you. It's in paragraph 1 so in the – in trying to keep time, to keep within that half hour – I go on for hours and hours but I will try to skip through some things. Again, this is a presentation by the Maritime Aboriginal Peoples Council and which is made up of three native Councils: the Native Council of Nova Scotia, the Native Council of Prince Edward Island and the New Brunswick Aboriginal Peoples Council. On behalf of Chief Grace Conrad for the Native Council of Nova Scotia and Chief Wendy Wetteland for New Brunswick Aboriginal Peoples Council, as well as Lisa Cooper, we do this presentation collectively on behalf of those three Councils, and I as the Director of Intergovernmental Affairs for MAPC.

So thank you for providing us the opportunity to present our preliminary views and comments on the matter. They are preliminary views because we will be conducting a series of 23 community meetings from, I guess, finding time during weekends and so forth between now and sometime in January and February of which we'll have more comments and more views that we will share with this committee as well as our comments and views on your preliminary report or recommendations to the Minister. And with the understanding also that I think the Minister or the government will be calling on more consultations possibly to see what the legislation or enactments will be like. So we will be embarking on that.

The Councils advocate – MAPC actually, Maritime Aboriginal Peoples Council, has been around for quite a long time. We were established way back in the early '80s and produced one of our - was called Our Land the Maritimes which is a seminal documentation we – a research documentation on the issue of comprehensive land claims in the Maritime provinces. And the three Councils have always worked together. The Native Council of Nova Scotia works with about 24,900 off-reserve aboriginal people. The New Brunswick Aboriginal Peoples Council works with, oh, about 15,000 and the Native Council of PEI with 1,700. Altogether, the off-reserve population known sometimes as the forgotten people isn't that large compared to the 2 million odd people in the Maritimes, but it is an extensive population.

The Councils themselves organized in '74, '72 and '75 and basically to combat *The Indian Act*. I won't go into the story about *The Indian Act* but we understand that it's one of the last where – or Canada is one of the very last countries in the world to still have an act against people. Most countries South Africa – everyone else has gotten rid of these things but we still carry on that old colonial view of – well, basically imprisoning people, really. How can I say it?

That's slowly changing however not fast enough. And of course *The Indian Act* created a lot of hardship and a lot of tearing apart of families and men and basically women in the '70s. That still has to change. We can't live like this. Our children can't live like this. And so they organized across Canada, really from coast to coast and eventually women again were able to force the government to change in 1985 but also there was a lot of legal cases that Lavallée (ph) and so forth married to Axworthy that made it happen. So it wasn't a beautiful gift from Canada to the aboriginal people, here you are free now. It wasn't that at all. It was a painstaking struggle and we still see that happening to this day. We have the *Deschaine* (ph) case. We have the *McGiver* (ph) case and we have a slowly – *The Indian Act* is – this is being – how we'll say? You can't civilize. It has been – dusted, I guess, somewhere.

We resolved to put an end to the policies of subjugation, disadvantage perpetuating marginalization and discrimination which hold back our communities from their full development of potential as one of the 73 nations of aboriginal people. When I speak of nations, I'm talking about the aboriginal nations of people, the Mi'kmaq people, the Maliseet People, the Passamaquoddy People, the Naskapi People, the Montagnais People, the Iroquois and so forth all the way West, not *The Indian Act* bands terminology. These are the actual nations of this country which I think is important to understand that we do have and it does continue in Canada 73 nations was covered abreast of this geography, the breast of the second largest land mass and water mass on earth that it is. It's still very real in the traditional sense and in a contemporary sense also.

I'll skip paragraph 45 except the model of the Native Council of Nova Scotia obviously is to go forward to the very – and the other three Councils similarly have a similar model of moving ahead. In the kit that got passed by there are two publications that you may find useful. One is a 3D handbook and you don't need to refer (inaudible) – one is a 3D handout which is a document that we produced way back in 1985 to help people understand the Treaty relationship and of course the Netukulimk towards a better understanding. And the concept – it's a Mi'kmaq word meaning – Netukulimk is I'm providing for the wellbeing of myself and my family, my community. Netukulimk, it's a concept that we don't have in English yet a word for or in French. It's the behavioural pattern of how you harvest and what you live or leave and what you take back for your community, yourself and your family.

So you might find these two publications useful to refer back throughout your journey

across Canada. Our Treaties in the Maritimes obviously and you'll hear this – our Treaties are Peace, Friendship and Trade. People like to live out the trade but they are Peace, Friendship and Trade. And briefly we've had – the Mi'kmaq people who have lived with the French for 175 years very peacefully and lovingly. The French approach to this new world was one of tolerance and not possession so much as with we call the term love, and the catholic faith was adopted by the Mi'kmaq with that, but remember (ph) too. And so that hung (ph) of 175 years is a not to – well recorded history in English Canada but it is a very real history both the Mi'kmaq and the Maliseet people too and a lot of our languages have adopted some of the terminologies for French. In Mi'kmaq it's *wengy* (ph). *Wengy* means French.

So you know we're talking about a cow. We didn't have too many cows here until the French came so it's *wengy theam* (ph). It's really a Frenchman moose and so the terminology. So when you hear that term *wengy* and you'll hear that also in the Mi'kmaq language adopting because that was a very important era, around 175 years of peace. Then of course the English came and we've had a period of colonial – colonial rule, I guess, and then from that the ordinances and then *The Indian Act* in Canada itself.

Turn to paragraph – I guess paragraph 6 as I say, paragraph 7. The larger portion of aboriginal people live off-reserve. They're about – in the Maritimes about 23,000 aboriginal persons who identify as First Nations persons and have registration under *The Indian Act*. It's a slow process but are registered as either Status Indian or – they're basically called Status Indians and refer to – I like to refer to the term First Nation and there's about 16,000 living on the reserves. In the Maritimes we have 23 band councils but there's more reserves. Each reserve – each band council's got more than one reserve.

So you can see between the numbers of 41,000 who identify and 23,000 that's about half. So there is a larger proportion that's off-reserve. There is a reason for that: education, housing, opportunities and so forth, and that's the reality. And that's the shift that is occurring across Canada and it should be noted. In addition, to its mandate, MAPC also functions as a leaders' forum for the chiefs and on paragraph 9 we have all of the 30-odd years plus produced in how the number of workshops colloquiums, research, documents, pamphlets and so forth and one document that you may find useful to use as background is – is the Koqaja'taqatineny, is Volume 1 and Volume 2.

Volume 2 is actually the commentaries of individuals, how – what *The Indian Act* did to them and their families. Volume 1 is the summary of that. You already have that, yes, and Volume 1. And there's some startling comments in that about the government's treatment and if you look at them they are true. These are reports from *Hansard* and so forth and basically they're trying to get rid of the Indians. It has always been an issue aboriginal peoples in Canada.

The paragraph 10, I move into the discussion about – we also have provincial policies around that aren't that friendly to aboriginal people throughout the Maritimes. Much of our marginalization and disadvantage and subjugation is the result of federal and provincial government policies, regulations, acts and practices which have their genesis from the failed colonial view about Indians. With the guiding star policy for Indian policy as to who an Indian is, where an Indian belongs and which Indian is deserving more than another. That has not changed. That has being the end-result of – it's been the goal, the failed goal.

It's actually – ironically, if you study politics, it's the only department in Canada to have one goal since colonial times that has successively failed yet has been continued on. Money appropriated every year to the department to promote a failed policy has done nothing for aboriginal people whatsoever. All it has done is – is divide aboriginal people from the promise that is their land, their Creator's land. So it's ironic but it continues. And try to get rid of the Indians, try to kill the Indians is real, and I know people say, Roger, well, you can't say that. Oh yes, I can! If the Prime Minister apologized for trying to kill the Indian in the Indian child – I mean, if I said that to a Ukrainian, I'm trying to kill the Ukrainian in a Ukrainian child or a German I don't know what I am doing. And that's what the residential schools did. And so we have that sad litany in Canada of sadness.

MAARS also operates secretariats for the three Councils, the fisheries, air and body and so forth and there's DVDs and everything else and you can read. If you don't want to read, then you can watch the DVDs. It's 40 minutes and it tells you what we're doing with the fisheries. And of course paragraph 14, I move onto ikanawtiket – which is our charity. And I now turn to, I guess, paragraph 15 is where I'll probably start my presentation.

And I think it's worthy to notice there is a conflict of values and a diversion of interests between the homocentric western-oriented Canadian worldview and the ecocentric Indian nations of people worldview. At the heart of this problem lies the fundamental issue of value perceptions and when we – and this is by professor Pobihushchyý in July 16, 1984 just two years after the repatriation of Canadian Constitution. But it's important to note that that people take that for granted. When we're talking about the environment from an indigenous point of view or an aboriginal point of view or a native point of view, however you want to look at it, whatever terminology you wish to use, all the land is what means something. All the land, we are the creation of the Creator of the land, just as every other creature is.

We are interconnected and interwoven. In English, I guess, you could use symbiotic. We live together. Without an environment, there isn't us, with an environment there is us. So whenever you harm of chart or somehow carve out the sustainability or the life giving forces of the environment you're also cutting out the sustainability of the life giving forces of aboriginal people. And this is so important to note.

Paragraph 16, you know, how do I do this in half an hour? Are you keeping time? He's going to nudge me, all right.

**Johanne Gélinas:** I just want to make sure that we will get to the heart of this process which is EAs and we already have gone through 20 minutes, so –

**Roger Hunka:** Ok, great.

**Johanne Gélinas:** It's up to you to figure out where you want to –

**Roger Hunka:** Well, as I talk about that paragraph 17, and let me just move on to, you know, Canada people don't know what our word Canada means. It's a Place There. It's the Iroquois word and on paragraph 19. Paragraph 20, I'll skip that. You can read the paragraph. Twenty-one: "Each aboriginal person of an aboriginal nation of peoples hold dear in their soul and mind and spirit being a fundamental absolute truth, the ecocentre worldview of aboriginal bonds of what all that is alive, a gift of the Creator".

When we look at the repatriation of the Constitution it's important to note all governments at that time and the Prime Minister Pierre-Elliott Trudeau agreed that there would a guarantee, a section 25 guarantee of The Aboriginal Treaty Right of the Aboriginal Peoples of Canada. At the same time, at section 35, excuse me, which codified and brought into our life again the Royal Proclamation of 1763. The Royal Proclamation of 1763 is an extremely important document. It's – it's the document by which you have provinces or Canada has provinces. This is a document by which you have comprehensive land claims. It's a document by which Canada is backlined (ph) itself, how we keep this – this nation together in the geography that we formed it considering that there are outstanding obligations which are the – part of the honour of Crown land to satisfy with the aboriginal people.

When we look at the Canadian Environmental Assessment Agency and when we look at the – we have to go back and say, well, why are we reviewing all this? Why are we reviewing all this? I mean a Canadian Environmental Assessment Agency, the Act, didn't come in until what? 1992? We had – we had a *Canadian Environment Protection Act*, what? In 1999? So we have a protection act and then we have an *Environmental Assessment Act*, and then we have also in 1992, we have Mister – Prime Minister Mulroney comes back to Canada say, hey, we're the first nation to agree with the Rio Convention and we agreed that we will have a CBD, a Convention Biological Diversity. The Convention Biological Diversity talks about conservation, sustainable use and the equitable sharing of resources. Those are the fundamental three pillars.

And in Canada we didn't have anything until 1992. We had who's who, (inaudible) wildlife service, forestry service. That's about it. So what happened in 20 years? An act disappears, an act falls apart. It didn't meet its goal. When we look at the CEPA

file. I'm going to go to CEPA for just one second. I think it's important. Because I'm not – I don't believe that quickly changing things just for the sake – for the purpose of changing is necessarily going to do anything. CEPA: "It is hereby declared that the protection of the environment is essential to the wellbeing of Canadians and that the primary purpose of this Act is to contribute to sustainable development through pollution prevention, the Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development".

Well, let's see POM (ph), noble words, noble approach. And then we have in 1992, the *Canadian Environmental Assessment Act* which was later on changed 12 years later or 10 years – 2012, "Whereas the government of Canada seeks to achieve sustainable development by conserving and enhancing environmental quality and by encouraging and promoting economic development that conserves and enhances the environmental quality". So we're talking about the environmental quality and the health of persons. So what happened? It's – can we second blow at the same time, the expression goes. Can we have development and economic and then sustainable development, sustainable environment? That is an extreme, extreme challenge, especially if one is for health and quality.

I was here last night or yesterday, sorry in not the evening, during the day time and I heard one of the presentations about White Points (ph) and so forth. But – and the learned lawyer made the point that there was the – The terms of Reference. But actually, if you read that case – read the decision, it turned on the quality issue. The board was very intrigued but the fact that what they were doing was reviewing the fact – what is the quality of that mine? What does it do to the quality of residence in that area? We must remember that we are not an island. We are part of a global community. We have many, many of our relationships with our traders in the south. We have NAFTA and so forth. We have many, many relationships. We have relationships internationally, the CBD and so forth.

It's not that easy just to ignore things. We are run – our fundamental principle which we all agree to is the belief in God, the Rule of Law, peace, order and good government. And so the Rule of Law is important and beliefs are important. And so these things value, that they're all – they're all important. And everybody in this country no matter who they are has a right to seek a permit from anybody to do a project, an activity of works. And the works and the activity in a project should be done in a manner that either respects CEPA, and if it doesn't respect and if we're not sure of that, then we move into another – let's do an assessment of it. But what are we assessing? We're assessing the effects. Yes, it has to change because when you look at the sections from an aboriginal point of view it only touches a bit on aboriginal effects, on aboriginal peoples traditional hunting, the effects on our ecological sites and so forth.

But it's not kept in tune with or up to date with Supreme Court of Canada rulings and decisions. The need to recognize that the assertions of Crown sovereignty can only be reconciled through consultation and recognition and reconciliation of the rights of

aboriginal peoples of this country. That's been declared and dealt with – (inaudible) that's been declared in Haida and many, many cases. What we're suggesting if you need to – and we do need to, I guess, bring CEAA into the modern world while we concentrate on having truly an assessment act. I heard from many – but I'll say yes. It's one we just concentrate on a Canadian *Environmental Assessment Act* that does the assessment, that does the assessment involving all persons, companies. Let's assess the effects that this project or work or activity will have on people and the environment which affects their health.

Let's not worry about development. We have in our can (ph) – we have the powers – let the Department of Development develop and come up with their principles for sustainable development and then we can concentrate on a real assessment. I'm suggesting – we're suggesting that possibly if we want to make this national, while we have a national, *Federal Environmental Assessment Act Process*. And I'm now on paragraph 39. While we want to propose – I want to propose because – propose not to be bold about it, but propose something that's new. Something that has – rings out about history, something that will give our future 10, 20, 40, 50 years ahead say, ok, we have a *National Federal Environmental Assessment Act* and the process.

Why do we need a national federal? Because the lands we cover 23 areas. We have 15 ecoregions and we have bioregions in the oceans. We have ecoregions but we – we worry about the air, land, water and ice. Those four elements, those four bodies are important to us: the air, the quality of our air, the land, the water, its marine life. We're surrounded by three oceans. We have to consider ourselves – as well as the ice. Those are all part of assessing impacts or effects that a development of works or activity will have. And what are those effects? So we're suggesting a *National Federal Environmental Act*. Many persons say, well, why, why, why? Well, we have provincial assessment acts. Obviously, they're not working. They're not supporting involvement. Their people are not involved. They're not funding, support other people – just have no trust in them. They figure they're just – they' just there to promote the developer or promote the exploiter, whatever you can to call it.

So we need a federal leadership and there's nothing wrong with having a *National Federal Environmental Act*. Just take some leadership, just have an act. And the provinces could sign on with an accord. We did that with SARA, the species at risk. You may recall that when we came back from Rio there was a lot people saying well, we don't agree – we don't have anything with species at risk. What are we going to do, you know. So the first thing that happened in 1996, the federal government took the lead and said let's have an accord with the provinces. Let's work together through an accord to say we will develop some conservation measures for species – for species on our lands. And that would – that accord was signed and agreed to by all the provinces and we have a SARA.

Some provinces actually went on to copy and create their own SARA. Many provinces did. They would have fallen back to the federal ones. But we could have a *National*

*Federal Environmental Assessment Act* and the process and I think it could work. It would work.

UNDRIP. We do suggest that UNDRIP has a lot of goodness in it. It's – as you realize, UNDRIP is a guiding document. It's – it's a document that has many good points. It was worked on since 1982 with Erica Diaz (ph) who volunteered her life to achieving that document which was – just achieved in 2007, but the earlier document was really rich and powerful and strong, but when you're working at the United Nations body of 192 states, it gets carved up and chopped up. So when people look at UNDRIP now and think of it, wow, my goodness! It's the end of the world. You say to yourself, if that's the end of the world you should have been there in New York in 1982 and I was. You would have seen what it was then. If it had gotten through that one – but so at – paragraph 5 is important. Paragraph 8 is important.

I would like to see paragraphs 18 and 19 and 20 introduced into the – the Act. The – obviously 32 is the one that is – that brings it all together, “Indigenous people have the right to determine and develop priorities and strategies for development on use of their lands or territories and resources.” And Space Shock (ph) Consultants cooperated in good faith with the indigenous peoples concerns for their own representative institutions in order to obtain their free prior informed consent on any project affecting them.

And I know that's been contentions because many projects have gone through in this country which have not made an effort to talk with the communities be they on-reserve or off-reserve. Nova Scotia is prime for that and so is New Brunswick. They're considered to be 35 issues. Those are the commons. I would also suggest that when we're talking – one of the things that this Act needs if you want to develop it is the participatory involvement of people, to have them empowered, to make them feel empowered.

The – I did present also – you have – I took the liberty to make extra copies of the Our House Convention. This is the Convention of the United Nations Economic Commission for Europe. However, it's an environmental convention and I think that you may find it very useful to review it. But one of the objectives which I think would be very useful to include in the new *National Federal Environmental Protection Act* – I haven't come up with an acronym but I'm sure someone will come up with one. It says, “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate” – now that's really a compromise word, but “adequate to his or her health and wellbeing, each province or so forth will guarantee or can or guarantee the rights of access to information, public participation in the decision making and access to justice”. This will build on the road towards environmental justice which we're lacking in Canada.

I'll wrap up but we must remember that Canada is – has a 400 year history starting in the Maritimes. It's evolved. It's a landmass. The mindset at first was come. There's a great land. There are opportunities, great land, the resources. Come and

make a new life for yourself. And we still have that explorer, that conqueror approach to our forests, our waters and our airs. But I think we're also surrounded by a global community that is in Europe and in other parts of the world. I was looking saying, well, these are finite resources and we need to embrace individually a responsibility.

The ecocentric worldview that we're part of it, if we hurt that we're hurting ourselves, that we have a duty and responsibility to maintain a sustainable environment and the only way to do that is to be involved in that, those issues when something is happening some proposals, a project or activity that will harm.

And one other thought – we need a non-irrigation clause in this document that's going to be prepared, developed. And we also need to acknowledge the – the jurisprudence of the day. On the – I'm running out of time, I know that, but I'll be – CEPA, oh, the *Tahltan* case is an important case to read. It's a case that could have been solved quite easily. But the *Tahltan* people five – people out West in British Columbia very simple had a claim for many, many years but the government refused to acknowledge that.

And the Supreme Court now which was, you know, a very astute body of jurists today, probably the best we've ever had in this country said, look, British Columbia said I don't want to deal with it. They refused to even consult. So you can just see the mindset in jurists in this thing, you know, find – they have one sentence for – not even one sentence. It's three words for British Columbia in the whole decision, because that's how arrogant British Columbia was towards these people. So that's three simple words. And then they went on, they say fine. If you don't want to deal with the issues we'll deal with the issues. We have time and time told you, we don't want to carve up your provinces. We don't want to tell you what is really aboriginal lands and is not.

That's not for us. You need to reconcile that with aboriginal people. We've said that constantly. So in that case we are – we're chunking out. We're chunking out a bit of British Columbia – not much but you take out about a quarter of PEI that's a fair amount of land – and now it belongs in perpetuity and those resources to the *Tahltan* people. And that's – that's the pattern of what's going to happen across this country. I mean it'd be – to refuse that reality is silly.

With that, you'll have time to read this on the plane and so I hope that you'll read the first four in Canada to chart out a new *National Federal Environmental Assessment Process or Act*. And that will live for 50 years or a hundred years. Thank you very much. *Wela liqy*.

**Johanne Gélinas:** Thank you very much Mr. Hunka for your presentation and I also thank you – your colleagues. Now I understand why you asked us if we had a plane. We will need a bus for sure.

**Roger Hunka:** And we also have bags for you so you won't – these are

ocean-day bags where we do a lot for Environment Day so instead of shopping with plastic you'll be able to carry them in – they're cotton bags.

**Johanne Gélinas:** You have thought of everything. Thank you very much.

**Roger Hunka:** And someone told me they're good for 50 cans of beans.

**Unknown:** I've tested that personally.

**Johanne Gélinas:** Thank you. Before we get into the EA stuff, I have a question for you. You represent the Maritime Aboriginal People Council. We have tried to outreach as much people as we could here in Nova Scotia. You are the only one doing a presentation. Have we missed someone? Have we missed something? Is there other ways to reach out to the indigenous groups here in Nova Scotia?

**Roger Hunka:** Well, I can't speak for all but I know them all. I mean if you've – if you've sent correspondence to the band councils themselves and their chiefs, that's one way of getting the 30 band councils to respond. The other one is they have also organizations, regional organizations, the KMK, which is basically a supportive group of four elderly (ph) of the various band councils. So if you've reached out to those groups and the Atlantic Policy Congress which is another group that's – has a phone number and address, they should respond because they are mandated to support and work for their communities.

I must in fairness say we were caught off guard a bit. It is sort of a fast process especially for – we don't have subways here in the Maritimes so we don't run for the cars and so – not that we're slow moving but we say, well, that's fast, that's fast. So I think the process may be just a bit too fast for some to collect their thoughts, talk to Elders and so forth. So – unless you've been really steeped in it, it's hard. We were able to mobilize because we do have Ikanawtiket and our three Councils have been involved in countless EAs and NEB boards and also FAC (ph). We're all over the place so we – we have to live in two worlds so we understand it so we move that much more quicker probably.

**Johanne Gélinas:** And you have mentioned also that you will get back to us after your consultation with more views, I guess. Would it worth reaching out again to communities here saying that that was not the only option to talk to the panel but if they want to do any kind of consultation or take the time to go through the analysis then they can get back to us by end of this year?

**Roger Hunka:** Well, I think so. I think when you by the time say November, December passes, you'll have a fair idea where you're going. It might be useful at that time to, you know, let people know that before you do your file report or even after you do your report, that it's still open to amend (ph) the momentum and so forth. Of course, we'll still want to talk to you. We'll still want to hear from you because all

process of reconciliation is consultation and it's not understanding – understanding. Indigenous people, aboriginal people in the Maritimes are not against anybody. I mean we're the ones who's developed our signed Treaties of Peace and Friendship and Trade. We know we have to coexist and trade is an important element. So we work together. So I think that'd be a useful exercise to have.

**Johanne Gélinas:** And you mentioned rightness at the beginning of your presentation that this is not the formal you (ph) to consult as you understand it. This is really pre-consultation trying to extract as much views as possible to come with a first document which will be a recommendation document, so there will be other possibilities to react and express views.

I would like to start with your paragraph 46. And you may not have the answer to my question right now, but for sure as you will be consulting with your communities this is something that we would like to get more understanding. When you talk about – you said, “The government has a legal obligation to support a complete, meaningful, honourable consultation process”. When it comes to project which will go through an EA process, how do you see the steps? And where does it start? And where you want to be involved? And what do you need to do a proper analysis of a project?

**Roger Hunka:** Well, as soon as a proponent goes to a government agency no matter what it is. It's forestry or – or the mines or utility board, anybody who goes to that body is obviously saying “I'm looking for a permit to do something”. They have an idea what they're going to do. They're going to have a project description, a brief even if it's a two-pager. At that time, the provincial government and the federal government – because our Federation, both governments, and I know in '92 make up Canada. And so they have a legal obligation to contact the aboriginal communities on- and off-reserve and say this is a project happening. This is the – this is the description of it. Do you have concerns, comments, views, issues that you want to present or ask the proponent?

Once that starts, that ball starts, you'll get those things happen then consultation occurs. But when you have – don't have that, I know Nova Scotia takes his hands-off policy, but we don't want to interfere. Well, what do you mean you don't want to interfere? You're the one who issues the permit! If you – and you're the one who may collect the fee. You're the one who's going to collect the royalty whatever it is. You do have a legal responsibility. I mean the Supreme Court in *Delgamuukwý* and *Van der Peet* and then of course *Haida* and *Mikusupre* (ph) have made that very, very clear. You do have the responsibility, not another agency, not a board, not someone off the street. The government of Nova Scotia, all ten governments including territorial governments and the federal government have that duty because of the honour of the Crown. New ministers are ministers first ministers of the Crown! Not second or third. Your first ministers I'd say are ministers of the Crown so you have that honour. You uphold that honour. That's the basis of our 25 in section 35.

**Johanne Gélinas:** And on the ground, how that happens? Do you have the provincial authorities which will go and consult you and at the – in parallel at the same time you will have the federal government? Or there is a kind of working-together plan to consult you the proper way?

**Roger Hunka:** That's why I'm suggesting get rid of all the provincial ones. You have one national one. We have a National Safety Transportation Board. We have a National Energy Board. We have many, many national boards, aviation boards. We have many national boards. For the environment, have one *National Act* and one national board that deals with all the environmental issues across – environmental issues that deal with the waters, the oceans, land, air and ice. And the provinces will love it. I mean Nova Scotia, New Brunswick and PEI are bankrupt. So they don't have any money. Newfoundland has some but they're hiding it. But anyways, so they would welcome that and you have – there's tons of experts. I mean even yesterday I saw them just coming out of the room. You use professors, all kinds of people. You have people who did oil and gaz. You have all kinds of experts that would buy their time. It's an industry. Environmental assessment is an industry but it's an industry for a common good, a public good.

**Johanne Gélinas:** Thank you.

**Roger Hunka:** So I'd do that.

**Johanne Gélinas:** Renée?

**Renée Pelletier:** So first oui et merci, thank you for your presentation. A couple of questions. I wanted to start just by understanding a bit better how currently the federal government is consulting with off-reserve people. So in a federal environmental assessment is the Crown contacting your organization or are they leaving it to the individual First Nations to reach out to their offers of members? Is anyone getting in touch with the people who are not on the band list, so to speak? How is that currently happening?

**Roger Hunka:** Well, to the credit of the Canadian Environmental Assessment Agency and Bob Holman (ph) because I've corresponded a few times with him to sort of correct a few things like you know every violin needs to be tuned once in a while. We do get direct information if it's a federal CEEA environmental assessment. They will contact us directly the three Council or MAPC that there is a project happening, a brief description and then we take it from there and there is where Jessica gets in and meets the people, talks and starts the – But it's – we get – the problem on the other hand, it doesn't do anything. It has a consultation process but not with us. It says – it's a hands-off thing.

So you have provincial assessments that occur in the vacuum sometimes. You get the site and so I waste my time and money – Jessica but she needs the money to go through every morning looking at the sites, what's coming up, monitor the sites. So

that's about the best way to – other than that there is no direct ring-ring from a province to say by the way we're doing – and I think that's sad. It shouldn't be happening.

**Renée Pelletier:** So then – just to pick up on that. What happens when you discover a provincial project that, you know, you haven't been notified of? Did you sort of insert yourself in that process and will the provincial Crown consult with you?

**Roger Hunka:** No. I just said the province – they're out of it. They don't want to talk about it. We will then directly work with the proponents. Most – 99% – of proponents they're in business. They want to get something happening. We've found that we'll invite them to our offices. We'll invite them to explain their project clearly. We'll invite the chiefs if they need to be invited. We invite the different – if it's employment people or national resources commits (ph) that we have and they'll come to a meeting. They'll sit down and spend three, four hours the first time. They'll get more information you have but it's the same materials and you know they'll explain it back and they'll get back to us with some answers. And so we do that. Well, actually most of the projects that have gone through have been with us directly dealing with them. The province doesn't have a clue about what we did.

**Joanne Gélinas:** Can I just add one question on this one? Should we assume that the proponents are not even aware that they have to contact you and to sit and talk with you? So you are proactive because they are somehow ignorant of what they have to do with you?

**Roger Hunka:** There is a – there is a policy statement issued by the Province of Nova Scotia. It was the consultation process. However it just lists the – KMP process itself. It doesn't say the individual bank accounts. They did it before but probably doesn't now. And it says you may wish to discuss this with the Native Council of Nova Scotia. That's for Nova Scotia. PEI has nothing and New Brunswick has nothing. So it's just the one liner.

**Joanne Gélinas:** So they don't even promote – I mean the government, the provincial government doesn't even promote the need and the importance of contacting aboriginals?

**Roger Hunka:** No, it doesn't. It doesn't promote at all but – I don't want to take up this time but there is a whole reason why it doesn't. And it has to do tremendously with the fact that Nova Scotia is a real – if you look at it from a broader perspective is a tenant government on Mi'kmaq land. That's another story.

**Renée Pelletier:** Just another question about UNDRIP. So as a panel we are trying to figure out how to implement the principles in UNDRIP in our recommendations, and I'm wondering if you have thoughts on how UNDRIP could be reflected in a new federal environmental assessment process?

**Roger Hunka:** Well, as I said, there are paragraphs in there that are – are very, very important as a said a number – 18, 19 and 20, if you could incorporate those, and I’m sure there is enough wordsmith around to play with those, to include those either in the preamble of your *Federal National Environmental Assessment Act*. Preambles are important – or within sections of the Act itself. Indigenous have the right to participate – so you know, that decision making can involve all – no, all Canadians have a right to, that’s why I gave the Harris (ph) documentation. All citizens have a right to participate in decision making matters which would affect their lifestyle, rights and so forth.

You could mold those words. I’m not here to draft it but you could mold those words and – I’ll draft it, but I mean that’s another story. But you could use those lines – that language in the intent. And the same thing goes for 19 that it’ll operate in good faith and “all persons are offered in good faith when they’re working on a CEAA or an environmental assessment, as well as indigenous people have the right to maintain and develop a political”.

Those – that language is the inclusiveness that you want to build. You need to – you can’t say “please, trust us”. You know, this – this – a lot of people are running away from governments from a whole range of reasons, but you don’t bring about trust by saying “trust me”. You bring it about by saying, well, here are the processes that allow for openness, allow for transparency, allow for participation within that decision making, that allow for – as your pal is doing – I mean you’re listening to everyone to – well, we’re here to hear. Yes, you have to correct it on point. We can’t go off point, but – and if you open that up people will – will trust and will look at the overall.

The other thing that I want to mention – I know it’s aside – social licence is something that you must begin to tackle with and understand its complexities. But as I said, I think the best approach is to start with a kind of federal – a national federal environmental assessment process. That’s what you want to deal with. Focus on the assessment. Don’t worry about the other parts. They will fall in. They’ll have to fall in.

**Renée Pelletier:** Just – thank you. I guess one last piece of homework maybe for you is that in your consultations with communities over the next few months, one thing that I would invite you do discuss with them and encourage you to discuss with them is maybe how specifically the principles in UNDRIP like the right to be taking part in decision making where rights are potentially impacted, and of course the right to free and informed and prior consent. Where we would fit that in to an environmental assessment process? You know, how can indigenous people be a part of, not just be consulted but be a part of the decision making? And what does that look like? So we would definitely welcome, you know, your thoughts as an organization and then communities that you represent as well.

**Roger Hunka:** Ok, I’ll make a note of that.

**Doug Horswill:** Ok, my turn. People in the West have a slightly different view of the federal government than people in the Maritimes. So when you prefaced (ph) your concept to the national act and process, what contact, what communication, what consideration have you given to the diametrically opposite perspective that we will face or that we could face in the West as opposed to the Maritimes?

**Roger Hunka:** Well, I don't know. I mean I know that the West was opposed to a national energy – back in Mr. Trudeau's era, Pierre-Elliot Trudeau's era. But I think on the environment, I truly believe that I think that Albertans what they've seen of their province, what they've seen of hydro-fracturing, what they've seen of the oil and gas industry, what – how they've been suffering as well as life quality – I think when we talk about an *Assessment Act*, we're talking about everybody in this country having an opportunity to live at least breathe clean air, drink clear water. The sustenance is the fundamental elements of a human being living.

I – I don't think so. I would think that probably they'll be the first ones to jump on board. I would say, you know what? Let's do that because we've got a lot – let's keep a blamed (ph) a provincial government more than they do a federal government sometimes vice versa.

**Doug Horswill:** Ok. So your point then is that that's what you expect based on the logic of the proposal, but you haven't had – you haven't broached that – this idea in – in any format with your – your counterparts or colleagues?

**Roger Hunka:** Well, for example, we have – we are an ocean province.

**Doug Horswill:** Right.

**Roger Hunka:** MPAs is a prime example, Marine Protected Areas. If I mention that to an Albertan, they'll say who (inaudible – cross talk)

**Doug Horswill:** – would have a different view.

**Roger Hunka:** Pardon me?

**Doug Horswill:** British Columbian might have a different view.

**Roger Hunka:** British Columbia, but Alberta, Saskatchewan would say well, it's a bunch of water. We don't really care but we have the fishing interests here. I would say, well, you know, it's – so it's presenting it as an assessment of an act. It's an assessment with involvement of the provinces. That's why I said one of the things to do is think about the act and get an accord. And I would think that the ministers even and the premiers they meet together would not object to an accord to work towards that.

**Doug Horswill:** Ok. Let's talk about the accord for a moment. One place where one sees that in – in action is related to the offshore board here and in Newfoundland. Does the – I know that – the scope and nature of those organizations are different than what we're talking about, but does that institutional structure offer some guide – guidance in relation to how we might think about this institution that you are proposing?

**Roger Hunka:** The – the C-NSOPB and the Newfoundland, those boards were established through an accord where the federal government said it's – this is our resources and the provincial government says, no, they are our resources. It was a matter of agreeing to disagree. So they said, while we disagree who own these resources, let's get together to develop them. That's why they formed both and a third one that never really took off in BC. That was the rationale for having the accords on these boards. And the boards have – are charged with promoting hydrocarbon development in their offshores. That's their *raison d'être*. And so they have to do that. So I would say they're more or less like an economic development engine.

**Doug Horswill:** Understood. They're doing a different job but I'm talking about the structure.

**Roger Hunka:** But, you know, I think your structures – there are so many different ways of structuring. I mean you can have a – a multi-panel. You can have a panel that works quite well for these major projects that you have a federal, the national federal national processes, member with a provincial – member of whatever the engine might be – energy, electricity, whatever sitting on that board. It may be an expert. I mean, Admirals (ph) Accord is a prime example where you have a judge but he doesn't know everything so he brings in a captain to sit beside him and citizenship the same thing, you know. So you have a whole range of a panel with a – well founded so that you have a panel but you also have the young, the expertise, the young students, the graduates from universities who know about these topics as well as experts who've been in the field. Draw them in and see what's happened with the project. Because you're assessing its – you're assessing the impact of that project. That's what you're trying to do, the effects of that project. Not that you're going for or against it. That's the problem. Many people think –

**Doug Horswill:** Right, I understand that. Ok, that's interesting. So it's possible. I mean that structure you're describing and the reason why those things were set up, you could see a parallel in relation to the environment which is not constitutionally picked one side – so the same arguments could occur so maybe the same structures might –

**Roger Hunka:** And they do have a federal rep, a provincial rep and an industry rep on those boards.

**Doug Horswill:** Ok, so we could look to some degree for guidance. On – in the manner of proponents coming directly to you in relation to provincial projects, do you support or otherwise the notion of impact benefit agreement type – contractual relations between First Nations communities and proponents? Is that a vehicle that in your view has had any –

**Roger Hunka:** It is a vehicle that's being used more and more now – impact. It's – from our perspective we like to use it from – for looking at the employment opportunities, the training opportunities to develop that underdeveloped human capacity. And so we find it's much more beneficial and productive to use it that way. They – many companies don't have a big slush fund of money, you know. So when we're looking about the educational element, setting up scholarships and stuff, impact benefits are affected.

**Doug Horswill:** Last question. You talked about the – the Convention Biodiversity and then the sustainability issues that came out of that. Sustainable development has this notion of social environmental and economic. I think your point was that within CEAA or within environmental assessment we should leave the economic out, let that be then – you were projecting the notion of sustainable development. You were saying this agency and that agency. Is that correct?

**Roger Hunka:** That's right. You're – exactly. Leave that to – that development agency that should deal with policy. The government says this is what we want for development (inaudible – crosstalk) assessment.

**Doug Horswill:** Ok. So it's just the way you get to sustainable development as opposed to the concept itself that you were – you say it's the vehicle you use to get there –

**Roger Hunka:** Yes.

**Doug Horswill:** As opposed to rejecting the notion.

**Roger Hunka:** Exactly, exactly.

**Doug Horswill:** Ok. Thank you.

**Rod Northey:** Yes, thank you. I'm trying to – I'm just trying to understand a little better on taking a specific assessment. So let's take something more recent. You say you get notice of a project from the CEAA Agency. I just wanted to follow up with what happens after that. Do you have some examples where you would say that – you could say the process is working well or the process is not working. What happens once you have got a notice in recent years from the CEAA Agency about a project?

**Roger Hunka:** Well, for example you would get Shell and BP right now in the offshore doing explorations – one is actually into drilling mode, drilling exploratory wells. They had an environmental assessment process. They went through it and it was supported by the Canadian Environmental Assessment Agency – so many of them. I think to go on consulting work with them. And so they did. They did well. They've been actually very good in reporting back and advance with their two drilling projects. The BP is on hold right now because of – from – they're sort of following the thing. So those two offshores have been work – they worked out well with the – as I said we don't – Energy East is one which was NEB driven and again Canadian Environmental Assessment is helping them with participatory funding so that's what they have then. Now, once you're in there if you have the capacity then it's – it's one (ph) on working. There isn't – that's – that's the big thing. You – I see this board as being conductors. This is how the music is supposed to sound. You have to work it out on the ground, because you're the developer. You're the community at stakes. You have the interests at stakes. We're all part for a living environment but you have the biggest interest or the biggest stakes in that interest.

**Rod Northey:** Just one further question then on – I understand the issue of the employment and I understand the off-reserve nature of what we're talking about, but how does your membership relate to the question of use of lands, traditionally use of lands. Your members, I assume, do have that. So how do you – do you work with First Nations directly? How – how does the interaction go when you're going from all the way down from the federal government through you to finding out how people are specifically affected? What's an example of something recent where your membership has been affected and you've been assisting as sort of the liaison?

**Roger Hunka:** Well, one example is – back in 1986, the Supreme Court of Canada ruled in the *Simon's* decision that it indeed the Treaty of 1762 is in effect and is an existing Treaty. The problems at that time were away – they ran away. The Grand Chief at that time, Donald Marshall, Senior, made a Proclamation that he asked all of the aboriginal communities on-reserve, the bands as well as the native council at that time to formulate their harvesting regimes, that's being a MAARS (ph) regime. Because he did not want to have people saying these are a bunch of Indians running around in banks (ph) and streets (ph) something, you know. This is the concept.

So we developed the regimes, aboriginal harvesting regimes and in that booklet of native councils you see it's called Netukulimk. So they have a harvesting regime. Some of the bands have theirs. Some – some didn't. They went with just their band card, say (inaudible) that band card. We report everything else to the province. Actually, depending on what government it is, the first few governments received our reports about how many do you got and everything else. These – these last ones, they don't really care what you do.

Last one example – the other one is fishing with the *Sparrow* (ph) decision and then of

course you had the *Marshall* decision, but the *Sparrow* decision in 1990, and 1991 the Aboriginal Fishing Strategy came about from that Aboriginal Fishing Strategy came about the Allocation Transfer Program which allowed for the advancement of more aboriginal people into the communal commercial fisheries where they – as again the court said, well, the Minister has enough in his tool chest of licences, permits, leases and – I forget what else it was – four elements – to accommodate aboriginal people across this country to access the resource. And so we've done that through our (inaudible).

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

**Johanne Gélinas:** Mr. Hunda, thank you very much. Thank you for both of you. We have a lot of reading to go through and we are looking forward to get your written submission.

**Roger Hunka:** Thank you very much and we'll be here for the rest of the say so if you have any questions you're more than welcome to ask.

**Johanne Gélinas:** Thank you. We will – we have another presenter, so Jennifer Copage. You can come in and join us. And if we don't have any more presenters we will resume until tonight for the open dialogue session.

**Doug Horswill:** Could you send this electronically?

**Roger Hunka:** Yes.

**Doug Horswill:** Thank you.

JENNIFER COPAGE

Good morning.

**Johanne Gélinas:** Good morning. And speak through the mic.

**Jennifer Copage:** Good morning. Ok. I'd like to thank the panel for my on-the-fly presentation. I just wanted to –

**Johanne Gélinas:** Just speak in the mic and louder, please.

**Jennifer Copage:** Ok. So my name is Jennifer Copage and I am here representing Sipekne'katik First Nation also Shubenacadie. So I just wanted to give some background on the ground how it is in Nova Scotia. As you're aware, the treaties in the Maritime provinces are quite different from treaties out west so that's important to

acknowledge in our area, and also consultation in Nova Scotia the way it is set up in the early 2000s an aggregate was formed to represent all 13 First Nations in consultation in Nova Scotia. So the Made-in-Nova Scotia Process or the Mi'kmaq rights initiative which is administered by KMKNO.

In 2013, Shubenacadie opted out of that process and chose to start a process of their own community-based consultation for various reasons. So I just wanted to – the panel to know – you had mentioned Johanne about no presentations today and I just wanted to address that comment. It's very difficult with little capacity to be able to on short notice to compile all our concerns and into, you know, and present them. So I'm just here to make that comment that we are working on – but it's too early yet for our comments. So they will be forwarded in December for your review. So I just wanted you guys to know that First Nations in Nova Scotia are extremely interested in this process and it's important.

One thing is to talk to the people who are impacted by projects is key. And we have examples in Nova Scotia of projects where that has not happened and one is Alton Natural Gas storage projects as you may be aware. And I just wanted to also draw your attention – yesterday was Treaty Day in Nova Scotia where historically the province and the Mi'kmaq come together and re-acknowledge those treaties. And for the second year in a row, Premier McNeil has not attended those ceremonies. So that's very concerning and he is the Aboriginal Affairs Minister as well, so that is concerning. So those are my comments just to give you what the landscape in Nova Scotia really is. Thank you.

**Johanne Gélina:** Thank you very much. Can you say a few words about your consultation process with your own communities.

**Jennifer Copage:** So we have sought funding from the federal and the provincial government of Nova Scotia to create a community-based consultation process. So actually next week we're doing community engagement to start that process and it will be reflective of the values of band members of Shubenacadie.

**Johanne Gélina:** If ever you can come to us with more detail examples of how the consultation process faired (ph) to address your concern to have you involved on specific projects that might be useful too.

**Jennifer Copage:** Ok.

**Johanne Gélina:** Questions? No. So thank you very much for having taken the time.

**Jennifer Copage:** Thank you.

**Johanne Gélina:** Excuse me. We will resume for probably all morning. If we

have newcomers in the afternoon we will make ourselves available otherwise you are all invited to the open dialogue session tonight at 6:30 if I'm right but I have to check with my colleagues. 6:30? 6:30 in this room tonight. Thank you very much and have a good day.

## **AFTERNOON SESSION**

**Johanne Gélinas:** Melissa Nevin, thank you very much for being with us and who will continue the presentation of today under the Aboriginal Event. And just for you to know because I don't think you were with us this morning. We have also tonight this open dialogue session where you are more than welcome to join us. So the floor is yours.

## **MELISSA NEVIN**

Ok, I just want to start to give a little bit of background of Nova Scotia and where we are. We had initially start – signed an umbrella agreement. I believe it was in 2007 and as part of that umbrella agreement we decided to develop the consul – the terms of reference for the Mi'kmaq Nova Scotia-Canada consultation process. So we have terms of reference on consultation in Nova Scotia on this and this document was ratified in August 31<sup>st</sup>, 2010. It was signed by all three parties, including the Assembly of Nova Scotia Mi'kmaq Chiefs and the Province of Nova Scotia and the Canadian Government. It was signed by INAC so – whatever. They're called now the Indigenous and Northern Development Canada.

And – so the terms of reference was signed by all three parties, the eight outlines, the step-by-step process for consultation in Nova Scotia. The process is – includes the 11 Mi'kmaq communities in Nova Scotia. It's an optional yet preferred process for Nova Scotia and for the assembly of Nova Scotia Mi'kmaq Chiefs. The purpose of the tour is to assess possible infringements from the Crown decision or actions to minimize impacts on rights and title to accommodate the Mi'kmaq, and yes, to work through that through dialogue, Mi'kmaq consultation.

There is approximately 300 projects that we're working on just to give you a context of Nova Scotia. They're broad – broad scope projects, policies procedures, all sorts of different types in mine (ph) renewable legislation we're consulting on various things in Nova Scotia and they're in various stages of development. So we have projects from the beginning, projects that may have been approved that were continuing to consult on, but to focus on CEAA we had worked on I'd say about six projects that included CEAA.

The first one that I want to talk about was the Maritime Links of Sea cable which was a screening. That went through. That was – that was in initial stages of when we first

started dealing (ph) with CEAA in a preliminary way. That – EMERA did a quite comprehensive document for that project. We reviewed it and we provided comments because we have a good working relationship with EMERA a lot of our recommendations that we provided for that were encompassed into that document. So they did a Mi'kmaq ecological knowledge study as well as a Mi'kmaq fishery study. We recommended both and they did both.

So – and we had a lot of back and forth with that proponent on potential impacts of the crab fishing and we continue to have those conversations. We developed an IBA or an MLU and IBA with EMERA for this project and we continue to work with them on that project. The second project that we worked on which was of – I'm not – I think it was under the old process which was Donkin Coal Mine and that was a full EA. So we participated in that. We subcontracted a consultant to review that for us and we provided input. With that project we also developed an IBA – well, an MLU (ph) and an IBA. That IBA has just been finalized this past year because this project switched proponents so that took a long time even though we initially started this around I'd say 2008, 2009. So we're – we're continuing to work on that. That project has not proceeded yet.

And there – we worked with the company as well on the wetland component of that and they worked out some wetland research component for that project on top of the Impact Benefits Agreement so one of our groups which is the Unama'ki Institute of Natural Resources, they will be doing some wetland research within the Bras d'Or Lake as part of that funding that's coming from the proponent. So that was part of the consultation and part of the discussions that we had with the proponent. And, yes, we continue to work on that.

The third project that we worked on with the Canadian Environmental Assessment Agency was the Shelburne Base and Exploratory Drilling Project. That project is by Shell Canada. We participated through the CEAA process. There was – we recommended a fishery – a Mi'kmaq fishery study which was completed. We were satisfied with the work that was done with regards to this fishery study. However, we were concerned about this project and the location of a capping stack that was either – it was going to be in Europe somewhere. We were – the recommendation by the Assembly of Nova Scotia Mi'kmaq Chiefs was to have the capping stack located closer so that – because it was something like 20 days before they could mobilize this capping stack. So we wanted to – what's that? Ok.

**Unknown:** (inaudible – off microphone)

The capping stack is – I don't know if you're familiar with Macondo or the deep-water rising (ph), drilling accident in the Gulf of Mexico, the Gulf of Mexico. So when that project – when they had that incident, there was a whole set of things that had happened that I'm – I really cannot speak to, but what happened was they were required – because they couldn't close off the – the – to stop the flow of the oil –

**Rod Northey:** Capping stop?

**Melissa Nevin:** No, capping stack. So the cap – capping stack is something that BP built to stop the flow of that, of the oil coming out of the drill site. Ok, so it's called capping stack. So we had requested a capping stack to be placed closer to Nova Scotia so that it could be mobilized in a shorter – shorter timeframe. So there was a lot of back and forth between our office, the Canadian Environmental Assessment Agency and the proponent. When that recommendation was made I don't think there was a clear understanding of the capping stack and what was required and that a special ship would be required to transport it and that it was a whole industry within itself and that it needed to be monitored.

What we were able to do was short – was work with Shell and CEAA and the Canadian Nova Scotia Offshore Petroleum Board to shorten that period from 21 days to something like 14 days. But that doesn't alleviate the concerns totally of the Assembly of Nova Scotia Mi'kmaq Chiefs. Those concerns are still outstanding. So I'm not sure how to, you know, reconcile that based on, you know, a project being developed and the risk of that project. You know, because this is a deep-water drilling exploration and you know an incident did happen. So I can see that a lot of our – the Mi'kmaq people in Nova Scotia are concerned. They did drop the riser. There was an investigation of that and what happened and why their riser had fouled (ph).

So there was an incident that did happen. Fortunately, it wasn't catastrophic so you know Shell and the Canadian-Nova Scotia Offshore Petroleum Board are continuing to work with the Mi'kmaq to sort that out. But we were very concerned about how long that takes, because something like 21 days, 14 days of oil going into the ocean is of concern. So that's what happened with that project. There was a lot of back and forth with CEAA and that's kind of where we ended because it is consultation. It is a two-way street.

Yeah, so that's kind of where we came from but the Mi'kmaq – the Assembly of Nova Scotia Mi'kmaq Chiefs are a very process-driven body and they were able – even though they were still concerned about that they still had outstanding environmental concerns, they were able to sign an MOU and a good-neighbour agreement with Shell. So they signed an agreement and worked with Shell on that.

The fourth project that our office worked on was the Black Point Quarry Project. So we went through CEAA 2012 with regards to that. We had some concerns, and we still have outstanding concerns with regards to wetland but that will happen as the project goes along and we'll work with the Province of Nova Scotia to – to address those wetland concerns. Our major concerns with the project however were that a Mi'kmaq Lodge Home Knowledge Study was completed but what was lacking was the study of potential impacts to fish or our Mi'kmaq fisheries. So we had recommended a Mi'kmaq fishery study early on.

One of the issues was that the proponent didn't take those recommendations seriously. So what happened in the back-end of the project is that it ended getting tied up at the end because there – we didn't have enough information to say, ok, we don't – to say whether the project was going to impact on Mi'kmaq fishing activity or not because there just wasn't that information. The studies weren't complete. There wasn't enough information there for us especially for the food, social and ceremonial fisheries. And so there was a lot of back and forth with that project. Eventually, we had – we had got the proponent to complete a Mi'kmaq fishery study.

But what happened was is that because of the regulatory timeframes, they had to approve the project before the study was completed, the studies in draft form so there is – we had no play – there is no real way of having the study complete and have those concerns or really know what those concerns were prior to the approval. So it kind of left us in a gap and we're now – we're going to have to figure out how that's – how we're going to remediate those concerns or look at those.

**Johanne Gélinas:** What is that last project? The one that you're talking about?

**Melissa Nevin:** The Black Point Quarry Project (inaudible – off microphone). It was – we could have the fishery study complete.

**Rod Northey:** Is it a federal or just provincial liaison?

**Melissa Nevin:** It was both.

**Rod Northey:** Oh, it was, ok. Thank you.

**Melissa Nevin:** (inaudible – off microphone) the province and the feds before the fishery study was complete and it's because of the way the regulatory timeframes are it ended up that way. There are subsequent approvals but it would have been my preference that – that this work be completed prior to the approval so that we can make sure the proper mitigations and monitoring measures were in place. Ok. I was just holding it. I didn't know whether – ok.

So the next two projects are preliminary projects. We just started the CEAA process with them. So that's the Scotia Basin Exploratory Drilling Project and the Beaver Dam Gold Mine. So they're in their early phases. We applied for funding and we got confirmation of receiving funding. BP had submitted their project description and so did Beaver Dam. Scotia Basin Exploratory Drilling Project submitted their EIs but CEAAA found it to be insufficient. So I thought that was a good thing because not all of the communities were included in the Mi'kmaq fish – the Mi'kmaq fishery study they completed. So they're going to go back. BP indicated that they want to do this right so they are going back and looking to do the report, you know, in a manner that you know is appropriate for the Mi'kmaq and CEAA. So that's where they're at, so that's early stages.

So I had a good experience with applying for the funding. CEAA has been quite good and flexible – well, not necessarily flexible but they've been really good when applying for funding and, yeah, so I don't have any real comments about the funding envelope piece because that's gone very well for us. The timelines are quite short sometimes, so if – but it is what it is and we're lucky we do have some capacity but I would worry about the timeframes from those communities that don't necessarily – who are still building that capacity.

Yeah – so I'm not sure if you have any questions with regards to MEKS but I want to let you know that we have an MEKS protocol. We also are looking to at some point develop a protocol for the Mi'kmaq fishery study, but that is going to take some time because we have to pull the appropriate individuals together to do that work. Yeah, and there is a couple of things that I just wanted to highlight as well.

We – under the old CEAA process before CEAA 2012, there was environmental screenings. Now what's being done are environmental effects determinations in the replace of these screenings. The issue that we're running into is there's not enough information in these environmental effects determination to determine whether there is potential impacts on Mi'kmaq Rights and Title. So that's a concern for us. Once the screening process has been taken away there is very little environmental information being provided on smaller projects.

The CEAA legislation doesn't fully address impacts to traditional ecological knowledge and – and aboriginal rights and title and only assesses the environmental effects. This is just from my view of working through these projects. CEAA legislation does not have – has not clearly identified the process for accommodating impacts to TEK, so that work still only needs to be – to be done. There's no mechanism for Mi'kmaq recommendations to be implemented during the CEAA process. So when we make recommendations there is no mechanism in place to ensure those recommendations are followed through. So what was some of the difficulty we had with regards to the Black Point Quarry Project and partially the Shelburne Basin Exploratory Drilling done by Shell. We made a series of recommendations and those there was no way to ensure that they were – they were going to be completed.

And the other thing is – and this is not just CEAA. This is across the board. There is a lack of follow up on – on projects when they're approved and there is a lack of follow up when monitoring the terms and then conditions of approval. So once a project is approved, you know, there is monitoring and the terms and conditions that follow and what may be happening early in the consultation – it may be going very well – but once they have their approval we may not hear from proponents. They'll not be following up on the terms and conditions of their approval.

So there is – there is no oversight afterwards and I don't know who would do this. I don't know if it would be CEAA or another body ensuring that these terms and

conditions are – are being followed, but there is a lack of follow up on that end and ensuring that those conversations are ongoing with the proponent and that Mi'kmaq or aboriginal concerns are being addressed.

We – these are just preliminary remarks that I wanted to make. We're planning on submitting written comments so once we've had the opportunity to thoroughly review the *Canadian Environmental Assessment Act* and make our recommendations, we will be providing written comments. Also, I just wanted to make one last comment about the timing. The timing for this is very taxing on the aboriginal organizations so I just wanted to make that note, because you know we are – we are working on consultations. We do – we are building our capacity every day and – but this, just due to the time constraints on this, it is very taxing as well as I wanted to make a comment that you know the – funding – the funding of this was – was good. However, when we sat down the chiefs were concerned that it wasn't enough funding for us to do a substantive review of what was required. So I just wanted to highlight that and just that we will be providing written comments to you.

**Johanne Gélinas:** Thank you very much. I would like to clarify something. Obviously, you have a lot of experience in assessing projects. Sometime you talk about the CEAA process and I was under the impression that in parallel you're having your own consultation process with the proponent or the proponent is having his own consultation process with – with your communities. Am I right to say that?

**Melissa Nevin:** Yes, we have a parallel process. We have our consultation process and then we have a benefits process and they run parallel. We try to separate them as much as possible, but they seem to be overlapping because we like to focus just on consultation and have that, and have the benefits discussion completely separate. But that's been very tricky.

**Johanne Gélinas:** So for example under the benefit agreement do you have environmental specific requests that you will also bring to the attention of CEAA for example? I tried to find an example – one good example would be this fishery study that I can understand in some cases the proponent has paid for that fishery study. At the same time, there might be some other studies that you will request from CEAA to have enough information to make decision or a good assessment. Am I correct saying that sometimes they will – you will have an agreement with the proponent for a type of study and sometime you will ask CEAA to explore deeper some aspect which may end up being done by another study?

**Melissa Nevin:** What happens is we make the recommendations. Those studies are not – like the Mi'kmaq ecological knowledge study or the fishery study are not part of the IBA.

**Johanne Gélinas:** Ok.

**Melissa Nevin:** Those recommendations are made early on. The IBAs discussions are based on – the discussions are benefits officer and the benefits committee have with the proponent. So I'm removed from that. I, on my side, recommend the MEKS just so that I can properly assess the project. That's why they're recommended so I can assess them. If I don't have those studies then it makes it very difficult to assess the projects.

**Johanne Gélinas:** And one last question. You have talked about MOUs, Good Neighbours Agreement and consultation agreements. What are the differences between the three?

**Melissa Nevin:** Well, we don't have a consultation agreement. We have – what we have is the Terms of Reference for consultation between the three parties. So it's – it's – well, yes, it's an agreement based on how consultation will proceed.

**Johanne Gélinas:** And that's a public document?

**Melissa Nevin:** It is a public document on our website.

**Johanne Gélinas:** Ok.

**Melissa Nevin:** And it's on the Office of Aboriginal Affairs website and I do – and it may be on the INAC website.

**Johanne Gélinas:** We'll find out.

**Melissa Nevin:** Yes, but it's definitely on the Mi'kmaq Rights Initiative website and the Nova Scotia Office of Aboriginal Affairs website. The – what was –

**Johanne Gélinas:** The Good Neighbour Agreement.

**Melissa Nevin:** The Good Neighbour Agreement is what Shell call – we'll call it is. It was an IBA. They just didn't feel like it was impacts so they wanted to call it a Good Neighbour Agreement and that's why it is – it was called what it was.

**Johanne Gélinas:** And the MOU.

**Melissa Nevin:** And the MOU is just basically an agreement to make an agreement. So the benefits office does the MOU first and spells out how they're going to develop the IBA and that's – or the benefits agreement, or it's sometimes called the Collaborative Benefits Agreement. They're called all different sorts of things, but basically they're benefits agreements and the MOU just happens – it's a procedural thing on our end, and then we get into the IBA. I hope that clears things up.

**Johanne Gélinas:** Ok, I may have more questions later.

**Renée Pelletier:** A question about – the fishery studies, you've mentioned them a few times and it sounds like for specific projects these tend to be completed by the proponent. Is that correct?

**Melissa Nevin:** Well, what we do is we – the proponent pays for them, but the proponent either has the consultant company that they hire Scientech (ph) or whatever consultant company it may be. They subcontract a Mi'kmaq organization to do that group. We only have three Mi'kmaq – three Mi'kmaq groups that actually do fishery study. One of them is the Unama'ki Institute of Natural Resources. The second one is the Mi'kmaq Conservation Group. The third one is a company which is member to Chichiamanex (ph).

**Renée Pelletier:** When you're so – it would be Stentech (ph) that subcontracts to one of the Mi'kmaq organizations?

**Melissa Nevin:** Sometimes it's the consultant that subcontracts directly.

**Renée Pelletier:** Ok.

**Melissa Nevin:** Or – because it depends, right? Because some consultant companies have relationships with some of the Mi'kmaq groups like CBCL (ph) for instance always works with member Chichiamanex. So if the proponent decides to contract CBCL, sometimes they'll go through that. If not, sometimes with the Black Point Quarry they didn't go through their consultant. They went to – they did an RFP process and they worked with those three groups or basically they did an RFP. We recommended an RFP process to do the MEKs and the fishery study. And then they picked a – one of those three organizations over businesses to do the study. So it's the Mi'kmaq doing the work, but the proponent is paying for it.

**Renée Pelletier:** Ok, so I guess I'm just trying to understand how it would differ from what I've seen in other – other areas where a particular First Nation determines that a certain study is lacking and will say, "Hey proponent, you have reported this. You need to fund us and we're going to do our own study and we'll give a report to you". So maybe it's exactly the same thing in result, but I'm wondering when it's subcontracted to you, are you still the ones figuring out the scope, the – you know, all those details?

**Melissa Nevin:** No. We leave that to the proponent. The scope is up to those organizations themselves as our organization tries to – when we're doing consultation, we make our recommendations, however we don't interfere. We leave to those organizations to do the work and we review it and we provide our recommendations. So it's – we are – it's – it might sound strange, but we're consulting over here. The proponent's doing their thing here and they're subcontracting Mi'kmaq organizations to do that work. We're not telling them to – we'll make recommendations, but we're not defining the scope for them.

**Renée Pelletier:** Ok.

**Melissa Nevin:** Those Mi'kmaq organizations we expect them to have the expertise like an environmental consultant would to do the work that they're being hired to do.

**Renée Pelletier:** So it's the Mi'kmaq organization that's figuring out the scope, not the proponent? Is it – that's right?

**Melissa Nevin:** Yes.

**Renée Pelletier:** Ok. Ok, that's clear. Thank you. So the other thing that you could either talk about now or I'd invite you to think about when you're preparing your written submissions is as you're likely aware in our Terms of Reference as a panel, we're looking at and trying to figure out how we implement the principles in UNDRIP, the United Nations Declaration on the Rights of Indigenous People into our recommendations on – on federal EAs.

So I'd love your thoughts, your community's thoughts on how do we integrate things like free prior and informed consent and the right to take – to participate in decision making when our rights are potentially impacted. How do we – how does that fit in an environmental process? So I mean it sounds like you've had a ton of experience and liaise and a lot of experience participating through – on the consultation end, right? And I'd invite you to think big and think about how your role might change like – how could things be different in your ideal world? So I'd love to hear your thoughts on that.

**Melissa Nevin:** I – yeah, I was afraid this question was – because it's a huge thing that we – it's a huge undertaking that we need to consider. I think that we need to have some internal discussion about how that would work and that would fit in our process because we have defined our own process and how consultation will occur and – and it seems to be working in Nova Scotia. It's helped us build relationships with both the feds and the province so how that would look or how that would fit that requires some internal conversation.

We have an individual who has worked with the UN and is familiar with UNDRIP, so I would hope – I hope that she will help with that, but we do need to do some internal work and how that could fit, because we're just starting to look at that and have some internal discussion with that overall. And because our community members have mentioned UNDRIP and we need to have a better look at what best fits for the Assembly of Nova Scotia Mi'kmaq Chiefs.

**Doug Horswill:** The process that you have outlined which shed – from your point you just said it seems to be working. Maybe you've got a few minor things that you – you were talking about. How – can you talk about the history? How did it evolve?

**Melissa Nevin:** It evolved as part of the Made-in-Nova Scotia Process. It started when, you know, just after Marshall and I don't want to get into too much detail because that was before my time and that is very much a question for our senior advisors. But it's started there and they developed – it was this willingness from the province, the feds and the big macho work collaboratively to start the Treaty negotiations process and a consultation process. So our consultation process was developed as part of the signing of the umbrella agreement. And all of these documents are on our website. So the umbrella agreement as part of that agreement was to develop the consultation Terms of Reference.

**Doug Horswill:** If along the line of Renée's last question about your continued thinking on this and potentially submitting something more to us, one question that might be useful to us would be what – what were the key success factors in coming to a process that you're at today which generally is satisfactory to you? What are the key success factors if somebody else find you, is going to come along and think about the same thing? What would they have to have as the key ingredients to make it work? You don't have to answer right now.

**Melissa Nevin:** I'm not sure. I think that's a big question and I would leave that to our senior advisors to answer that question, because that is a big question.

**Doug Horswill:** Sure.

**Melissa Nevin:** But like I said, I think that there was a willingness by all three parties to have something that worked, and I think it was the people that were involved at the time when they started the Made-in-Nova Scotia Process that may – there was this willingness there to work together, to develop that and I think that that is part of it.

**Doug Horswill:** Great. And one last quick question. Do you have any – in your IBAs, do you ever contemplate having an environmental monitoring requirement within a committee or something like that between yourselves and the proponent?

**Melissa Nevin:** Yes.

**Johanne Gélinas:** And did you get it?

**Melissa Nevin:** Yeah, yeah. We've – this is new and the one that is the Maritime Link Project that was quite successful. We had the Nuama'ki Institute of Natural Resources do some monitoring and they were out there. And it was good because they were out there and they were able to feed into our process and it allowed us the opportunity to see where we could build upon as well for monitoring.

**Rod Northey:** Yes, thank you. Timing consultations, so I'm just trying to get a

sense. Those are very nice full descriptions of the projects, very helpful. So just to go back to the moment how it all starts. It starts it sounds like – I'm just trying to paraphrase a bit that you get some notice from some government. It could be the province or is it usually the federal CEAA? I'm just trying to get a sense what the range of the start is. What you – ok, let's start with that one.

**Melissa Nevin:** Ok. It depends. It depends on the project. It depends on what approvals are required first. So if it's a larger project and they know that a Canadian Environ – like an environment, a federal environmental assessment is required usually what happens is a letter comes from CEAA and CEAA coordinates that. Sometimes what happens is that there is a coordinating because we have – we're very coordinated in place (ph). So sometimes we get a letter – we asked – well, it's from years of working with the government. We'll receive letters at the same time. So if it's a coordinated EA process, we'll receive letters from both Nova Scotia Environment and CEAA at the same time.

So it just depends on what approvals are required first. So with Donkin, even though that was required a federal environmental assessment, there was an EA approval that was required by the feds first. But DNR also knew about the project first because we have a mining consultation table set up. So what happened with Donkin was is we got a letter from the Department of Natural Resources and then we got a letter from Nova Scotia Environment because an EA was required, a provincial EA. And then it went through the process of a federal EA and a provincial EA and so on and so forth based on those approvals. So we're still with this project. We still – for Donkin, because it hasn't been developed. There's things that are still outstanding for approvals from DFO and Transport Canada.

**Rod Northey:** Ok. I have a few more questions. So have there ever been projects where the EA got completed and your recommendation was it should be elevated and get a panel review? It doesn't sound like any (inaudible – technical) stories went to the panel.

**Melissa Nevin:** Ah, no. None of these projects were under a panel. We – I don't remember ever seeing a project where we thought that, ok, this definitely requires a panel review. That recommendation's never been made by our office.

**Rod Northey:** Ok. Just to go a bit broader, one other question we're trying to wrestle with is the starting point for projects and so I appreciate, as you call it, you're well coordinated. What about the instance where a proponent might consider you to be a co-proponent or a co-manager? Have you ever had a discussion where pre-CEAA, pre-regulatory, the proponent comes in and wants a different approach altogether? It sounds like – has that happened?

**Melissa Nevin:** All business decisions we leave up to – we have a separate corporate body. So the Assembly has a corporate board, an entity. We would defer

them to that corporate entity. The bands are – have their own autonomy, so if they decide to get into business with a proponent we do not interfere and we are – our office is there just to assess whether the project has impacts to rights and title regardless of who the proponent is. So sometimes we've consulted on projects that the band was the proponent.

**Rod Northey:** Oh! Alright, ok. So you're auto – in that sense, you're autonomous from even that side of your own governments?

**Melissa Nevin:** Yes.

**Rod Northey:** Thank you. That's very helpful.

**Johanne Gélinas:** Thank you very much to have decided to come this afternoon. Very much appreciated and we look forward to get your written submission.

**Melissa Nevin:** Thank you.

**Johanne Gélinas:** So that's it for this afternoon and we will start over at 6:30 for the open dialogue session. Thank you very much.