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Chair

Mr. Mark Warawa

Standing Committee on Environment and Sustainable Development

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● (1105)

[*English*]

The Chair (Mr. Mark Warawa (Langley, CPC)): I call the meeting to order.

Colleagues, we're starting a little late. There's a possibility of a vote, in which case we will suspend and then come back.

Today we have witnesses by video conference and in person. We will begin with Mr. Gibson.

Mr. Gibson, you will have up to 10 minutes to make your presentation. All three witnesses will get up to 10 minutes each, and then we'll begin questions.

Please go ahead, Mr. Gibson, for 10 minutes.

Professor Robert Gibson (Professor, Environment and Resource Studies, University of Waterloo, As an Individual): Thank you, Mr. Chair, members, and colleagues.

I'm Bob Gibson, a professor at the University of Waterloo, but I'm not representing the university or any other special interest. I've been working on matters related to the design of environmental assessment processes for longer than some of you, and maybe some of your parents, have been alive.

If anything, I try to take the perspective of my grandson's generation. The idea here is that I may be able to provide you with something of the long view and then talk briefly about some of the main implications, which should be in the speaking notes that you have.

The basic message I have is that Canada is now and has been for a long time in need of second-generation environmental assessment, and that tinkering with the existing process in a piecemeal fashion is unlikely to deliver the greater effectiveness and efficiency we probably all desire.

We've had environmental assessment in Canada for nearly 40 years. The Canadian Environmental Assessment Act is more recent. It has some aspects that are more recent, it has a quite acceptable set of purposes in section 4, it has admirable requirements to consider cumulative effects, but otherwise it is basically old-school environmental assessment.

Old-school environmental assessment came from the period when it was possible to expect that focusing assessment law on projects individually would be enough, when it was possible to think that it would be sufficient to reduce or mitigate the most significant adverse effects of our undertakings rather than to require a positive legacy from each of them, and when it was possible to expect that these requirements would lead proponents to incorporate environmental factors into their core planning along with the usual financial technical and political considerations. It was possible at that time to think that all of this, in well-designed processes, would make assessment easier and more efficient over time, because it would be more commonplace and habitual.

After 40 years, I think it's safe to say that not one of those assumptions was valid, or at least is valid any more. We have learned that the important effects of our undertakings are the cumulative ones, and that the main opportunities for positive change, for innovation, and for dealing with both our problems and our opportunities are at the strategic level, meaning the policy, program, and planning level.

We have found that despite the good intentions of assessment, and in part because of the poor design of actual assessment processes, proponents for the most part still look at these requirements as side issues, as administrative or regulatory hoops to jump through, rather than as part of their core decision-making. We have watched governments in virtually every jurisdiction become increasingly overwhelmed by the weight of expectations and responsibilities that they're expected to deal with.

Part of the problem is the scale of the issue. Part of the problem is also that the Canadian Environmental Assessment Act was not very well designed from the outset. It typically starts too late; and part of the reason for that is late regulatory-level law, which means less of a trigger. It leaves many issues open in negotiation. What you have to cover is subject to negotiation, both within the direct Canadian jurisdiction and when there are processes carried out jointly with the provinces or territories or other jurisdictions. We have responsible authorities with conflicting roles.

● (1110)

We have no effective enforceable decision out of it, and so it's not surprising that we have additional inefficiencies. I don't think it is possible to address these inefficiencies—deficiencies, effectively—through the usual kind of tinkering.

Basically two simple choices will be presented. You will be informed that CEAA's approach is inadequate, and it is. You could respond by simply adding new obligations to the existing shaky edifice. You'll be informed that CEAA's processes are frustrating and inefficient. You could respond by exempting more undertakings and by deferring many of the rest to the provinces and territories, but you will find that there is a dog's breakfast of miscellaneous flawed processes in all of the territories and all of the provinces, and some additional ones under land claims settlements, some additional ones at the municipal level and under sectoral law, etc., no two of which are the same and no one of which is a model. We have that problem. In addition, at the provincial level the motivation, the expertise, and the authority to deal with matters of federal jurisdiction are generally absent. The deferral option by itself, while superficially attractive, will not work.

That leads to what would work and to what would be in a second-generation environmental assessment. Frankly, it's not easy, but there are some basic principles. I have set out in your notes a dozen basic categories of things that need to be done. I don't mean to oversimplify by doing this briefly, but that's how much of my initial brief could be translated by today. There's more in a longer brief that you will get shortly and there's much more to be talked about here today, but in what time remains, let me go through some of the key points. I'll be happy to answer questions on the other aspects.

First of all, we have tried in Canada to have harmonization of assessment across the many jurisdictions. More than 10 years ago the federal government initiated a multi-stakeholder process run by the Canadian Standards Association. That process lasted for years and reached draft 14 of a national standard for best practices in environmental assessment. At that point the provinces pulled out, and it has not been regenerated since. I have perhaps the last remaining copy of draft 14, if you'd like to look at it at some point. There may still be hope in that initiative, though I don't see it as being easy or quick.

The alternative would be for the federal government to set a strong, comprehensive, tightly designed environmental assessment process as a national standard; and through harmonization and joint agreements with the other jurisdictions where there is mutual application, you would raise other jurisdictions to the national standard. I think you can do that. I don't think it will be easy, but I think it's the best option available.

● (1115)

Second, in making this standard stronger and clearer and more transparent, there are a number of particular steps. One is that the purposes section now requires assessment to make a positive contribution to sustainable development. The act is mostly about mitigation of significant effects. Entrenching the test of a positive contribution to sustainability into environmental assessment is what various jurisdictions are now doing. We've now had five panels under joint jurisdiction in Canada apply it, and it is the leading edge. It is what we would hope to use to integrate all the considerations for a positive legacy. It's more likely to get things into core of decision-making, more likely to be efficient, and more likely to be quick.

The Chair: Mr. Gibson, I'm going to ask you to stop at that point.

Prof. Robert Gibson: Okay.

The Chair: We look forward to your answering questions.

Next we have Dr. Sinclair from the University of Manitoba.

Professor John Sinclair (Professor, Natural Resources Institute, University of Manitoba, As an Individual): Thank you for the opportunity to speak and participate in your deliberations. I hope you're given the opportunity to hear from many Canadians as you carry out this task.

I would like you all to consider your own constituencies. You might pick up a newspaper in your constituency and learn about a new project. That's how many Canadians find out about projects that are happening in their area, projects that could bring risks to the environment, to the area's social and economic future, and to the health of the community itself.

While you might be interested in the jobs that a project has to offer, other people in your constituency will have other interests. Your neighbour may be interested in health services. She may note that many of the jobs are low-paying ones that will put pressures on the health sector. Your local environmental organization may be concerned about stack emissions and water emissions. What these people have in common is that they're interested in an efficient and fair way for decisions to be made about the project. The people who call your constituency office are all assured that there's going to be a proper pre-approval assessment. I think this scenario plays out on a daily basis across our country, and Canadians have come to expect environmental assessments and depend on them as one of the important policy tools for making decisions that are sustainable and provide net benefits.

It's what's referred to is minimum regret planning. That's what people like to see us engage in. Environmental assessment is a principle that is no more complicated than trying to incorporate common sense and concerns about community futures into the decisions that we make. It's now practised in over 100 countries. It's evolved in all those countries and will continue to evolve. It's a daunting task before you. Dr. Gibson has already outlined a number of the important aspects of assessment that you will need to cover, so I won't go through the list that I put into my brief. I'll just mention three: meaningful public participation, multi-jurisdictional assessment and substitution, and the focus of assessment processes.

Public participation is often identified as the cornerstone of environmental assessment. In fact, the Canadian Environmental Assessment Act underscores the importance of this by stating that one of the purposes of the act is “to ensure that there are opportunities for timely and meaningful public participation throughout the environmental assessment process”.

We've tried to make participation more meaningful since the five-year review of the Canadian Environmental Assessment Act. We now have funding for comprehensive studies. We've made improvements to the FEIA and there's new guidance material. But to my knowledge there's been no open review of these undertakings. We still have a long way to go to incorporate meaningful participation into environmental assessment.

There are a number of key issues that I continue to hear about from participants and as a participant. These relate to accelerated decision processes, insufficient resources, information and communications deficiencies, the lack of participation at early stages in the decision-making processes, and our weak participation in follow-up activities.

Meaningful public participation must continue to be a cornerstone of environmental assessment. I've suggested in my brief a number of things that need to be done in this regard, and I think they're particularly important as we move away from having government scientists participating in the process and bringing important details to the table. We're going to have to look to ways to make sure that other people have the opportunity to come and bring that information. We need to clearly identify the components of meaningful participation. We need to codify direction, and we need to look at other ways to encourage participation through alternative dispute resolution.

In respect of multi-jurisdictional assessment, Canada has a long history of interjurisdictional coordination. Three approaches to environmental assessment have been considered: standardization, harmonization, and substitution. Dr. Gibson already talked about standardization, so there is no need to explain this further.

● (1120)

Many contend that there continues to be duplication in the process, but that it will be eliminated once we deal with harmonizing the process. I think a lot of duplication has already been removed from the process, because political masters have required that be the case. In fact, much of the duplication that's left is the result of politics.

Basically, there are two forms of multi-jurisdictional assessment that we have traditions in, one being bilateral agreements, of which there are many. All provinces west of and including Quebec have bilateral agreements, and we've had project-specific agreements, such as the Sable Island project. More recently we've had one example of substitution, that being the Emera Brunswick pipeline case.

I feel that the focus of this review should be on bilateral agreements. Specifically, I think that bilateral agreements should be completed with all provincial jurisdictions and that the existing agreements need to be strengthened to ensure process certainty for proponents and the public, while limiting the variation in what's required. As Bob has already mentioned, it's a dog's breakfast in terms of the processes that we're trying to harmonize. There are misunderstandings about decision authority that need to be corrected, and we need to ensure that harmonization occurs to a higher standard and not a lower standard.

I'd just like to comment on substitution. I think that the Emera pipeline project has indicated to us that, really, we should be eliminating substitution at this time, or at least restricting it until regulatory processes are modified. We need to further discuss how and if it's even appropriate to substitute regulatory tools for what is largely viewed as a planning tool for sustainability. It's also hard to substitute outside of one's jurisdiction.

Lastly, I'll talk about the focus of EA law and policy. It's been suggested that to gain efficiencies we just need to reduce the number of EAs that we do. There are a number of ways of achieving that. I will just mention two. One is the elimination of screening level assessments; the other is moving to a new model of deciding what projects should be assessed, such as projects of national significance.

Screening levels assessments have been a target for elimination for as long as I can remember—at least 20 years, I think. While there are cogent arguments for reducing the number of screenings, especially now that we have class assessments, we need to carefully consider the sorts of projects we would be eliminating. The proverbial park bench is often referred to as the sort of thing that is subject to screenings. That's a simplified argument. There are many projects at the screening level that require careful consideration. We have to think about how those projects should be assessed; in other words, they're large projects if we get rid of screening level assessments.

You'll be directed to the Australian experience in terms of thinking about projects of national interest. Consideration of projects-of-national-interest approach will require you to tackle the difficult or delicate issue of how to make the determination of what should be considered. You'll be directed to the Australian experience, and I will just point out a couple of thing in that regard. First, the Australian Environmental Protection and Biodiversity Conservation Act relates to projects of national environmental significance. The act actually combined a number of other acts related to biodiversity, conservation, whaling, and so on, which helped to provide the significance test for the act. As well, the number of cases actually went up once the act was put in place, and the delegation that's occurring under the act has been problematic.

So in conclusion, I'd like to say that much has been learned about EA law and policy from practice here in Canada. In fact, we were at one time the go-to jurisdiction for ideas and innovation in relation to EA process and practice. Canadian practitioners continue to do this, but nationally many leaders in the field are concerned about slippage as we move to make EA processes more efficient by limiting the scope of assessment, restricting public input, and spending time in court. We need to only look at the projects we undertook before national assessment processes were in place to see the value of forward-looking assessment processes.

● (1125)

We need to do a better job—Parliament needs to do a better job—of making sure that Canadians have the tools to advance sustainability, protect ecosystems, and retain their social and economic well-being. This requires strong EA law, regulation, and policy that is legislated and gives the public a meaningful voice in decisions, avoids duplication, and is effective, efficient, and fair.

Thank you.

The Chair: Thank you, Dr. Sinclair. I appreciate that so much.

Next we have the Saskatchewan Mining Association. I believe Ms. Pamela Schwann, the executive director, is going to be presenting.

You have up to 10 minutes.

Ms. Pamela Schwann (Executive Director, Saskatchewan Mining Association): Thank you, Mr. Chair.

My name is Pam Schwann. I'm executive director of the Saskatchewan Mining Association. I'm very pleased to be here today to present to the Standing Committee on Environment and Sustainable Development in respect of the review of the Canadian Environmental Assessment Act.

I am joined today by representatives of two of our member companies. They are Ms. Tammy Van Lambalgen, vice-president of regulatory affairs, and corporate counsel for AREVA Resources Canada; and Mr. Liam Mooney, vice-president for safety, health, environment and quality, and regulatory relations, with Cameco.

In the brief submitted to the committee, we have identified four areas in which changes to environmental assessments can immediately improve the process while ensuring the integrity, intent, and spirit of environment assessments.

I'll quickly go over these four reforms and then go into a little more detail, if time permits.

Incorporating the following reforms to the CEA Act will be beneficial, we believe.

The first one is eliminating multiple environmental assessments so that there's one project and one process. This would give the federal authority the ability to designate another jurisdiction's assessment of a project as equivalent under CEAA. This will reduce the duplication and overlap of federal, provincial, and local environmental reviews that our companies experience.

The second reform suggested is to rationalize project triggers. Administrative decisions should not trigger an EA. Expanding the exclusion list regulations to reflect a more common sense approach would end costly and unnecessary reviews of a great number of minor projects.

The third reform would be to better integrate environmental, social, and economic considerations. When considering environmental mitigation measures, it is important to identify what is technically and economically feasible and to factor in the economic and societal benefits of projects to Canadians.

Fourth would be to establish environmental assessment cycle times. The stated goal of the Major Projects Management Office or MPMO is to complete an EA within two years. Much could be gained by requiring that federal authorities set and follow timelines mandated by legislation or the federal environmental assessment coordinator.

Last—and this really has more of a Saskatchewan focus currently, but has national implications further down the road—is to ensure that positive reforms to CEAA are extended to projects that are primarily regulated by other federal authorities, such as the Canadian Nuclear Safety Commission.

The 2009 report of the Commissioner of the Environment and Sustainable Development cited a number of the problems with the CEAA process, noting that the federal environmental assessment suffers from systemic delays and a lack of coordination, and focuses on expensive and frustrating processes without being able to demonstrate value to the environment or to society.

We would like to compliment the Government of Canada for taking some positive steps toward improving the federal EA system through amendments brought forward in the 2010 Jobs and Economic Growth Act. However, we believe that more change is needed.

We'd like to emphasize at this point that the changes we are proposing are not aimed at lowering environmental standards or removing any area of industrial activity from regulatory scrutiny. They are simply intended to improve the efficiency, timeliness, and predictability of the EA processes. The SMA believes these changes will help to strengthen environmental protection by enabling regulators to focus on the areas that are of greatest environmental concern rather than devoting precious resources to projects and activities that have little or no environmental impact.

We'd like to further elaborate on these four proposals specifically. In the brief, we have specific wording addressing each of these proposals.

The first one is to eliminate multiple environmental assessments and adopt a one-project, one-process model. The principle of one project, one process is often not observed by responsible authorities administering CEAA. There are structural reasons for this. The CEAA process is predicated on the assumption that all projects that have federal involvement require some form of federal EA, except those that are specifically exempted by regulation.

This approach is inherently inefficient and inconsistent with provincial EA regimes, which provide for agreement of a single EA process or the exercise of discretion as to whether a formal EA is needed, based on an initial project description.

● (1130)

In the view of the SMA, the concept of equivalency offers the best path forward for redressing deficiencies in the current system. Subsection 12.4(1) of CEAA presently enables the responsible federal authority to cooperate with other jurisdictions in discharging EAs. We would urge the government to implement changes to CEAA that would instead enable the federal responsible authority to designate another jurisdiction's assessment as being equivalent to an assessment under CEAA.

Such a duplication of effort among multiple regulators often results in lengthy delays to projects without any additional benefit to the environment whatsoever. Instead a single, thorough process undertaken by one level would be accepted to satisfy both the federal and the provincial requirements. We understand that this practice is already being applied to certain projects in British Columbia.

The brief that we submitted proposes specific wording to an amendment to sections 12 and 54 of the act that would address the one-project, one-process equivalency.

The second reform is to rationalize project triggers.

The Chair: Ms. Schwann, I'm sorry to interrupt.

We will suspend this meeting and reconvene after the vote.

You will have just a little over four minutes to present when we come back, Ms. Schwann.

Thank you.

● (1130)

(Pause)

● (1225)

The Chair: We will resume.

We have the Saskatchewan Mining Association, with Pamela Schwann, the executive director.

You have a little over four minutes left.

Ms. Pamela Schwann: Thank you, Mr. Chair.

We'll continue with the second of our four major recommendations for CEAA reform. The second one, as mentioned—

The Chair: Ms. Schwann, I have one minor issue. We've each now received the briefing document. It was translated during the break, so everybody has that briefing document in front of them.

Ms. Pamela Schwann: Great. Thank you very much.

Then we are on page 6 of that briefing document, and the recommendation we are looking at is headed "Rationalize Project Triggers". It has been mentioned by Drs. Gibson and Sinclair that the environmental assessment is intended to serve as a planning tool for the projects. However, functionally the EA process has been extended to regulatory decisions made with respect to minor approvals that are already covered under an existing licence.

The net result is a great number of EAs for minor works, introducing lengthy process delays into what are essentially administrative decisions. Section 7 of CEAA specifies the circumstances under which an environmental assessment is not required. Perhaps it could be expanded so that projects that actually improve environmental performance are not put through the same protracted review, which only prolongs their implementation.

The SMA brief proposes an amendment to paragraph 5(1)(d) of the CEAA and the addition of a paragraph 5(1)(d.1) to ensure that only those activities or undertakings that are not bounded by the current licence would have the potential to be encumbered with the federal EA process.

In the interests of time, we won't expand on recommendation number 3, to better integrate environmental, social, and economic considerations. I'd like to move to page 8 and the fourth recommendation, which is the establishment of environmental assessment cycle times.

Cycle times for the completion of federal EA processes vary between industry sectors and between regulators. While the typical timeframe for major projects in Canada has been four years, the MPMO's stated goal is to reduce this to two years. We would note that the Australian Olympic Dam deposit went through its EA process in just over two years.

The new regulations, the establishing timelines for comprehensive studies regulations, are very promising in this regard, and the SMA is very encouraged by the potential improvement in predictability and timeliness.

However, these regulations and any other improvements to CEAA should be extended to all industry proponents, including uranium industry proponents, irrespective of other federal regulatory regimes. The SME brief proposes adding a new section 12.6, which would specify that

> Every federal authority shall comply with timelines prescribed pursuant to Regulation and by the federal environmental assessment coordinator unless otherwise authorized by the Minister.

Finally, we'd like to look at ensuring consistency for all project proponents. CEAA applies to resource developments that are regulated by the Canadian Environmental Assessment Agency. However, for developments in the uranium field, the CNSC is the main federal body, with the Nuclear Safety and Control Act serving as the primary piece of the regulatory authority.

As such, we would put forward an additional recommendation that these reforms be extended automatically to the uranium and nuclear industry so that project proponents in this sector are treated equally to those in other resource and energy sectors. It bears repeating that what we are seeking is not lower environmental standards, but improved efficiency in the overall regulatory process.

Again, in summary, our four recommendations are to eliminate multiple environmental assessments; to rationalize project triggers; to better integrate environmental, social, and economic considerations; and fourthly, to establish environmental assessment cycle times, and to make all of these provisions also applicable to the uranium industry, which is regulated under the CNSC.

Mr. Chair, thank you very much, and thank you to committee members. We'd be happy to entertain any questions you might have.

The Chair: Thank you so much, Ms. Schwann.

The first round of seven minutes begins with Mr. Lunney.

You have seven minutes.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you.

Thank you to all of our witnesses, and my apologies for the interruption that slowed us down a little bit.

I think we've had some very interesting presentations from all of our witnesses. I would like to start with some questions for our friends in Saskatchewan.

You gave us a very thorough and concise presentation, but at the same time covered your points quite succinctly, I thought, though you were cut short a little bit because of the time.

First of all, I want to ask about the concern about having multiple authorities responsible for environment assessment and how that impacts the investment in projects. Can give us an example?

Maybe start there, and then I have a number of other questions I want to move through. Maybe one of your other colleagues would—

● (1230)

Ms. Pamela Schwann: Liam Mooney will respond to that one.

Mr. R. Liam Mooney (Member, Vice-President, Safety, Health, Environment and Quality, Regulatory Relations, Cameco Corporation, Saskatchewan Mining Association): Thanks, Pam.

It's Liam Mooney, with Cameco Corporation.

On that subject, I think the Province of Saskatchewan is ultimately going to have a story in relation to this. But I would go back to the example that Pam Schwann delivered earlier on the Olympic Dam project, a major expansion to an existing project going through an environmental assessment process in a little over two years, in stark contrast to the length of time required to go through a similar process in Canada. I guess the conclusion that can be drawn is that there are other investment opportunities in other parts of the world that might be more attractive, with the regulatory certainty and predictability of process that is present in those jurisdictions.

Mr. James Lunney: Summing that up, you might say that if an EA is unpredictable or inefficient it can delay or prevent a project.

I'm wondering about the mining association website. I notice that mining in Saskatchewan employs about 30,000 people directly and indirectly. I notice that your sector is also a leading employer of aboriginal people. As of 2009, northern mines employed some 1,368 people of aboriginal ancestry, according to what I gleaned from the website. I guess the conclusion is that inefficient environmental assessments not only lead to lost investment but also lead to lost jobs. The question we had there was, how can CEAA be made more efficient and predictable without sacrificing environmental protection? That's really the focus of our discussion today and of the points you brought forward.

I noticed that you were a bit rushed in answering, and you had a bullet that you wanted to expand on. I think it would be item 3 in your summary of recommendations, “Better Integrate Environmental, Social and Economic Considerations”. Would you care to expand on that concern?

Ms. Pamela Schwann: I think we have some specific examples. I'll again ask Liam and Tammy to respond to this.

Mr. R. Liam Mooney: On that question, the point that is being made in the SMA submission is actually what you're driving at: to recognize that we are a significant part of the employment picture in northern Saskatchewan and that projects that take much longer to come into place might not be as attractive as projects in other jurisdictions, which will ultimately the jobs. The availability of jobs is directly driven by the projects that we can carry forward through the environmental assessment process, and where capital dollars are best spent with the certainty of a licensing and approval process that is predictable.

Mr. James Lunney: I want to ask you about the period when we were dealing with the Jobs and Economic Growth Act and the amendments that took place in July 2010, which partially consolidated authority for most comprehensive studies. In your assessment, have the amendments made it easier for your member companies to navigate environmental assessments?

Ms. Pamela Schwann: I can speak to that. We haven't had very many new projects or expansions outside the north that have been triggered under CEAA. One of our main points is that we have a lot of uranium activity in the province. We produce 100% of Canada's uranium; we're the second leading producer in the world. Unfortunately, the improvements to CEAA do not apply to any of the uranium projects, because they are regulated by the Canadian Nuclear Safety Commission, and those projects were exempted under the good amendments that were made to CEAA. What we would like to see is those amendments being transferred across and applied to CNSC-reviewed projects.

Mr. James Lunney: So you're predicting that further consolidation would make environmental assessments more predictable and straightforward for your member companies and that there are still disconnects in jurisdictional responsibility.

● (1235)

Ms. Pamela Schwann: Yes, absolutely there are in jurisdictional responsibilities among federal regulators. When a competitor for producing uranium such as Olympic Dam is able to get a project approved anywhere from two to four times more quickly than you can get a project approved in Canada, we are put at a serious competitive disadvantage.

Mr. James Lunney: Thank you for that.

I want to turn to Dr. Sinclair for a moment.

You focused your remarks on three areas: public participation, jurisdictional assessment, and the focus of our laws and policies. In one of your bullets, under “Meaningful Public Participation”, you mention the “identification of alternative ways to resolve disputes that should be included in any legislation”. Would you care to expand on that?

Prof. John Sinclair: Sure. Thank you.

For some time, the Canadian Environmental Assessment Act has allowed mediation to occur as an alternative dispute resolution technique.

We've just finished some research published in the *Dalhousie Law Journal* that looked at why mediation wasn't being used as much as it could be under the act currently, and how it might be used more. Two things that we came forward with were, first, the kind of assessment—and here mediation could be a type of assessment—and second, the use of mediation within an environmental assessment. As a result of our work, what we recommended in regard to this seven-year review is that a small but critical step forward would be to enshrine the mandatory consideration of mediation as a process option in the legislation.

The Chair: Thank you, Mr. Sinclair, and Mr. Lunney.

Next is for Monsieur Choquette for seven minutes.

[*Translation*]

Mr. François Choquette (Drummond, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses for sharing their information with us.

My first question is for Mr. Sinclair.

We have recently welcomed Mr. John Bennett from the Sierra Club. He talked to us about the importance of public participation.

[*English*]

Prof. John Sinclair: I'm sorry, the audio equipment—

Ms. Megan Leslie (Halifax, NDP): I didn't hear any of it.

The Chair: The time has stopped.

A voice: Apologies.

Mr. François Choquette: That's okay.

A voice: Go ahead, please.

[*Translation*]

Mr. François Choquette: I was just talking about the importance of public participation. One of our witnesses told us about a potential two-step environmental assessment. The first step—even before the project is set up—would be to determine whether the project is worthwhile. Mr. Gibson talked about national projects. It would then be a question of conducting more comprehensive studies as the project is being developed.

At which stage should the public be most involved?

[*English*]

Prof. John Sinclair: The earlier they participate, the better. That's early and often. The sooner the public can be involved in the approval cycle, the better. It's no use bringing people in to participate in a process if the decisions have already been made about what we will do, and how we will do it. One of the hallmarks of meaningful participation is that there's actually an opportunity to influence what's happening on the ground, or what's proposed to happen on the ground. If that's not part of the process, then it's going to be very difficult to have meaningful participation. The earliest in the project decision cycle that it can happen, the better. A number of jurisdictions have looked at how to try to accomplish that.

[*Translation*]

Mr. François Choquette: Thank you.

In your report, you talked about interjurisdictional coordination and the one that should take precedence in environmental assessment. What really stayed with me is that we should think of assessments as a way to improve things, not a way to relax requirements.

At the moment, which jurisdictions have the best environmental assessments? How can we improve legislation to make environmental assessments more strict?

● (1240)

[*English*]

Prof. John Sinclair: Here's my experience. In working with all of the provincial jurisdictions across Canada, everybody thinks that their process is the best and that CEAA's is the worst. I've actually published about that. So you're starting at a disadvantage when nobody thinks you're very good to start with.

What I am suggesting is that there's a need to strengthen the existing agreements to ensure that we are actually harmonizing process so that, as you mentioned, we know who the lead authority is; we know how the federal government is going to participate; we have some certainty as to what the role of the provincial governments is going to be; and we have some certainly, if a hearing is called, that it's either going to be a joint panel or that the federal government will participate in that panel. We don't have certainty on those sorts of issues right now.

I can't point out and say which one is the best. As I said earlier, it's a bit of dog's breakfast. There are certain provisions in some provincial legislation that are forward-looking and others that aren't so much. So it's hard to just pick one and say that it's the best—but all of the provincial jurisdictions think that their process is the best.

[*Translation*]

Mr. François Choquette: Thank you.

My question is for the two people here, Mr. Sinclair and Mr. Gibson.

Can you expand on the idea of projects of national interest, large-scale projects? What do you mean by that? What is a project of national interest? How can legislation better address projects that need environmental assessment?

Mr. Sinclair, you can go first. Mr. Gibson, you can answer afterwards.

[*English*]

Prof. John Sinclair: I think that's the challenge before you, to identify how you would try to come up with some criteria of what a project of national significance is. As I've mentioned already with the Australian example, what they used were other pieces of legislation. For them, one thing that's very important is biodiversity. One of the triggers of a project needing national environmental assessment is if it affects biodiversity. That's a very good trigger. Another relates to wetlands and impacts on wetlands. Those are the sorts of things that we would have to look at to identify to establish those sorts of criteria for determining the types of projects that would fall into that realm.

Prof. Robert Gibson: We do the identification of major undertakings now typically as indicated by what goes to a panel. There is an established process by which there is at least some judgment of that kind. However, the criteria that are most obviously useful are the ones that are setting some kind of major precedent and are dealing with cumulative effects. My answer would be to try to do as much of that identification through strategic-level assessment, where you can address some of the cumulative and policy-level issues and options, and those processes themselves should identify particular projects of national significance.

The Chair: The time has expired. Thank you so much, Monsieur Choquette.

The next seven minutes are for Mr. Toet.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

I want to direct my first question to the Saskatchewan Mining Association, and it's in regard to some of the different approaches we've seen in Canada and in some international contexts.

CEAA currently uses the all-in-unless-excluded approach, meaning if it has a federal aspect to it, it automatically is in. An alternative approach is a list approach.

Would your association have a preference for a list approach or an all-in-unless approach, and why would you have that preference?

● (1245)

Mr. R. Liam Mooney: Hi. It's Liam Mooney again.

In that regard, I think the answer that we've been pushing for is more that equivalency compensation, the recognition of the jurisdiction and the capability of the province to do environmental assessment. We would not advocate for a list approach. I think the idea of the triggers isn't a bad one in the conversation; but we see efficiencies potentially where there might be a federal trigger for an environmental assessment, but there is also a provincial assessment process that is adequate in the circumstances that have been reviewed, and there are criteria in place to ensure a degree of consistency across projects across Canada.

That would be our response on that front, that the answer lies not in the either/or but in looking to the provincial jurisdiction and its ability to manage environmental assessment.

Mr. Lawrence Toet: So you're really moving to have it more in a provincial jurisdiction and not in a federal jurisdiction.

Mr. R. Liam Mooney: We believe that if equivalency is adopted, there are efficiencies, in that you have the provincial assessment process that's carried out for the project, and the checks and balances that would be in place federally do constitute a review of that process and provide a degree of comfort by the minister with the processes that are in place before the provincial projects. Once there's that degree of comfort, it's essentially accepting the provincial EA process as adequate, and we'll take the outcome, and then there will be federal approval still required in the grand scheme of things.

Mr. Lawrence Toet: On a provincial level then, whether it's for federal or provincial review, you're saying you would still like to have a trigger approach to the assessments. What would you see as the basis for those triggers?

Mr. R. Liam Mooney: In our first recommendation, we talked about rationalization of the project triggers. And I think in that conversation there was some clarity: It should be the bigger asks, the bigger questions, that precipitate a federal environmental assessment requirement. Whether it's ultimately satisfied by the provincial equivalency conversation or is run through the federal environmental assessment, it's still driven by the same thing. There is a rationalization of triggers but not a loss of the trigger approach that's currently in place.

Mr. Lawrence Toet: Okay, thank you.

I have a question for Dr. Sinclair that goes back a little bit to the public participation aspect. I know that it's been asked on a few different occasions.

When you talked about meaningful participation, you said that the sooner in the process it is done, the better. I'd like you to maybe expand on how you see that really working out in reality. How does that participation become much more meaningful. At whatever stage it is in the process, it doesn't play as much of a role if we don't expand on that ability, right?

Prof. John Sinclair: Thank you.

During the five-year review, we had near consensus on what meaningful participation was at the regulatory advisory committee, which comprised industry and first nations and environmental groups. It included a number of criteria that are in my brief, so I won't repeat them. But I will add to that list some work that we've done with the same groups from a research perspective. To define meaningful participation, what we've added to the existing list in my brief are the importance of integrity and accountability, including transparency and clear process intentions; the ability to influence decisions; fair notice and time for participation; and inclusive and adequate representation. Some that are critically important to me are the opportunity for open dialogue and the use of multiple approaches and methods of participation.

In terms of the timing, there are opportunities that could be better used, both within and outside the assessment process as currently legislated, to involve people in decisions that affect them.

Mr. Lawrence Toet: On most of these projects, the proponents will be doing their due diligence and working through a business case prospectus initially. At what point would you actually see the environmental public input into that process?

● (1250)

Prof. John Sinclair: In Manitoba, we had a process wherein we sat down for quite some time and thought about this. This was a multi-stakeholder group brought together by the province. We had some agreement quite early on the initiation of the process. That could be within the legislated process or on behalf of the proponent, following directions provided for in legislation. So there was agreement, including agreement from industry, that the process could start quite early.

Now there are obviously issues of confidentiality around some activities that proponents want to undertake and don't want their competitors to find out about. What can I say about those?

It needs to start as early as practicable in the process. Right now we often start the participation process once we've decided what the project is, exactly what it looks like, and where it's going to be. That's too late, as we're then just working with operational decisions.

The Chair: The time has expired.

Thank you, Mr. Toet, and Mr. Sinclair.

Ms. Duncan, you have seven minutes.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you all for coming, and thank you to our witnesses in Saskatchewan.

I'm going to begin by asking about sustainability assessment, which focuses on the economic, environmental, and social sustainability of a project rather than merely on determining the significance of adverse, mainly biophysical, environmental effects. It seeks to improve positive elements of a project as well as to mitigate the negative ones.

I'm just wondering if I can go to the three witnesses. Do you think that CEAA should be amended to require assessment of the environmental and socio-economic sustainability of projects, and not just their adverse environmental effects?

One-word answers are fine.

Prof. Robert Gibson: Certainly, I think we need a positive legacy and we will more likely get all of these factors considered openly in an integrated manner, if it's required by law and we avoid the trade-offs being made in closed circumstances without accountability and transparency.

Ms. Kirsty Duncan: Thank you, Dr. Gibson.

Dr. Sinclair.

Prof. John Sinclair: I agree as well and would just add that I think that's the direction that things are moving in other jurisdictions as well.

Ms. Kirsty Duncan: Thank you.

And in Saskatchewan?

Ms. Pamela Schwann: Our third point in this submission was to integrate environmental, social, and economic considerations in the process, in accordance with paragraph 4(1)(b) already.

I'd also just like to mention that in Saskatchewan—and I wouldn't think it's just the case in the Saskatchewan jurisdiction—under the duty to consult, most of the communities in the north are aboriginal, first nations, or Métis. So very early on in the process or from the get-go, we're involved in consultations about environmental, social, and economic considerations, whether specified through CEAA or not.

Ms. Kirsty Duncan: Thank you.

CEAA currently focuses on assessment of biophysical effects and other directly related effects using the legal test of determining the significance of adverse environmental effects and identifying mitigation measures that reduce the effects below the significance level. I think some people feel that the significance test has been misused; and in the past, the environment committee has proposed a definition of significant that would make this test more objective and quantifiable and less subject to misuse.

I'm wondering, Dr. Sinclair, if you could comment on how you might define significant. From the things that have been suggested in the past, it's clearly a very difficult thing to define.

Prof. John Sinclair: There's a practitioner, David Lawrence, a colleague of mine, who has published quite a bit on the significance test. If he isn't coming before the committee, I would recommend that you have a look at some of his work in that regard, because he has thought more about that test than I have. So I won't try to answer the question—

Ms. Kirsty Duncan: Could you send his work in to the committee?

Prof. John Sinclair: Sure, we can make sure you get his work.

Maybe Bob, do you want to...?

● (1255)

Ms. Kirsty Duncan: Dr. Gibson.

Prof. Robert Gibson: The significance test is inevitably complex because it depends on the specifics of the circumstances. Hoping to have a simple answer that can simply be quantifiable is attractive but I don't think it's practical. The term has certainly been abused, but the better way around that is to focus assessment on comparison of the reasonable options available in the two alternatives within the project concept. So what you'd be doing is openly judging according to explicit criteria, which should include the full suite of sustainability criteria that our colleagues have suggested. If you compare the relative merits when looking at the long-term legacy of undertakings, you will be less likely to get snarled in this legalistic question about whether you've crossed the boundary into significance or not, which isn't the issue. The issue is whether we get desirable projects that will leave a positive legacy.

Ms. Kirsty Duncan: Thank you.

Dr. Sinclair, you mentioned that government scientists are moving away from the process. I wonder if you could clarify that.

Prof. John Sinclair: Sorry, no. What I meant by that is that as we reduce the number of scientists and other people in government who can participate in these processes, we're then relying on others to participate. So we need to make sure there are participatory processes available for them to bring forward some of the important data that might otherwise have been brought forward by government agencies.

Ms. Kirsty Duncan: I don't know if you can comment on this, so I'll ask gently. Can you comment on whether government scientists should be moving away from the process?

Prof. John Sinclair: Absolutely not. I think there's an obligation.

You know, if I can't get support to do the research, you're relying on my ability to do it for free or to get students to do it for free. There has to be some ability by the federal government to help and to have scientists and others involved in decision processes like these, especially for large complex processes. Absolutely.

Ms. Kirsty Duncan: Are you aware of projects where it's been challenging because of a lack of scientific expertise?

Prof. John Sinclair: What I would say is that it's been challenging where there have been multi-jurisdictional assessments, or bilateral assessments that haven't involved the federal government. It's been challenging when the federal government hasn't come to provincial hearings, even though it's a joint process or harmonized process.

The Chair: Thank you so much. The time has expired.

Because of the short remaining time, we'll share two minutes each.

Two minutes, Ms. Liu.

Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP): Thank you, Mr. Chair.

Mr. Sinclair, you mentioned there might be other witnesses who could help us in the study. So I would suggest that you provide the clerk with the names of those witnesses.

Prof. John Sinclair: I will.

Ms. Laurin Liu: We had the Canadian Electricity Association come in and we had a really interesting conversation about the ideal social licence. We talked about how the process of consultation is really important, as you and the Saskatchewan Mining Association mentioned earlier.

We know that consultation with aboriginal communities is important. I was really glad to hear that you're trying to take social and economic factors into consideration, and I think that's really important. We also know that recent cuts to the CEAA threaten the consultation process with aboriginal communities.

So my question is this. Does your industry see the value of social licence that comes with a robust EA process? Or would the Saskatchewan Mining Association encourage a stronger consultation process? And if so, what form would that take?

The Chair: You have 35 seconds.

● (1300)

Mr. R. Liam Mooney: I'd start by saying that we had a long and storied history of consultation in relation to our projects in northern Saskatchewan, before the duty to consult became the focus of case law in that regard.

Cameco Corporation is the largest industrial employer of first nations and aboriginal people in Canada, so in that regard we—

Ms. Laurin Liu: I don't have that much time. I'm going to interrupt you there.

Could you just say if you consider social licence something that the association could benefit from and help projects go ahead?

Mr. R. Liam Mooney: Absolutely, and—

The Chair: Unfortunately, I'm going to have to stop you there. My apologies, but the time has elapsed.

Mr. Sopuck, you have the last two minutes.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): I'll be brief, which is difficult for a politician—and, hopefully, you will be too.

One of the CEAA criteria is that the process has the ability to question the need for a project.

Both Dr. Gibson, and Dr. Sinclair, do you consider that appropriate?

Prof. Robert Gibson: Certainly, and this usually is called the purpose of the undertaking.

If you have the purpose and the alternatives to serve that public interest purpose defined properly at the beginning, much of the rest gets easier and clearer.

Mr. Robert Sopuck: Dr. Sinclair.

Prof. John Sinclair: I would just agree, so you can—

Mr. Robert Sopuck: Don't you think, however, that the need and the purpose of a project or the allocation of a natural resource is best left to accountable elected officials as opposed to people who are involved in the CEAA process—who, with all due respect are not elected and, by definition, not accountable to citizens at large?

Prof. Robert Gibson: Certainly the ultimate responsibility should be with those who are accountable, and the decisions—

Mr. Robert Sopuck: To be elected, I think you meant to say.

Prof. Robert Gibson: Yes, they are the accountable people.

And the final decisions—and there should be a decision, in my view, under this act—should be the responsibility of elected officials, informed by proper process and transparency and full engagement, including on the trade-off questions among these larger issues.

Mr. Robert Sopuck: Regarding the assessment of the need for the project, I think that implicit to that is an assessment under CEAA of the business case for the project. Presumably, any project brought before CEAA will already have passed the business case test and, by definition, be economical—or at least the proponents are risking their own money.

And I'm certainly not qualified to do this, but do you, Dr. Sinclair, or Dr. Gibson, with all due respect, see yourselves as qualified to question the business case by proponents?

The Chair: Mr. Sopuck, your time is up.

Unfortunately, time is up on the clock, too.

I want to thank the witnesses for being here.

Ms. Laurin Liu: I'd like to move a motion before the committee.

Sorry, is this the proper time to move a motion?

Ms. Megan Leslie: It's a point of order.

Ms. Laurin Liu: On a point of order, I move that the clerk look into inviting these witnesses back on another day that the committee meets.

The Chair: You cannot move a motion on a point of order.

Ms. Megan Leslie: I didn't know that. We're all learning.

The Chair: It did happen in the last Parliament, but it's against the rules.

I was just going to say to the witnesses that any input they'd like to provide—and there's no obligation here, as it's totally voluntary—will likely help form what a draft report will look like. Any recommendations would also be fine. While this is not required from witnesses, we would welcome it.

So with that I would accept a motion to adjourn.

The meeting is adjourned.

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