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Chair

Mr. Mark Warawa

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● (1105)

[*English*]

The Chair (Mr. Mark Warawa (Langley, CPC)): We have a quorum. It is 11 o'clock, so we will proceed.

Thank you, colleagues.

And thank you that the coffee has arrived. That's good news, too.

I want to thank the witnesses. We have a large group providing testimony today. Each group is provided with up to 10 minutes.

We will begin with the Assembly of First Nations. I believe it's Mr. William David who is presenting. Or is it Mr. Jones?

Mr. Roger Jones (Senior Strategist, Assembly of First Nations): Thank you, Mr. Chair.

Mr. David is here, accompanying me today.

Prior to starting our formal remarks today, the national chief would like to convey his message of congratulations to all members of the standing committee on your election successes and your appointment to this committee. Of course, he wanted to be here. Unfortunately, his scheduling did not allow that today.

Environment and sustainable development is critically important to first nations, so it is with pleasure that we make our first appearance before you today.

The Canadian Environmental Assessment Act is important to all Canadians because it is the primary legislative vehicle used by Canada to reconcile environmental and economic considerations in the context of development. What is less well known is that the act is also the main legislative vehicle for reconciliation of aboriginal and treaty rights with development projects. It is through the environmental assessment process that first nations are often first engaged on proposed developments. This is especially the case where developments are proposed or conducted in the absence of an existing partnership with first nations.

Let the AFN be very clear that first nations are not opposed to development. There is no shortage of first nations either working in partnership with industry or even taking the lead on major resource developments. A number of these success stories were featured at the international mining and energy summit that the AFN hosted earlier this year in Niagara Falls. In these cases, first nations have already determined that development is entirely consistent with our obligations to the Earth and our peoples.

Many of these first nations are interested in an act that respects first nations environmental knowledge and economic interests. The act must be streamlined to allow first nations to develop our own territories. More often, however, development is proposed by companies that have not developed a relationship with first nations, which is of critical importance. They must do so in the context of the environmental assessment process.

Sometimes projects are proposed that threaten critical resources or culturally significant sites. This makes the process of engagement and dialogue difficult, because first nations may enter the process under threat of unknown impacts to their lands, territories, and resources. In these cases, first nations require a CEAA that can effectively reconcile first nations' rights with the interests of developers. Sometimes these rights and interests can be reconciled quite easily; other times they cannot. First nations are concerned that the current CEAA framework does not adequately assess whether and how our rights can be reconciled with the interests of industry.

AFN's main recommendation is that the committee should recommend that the government establish a joint crown-first nations process to reform the CEAA to fulfil the honour of the crown and make the act effective with respect to consultation and accommodation. The time and resources it takes to do so should be seen as an investment to get it right for all actors, rather than simply an exercise in first nations engagement.

In 2004, after the last review of the CEAA, the Supreme Court of Canada rendered many decisions that stated that reconciliation was an imperative in Canadian law in relations between the crown and first nations peoples and between industry and first nations peoples. That imperative of reconciliation is also reflected in the United Nations Declaration on the Rights of Indigenous Peoples, which of course Canada now supports. We're keen to work with the Government of Canada in implementing the rights set out in the declaration.

I would also point out that it's very important that Canada get it right, because of the recent announcement that was made by the Prime Minister of Canada on the creation of the Canadian International Institute for Extractive Industries and Development. That announcement was made at the gathering of the heads of the Commonwealth. It states that the newly created institute will undertake policy research to identify best practices in extractive sector management for individual countries and arrange technical assistance for governments and communities in developing countries through a partnership between Canada's private sector and Canadian civil society organizations.

It's important that Canada get it right before it starts exporting policies and practices to other countries, in particular where there are indigenous peoples who may be affected by development.

We recommend you look at the report of the special rapporteur on the rights of indigenous peoples, James Anaya. He's a United Nations rapporteur. He issued a report earlier this year, in July 2011. One of his conclusions and recommendations is:

> On the basis of the experience gained during the first term of his mandate, the Special Rapporteur has come to identify natural resource extraction and other major development projects in or near indigenous territories as one of the most significant sources of abuse of the rights of indigenous peoples worldwide. In its prevailing form, the model for advancing with natural resource extraction within the territories of indigenous peoples appears to run counter to the self-determination of indigenous peoples and the political, social and economic spheres.

We have plenty of legal developments, both domestically and internationally, that direct that states and indigenous people need to achieve reconciliation in terms of their relationships, in all forms: politically, economically, socially, and culturally.

As far as the Assembly of First Nations is concerned, the act needs to be updated to ensure consistency with the crown's obligations in relation to the reconciliation imperative.

Members of the standing committee, I must inform you that first nations have litigated issues related to CEAA more than perhaps any other group. Expensive scientific and legal studies, coupled with litigation, are both major causes of delay. I must also inform you that despite the groundswell of litigation and delay, virtually no policy work has been undertaken with first nations to address consultation and accommodation issues, or reconciliation generally.

I'll skip right to our recommendations in view of operating within the 10-minute framework.

In the absence of more time or funding to explore potential improvements to CEAA with first nations, or even to analyze the current act, the Assembly of First Nations recommends that the standing committee recommend that the government engage first nations in its response to the report of the standing committee. First nations require a joint crown–first nations process to determine how reconciliation can be reflected in the act. Such a process should include, among other things, the following: recognition of free, prior, and informed consent in the preamble language of the act as well as an articulation of circumstances under which the free, prior, and informed consent of first nations must be secured prior to development; expanding triggers to include aboriginal title, treaty rights, and aboriginal rights, which is consistent with rulings of the Supreme Court of Canada and in particular with respect to Haida and Taku; a framework within which the crown will work with first nations governments on screenings and on strategic environmental assessments; a requirement for the crown to share strength of claim assessments with first nations and an opportunity for first nations to comment on those assessments; delivery of plain language assessments of environmental impacts by the proponents so that our community members will be able to understand them; and first nations participation at all decision-making stages of the environmental assessment process, including the policy development process, particularly with respect to scoping decisions.

I'll conclude there, Mr. Chairman. Thank you.

● (1110)

The Chair: Thank you, Mr. Jones.

Mr. David, thank you.

Next we will hear from the Canadian Association of Petroleum Producers, for up to 10 minutes.

Go ahead, Mr. Collyer.

Mr. David Collyer (President, Canadian Association of Petroleum Producers): Good morning, Mr. Chair and members of the committee. My name is Dave Collyer. I'm the president of the Canadian Association of Petroleum Producers, or CAPP, as we refer to ourselves. I welcome the opportunity to provide CAPP's perspective on CEAA, which is important legislation in its own right. However, I want to start by positioning CEAA in a broader context and by encouraging the committee to review CEAA with an eye to the opportunity for more fundamental regulatory reform.

First, why does regulatory reform matter? It matters because it's fundamental to Canadian competitiveness, attracting investment, creating jobs, driving economic growth, and creating prosperity for Canadians. Our industry is the largest single private sector investor in Canada. We invest something in the order of $50 billion each year and we employ more than half a million Canadians, so the competitiveness of the industry and the ability to attract investment is critically important to us.

It's rather sobering from our perspective that a variety of domestic and international authorities have cited our overly complex, redundant, and open-ended regulatory system in Canada as a threat to our ability to attract capital to develop our abundant resources.

I also want to be very explicit that this is not just about delays in projects. This is about potential cancellations, it's about significant deferrals, and it's about a potentially chilling effect on investment in Canada and the attractiveness of Canada as an investment destination.

Often while we let the regulatory process churn along, market developments occur, competitive alternatives emerge, and market windows pass. So I think it's very important to think about this in the context not only of delays, which are potentially seen by some as an inconvenience, but rather of a much more fundamental impact on investment capital coming to Canada.

We propose three key principles to guide broader regulatory reform, and I think they're equally relevant to your considerations on CEAA. First, we believe the regulatory system must enable economic growth, environmental performance, and energy security and reliability. All three are important. There's no question that the high standard of environmental performance must be maintained. All Canadians expect that. But our economic growth and our energy security and reliability, we would argue, are critically important as well and must be given due consideration.

Second, regulatory reform needs to address both intragovernmental and intergovernmental coordination. We need to sort out regulatory overlap and redundancy among the federal, provincial, and territorial governments, and we must also address, where it occurs, the lack of alignment and overlapping responsibilities among departments with regulatory responsibilities within each level of government.

Third, regulatory reform needs to improve process timeliness and efficiency with results based on sound science.

We also want to emphasize that without concurrent process improvements related to aboriginal consultation, we will not fully realize the potential benefits of improvements in the regulatory process.

As you conduct your review of CEAA, we would ask that you have an eye to those principles and the opportunity to both identify and address more systemic issues in the regulatory process.

As I mentioned earlier, CEAA also needs to be clearly anchored within the broader system in which it is only one input to decision-making. Regulation must be framed by broad public policy decisions taken at the political level and by regional planning processes, both considering a broad diversity of inputs. For example, decisions on whether or not to develop a particular resource, we would argue, are generally taken and appropriately taken at the political level and are often guided by regional planning. These decisions are informed by a very broad diversity of inputs encompassing economic, environmental, and social considerations.

It's not the role of CEAA, the EA process, or other regulatory and permitting processes to make those broad policy decisions, but rather to subsequently inform how the resource is to be developed, including whether there are any show stoppers from an environmental perspective.

We would suggest that the distinction between whether and how is an important distinction that you should consider in your review.

With that backdrop, let me turn to the specifics of the CEAA review. I'd like to start with a few comments from our perspective about what CEAA is and, importantly from our perspective, what it is not.

● (1115)

Starting with what it is, our view is that CEAA is a relatively narrow piece of federal legislation intended to allow informed decision-making at the early stages of project review. It requires regulatory authorities to engage in an EA if, and only if, there is a federal trigger.

If there is a trigger, CEAA requires the regulatory authority to determine whether a project is likely to result in significant adverse environmental impacts and to consider related impacts pertaining to socio-economic effects in aboriginal peoples. Full stop.

As to what it is not, while CAPP is strongly supportive of sustainable development, EA is not a tool to assess whether a project meets sustainable development criteria or to address broad socio-economic considerations. It's not about assessing impacts distant from the project. It's not about regional planning. It's not a tool to interfere with the legitimate role of other jurisdictions to conduct their own environmental assessments on projects within their jurisdiction. It's not a permitting process, nor is it a tool to review or try to undo resource development or related policy decisions that are within the broad purview of policy-makers. Finally, it should not be used as a tool to unreasonably frustrate, delay, or stop development.

In short, from our perspective, CEAA must be clearly grounded in its proper role of enabling informed decision-making in the early stages of the review of specific projects for which there is a federal trigger.

The scope of CEAA can, and from our perspective should, be confined to that core objective. I think some parties coming before this committee will argue that CEAA has a much broader scope or that the scope should be expanded. I would strongly urge the committee to discount those representations.

Turning to our specific recommendations on CEAA, I will just touch on a few points, and these will be more fully outlined in our written submission.

First, we need to move more consistently to a one-project, one-assessment approach, led by the best-placed regulator, and apply a risk-based approach that directs resources to higher-risk projects more consistently. That means that we need to address the long-standing issues associated with equivalency and substitution and ensure that we can move forward on that basis more consistently. I also want to emphasize that the absence of a federal trigger does not mean that an environmental assessment does not occur. I think the review of in situ oil sands projects in Alberta is a good example. They're subject to extensive regulatory review by the provincial authorities.

Second, we need to establish mandatory timelines and increased accountability to deliver results.

Third, we need to ensure that decision-making is directed back toward the fact- and science-based approach, which was the original intent of the act.

Fourth, we need to improve the aboriginal consultation process, for the benefit of all parties. That would include, from our perspective, a more consistent, time-limited process and better definition of the government's consultation responsibilities. Let me be really clear. Our industry is strongly supportive of aboriginal consultation, for all the obvious reasons, and that consultation takes place throughout the life cycle of most projects.

Fifth, from our perspective, it's very important that the committee, in its deliberations, be clear on where CEAA fits within the broader policy and regulatory framework and ensure that the mandate and scope of CEAA are defined accordingly.

Let me just wrap up with a few key points.

I think this committee has a tremendous opportunity to improve the competitiveness of the regulatory system in Canada, which from our perspective will have a real and tangible impact on jobs and economic growth.

I think we can all agree that this effort must continue to deliver responsible environmental outcomes. That's what we want, I believe that's what you want, and I believe that's what Canadians want.

Implementing the recommendations we've made with regard to CEAA and the EA process in a timely manner will improve both environmental assessment and, from our perspective, provide a foundation from which to improve the overall regulatory system in Canada.

We strongly encourage the committee to conduct its review in a manner that puts CEAA in a broader context and with an eye to the broader regulatory reform opportunity.

Thank you. I look forward to your questions.

● (1120)

The Chair: Thank you, Mr. Collyer.

Next, we will hear from the James Bay Advisory Committee on the Environment.

Mr. Morin and Ms. Otter Tétreault.

Ms. Chantal Otter Tétreault (Member, Cree Regional Authority, James Bay Advisory Committee on the Environment): Good morning. My name is Chantal Otter Tétreault. I am a member of the James Bay Advisory Committee on the Environment. I sit on the committee as a member appointed by the Cree Regional Authority. I'm accompanied today by the committee's analyst, Graeme Morin.

I would like to start off by stating that the James Bay Advisory Committee on the Environment was created following the signing of the James Bay and Northern Quebec Agreement in 1975, an agreement that is protected by section 35 of the Constitution Act. The committee is composed of representatives from the three governments: Canada, Quebec, and the Cree Regional Authority.

Prior to highlighting our recommendations regarding the act, I would like to mention that our mandate within the committee is to oversee the administration of the environmental and social protection regime as outlined in section 22 of the agreement and to act as the official and preferential forum to advise and be consulted by responsible governments on issues, laws, policies, or regulations that affect the protection regime, land use measures, the communities, or the environment of the James Bay territory. This includes, of course, all issues pertaining to the environmental assessment and review process applicable to the territory, as outlined in section 22 of the agreement.

In light of our mandate, I offer to the standing committee today our recommendations regarding the revision of act, with two implicit goals: to improve the environmental and social impact assessment and review procedure; and to protect the James Bay territory, its inhabitants, and the rights and representative processes of the Cree people, as stipulated under sections 22 and 24 of the agreement.

Before I move on, please note that a map of the territory and additional information regarding some of the rights accorded to the Cree people under sections 22 and 24 of the agreement are available in the appendices to our brief. They offer more details, information, and examples. We must also affirm that we clearly understand that the Canadian Environmental Assessment Act is based on rules of application, purposes, and institutions that are quite different from those set out in section 22 of the agreement.

As a result of these differences, our message today is very straightforward and revolves around two central themes: clarity and coordination.

In terms of clarity, we stress that section 22's environmental and social protection regime affords a special status of participation and representation of the Cree people on all of the committees and at each stage of the environmental and social impact assessment and review procedure applicable to the James Bay territory. This special status is well over and above that which is provided for in the procedures involving the general public and is a fundamental element of the agreement.

Moreover, section 22's regime and assessment and review procedures are based on a particular set of nine guiding principles and are specifically designed and adapted to protect the Cree way of life, including Cree wildlife harvesting rights and guarantees as outlined in section 24 of the agreement.

Recognizing that these provisions, guiding principles, rights, and guarantees are not addressed in the act and that they cannot be amended without the consent of the agreement’s signatory parties, clarity in the act is required. Pertinent amendments to the act must be made to clearly address the special status of the Cree people, the guiding principles of the agreement, and Cree harvesting rights and guarantees when the act’s assessment and review procedure is triggered in the James Bay territory.

In terms of coordination, we stress that section 22 outlines the assessment and review procedures for projects affecting the James Bay territory. These procedures are unique to the lands under the James Bay and Northern Quebec Agreement and are recognized as such in Quebec's legislation, such that Quebec's southern procedures do not apply within these lands.

Section 22's procedures are thus adapted for the James Bay territory and outline the assessment or review of projects in light of their respective jurisdictional natures: provincial, federal, or pertaining to Cree category I lands. The Canadian Environmental Assessment Act's assessment and review procedure is applied in concurrence with section 22's procedures. Some projects are thus subject to three different procedures, despite the ambiguities, additional costs, and delays that this situation creates.

The committee respectfully acknowledges the duties and responsibilities of federal authorities under the act but is of the opinion that development projects should ideally be the object of one assessment or review in order to maximize efficiency. We recommend that the act be amended to outline systematic coordination protocols for one assessment or review when the act and section 22's assessment and review procedures occur in concert in the James Bay territory.

● (1125)

At a minimum, such an amendment would cover situations where both federal procedures—the act and section 22's federal procedure—are triggered simultaneously. We recognize that revision of the Canadian Environmental Assessment Act and coordination with the environmental protection regime of section 22 is a very significant exercise.

We remain very open to discussion with the standing committee and the pertinent departments, in accordance with our mandate.

Thank you.

The Chair: Ms. Morin, are you presenting also? Thank you.

Next we will hear from the Mining Association of Canada, Mr. Gratton and Madam Laurie-Lean for up to 10 minutes.

Mr. Pierre Gratton (President and Chief Executive Officer, Mining Association of Canada): Thank you for the opportunity to present to you today. I am here with my colleague, Justyna Laurie-Lean, who has worked on federal environment assessments since the act's inception.

MAC represents the majority of major mining producers in Canada. Our members produce a diversity of minerals and metals, including base metals, gold and precious metals, steel-making coal, diamonds, iron ore, uranium, and oil from the oil sands.

All our members subscribe to MAC's award-winning corporate responsibility initiative, called Toward Sustainable Mining. TSM, which is a condition of membership, includes reporting against a range of comprehensive performance metrics subject to external verification at the mine site level. It is the only system of its kind in the world for mining and has been recognized by groups like the Canadian Business for Social Responsibility as best in class.

As you have already heard from the agency, mining is its most important client, comprising the lion's share of its workload. While this has been the case for a long time, it is even more the case today, given the growth under way in our sector. Rising commodity prices driven by China are creating opportunities not seen in decades. We have estimated that there is as much as $137 billion in new private sector mining investment to be spent across Canada in the next decade or less. A lot of this will be subject to federal environmental assessment, so we have a decided interest in your deliberations.

My first message to you is this: for major projects subject to comprehensive studies, i.e., mines, CEAA is no longer broken, so don't fix it. That is to say, with the 2010 amendments we now at last have a federal environmental assessment process that is well managed. The worst unjustifiable delays have been eliminated and the agency is doing a good job running effective and efficient assessments. This was not the case before 2010.

What did the amendments do that was so good? They put someone in charge.

For almost 20 years, Canada had a Canadian Environmental Assessment Agency that had no responsibility for environmental assessments. They didn't run them and they were little more than a policy shop. Instead, EAs fell to individual departments whose legislation triggered EAs. For mining, this often meant Fisheries and Oceans, but sometimes Environment Canada or NRCan.

As these departments were neither trained in EAs nor resourced to do them, what happened in practice was that they resisted assuming the responsibility for them. One of the biggest sources of delay was at the front end. Proponents pounded on doors in Ottawa asking for an EA to commence, sometimes waiting as long as 18 months for a process to start. By this time, the provinces were well on their way with their own respective assessments, so harmonization was impossible.

In 2010, the agency was given responsibility for running comprehensive studies and determining whether panels were required. The agency has implemented the amendments well and efficiently, and we commend them for this.

As a result, mining EAs, which are almost always comprehensive studies or panels, start on time. As I said, the agency runs them well. As a result, Ottawa and the provinces are now working together. Reports from our members on the ground are consistent: the agency is doing a good job.

I would pause here to emphasize what we've said to the natural resources committee, the finance committee, and to anyone else who will listen: the funding for the Canadian Environmental Assessment Agency and for the major projects management office sunsets at the end of this fiscal year and we need their funding renewed. Without it, you won't be able to handle the volume, and we risk undermining the gains we have made.

The 2010 amendments did little else of consequence to us. They did not change the nature of EAs, nothing was made easier, and no demands were lessened. All we have ever asked for was a well-run process and now we have one. This is why, as we appear before you today, we implore you not to do anything that might compromise the efficiencies we have finally attained.

We do have some suggestions on how you might go further. We point out that the 2010 amendments have benefited our sector the most, but sectors that are subject to lower-level screenings not administered by the agency did not see meaningful benefits flow from the 2010 amendments.

First, you should consider amending the act to allow for equivalency. Our brief provides sample text. It would allow the federal government, on a case-by-case basis, to allow another jurisdiction's EA to be accepted as equivalent to Ottawa's. In an era of scarce resources and deficits, this means simply letting Canadians' limited tax dollars support one good EA instead of two—one process, not two; one set of public servants, not two. Sometimes these public servants may be federal, sometimes not.

● (1130)

Second, the committee should look at the possibility of giving CEAA the power to work with other jurisdictions at their request on strategic environmental assessments. In 2003, MAC, jointly with environmental groups and the Assembly of First Nations, advanced this idea. It was rejected at that time. Today, there may be more of an appetite for this idea. It would allow the federal government and the provinces to jointly assess a region's carrying capacity and look at broad environmental issues. This would help to prevent layering onto a proponent the undue burden of trying to answer for future developments that may or may not occur. It would provide a useful baseline of environmental information for proponents to build upon and address. It's an idea that would, for example, respond to concerns being raised about the potential developments in the Ring of Fire.

Third, we want to comment on some ideas brought forward by others to date. We agree with the general idea that federal liaison should focus on major projects. Allocating scarce resources to assess the impact of a new park bench in a national park does not seem like a good use of resources. I don't use this example frivolously. These park benches do trigger EAs. However, we would be concerned with wholly abandoning the concept of federal decisions as triggers for federal liaison. Federal EAs should be grounded in federal jurisdiction. To move to a project list approach without triggers would stray significantly into provincial jurisdiction and add yet more complexity and challenges to the natural resource sectors, whose primary regulator is the province.

I note that Arlene Kwasniak, who appeared before you a few days ago, who does a lot of work for the Canadian Environmental Network, also agreed with us on this point. There are means for the federal government to insert itself into projects of national significance if required, but we strongly oppose the idea that Ottawa should become involved in matters of provincial jurisdiction, just because, maybe, it can. There should be a better reason than this. Do not ignore the fact that on environmental matters, the federal government has many other laws at its disposal.

Lastly, we want to comment on the idea of granting CEAA enforcement powers. To us, this seems like passing the buck. We are currently urging the federal government to implement compliance mechanisms for several acts, including the Migratory Birds Convention Act, the Species at Risk Act, and aspects related to the Fisheries Act. Compliance mechanisms would bring enforcement with them. The best way to ensure compliance with the outcomes of federal liaison is to have federal acts that can be enforced in a clear, predictable manner. This is not currently the case. Rather than amend CEAA to create an enforcement provision, we suggest that the federal government make its other acts work the way they should.

Thank you, and we look forward to your questions.

● (1135)

The Chair: Thank you to each of the witnesses for your presentations and staying within the 10 minutes. Also, thank you for the briefs that you provided to the standing committee prior to today's meeting. It made it possible for us to be well prepared.

We will begin the seven-minute rounds of questioning with Ms. Rempel. You have seven minutes.

Ms. Michelle Rempel (Calgary Centre-North, CPC): Thank you to all the witness groups for coming today.

To Mr. Collyer and Mr. Gratton, your industry associations represent industrial groups where there is a great deal of capital intensity and investments, as well as sensitivity around the investment processes. Your industry associations also represent a great deal of employment in this country. The statistic I have for the Canadian Mining Association is 350,000 jobs within Canada. CAPP member companies employ about 500,000 people.

Given all these things, and some of the comments you've made, perhaps you could describe the importance of having predictable and efficient environmental assessments on investment within each of your industries, as well as some tangible examples where perhaps we haven't seen that, and how we can improve our processes from there.

Mr. David Collyer: First, thank you for the question. I would start by saying the premise is absolutely correct. Given the magnitude of the investments that our industry makes and the significant capital exposure that's involved in those investments, predictability around scope and timing of the regulatory process is extremely important. People need to know that when they bring forward projects of a significant magnitude, their views will be heard, there will be a fair and due process, and they can expect that process will lead to a decision within a reasonable timeframe.

I come back to my comments in my remarks. This is not just about project delays. We're in a global investment climate where capital is mobile and the competitive environment changes rapidly. If a project is held up for a long time in the regulatory process, we often run the risk.... And the Mackenzie Valley pipeline project is probably the poster child for what can go wrong, but it's a good example of the market changing dramatically during the course of the regulatory process.

So I think scope and timing are extremely important. Mackenzie is a good example. I agree with Pierre that there have been changes, improvements made, but the Jackpine Mine that Shell is advancing in the oil sands has been waiting, I think, about four years for the process to be clarified in terms of how it will be reviewed.

The recent review of the major hydroelectric project in Newfoundland is another example, I think, of a case where the scope of the review was uncertain. The regulator, from our perspective, although not directly involved in our industry, looked well beyond what a reasonable scope of EA would be in terms of reviewing that particular project.

So there are two or three examples, but there are others. We've asked our member companies also to provide some information to the committee that will be helpful in demonstrating some cases where the process has not worked particularly well.

I will just reaffirm the point. Predictability on the scope and timeline of the regulatory process is critical for our industry, from a competitive standpoint.

● (1140)

Mr. Pierre Gratton: First, in response to your first point, I'd like to add that while the Canadian economy presently is shedding jobs, we can't hire people fast enough. We are facing a human resource shortage and need people across a whole range of disciplines as quickly as we can. With the numbers I was giving you around new project developments, that's only going to be accentuated in the years ahead. This work shortage is a global phenomenon that we're facing.

The $140 billion investment also translates into tens of thousands of direct jobs, and a lot more indirect jobs, so there's a huge opportunity ahead of us.

I'll give you two examples that come to mind. One is a bit dated, but I'll use it anyway.

There were two major mining deposits around the same size, discovered around the same time. One was Voisey's Bay, which you've probably heard of. The other one was in Australia, the name of which escapes me. Their mine was reviewed and built before our process started. So that's just one example.

The other one that comes to mind, which is more recent, which is I think a sad story—though, hopefully, it's going to have a happy ending—is the Red Chris project in northwestern B.C. This was a project that underwent a comprehensive provincial assessment. The federal government, again, under the old rules, was quite far behind and ultimately decided at that time to do a screening-level assessment instead of a comprehensive environmental assessment. The federal government was taken to court. It was tied up for three years at different levels of court. Finally, the Supreme Court ruled that the federal government erred in scoping down and should have treated this as a comprehensive assessment, though they did, to put it one way, show pity on the proponent. And the proponent was allowed to proceed because it wasn't the proponent's fault that the federal government made the determination it did.

Now, the new amendments have clarified all of this, and we now do comprehensive studies or panel reviews. We don't have an issue with that. We just want the rules to be clear and to know what we're getting into when we get into it.

So that is a project that is now in final permitting, and it's probably, we hope, going to start construction in the spring and start to create jobs for British Columbians and for Canadians. But that's a long delay and just an example of what can happen when the rules aren't clear.

Ms. Michelle Rempel: You just spoke to some of the potential benefits of looking at an equivalency or substitution system with the provinces. Are there specific areas that you think could be quick wins or ways that we could look at potentially implementing a substitution or equivalency process?

Mr. Pierre Gratton: The example we provided in our brief already exists in at least one province's environmental assessment legislation, which is simply an enabling mechanism. The Province of B.C. can determine on a case-by-case basis that a particular project is best reviewed by the federal government instead of by the provincial government. They have used this in a couple of cases around port facilities because the federal government has more expertise, ports being its jurisdiction. So the federal government does the environmental assessment and then the province accepts it as its own.

We're suggesting that the federal government have a similar provision that could be used on a case-by-case basis if it deems that the province can answer appropriately.

The Chair: Thank you. Time has expired.

Madame St-Denis, seven minutes.

[*Translation*]

Ms. Lise St-Denis (Saint-Maurice—Champlain, NDP): I wish to thank all of the witnesses.

Given that we presently find ourselves on the traditional territory of the Algonquin, I will begin with the two First Nations representatives.

As representatives of the First Nations of Canada, could you explain to us how the Canadian Environmental Assessment Act can integrate the diverse cultural specificities and aboriginal rights of each of these nations?

● (1145)

[*English*]

Mr. William David (Senior Policy Analyst, Environmental Stewardship, Assembly of First Nations): I'll take this on behalf of the Assembly of First Nations.

The act itself, as a whole, can't do that without a specific provision. Our position is that it has to be done on a case-by-case basis and that first nations have to become engaged early in the process. The process itself has to respect, specifically, aboriginal treaty rights of those first nations. As well, it has to be sufficiently holistic to take into account, for instance, socio-economic impacts as well as benefits, cultural impacts, and human rights impacts.

As far as I know, the act does not do an adequate job, in our mind, of even taking into account the rights considerations, never mind some of these other ones. It's something the Assembly of First Nations has identified as a major issue with the act—which does not have an easy solution but requires dialogue between first nations and the crown, or between first nations and the government, more precisely, in order to address comprehensively how to deal with consultation.

Ms. Chantal Otter Tétreault: Concerning the Cree of the James Bay area, within our agreement, within section 22, it is based on both social and environmental aspects. In that, social does include our cultural values. Within our environmental assessment, we do take into consideration cultural values.

This is not portrayed within the CEA, so for certain examples in the past, such as the Eastmain-1-A and Rupert project, many of the questions the proponent, Hydro-Québec, needed to answer were based more on social questions rather than environmental ones. So it's somewhat of a balance, within our environmental review, that the social aspect—which does mean cultural—is respected.

[*Translation*]

Ms. Lise St-Denis: Thank you.

Much has been said, even yet again today, about jurisdictional issues relating to environmental assessments. We have thus discussed provincial jurisdiction, federal jurisdiction and, with regard to section 22, aboriginal jurisdiction.

Could you briefly explain the position taken by the Supreme Court of Canada in the 2010 Moses decision regarding timelines? It somewhat explains why the delays are sometimes so long. Regarding the Moses decision, I would also like us to discuss the compatibility between the Canadian Environmental Assessment Act and the consultation process provided for under the James Bay and Northern Quebec Agreement.

[*English*]

Mr. Graeme Morin (Environmental Analyst, James Bay Advisory Committee on the Environment): Quickly, first I just want to state—and I don't think anybody here would disagree—that we need to respect the decisions of the Supreme Court, so we're not going to put into question what was in the Moses affair.

Conversely, at least, the committee itself is of the opinion that it is a good decision to respect and to consult first nations from the beginning, which is more or less what was in the decision. Of note, though, is that it is one of the principal considerations in the agreement. The Crees enjoy a special status of consultation and participation over and above what is generally afforded to the general public, and that applies to section 22 of the James Bay and Northern Quebec Agreement.

What we see is perhaps the Supreme Court properly reacting to concerns, obviously subsequent to the signing of the James Bay and Northern Quebec Agreement, which was done in 1975.

The issue, though, is that when we get to the operational stage within the EA process, there is a disconnect between what happens during that process and what was supported or decided upon by the Supreme Court. So what we're asking—at least what Chantal forwarded—is to fill that gap. Section 22 goes well beyond what is in the CEAA, and it, of course, is in concordance with what the Supreme Court mentioned or decided, so perhaps it behooves this commission to consider specifically recognizing the convention, perhaps in the preamble or text of the act, when environmental assessments occur in the territory, so that by default we can then fill that gap.

In essence, right now section 22 goes well beyond what is in the act, and of course a Supreme Court decision is in line with that. There is still some road that has to be traversed before that.

● (1150)

[*Translation*]

Ms. Lise St-Denis: My next question concerns my riding. During the course of a visit to Wemotaci, Mr. Boivin, the chief of the Conseil Atikamekw, shared with us his concerns regarding the difficulties those nations that are far removed from large urban centres are having with regard to the adoption of certain environmental practices, such as recycling, for example.

Do you think the Canadian Environmental Assessment Act sufficiently takes into account…

[*English*]

Have I finished my time?

The Chair: I'm sorry, your time has expired. Thank you so much, Madame St-Denis.

Next, Mr. Sopuck, for seven minutes.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thank you, Mr. Chair.

The question is for Mr. Collyer or Mr. Gratton. Would you agree that federal resources should be focused on larger projects that pose a higher risk to the environment rather than on smaller projects, and do you think that an approach that uses a project list to determine which projects would require a federal EA would be effective in focusing resources on significant projects?

Mr. David Collyer: I can start with a response to that.

Absolutely, we agree that the focus should be on those projects that are higher risk, and a risk-based approach should absolutely be used to allocate resources, which are scarce everywhere.

Our view is that we need to continue to focus on federal triggers. That is the appropriate mechanism by which to trigger any aid at the federal level, and I'll just reiterate the comment I made during my remarks that one should not assume, because there is not a federal assessment, that these projects are not being assessed, and there are many that are not assessed at the federal level. In situ projects, which are subject to a rigorous provincial review, would be an example of that.

Mr. Pierre Gratton: I would agree with everything my colleague has just said. I would also clarify one other point that was raised before this committee before, as an example. There was the notion of having greenhouse gases become some kind of trigger in Australia, and I would just like to clarify to the committee that there is no such mechanism in Australia.

For the act to really be effective and to work as it should within federal jurisdiction, it has to focus on those things for which there are real federal triggers.

Mr. Robert Sopuck: I have a tendency to focus on the environment itself as opposed to process—things like water quality, biodiversity, air quality, and so on. Given that many of those are governed by various acts and regulations both federally and provincially—the Species at Risk Act, the Migratory Birds Convention Act, the Fisheries Act, and so on—when mines are being developed or energy developments are being planned, I would assume that you build in the compliance with all those acts and regulations from the very beginning. Is that correct?

Mr. Pierre Gratton: Yes. One of our concerns, which I voiced today, is that with some of the acts you just mentioned there aren't presently compliance mechanisms. That is a major concern of ours.

The Migratory Birds Convention Act, for example, is an absolute prohibition and there is no way to be able to comply with the act. You have to do your due diligence and hope it works and that you stay out of court. The Environment Canada website's current advice to its clients is to consult their lawyer. We actually don't think that's the answer. We think we need a regulatory mechanism that would allow us to obtain a permit to demonstrate compliance with the act.

● (1155)

Mr. Robert Sopuck: I really appreciate your reference to the Migratory Birds Convention Act, because carried to a logical extreme it would mean the end of Prairies agriculture, so I think your caution is very well taken.

Mr. Collyer.

Mr. David Collyer: I would just reiterate the same point. Compliance is the minimum requirement. I agree with Pierre that there's an opportunity to improve the clarity on compliance requirements, but in looking at any new energy project, compliance is the minimum threshold. We often try, for economic or other reasons, to perform better than that, but absolutely that is the going-in position.

Mr. Robert Sopuck: Right.

What do you think about a guidelines approach to a number of projects? For example, we know how to build stream crossings in a way that allows fish to go underneath roads and so on. What if the relevant regulatory authorities were to issue you guidelines and you simply followed them in many cases? Would that be helpful?

Mr. David Collyer: We have guidelines, recommended practices for many of the activities we undertake. We're always open, obviously, to improvements on that, but your question is somewhat contradictory in that you referred to guidelines and then said “you must follow”. In the context of best practices and improvements in the way we do things, absolutely, we are open to that, whether they come from government regulators or from our own industry.

Mr. Robert Sopuck: Your point is well taken.

Mr. Collyer, I was struck by the comments you made making the very strong distinction between the words “whether” and “how”, and as an elected official I really appreciate the fact that you've recognized the role of elected officials in making these kinds of decisions. I think you are exactly correct in your assessment of what an EA should be.

Unfortunately, it has become a political process, which questions whether a project should even go ahead or not, and that takes the responsibility out of the hands of elected officials, who, in terms of consultation processes, are subject to something called elections, and we're consulting on a regular basis. Having environmental assessments deal with the environment itself and how a project is developed makes a lot of sense.

I also appreciated your reference to the Mackenzie Valley pipeline, having been part of that assessment back in the 1970s myself, personally, and again, it's an astonishing poster child for how not to do things.

Mr. Collyer, just talking about the Mackenzie Valley pipeline for a minute, do we know how to build pipelines in an environmentally sound way, especially with regard to stream crossings?

Mr. David Collyer: The short answer is absolutely. We have a long history of building pipelines in a diversity of environments, including many stream crossings. Yes, the technology exists. We know how to do this, and one of the really unfortunate outcomes of the Mackenzie process—over and above the fact that it took so long and may well have an impact on whether that project ever proceeds or not—is the fact that we went over and over the same issues in a multitude of forums with a multitude of people. And that in no way is a representation that those issues should not be addressed. What we need to do is find an efficient and effective way to address them and make sure they are addressed to the satisfaction of the key stakeholders and the regulator, and then move on.

We keep recycling and going over and over things that frankly are well established and we've already done justice to in terms of addressing the issue.

Mr. Robert Sopuck: That surprised me as well. I know from own time in the Mackenzie Valley that the streams hadn't changed from the 1970s to the 1990s. To have to do that assessment all over again, given the multitude of reports from the 1970s, on almost the very same streams, seemed a little redundant and expensive to me.

I take your point about the tragedy of that process. I think it can be called that because those communities up there are impoverished now, and may remain that way for the foreseeable future, because the pipeline was not built. I think there are real consequences for communities with these processes.

Thank you, Mr. Chairman.

The Chair: Your time has expired.

Monsieur Coderre, welcome to the committee. Ms. Duncan had to leave because of a health issue. We are studying the CEAA review. We'll provide some latitude.

● (1200)

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): I will attempt to do honour to my colleague. Thank you very much.

Welcome, gentlemen. Clearly, when one considers the environmental reality from an industrial perspective, it always looks different from the way it appears when viewed from a First Nations perspective.

My first question is for Mr. David. Do you think that, in the context of all of this legislative upheaval, it is possible to harmonize an environmental assessment act with the requests, or with the traditional respect of aboriginal peoples?

It is the strategist who is going to respond. Go ahead.

[*English*]

Mr. Roger Jones: We believe it's entirely possible to achieve coordination and collaboration among governments. I think the first principle that needs to be included and respected in any federal legislation regarding environmental assessment is that our governments have to be respected. They have to be included in the definition of jurisdiction and not simply regarded as a stakeholder or as an interest rights holder who is allowed to sit at the kid's table.

If you want coordination, collaboration, and partnerships to achieve everything that people want, which is effective, efficient assessments and compliance, then I think you should include first nations governments right from the start. This will ensure that all the issues are addressed, and that all the parties have the ability to streamline examinations and, where necessary, come to agreements on how to proceed. As far as we're concerned, it's entirely possible.

Hon. Denis Coderre: As a Liberal, I am what Mr. Trudeau used to call a radical centre, meaning we have to strike a balance. We want to protect the environment, but we don't want to kill the industry, and we want to build a partnership with first nations.

Do you feel that it's just a fight based on interests? Is there a way, Mr. Collyer, to monitor, use, and work with them as partners? I have just been here for a few minutes, but with your answers, I have a feeling that it's a bit of an irritant more than anything else. I'm a straight shooter.

Do you believe that through the legislation we can make things happen?

Of course, we have to be respectful of governments. If there's a treaty we have to respect the treaty. At the same time, you don't want to kill the industry. It's good for the people—you create jobs for first nations and work in full partnership.

In a doability process, what can we do to make things happen? I believe the monitoring is important.

Mr. David Collyer: Thanks for the question.

I would strongly reinforce your premise that we need to find a way to make all of this work. We need economic growth, we need to protect the environment, and we need to find ways for the major stakeholders—aboriginal people—to be involved in the process. I would say first that our industry understands the need for extensive aboriginal consultation. It's a regular part of what we do on all of our projects, and it happens throughout the project life cycle.

I think everybody understands the legislative requirements around aboriginal consultation. I can't comment on the specifics of some of the particular treaties, but there are existing legislation and requirements outside of CEAA that address many of these issues. I would caution the committee against trying to put all of those things into CEAA and expanding its scope to address things that are appropriately addressed elsewhere.

There may be occasions where that is necessary, but I think we have a tremendous tendency whenever we look at a piece of legislation to go like this and keep trying to put more into it, as opposed to saying, “This piece of legislation is intended to address significant environmental impacts.” That's what it's for. Let's make sure it does that. Let's make sure it does it well. But let's rely on other pieces of legislation to do what they do appropriately, and not try to feed it all into CEAA.

● (1205)

Hon. Denis Coderre: I've had the chance over the last 15 years to be on both sides, so my role as a legislator is to find that balance. It's to respect the fact that we have to protect our environment, but also have all of the players working together.

When you're working with first nations, do you consider them as a level of government? Do you believe they are a government, so there is a jurisdiction issue that you have to respect in the negotiations?

Mr. David Collyer: We respect the government's obligation to consult and reasonably accommodate, and we respect the role we have to play in that. That's what we do.

Hon. Denis Coderre: Mr. Jones, do you feel that these are the kinds of things that happen on the field?

Mr. Roger Jones: More often than not we hear people's dissatisfaction with the level of engagement that takes place in these processes. They are looking for more effective and meaningful engagement in these processes and in resolving issues relating to economics and social and cultural considerations.

I agree with the observation that everything is political around these major projects, and maybe as legislators you're not being given due respect and due regard in your role in managing those issues. The fact is that you have the ability to play an effective, efficient, and meaningful role in addressing these issues in the legislation you're examining and making recommendations on.

The Chair: Unfortunately, your time has expired.

Thank you, Mr. Coderre.

Next we have Ms. Leslie for five minutes.

Ms. Megan Leslie (Halifax, NDP): Thank you very much.

To the mining association and the petroleum producers, thanks very much for your testimony. I learned quite a bit. However, this is the first opportunity we've had to have first nations representatives bring the first nations voice to the table here at our committee. My questions will be for AFN and the James Bay committee.

When the president of the Environmental Assessment Agency was here they talked about how the environmental assessment process was well suited to delivering the responsibility of duty to consult, as far as the views and knowledge of first nations.

I had a meeting recently with Matawa First Nations about the Ring of Fire. As you probably know, that environmental assessment will be a comprehensive review, a paper review. It's the opinion of the Matawa that doesn't fulfill the duty to consult.

In your opinion, do the CEAA provisions fulfil the duty to consult? I'd like you to touch on the different levels as well, whether it's a comprehensive review or a full panel review.

Mr. William David: Thanks for the question.

I've been sitting here listening to a lot of discussion about aboriginal consultation. Let me make one thing clear. With respect, I don't know of any federal legislative requirements that fulfill the duty to consult—I understand it's done on a policy basis. I'm not quite sure what that policy is.

The second point I want to make is that when we talk about consultation in this room, I've heard about the Red Chris case and the Moses case, and AFN raised the Haida and Taku cases as well. These are all Supreme Court of Canada cases that directly impact the specific projects. I would suggest to you that by not actually having anything within the legislative framework, and by not having first nations involved in the policy development framework, everything is being kicked out to litigation. That's really bad for first nations, obviously, and we've heard that it's bad for industry.

With respect to the Matawa case, that's a scoping issue, just like the Red Chris case was. As I understand, it is now in the courts, and I see that as a failure. I understand they wanted a review panel. I don't know what kinds of discussions or what kind of feed-in they had to the decision to do a comprehensive study. I don't know if they were making reasonable suggestions or not; I assume they were. The point of the matter now is any kind of discussion on that situation is moot until it runs through a court process. This is another one that could well end up in the Supreme Court of Canada. I don't think that's really good for anybody.

● (1210)

Ms. Megan Leslie: Your answer really turned my question on its head, and I appreciate that. Thanks.

Would the James Bay committee like to comment?

Mr. Graeme Morin: I completely agree with what Mr. David said; that's probably the crux of the answer.

What I would like to add is perhaps pursuant to what Mr. David had mentioned, with regard to the different levels within the CEA Act of what is consultation. Consultation is a loaded word in the CEA Act—there's a specific definition; there's involvement; there's informing; there are different levels, which are discretionary for the responsible authority, depending on the nature of the project and the nature of the environmental assessment. As was mentioned, it's very important to be talking about the same thing—apples and apples, oranges and oranges. So, for instance, definitions for consultation within the CEA Act are defined within the act itself, but within a different jurisdiction—our own in James Bay territory—it means something else.

The duty to consult would theoretically have to be defined case by case, jurisdiction by jurisdiction in terms of what that means in situ. Do we need to do that? Do we need to go there? Gosh, that's most definitely a work in progress for the JBACE. We actually have a subcommittee working on that right now.

Unfortunately, I can't give you an immediate answer.

Ms. Megan Leslie: Sure.

How much time do I have, Mr. Chair?

The Chair: You have 25 seconds.

Ms. Megan Leslie: Then I'd ask if you could follow up with me in writing. As I pointed out, this is the first time we've actually heard first nations voices—representatives from first nations. If you could, give us advice about what we should be doing to further consult, with who and how—and this is just the legislative review—and maybe on specific issues as well. Maybe we need to do an actual deep look at legislating the duty to consult and embedding it in legislation. If you could follow up with us in writing, that would be fantastic.

Thank you.

The Chair: Thank you, and time has expired.

Any request for information is voluntary; it's not required, but any information that could be provided would be helpful.

Mr. Lunney, you have five minutes.

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

Again, I thank the witnesses for being with us today. It's an extremely important issue. I will start with our friends from the AFN who are with us today. I note you opened with greetings from the national chief on our recent democratic exercise and congratulated us on getting elected. We appreciate that. I want to acknowledge his greetings.

The national chief, Shawn A-in-chut Atleo, is from Ahousaht, and Ahousaht is part of the area I represent. So I am in his traditional territory, at least part of my riding is, and we have been working together.

You mentioned reconciliation. One of the elder advisers is also from our area. Chief Barney Williams, a neighbour of mine, works very closely on the reconciliation issues.

For our friends from the Cree James Bay, we want to acknowledge the leadership of your community. In 1975 there was a very significant modern accomplishment in coming to an agreement, and the names of your former Grand Chief Matthew Coon Come and former Deputy Grand Chief Kenny Blacksmith are well known in our circles here for their dialogue and contributions to overcoming some significant challenges. Now, having said that, we're glad you're here together because we are looking for a way forward.

Mr. Collyer, in your written remarks you said:

> We also want to emphasize that without concurrent process improvements related to Aboriginal consultation, we will not fully realize the benefits of improvements in the regulatory process.

We recognize that it's working better in some situations than others and there's something that needs to be fixed here. That's what the objective of our discussions is today.

For the CAPP, you employ some 500,000 people and represent 3.5% of our GDP. That's a huge contribution to Canada's GDP. Most of your operations are not in urban areas; they're out in rural areas. There are first nations communities there, which not only creates issues about consultation but it creates opportunities for economic development, partnerships, and employment of first nations.

Certainly that would be true of our mining community as well, where I think you have about 350,000 Canadians employed, and many of them would be first nations.

First of all, can you tell me or do you have any idea what percentage of your employed persons in the petroleum industry might be first nations, and the same for the mining association, if you could quickly remark on that? Do you have any idea?

● (1215)

Mr. Pierre Gratton: According to Statistics Canada, we're the largest private sector employer of aboriginal people in the country and we're about twice the national average in terms of employing aboriginal people. I would then emphasize, though, that there is a lot more potential, and as we face the human resources challenge I mentioned earlier, increasing the participation of aboriginal Canadians in our industry is one of our primary objectives.

Mr. James Lunney: I know that on the coast economic development for first nations is a priority. We've seen some great things move ahead. Recently I had a ribbon cutting for a micro-hydro project, where the Toquaht are participating. We were at that ribbon cutting and I remember remarking that the sound of that turbine moving behind us was the sound of a revenue stream for that first nation.

Another one of our first nations, the Hupacasath, has an agreement with a mining company for gravel extraction, which is moving ahead. That's a very positive development.

We want to create economic capacity for our first nations. It seems that's a great way to make a whole new suite of opportunities for the future.

We recognize that even though there are many other opportunities there, we have to work our way through this consultative process. I want to ask the Cree James Bay folks, since you've been at this for a while, whether you are aware of developments in your community in mining and so on that have worked out successfully. And are some of your people employed?

Ms. Chantal Otter Tétreault: First of all, I'd like to clarify that I am a Cree, but I'm part of the James Bay Advisory Committee on the Environment. Within this committee there are federal members, provincial members, but yes, it is for the interests of the Cree. I myself do work for the Grand Council of the Crees, so I'll speak on behalf of the development happening in my territory.

A few years ago, the Premier of Quebec announced the Plan Nord, and this has seen the development of 50% of our territory above the 49th parallel, all the way up to Nunavut. With this there was also 50% protection. This is still in the planning phase.

Also, with the increase of gold there has been more mining activity in our territory. This has led us to be more proactive in terms of building a relationship with these mining companies. We have also developed a Cree mining policy within the Cree Regional Authority, so on behalf of the advisory committee we are working on seeing that there is a relationship within the companies, but also in terms of public participation.

Mr. James Lunney: Thank you.

The Chair: Your time has expired.

Next is Madam Freeman, *pour cinq minutes*.

Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP): Thank you, Mr. Chair.

My questions are going to be directed to Mr. David and Mr. Jones from the Assembly of First Nations.

Thank you very much for being here with us and for your testimony and recommendations.

I'm interested in speaking with you because my riding includes Oka. It's traditionally Kanesatake Mohawk territory. The people of Kanesatake have never been consulted, let alone given their consent to mining projects that keep trying to come into the territory. This is traditionally their territory, and it's currently under review, so there is a lot of concern about the fact that there have been no consultations—or not with them anyhow. There has been a little bit of consultation with the people living in Oka, but not with the people of Kanesatake.

The people of Kanesatake believe there should be free, prior, and informed consent. If they draw on the UN declaration of indigenous rights, to which Canada is a signatory...they're trying to make this argument. I'd like to hear from you. Could you elaborate on the importance of consent and the difference between consent and consultation?

Thank you.

Mr. Roger Jones: Thank you for the question.

As Mr. David pointed out earlier, I think that's perhaps the $64,000 question—or maybe it's now the $64 billion question. This is something that is extremely important in terms of being able to work at.... I think one of the things to take from the United Nations Declaration on the Rights of Indigenous Peoples is that these are standards that we want to achieve together with states—in our case, with Canada.

I think what has failed to happen in this country, as Mr. David pointed out, is that when courts—or situations like the UN declaration—set out requirements as to what the engagement relationship ought to be between the state and the peoples, we're not working together to try to define what that is. Often what we see is unilateral policy or guideline development. That's not going to work, since it obviously hasn't had the benefit of the input of the indigenous peoples involved.

I don't think there is any particular magic formula around what it means. I think it's a process. I think it's a process that requires the relationship to develop and to evolve, which will enable people to then be in a position to create agreements and to create partnerships. In essence, that's really what consent is: it's how you get the parties to be mutually satisfied about the outcome that is desired.

● (1220)

Ms. Mylène Freeman: One of the problems we have in this particular case in the Kanesatake territory is that the land claims aren't in agreement. Is there or should there be a federal process to adequately protect potential aboriginal rights?

Mr. William David: Yes, there should, and there is. That's already part of the law. That's where the duty to consult and accommodate arose.

So there definitely ought to be and there definitely is. Now, whether or not that's recognized and reflected through the environmental assessment process is one question. I'm not sure that it is.

How to navigate it is quite another question, particularly when it is related to claims territories and to resources that are in dispute. For instance, if there's a particular project that may contaminate either groundwater or surface water, which in turn hold fisheries that first nations are relying on for food and for social ceremonial fisheries, destruction of that fishery could actually lead to the destruction of the culture.

If the situation is that extreme, then I suggest that's precisely the reason consent is required.

Ms. Mylène Freeman: If no consultation—

The Chair: I don't want to interrupt you, but your time has expired.

Ms. Mylène Freeman: Thank you.

The Chair: Thank you.

Next we have Ms. Ambler for five minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Mr. Chair, thank you. Thank you to our witnesses for their presentations today.

My questions are for CAPP and MAC today. They are with regard to timelines.

As you know, in 2010 the amendments to the act were to streamline the process so that now all comprehensive studies begin in alignment with the provincial reviews. Timeline regulations came into force in June 2011 for comprehensive studies. These regulations provide 90 days for the agency to determine whether to commence a comprehensive study and 365 days to provide a completed report for the public.

What are your associations' views regarding the new timeline requirements? Do you think they're important? What are your views on them?

Mr. David Collyer: I'll just be very quick. We're obviously supportive of timelines. We think they're a step in the right direction. We think there's an opportunity to go further in terms of the integration of the federal and provincial processes, which would help further in terms of solidifying timelines and processes.

I think the amendments have been positive, and the more of that we can do the better.

Mr. Pierre Gratton: I would agree the timelines are working. As I mentioned earlier, we're finding the agency is implementing the act and the subsequent regulations very well.

The delays we experience now are no longer in the environmental assessment phase. It's really in the post-EA phase, around the subsequent regulations that we require. That can take a quite a long time.

● (1225)

Mrs. Stella Ambler: Could you tell me what other CEAA reforms you believe would help reduce assessment timelines then, on that note?

Mr. Gratton first.

Mr. Pierre Gratton: I guess the point we were making is you've done that now. You've actually done a very good job, at least for the mining sector, for those who do comprehensive studies and panels. They're now well run, there's someone in charge, and you have timelines.

We think there's a better use of resources from time to time that could be achieved through the equivalency mechanism I mentioned, where you might have a province lead one versus the federal government, and do it on behalf of both jurisdictions, or vice versa. But that doesn't really get at the timeline issue.

Where we have issues around timelines now is in the post-EA period. The time it takes to get a subsequent fisheries authorization, for example, can take years.

Those are some of the challenges we now face.

Mrs. Stella Ambler: Thank you.

Just to switch, Mr. Collyer, in your remarks I especially appreciated the section where you spoke about what CEAA is and what CEAA isn't. One of the things you said it exists for is to determine the environmental impacts.

Recognizing that we must not compromise the integrity of the process, do you believe that the process should take into account both the positive environmental effects as well as the negative environmental effects?

Mr. David Collyer: First of all, it should focus on environmental effects. That's the first message.

Second, I think we need to look at the full suite of that, a positive ending, and understand the full impact of the project in all respects, but it should focus on environment.

Very quickly, just following up on Mr. Gratton's comments, I think one of the issues around timeline is scope creep. We need to be really clear about what CEAA is and isn't, which is why I made the remarks in my presentation. That is a key issue. It relates, frankly, to the broader regulatory reform agenda as well.

Mrs. Stella Ambler: Indeed. Does this conversation fit with your recommendation that decision-making must be science- and fact-based? Can we do those two things? Does it all fit in together, integrity, economic impacts, positive and negative, and science- and fact-based?

Mr. David Collyer: Absolutely. It can be helped if the federal and provincial governments work with industry and others to put in place better monitoring programs, verification programs. We need a baseline of good science. That should be there to inform decision-making, and we're strongly supportive of it.

Mrs. Stella Ambler: Thank you.

The Chair: Your five minutes have expired.

[*Translation*]

Ms. St-Denis, you have five minutes.

Ms. Lise St-Denis: My question is directed to the witness from the James Bay Advisory Committee on the Environment.

If it turned out that it is impossible to include in the act the representation processes of the Cree Nation that are outlined in the James Bay and Northern Quebec Agreement, you said that you would recommend separate legislation to implement the processes under clauses 22 and 24 of that agreement. However, if for various reasons it were impossible to pass distinct legislation, could the Cree consider including more general consultation processes that would be less specific in the Canadian Environmental Assessment Act?

[*English*]

Mr. Graeme Morin: Thank you very much for the question.

Just to quickly put it into context, no federal legislation other than the.... Let me just be sure of my title. Since 1978, no federal legislation was actually put in place to give effect to the James Bay agreement, and it was just in a general manner. That is the James Bay and Northern Quebec Native Claims Settlement Act of 1977. On that note, though, in the event that the recommendations cannot be made, yes, we do recommend that separate legislation be put in place to at least give credence to those representative mechanisms.

I just would like to point out that Quebec's Environment Quality Act already recognizes those particular representative and participatory mechanisms and so can serve as an immediate example of what can be done within the CEAA. That exists already in the province of Quebec. If that can't be done within the act, then yes, federal legislation would be useful.

The point is that the JBNQA is an agreement that is protected by the Constitution of 1982. So whatever happens, CEAA must be made to clearly respect those provisions in the act, full stop.

I hope that answers your question.

● (1230)

[*Translation*]

Ms. Lise St-Denis: Thank you.

Should we consider the rights of the Cree Nation granted by the James Bay and Northern Quebec Agreement as essential to the development of that community and its environmental integrity?

[*English*]

Mr. Graeme Morin: I would have to say, yes, most definitely. What is in the convention itself represents the culmination of years and years of discussion and negotiation. Back in 1975, there was an element of conflict during those negotiations. But I would definitely have to say that what is included within the agreement itself definitely represents culturally important guidelines that definitely could be useful for all environmental assessment agreements.

The principles are fairly general and are fairly straightforward. I don't think people would have problems understanding and agreeing with them. They're all readily available within the convention and within our brief.

[*Translation*]

Ms. Lise St-Denis: Let me follow up on the question I asked earlier. During a visit to Wemotaci, an Atikamekw community, Mr. Boivin, the chief, expressed his concern regarding the difficulty remote First Nations have integrating some governmental practices such as recycling. Do you believe that the Canadian Environmental Assessment Act sufficiently takes into account the collateral impacts of industrial projects in remote areas? They are often forgotten.

[*English*]

Mr. Graeme Morin: Exactly. Just quickly, we have to be quite clear about what we're looking at with environmental assessments. Environmental assessments are project specific and site specific. I think we can all probably agree that cumulative effects that stem from those particular projects might not necessarily be best evaluated, or even mitigated, by project-specific EAs. There's a growing sense of the need for strategic environmental assessments, cumulative impact assessments, and all these different sorts of assessments.

I believe, and it is the position of the James Bay Advisory Committee, that, no, cumulative effects cannot—

[*Translation*]

Ms. Lise St-Denis: I believe Mr. David would like to answer.

Unfortunately, my time is up.

[*English*]

The Chair: Mr. Morin, unfortunately, time has expired. Five minutes go so fast.

Mr. Albas, five minutes.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair. And thanks to all of our witnesses for being here today.

I actually was at an opening of a construction site for a new mine in my riding of Okanagan—Coquihalla. It's a small silver mine, and when it's actually up to production levels, 30% of the jobs will be for first nations, so certainly a lot of the issues today are very pertinent to what's happening in my riding.

There were some earlier comments, both from a few of our witnesses as well as from our committee, in regard to federal-provincial...so I'll start with that.

In 2009, the Canadian Council of Ministers of the Environment recommended the addition of substitution provisions as a means to manage federal-provincial overlap and duplication. I'd like to focus on that.

Some provinces and industry associations have also suggested the addition of provisions to allow the federal process and decision-making to stand down if there is an equivalent provincial environmental assessment. So my question to MAC is, should substitution and equivalency be included in the act?

Mr. Pierre Gratton: Yes.

Mr. Dan Albas: Okay.

And to CAPP as well.

Mr. David Collyer: Yes.

Mr. Dan Albas: I ask both of you gentlemen, can you please provide an example specifically of a project that would use the equivalency that may be appropriate?

Mr. David Collyer: I can talk about that in the context of oil sands mining, where often the federal trigger is legitimately triggered by a relatively small issue, some impact on water course, for example. That invokes federal involvement in the process. There's a very, very extensive provincial review of those projects. That would be an example of one, from my perspective.

I want to clarify, though, that when we talk about substitution or equivalency, we talk about best-placed regulator. I think this is a very important principle: this is not always about a province or always the federal government; it's about figuring out which regulator is best positioned to look at the issue and then substituting on that basis. I think sometimes we get drawn into it being all provincial or all federal. That's not the approach we take. We use very deliberately the terminology “best-placed regulator”.

● (1235)

Mr. Dan Albas: Good. Thank you.

Mr. Pierre Gratton: I would agree, and I gave the example earlier of British Columbia, where the province had the federal government do the environmental assessment for ports. Again, it speaks to the issue of best-placed regulator.

Mr. Dan Albas: Do you have any other suggestions on how best to reduce or avoid duplication? We'll start with MAC and then move back to CAPP.

Mr. Pierre Gratton: You're probably used to having groups like us come and complain and demand lots of change, but in light of the 2010 amendments, we're not doing that as much. Because of the amendments, federal and provincial governments on environmental assessments are working much more closely together, and they're in sync. So the irritants that we would have had two years ago around the fact that the federal government was typically a year and a half late—and the duplication of process was a major irritant because of that—have now gone. So it's less of an issue for mining than it used to be.

But again, I would emphasize what I said earlier as well. We're the lucky ones, in the sense that the amendments addressed comprehensive studies and panel reviews, but there's a whole other layer of screenings that might affect pipelines, that might affect oil and gas projects, or other parts of the economy that aren't benefiting from this, and that's also where the issue around best-placed regulator comes in.

Mr. David Collyer: Very quickly, I think we've talked about most of them, and they'll be addressed further in our submission, but the equivalence and substitution timelines, addressing the aboriginal consultation issue, and I think, very importantly—and I come back to reinforce this—the question of positioning CEAA in a broader context and being clear about what CEAA is and is not is really fundamental to the work you're doing. This ongoing issue of scope creep and duplicative regulation or legislation is key to actually making the system work better.

Mr. Dan Albas: Following up, what is your experience with provincial environmental assessment processes? In your opinion, are they as rigorous as federal environmental assessments?

Mr. David Collyer: My view is they're very rigorous, and these projects are subject to extensive scrutiny. There is not a marked difference between the two.

Mr. Dan Albas: I have about 20 seconds left, by my guess, so Mr. Gratton....

Mr. Pierre Gratton: We used to joke, when I was with the Mining Association of British Columbia, that the federal government —this is pre-2010 amendments—would take the provincial comprehensive study, change the cover page, write an executive summary, and call it their own—but they'd take about three more years to do it.

Voices: Oh, oh!

The Chair: Time has expired.

Mr. Hoback, we'll have five minutes from you.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Mr. Chair.

I find this very interesting. I sit on the finance and agriculture committees. A lot of the issues you're talking about pop up in agriculture, and in finance, in the pre-budget talks, we're looking at things we can do to stimulate our economy. Regulations are definitely required, but duplication of regulations and duplication of jurisdictions definitely get in the way. Seeing projects move forward.... Whether it's in the mining, petroleum, or manufacturing sector, there have always been items or areas that have been identified that we need to move forward on.

Coming from Saskatchewan, I just did a round of meetings with a lot of my municipalities, and they talk about the culvert example. I'm sure you guys have heard that, where they're going to put a culvert in and all of a sudden they have to get an environmental assessment, then they have to look at the Navigable Waters Act, and then Fisheries and Oceans.... Where it would have taken them four hours to put the culvert in, all of a sudden it takes them four weeks, and where they would have spent $5,000 for a culvert, all of a sudden it's $35,000 for a culvert.

That's just in an RM with a group of farmers. That is a beef that comes across quite commonly and quite often, whenever I meet with my municipalities. How can we get this streamlined so that common sense comes back into the process, so that we still protect the environment but we move forward and allow activity to happen without stifling or choking it and making it impossible to do?

I'm sure you have examples of this in both the petroleum and the mining sectors. What kinds of examples could you tell this committee about? I think you started off with one in B.C. versus Australia. Maybe you can elaborate on that one a little bit?

● (1240)

Mr. Pierre Gratton: I'll give you two that come to mind.

Well, Australia's environmental assessment can take as little as six months. Even with our improvements, which are significant, we're still much slower than Australia.

Mr. Randy Hoback: Can I just stop you there, then?

Is it fair to say, though, as far as the assessment, as far as the impact on the environment, they would be equal?

Mr. Pierre Gratton: I wouldn't have enough knowledge to say, but I'd be surprised if Australia was much different from Canada.

Mr. Randy Hoback: Based in the assumption that, yes, they would—

Mr. Pierre Gratton: Their distribution of power is different from ours, so there could be reasons there as well.

The other example I'll give you is Baffinland. This goes back a couple of years, but they were going under a Nunavut review board environmental assessment for their bulk sample—this is a major potential iron ore mine, and this was for a large bulk sample.

They had gone through the NIRB, and then very late in the game, after they had their NIRB approvals, Transport Canada put their hand up and said, “Oh, your culverts are the wrong size.”

They ended up having to spend six months.... They'd already ordered their culverts. The culverts were on a ship heading towards the site to be installed, and Transport Canada came up at the last minute—after they'd had ample opportunity throughout the process to say so—and it cost the company a lot of delay and a lot of grief.

In the end it was resolved, but that is what happens when you have a process at the federal level that isn't well managed. Now, again, I go back to where I was. I don't believe that would happen now, but it happened then.

Mr. David Collyer: We have many analogies to the culvert example. It's just an example of an assessment being triggered over a rather trivial and routine issue.

I talked earlier about the Mackenzie Valley experience, which nobody wants to repeat. I think there are some good lessons to be learned per your reference to Australia. It's different, but there is some learning there. I think there are some good lessons in terms of the provincial processes that can be looked at as well.

There's an opportunity to make some fairly significant improvements.

The only other comment I wanted to make—just to go back to the aboriginal piece for a minute—is that we talk a lot about what doesn't work. But there's a huge list of things, examples of things, that work very well, where aboriginal peoples are engaged, they're employed, and there are tremendous opportunities for economic growth. Fort McKay is a great example of that.

I think we also need to focus on what is working, as opposed to what's not working.

Mr. Randy Hoback: It's interesting you say that because actually that was the next place I was going—to the example of northern Saskatchewan's uranium sector. There are a couple of great examples of aboriginal involvement, and the reality is that if the uranium sector wasn't there and operating, there would not be aboriginal employment in that region.

I'll look at a new example that's coming up. There's a possible hydro dam on the James Smith first nations, the three nations there—how they're working with Brookfield and trying to bring that project forward, and how they're working together right from the start through the process. I's such a good example of what can happen when you work together.

The Chair: Mr. Hoback, your time has expired. Thank you so much.

Mr. Coderre, you have five minutes.

[*Translation*]

Hon. Denis Coderre: Obviously, the difference between Australia and Canada is the Constitution. We can all agree that they are not the same. This must be taken into account. In Quebec, we are faced with a reality specific to Quebec that must be taken into account.

I am trying to understand. I am in favour of good environmental assessment. I try to cut red tape, because that is the issue. We also need to come up with different regulations, in an area where we must respect existing treaties and the duty to consult with First Nations, to ensure that this does not take forever. Because one of the issues is that…

[*English*]

you want a timeframe. You want to make sure that we have a time limit, but at the same time you have to protect the environment, you have to be respectful of the consultations. They are players. In my book, this is key. We didn't have that convention for nothing in 1975, and there's a reason that it's in the Constitution of 1982.

But at the same time, David, when we spoke in the past about the oil sands, that's the same thing.

What I'm looking for is to protect the strategic resources, to make sure everybody benefits out of it, but at the same time you need a process, because there were some tables regarding the water monitoring and all that. Sometimes less government might be interesting, but we need government. So this is the difference between smart regulation, cutting out the red tape, and seeking some results and protecting the environment—and protecting the people who are living in that environment.

Where's the beef? Do we need to put more money in the environmental assessment because we're cutting the budget? We can talk about all the philosophy we want, but if we don't have the resources, it means nothing. We can have a nice law with nice regulations, but if we don't have the resources to do so, it will create some other problems. We'll finish that in court, and we all know lawyers will get richer.

If you have one recommendation from both sides, how can I cut the red tape and be respectful of the Constitution? There's a reason that there's

● (1245)

[*Translation*]

… shared protection. Once the Northern Development Plan becomes reality, it will hit us head on. It will be an opportunity to show how the federal government, provincial governments, First Nations governments and industry can work together.

[*English*]

How can we manage it? Is it just a matter of resources and saying, "Okay, we put that in that law. You respect the first nations. You have to work with them—consultations, money, and that's it—in a timeframe." Would that be appropriate to do?

Mr. David Collyer: My short answer is this. I would just like to be really clear. Our view is that more regulation is not necessarily better regulation, but a foundation of all of this has to be environmental performance. Nobody's disputing that.

I would come back to two things. One thing is the equivalent substitution piece as an opportunity. And the second thing is timelines and clarity of process, including aboriginal consultation, because we all want to do that well. I think those are two key opportunities to improve the overall process. I think if this committee could make some inroads on those, we would all be well served.

Hon. Denis Coderre: Roger, do you want to deal with that?

Mr. Roger Jones: Thank you.

I think the Assembly of First Nations, and first nations generally, have done quite a bit of outreach in trying to engage everyone who has an interest in this issue to have a discussion and work things out. An example of that was the mining and energy conference that was held in June, earlier this year, where governments were invited, industry was invited, and they participated in a very constructive discussion. But it's the beginning. It can't be the end, and when the meeting ends the issues and the topic are forgotten.

I think we put forth a recommendation that the state—in this case, Canada—needs to work with the first nations governments to help shape and inform legislation that is going to address the relationship issues that are critical. When you get the James Bay agreement, or any other land claim agreement, it's a relationship that is created, and it's done by agreement, not imposed legislatively or by unilateral decisions on the part of decision-makers.

The Chair: Thank you. Time has expired.

Next is Mr. Lunney.

Mr. James Lunney: I want to pick up on something in Mr. Collyer's written report here. We are used to hearing quotes from the World Economic Forum and the International Monetary Fund on Canada's relative success during these difficult last couple of years of recession. In your written report, you make the comment that the International Energy Agency and the World Economic Forum have cited our overly complex, redundant, and open-ended regulatory system in Canada as a threat to our ability to track capital to develop our abundant natural resources. I wonder if you could tell us where we could access the source of those quotes.

Mr. David Collyer: We can provide those submissions for you. I'd be happy to do that. I guess my observation would be that we've not done as good a job on the regulatory process as we've done on managing the financial side of the system, and there's an opportunity to improve.

Mr. James Lunney: It's the object of our exercise today.

Coming back to our friends from the AFN, you said, Mr. Jones, something very close to the quote that I have here from Chief Atleo. He says, “To be clear, First Nations are not opposed to development but it must be responsible, sustainable and based on partnership.” I think your opening remarks were similar to that. That was from National Chief Shawn A-in-chut Atleo.

I guess the only word I'd have a problem with is “sustainability”. Extractive projects may have a life of 30 years or so. The particular projects may not be sustainable. I'm not sure of the context in which he meant that word, because extractive projects are not eternal. They have a lifespan. In that context, how do we work out situations where there are differences of opinion on moving ahead with first nations, industry, and government? How do we work this out?

A particularly thorny problem that's surfaced in British Columbia—some may be nervous about me even bringing this up—is the new Prosperity Mine. We have an area of British Columbia that has been ravaged by the pine beetle. In fact, our B.C. caucus had a presentation just yesterday with the Canadian Space Agency. They showed pictures from RADARSAT. When it was going over B.C., you could see it from outer space, the red death of those pine trees. They will be decades recovering. While in the last couple of years the forest industry has been booming, harvesting pine beetle wood, which had to be harvested, there's going to be a dearth of economic activity for decades as that section of the economy recovers.

We're looking at this Prosperity Mine. I don't have the figures in front of me, but it has maybe a 30-year life, billions of dollars in economic revenue and opportunities for first nations employment. I don't know all the details, but I understand the company involved has been trying to negotiate with first nations, but there has been a standoff about partnership, working together, economic, educational, and moving ahead opportunities. AFN Regional Chief Jody Wilson-Raybould says it's “hard to understand why CEAA did not reject the so-called New Prosperity Mine proposal, which is essentially one of the options in the first proposal that CEAA has already rejected”. She goes on to say that there “can only be one legitimate outcome of the second review process and that is rejection”.

So if we start with no as a beginning, how do we resolve issues like that, and is there a process? Is there going to be any hope of resolving this through process, without going to the Supreme Court?

● (1250)

Mr. Roger Jones: I think we have to be careful about talking about that project, because it is in litigation now. But one of the observations that people have made about that situation is that sometimes you have to look at it more broadly. In resolving disputes and mediation approaches, sometimes you have to expand the pie. That means you have to look at alternative options, what is available in the way of economic development in that area. Is that the only one, or are there others that might serve the needs and interests of everyone in that area?

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

Ms. Leslie, you have four and a half minutes.

Ms. Megan Leslie: Thank you, Mr. Chair.

As the chair pointed out, it is voluntary to answer questions in writing and follow up, so if you choose, James Bay committee and AFN, I would love a follow-up about something that my colleague, Monsieur Coderre, brought up: the cuts to the environmental assessment agency.

These are my questions. What is your experience of the agency's efforts to address aboriginal consultation? We can give you this in writing, so you don't need to write it all down. What do you foresee with the sunsetting of the funding for consultation? Also, we've heard some testimony about consultation fatigue and the inability to keep up. That to me has a lot to do with participant funding. Do you think there is or will be adequate participant funding?

Then I'd like to turn the rest of the time over to you, back to my original question about what we're doing here as a committee. We're going to meet soon and talk about our schedule and talk about what we're doing next with this seven-year review. Should we be out in communities? Should we be talking to first nations currently engaged with the process or engaged in the past? Who? What? Any ideas on what we should be doing, specifically with first nations issues?

● (1255)

Mr. William David: I'll try to be quick. On that, I think it would be entirely productive for you to be engaged with first nations that have had both beneficial and poor experiences with CEAA. It would be good to hear from all sides.

AFN takes the position that the government has to respond to this, and we think that would also be an appropriate time for first nations to become engaged. So there are multiple entry points for that.

To follow up again on Monsieur Coderre's point, if there's one thing I could say today in terms of a beneficial change to the act, it would maybe be a statutory basis for that participant funding, because the one thing that's going to be really bad is for that funding envelope to close, and the plan is for it to close. I think that's entirely unproductive at this point. Despite the fact that it's probably going to be renewed in some other form, first nations can't plan activities past March 31, so it's going to slow things down anyway, irrespective of whether the cloud of uncertainty is lifted.

In terms of participant funding, I will say the levels we had in the past, from my perspective, at least, are grossly inadequate. I have the privilege of helping some first nations with actual environmental assessments. I'm a trained environmental scientist from MIT. I have all kinds of trouble deciphering the assumptions that are fed into models to feed some of these outputs, as we'll call them. In some cases, there's an entire absence of data. So if we're going to assume we have a clay underburden or overburden when we have silt, that leads to an entirely different projection.

Those are isolated instances, but my point is that the first nations don't even know about what's in there because the participant funding itself is so meagre. Adding issues about consultation and accommodation means an addition of scientific experts. You have to hire legal experts to be able to engage with the crown, which is fully resourced to deal with those issues.

I don't know what to do about it because it places the burden on first nations and on proponents to deal with issues that I think the crown ought to be dealing with, and particularly, the participant funding program, the main vehicle for doing so, is potentially going to go away.

Ms. Megan Leslie: Thank you.

Mr. Graeme Morin: Just one quick note. The duty to consult is clear, from the Supreme Court and within the case of the James Bay agreement. It behooves federal agencies to provide that funding, if it is applicable at that particular time and to that particular case.

Mr. Pierre Gratton: Could I jump in, though you didn't ask me, just to point out...?

The Chair: Unfortunately, time has run out.

Mr. Pierre Gratton: Industry, environmental groups, and first nations are calling for the renewal of that funding.

Ms. Megan Leslie: Yes, I noted that. Thank you.

The Chair: Thank you.

Ms. Rempel, you will be our closing speaker. You have four and a half minutes.

Ms. Michelle Rempel: Sure.

To Mr. Collyer and to Mr. Gratton as well, you talked earlier about environmental assessment processes in comparative jurisdictions, in other countries. Since we're looking at best practices, perhaps we could get into that a little more deeply.

Mr. Collyer, certainly your member companies operate in other countries as well. Have you encountered any best practices that perhaps aren't in effect in Canada that we should be looking at?

Mr. David Collyer: There are some differences, and I think we have to acknowledge those. The best one that we've run across is some of the work that's been done in Australia. Mr. Gratton referenced that earlier. I think it is an example that ought to be looked at, and we can—

Ms. Michelle Rempel: Sir, could you just give us a little bit more detail on that?

Mr. David Collyer: We can provide more information on that, yes.

Ms. Michelle Rempel: With regard to those specific regulations—whatever, review processes—what about them was effective and how could they be useful in Canada?

Mr. David Collyer: I think there are some good examples there of the equivalence and substitution piece we talked about and also how timelines are applied. We'll follow up on that.

Ms. Michelle Rempel: Mr. Gratton, did you want to comment at all?

Ms. Justyna Laurie-Lean (Vice-President, Environment and Health, Mining Association of Canada): It's a very different jurisdictional division, with much clearer separation between what the states do and what the federal jurisdiction does. They have various prescribed processes that they go through very quickly. We could ask our sister organization—well, not sister organization, but the equivalent—in Australia to compare. There was a workshop or conference of federations that looked at this issue, and there may be a report available from it that could be helpful.

Ms. Michelle Rempel: My previous question dealt with pieces of legislation or processes in other jurisdictions that we could learn from. In your experience with working with other jurisdictions, what are we doing right? What are some of the key pieces of this act that perhaps let Canada be a world leader in environmental assessment or where we're seen on the world stage as a country that is very cognizant of environmental stewardship and environmental assessment in projects?

● (1300)

Mr. Pierre Gratton: I would just point out that if you look at the quality of environmental review that goes on, it's tremendous. The amount of attention that is brought to all aspects of a major project is huge.

I'm thinking of this image of the daughter of someone who is involved in the Mt. Milligan project. They've got a photo of her when she was about five years old, and the piles of documents are stacked next to her, two and a half times her size. Every aspect is looked at.

In terms of the substantive quality and level of review, I don't think that's at issue. The issue has been around how you get there and what the process is to undertake that and how long it takes.

Ms. Michelle Rempel: Maybe I can close with Mr. Collyer.

Compared to other jurisdictions, does the Canadian Environmental Assessment Act provide that social licence to operate for your member companies?

Mr. David Collyer: I think we've got a world class regulatory system in Canada. We can do better. I think we've got a regulatory system that stacks up extremely well relative to most other jurisdictions. The areas that we've talked about, timelines and processes, making sure we've got a world class monitoring and baseline science foundation for our regulations I think are all opportunities. I start with the premise that we're doing very well, and we're talking about getting better, as opposed to the system being broken and delivering flawed environmental assessment or flawed environmental outcomes. It's absolutely not the case.

The Chair: That's it.

Thank you again to the witnesses for being here and for your briefs. It was very good testimony we heard today.

The meeting is adjourned.

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