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Chair

Mr. Blaine Calkins

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● (1830)

[*English*]

The Chair (Mr. Blaine Calkins (Wetaskiwin, CPC)): Good evening, ladies and gentlemen. We're already a minute or so past 6:30. I have quorum at the table. We have a list of witnesses here that we need to get through.

We have Mr. Tony Maas from the World Wildlife Fund, who is the director of its freshwater program. From the National Energy Board, we have with us Mr. Robert Steedman, their chief environmental officer; from the Canadian Chamber of Commerce, Mr. Warren Everson, senior vice-president for policy; from the West Coast Environmental Law Association, Ms. Rachel Forbes, staff counsel; and from the Canadian Electricity Association, Mr. Geoff Smith, director of government relations.

We start off with your presentations for up to 10 minutes, then we will proceed to rounds of questions.

Colleagues, I've been very generous with allocating time, but we do have to consider our draft report tonight and we will probably be making sure that we end promptly when this part of the meeting is due to end.

Mr. Maas, are you prepared to go?

Mr. Tony Maas (Director, Freshwater Program, World Wildlife Fund (Canada)): Yes, sir, I think I am.

The Chair: I will go in the order in which I mentioned your names. That's the order that appears on our agenda.

Mr. Maas, for up to 10 minutes, please.

Mr. Tony Maas: Thank you to the Chair, first and foremost, and to the members of the committee for the invitation to speak here today on part 3 of Bill C-38, the budget implementation bill.

As introduced, my name is Tony Maas. I am the national freshwater program director for WWF-Canada. We are, as I think most folks know, one of Canada's largest and oldest conservation organizations. We have staff and offices from coast to coast to coast. Importantly, our work is science based and it is solutions oriented.

I'll talk a bit about our freshwater program as context. Our overarching aim is really about protecting and restoring the health of aquatic ecosystems so that we and future generations can benefit from the many values they provide, whether that's clean water and recreational opportunities, or habitat for fish and water fowl.

With this as context, and given my area of expertise, I'm going to focus my comments primarily on changes to the federal Fisheries Act that are proposed in Bill C-38.

The Fisheries Act is widely recognized as one of the strongest legal tools that Canadians have to protect fish and their habitat, including the water that the fish depend on, water that needs to be of a quality that doesn't poison them, water that shows up at the right time and in the right quantity to maintain their habitat. This, of course, is the same water that we all drink and swim in and use in our recreation. So in addition to protecting fish and fish habitat, the act has provided an extra layer of security around the water resources that we all depend on.

Is the act and how it's currently administered perfect in my view? Well, no, actually it's not. I think there's plenty of room for improvement. But the opportunities for improvement relate largely, in my mind, to how it is applied in a management context, not to the fundamental principle of protecting fish and fish habitat—which certainly holds water today more than ever, given that the numbers of endangered fish across the country continue to grow, and pressure on our rivers, lakes and wetlands mounts.

Let me give you three specific concerns relating to the changes to the Fisheries Act proposed by Bill C-38. First is the narrowing of the act's scope to include only commercial, recreational, and aboriginal fisheries. Creating a system that is based on determining what rivers and lakes deserve protection means, by definition, that some will be left without protection under the act. Does this mean, for example, that wilderness waterways that are not presently fished by commercial or recreational interests or aboriginal peoples get left out? What about streams that are currently being restored to support future recreational fisheries? There's a lot of hard work, including work by our own organization, and dollars that go into restoring the great ecosystems with the intent of having viable recreational and sport fisheries.

So my point is that while the terms “commercial”, “recreational”, and “aboriginal” fishery are defined in Bill C-38, the complete lack of detail on what the scientific basis and decision-making process used to establish which fisheries and waters are in and which are out makes it very difficult to assess the impacts of these changes and what they will mean on the ground.

Our second concern is the shifting of the rationale for prohibition from harmful alteration and destruction of fish habitat—which I'm sure that we in this room all know as the HAD provision—to a test of serious harm defined as "the death of fish or permanent alteration or destruction of habitat". This would shift the litmus test from a precautionary approach based on accumulated expert scientific advice concerning potential impacts of a project or undertaking to an as of yet scientifically undefined test of serious harm and permanent damage. Again, I'm not saying these new terms cannot be defined by science, but I do assert that when it comes to management and protection of natural resources, like the fisheries and the ecosystems that sustain them, a clear definition of foundational scientific concepts and criteria should proceed, not follow, legal and policy reform.

Finally, our third concern is the exemptions and delegation of responsibility. The provisions in the act that allow for the exemption of certain works, undertakings, and activities, and certain fisheries or waters have the potential to significantly undercut the important influence of scientific experts in the civil service who have the required knowledge to properly assess the impacts of a project and the sensitivities of particular habitats and waters.

On the issue of delegation, I believe there's significant benefit actually in working with provinces and territories to make implementation of the Fisheries Act more efficient, and I would observe that many delegation arrangements already exist to allow provinces and territories—and in the case of Ontario, where I live, the conservation authorities—to administer authorizations under the act. It is unclear, however, what if any additional responsibilities are contemplated for provinces and territories under the changes proposed in Bill C-38 and, more importantly, whether the provinces and the territories—and in the case of Ontario, where I live, the conservation authorities—have the capacity, particularly in these uncertain economic times, to take on additional responsibilities without additional resources.

● (1835)

For me, what is more concerning about the delegation possibilities in the proposed bill is the potential to also allow for delegation to industry or developers the responsibility to authorize adverse impacts on fish and fish habitat, which ostensibly is leaving the fox in charge of the hen house. Such authorization should remain in the hands of government agencies that are by definition bound to make decisions in the public interest.

I'll wrap up with a few more comments that are largely related to the process by which the changes to the Fisheries Act are being brought forward. I noted at the outset that we as an organization are solutions based. The success of our solutions is very much a product of our efforts to create and sustain diverse and often challenging relationships and partnerships that cut across civil society, government and, most importantly, often business and industry.

I believe the process by which the changes to the Fisheries Act, and for that matter, changes to environmental regulations more broadly, are being brought forward through the omnibus budget bill stands to undermine the very important progress that has been made over the last 20 to 30 years in developing strong, functional partnerships between industry and NGOs. Businesses—at least those that we have worked with—recognize the importance of ensuring and enhancing their social licence to operate.

Strong environmental laws are a foundation of this social licence to operate. They allow industry to function knowing that they have the support of Canadians because governments have ensured that rigorous protections of our environments are in place. When we erode those protections, in my view we begin to erode the potential for businesses to operate in a sustainable way in this country.

If I can leave you with just one message, it is this. Improvements to administration of the Fisheries Act do not require the significant changes to legislation proposed in Bill C-38. They are of a nature related to management functions and those can be resolved without these reforms. To that end, I would finish by urging you, the members of this committee, to use your influence to separate the reforms to the Fisheries Act from Bill C-38 so that they can be addressed in a timely but thorough manner through a reasoned multi-stakeholder and, importantly, a science-based consultation process, so that we can together work towards the goal of creating solutions to protect and restore the health of our remarkable freshwater fisheries and the habitats and ecosystems that sustain them.

I thank you for your time. I look forward to your questions.

● (1840)

The Chair: Thank you very much, Mr. Maas.

We now go to the National Energy Board, with Mr. Robert Steedman, for up to 10 minutes, please.

Dr. Robert Steedman (Chief Environment Officer, National Energy Board): Thank you, Mr. Chairman, and honourable members, for the opportunity to appear before you today and to support your review of part 3 of Bill C-38.

The National Energy Board's purpose is to regulate pipelines, energy development, and trade in the Canadian public interest. The board is accountable to Parliament and reports to Parliament through the Minister of Natural Resources. The board regulates the construction and operation of interprovincial and international oil and gas and commodity pipelines and international power lines. We also regulate oil and gas exploration and development on frontier lands and offshore areas not covered by provincial/federal co-management agreements. The NEB's regulatory oversight extends over 71,000 kilometres of pipeline that criss-crosses most of our country and approximately 1,400 kilometres of international power lines. The board does not regulate energy projects that are wholly contained within a province.

The NEB holds the companies it regulates accountable for the safety of their facilities and for the protection of the environment in which they operate. Our safety programs are designed to make sure companies are effective in managing safety and environmental protection throughout the entire life cycle of a pipeline, from design to construction, to operation, and through to abandonment.

As we audit and inspect for compliance, we look for evidence of management systems that provide a strong foundation for a pervasive culture of safety, forcefully affirmed by the organization's leadership, rigorously documented in writing, known to all employees, and consistently implemented in the field.

The board has an advisory function under the NEB Act, and in this role it reviews and analyzes matters within its jurisdiction and provides information and advice on aspects of energy supply, transmission, and disposition in and outside Canada.

The board holds a public hearing for any application to build a pipeline over 40 kilometres long and for a variety of other energy regulatory matters. In assessing a project, the NEB considers all factors relevant to the public interest, including the environmental effects of the project.

We have significant experience in considering potential environmental effects when making our regulatory decisions, and we have been conducting environmental assessments under the Canadian Environmental Assessment Act since it came into force in 1995. In recent years the NEB has conducted about 30 screening-level environmental assessments per year. Many of these screening-level assessments were part of a public hearing. The board has conducted comprehensive studies and review panels under the CEAA, all in association with a public hearing under the NEB Act.

The National Energy Board has the mandate, processes, and capacity to conduct technically rigorous, publicly transparent, and inclusive environmental assessments for any facility we would regulate. The NEB has approximately 50 environment, socio-economic, lands, and stakeholder engagement specialists, and 40 safety and engineering specialists on staff. As a life cycle regulator, the NEB attaches environmental conditions to project approvals, which we monitor and enforce beyond the environmental assessment phase, from project approval, through construction, operation, and eventual abandonment.

Throughout the entire life span of a project, we monitor to ensure that the company is managing its project so that it is operated in a manner that is safe and secure and protects the environment. Our compliance and verification program includes such activities as audits, construction and safety inspections, compliance meetings, emergency exercise assessments, and investigations.

If we find that a company is not complying with its regulatory obligations, we use a range of tools to enforce our decisions, uphold safety, and protect the environment. These tools range from an oral request for immediate compliance to criminal prosecution. They also include orders to stop work or modify the operation of a facility.

Should proposed legislative changes be enacted, then the NEB would operate within that updated framework. The NEB would continue to conduct its independent, fair, and accessible environmental assessment and regulatory review process for major pipeline projects. We would recommend terms and conditions to make the project safe for people and the environment.

The legislative changes address the timelines for NEB regulatory assessment and provide the GIC, the Governor in Council, with the responsibility to make the go or no-go decision for issuing a pipeline certificate. The proposed timelines are consistent with the NEB's historical performance, and tools are provided to deal with contingencies. Currently, the NEB makes a decision, but an order from Governor in Council is required before a certificate for a project can be issued. This would change so that GIC makes the decision and is not simply approving the NEB decision. Further, in situations where the NEB does not recommend approval, the analysis and recommended terms and conditions would be provided to GIC for the final decision.

● (1845)

Thank you for the opportunity to provide this overview of the National Energy Board's mandate and regulatory approach. I'd be pleased to answer any questions.

The Chair: Thank you very much, Mr. Steedman.

We now move to the Canadian Chamber of Commerce and Mr. Warren Everson, senior vice-president of policy.

Mr. Warren Everson (Senior Vice-President, Policy, Canadian Chamber of Commerce): Thank you very much, Mr. Chairman. I appreciate the opportunity to be here. I suspect, given the lateness of the hour and the number of evening meetings you've had this week, that I'm appreciating my being here a lot more than you are. But I do appreciate the committee's taking the time to hear from us and I commend you for your diligence. I've been reading the transcripts through the week and you've certainly provided the opportunity for a very vigorous debate.

The Canadian Chamber of Commerce is a big organization, the largest business association in Canada. We have more than 700 direct members and a network of chambers of commerce and boards of trade that represents nearly 200,000 businesses across the country. I mention this not to boast but just to say that in establishing our policies we have a resolution process that culminates in the adoption of resolutions at our annual meetings. I feel that we're credible, and that our resolutions represent a large constituency.

I'm going to use the short time I have for this statement to talk about context. I'm sure we'll get to the details of part 3 in our questions.

In February, the Canadian Chamber of Commerce issued a paper called, "The Top 10 Barriers to Competitiveness in Canada". It was prepared in consultation with our membership. Very prominent among the barriers that we identified was regulatory inefficiency. We have long argued that the current federal environmental regulatory system is flawed, extremely inefficient, and has unnecessary duplication that hampers competitiveness in the Canadian economy while sometimes doing very little to improve environmental protection.

The federal assessment regime affects a very broad range of Canadian businesses in every industry in every region. It's not about one particular sector or industry. I have members in the renewable energy business who feel that they will benefit significantly by reforms in this area.

Canada needs an environmental regulatory system that accomplishes two things. First, it has to protect the environment, human health, and society. We have at the chamber a long record of environmental regulation proposals in support of environmental regulation. We see it as a cornerstone and not an impediment to business competitiveness. I hope I can be believed on that point. The chamber believes that good regulation is a solid contributor to business competitiveness. We look around the world and see that some of the most competitive economies in the world—Sweden, Switzerland, Singapore, and Finland—are heavily regulated societies. So we are not opposed to regulation, but we call for efficient and competent regulation.

Second, the system has to provide proponents and opponents with a timely and predictable process. In this regard, the current system is clearly failing and failing quite badly. In 2011, the World Economic Forum listed an inefficient bureaucratic process as the most problematic factor in doing business in Canada. If we were setting out to design a review process from scratch, I suspect that nobody would design the system we have in Canada today—two sovereign governments with equal authority, both conducting an assessment of the same project independently, usually without any cooperation between them.

In the submission to the CEAA review this winter, the B.C. government attacked the inefficiencies of having two separate information registries, two different public consultation requirements, two different technical reports. B.C. noted that it had ruled on 115 environmental assessment certificates under its own act since 1995, and in 50% of those cases an environmental assessment was also triggered. In one of those cases, the federal government assessment disagreed with the province. This is a very ludicrous and wasteful situation. As parliamentarians, you have an opportunity to fix it.

It isn't only proponents who are protesting. In a submission to the same CEAA review, Jamie Kneen from MiningWatch Canada called the current system a “dog's breakfast”. He said, “This makes the public and the community groups ask why they should bother and why they should go back to this if the process is going to be that inconsistent”.

This is a point I often make in speeches that I give to the chamber network. Opponents to projects are very often community groups with limited funding. They are often using volunteers. Long, drawn-out proposal assessments are not in their interest either.

In addition to the incompetence of the administration of the act, there's the uncertainty. Toby Heaps at Corporate Knights wrote in February that:

> There are several barriers to building a clean energy pan-Canadian highway with multiple north-south chutes, but the biggest one is red tape. New grid roll-outs are so bogged down in red tape that the timescales would test the patience of the pharaohs who used to build pyramids – whoever starts a project is unlikely to be alive by the time it comes to fruition.

This is not a situation that we can live with as a country. The implications of inefficiencies spread out in all directions.

I'm sure everybody here is conscious that oil and gas represents 27% of the capitalization of our stock market and that more than 40% of the issues on the stock market are mining stocks. There are an awful lot of people who don't care whatsoever about those industries, but whose personal wealth is nonetheless deeply leveraged against our success. They may not know that their public pensions, their private pensions, and their retirement plans are being supported by the success of the natural resources industries, but you know it here in Parliament.

● (1850)

I saw that you also heard testimony this week from the American Federation of Labor. Chris Smillie was here. He talked about how uncertainty rolls back into training and into worker preparation. At the chamber, we're running a major skills project this year. We constantly hear from the community colleges about uncertainty. They cannot offer training programs until they know that there's a reasonable chance their students will be employed. So they wait, and they wait, and they wait, and while they're waiting, generations of students come through, take a look, see what's offered, choose other careers, and move off. It's a very unfortunate situation, and one that Canada cannot actually sustain for very much longer because of the need that we have for workers.

Tens of thousands of businesses in our membership share that same story of uncertainty damaging their prospects, suppliers, engineers, transporters, and builders. None of them are calling for weak regulation; all of them are calling for better regulation.

Thank you very much.

The Chair: Thank you, Mr. Everson.

We now move to Ms. Rachel Forbes of the West Coast Environmental Law Association, for up to 10 minutes.

Ms. Rachel Forbes (Staff Counsel, West Coast Environmental Law Association): Thank you for having me here this evening.

I am representing the West Coast Environmental Law Association. We are a B.C.-based environmental law, advocacy, and analysis organization. We are one of Canada's oldest environmental law organizations and have been providing legal support to British Columbians to ensure that their voices are heard on important environmental issues. We have worked to secure strong environmental laws in B.C. and throughout Canada for decades. West Coast Environmental Law was actually involved prior to during the drafting of CEAA when it was enacted. We have had a role on the environment and planning assessment caucus for years, as well as on the now defunct regulatory advisory committee. We have been actively involved in this round of review, repeal, and now replacement of the Canadian Environmental Assessment Act since the standing committee's review back in the autumn.

I don't want to be repetitive. I know you have heard a lot of submissions over the last few days. I'm going to start by saying we would also endorse the submissions of some of the other witnesses you have heard from, including MiningWatch Canada, the Assembly of First Nations, Ecojustice, and World Wildlife Fund Canada. There are others we would probably agree with in part.

I want to focus here on three different issues. We actually have one main recommendation for the committee. Then, being lawyers, we have a bunch of alternatives if the committee doesn't want to accept that one. I understand the four pillars of the government's responsible resource development plan are to create more predictable and timely reviews, less duplication in reviewing projects, strong environmental protection, and enhanced consultation with aboriginal peoples. We would also support those as part of a robust regulatory regime for environmental assessment and environmental regulation writ large. However, we don't think that part 3 of Bill C-38 accomplishes any of those, and we think that in some cases it actually hinders them.

We think that part 3 will actually result in weakened protection for fish and species at risk. An entirely new and actually less comprehensive environmental assessment process will see the federal government retreat from a strong role and smart regulations, not just from a lot of regulation. We think there are broad and seemingly unchecked decision-making powers given to cabinet and to ministers, which will result in less accountability and fewer opportunities for public participation and public oversight.

Can we still work towards those four goals that we all seem to actually agree on at the core, but which we have different ways of getting at philosophically? Yes. We think doing so would actually require a significant shift in the legislative process that is under way right now and a complete rewriting of part 3, and that goes to our first recommendation. It probably isn't a shock to anybody that we would hope the subcommittee would recommend to the finance committee the removal of part 3 in its entirety from Bill C-38. We would recommend conducting further scientific, factual, and legal studies and having fulsome, open consultation on amendments to the environmental assessment aspects of it, as well as on other environmental regulation, including that on fisheries and species at risk. That would include contemplated regulations, schedules, and other information that neither the public nor parliamentarians, to my knowledge, are privy to at this point.

After such study and consultation is complete—which in fairness I think would take months, not a couple of weeks—stand-alone bills could be introduced in the House and could go through a proper, legitimate process that actually gives people faith in the process and legitimizes it, regardless of what the actual contents of the bill and the act are. I think the process here and the review of CEAA that has gone on are flawed. Jamie Kneen touched on this the other night when he talked about referral to standing committee for a review, the process that happened at the standing committee, the dissenting reports from that, and then a lot of rhetoric that has ended up in a whole repeal and replace which is smushed into a budget bill where it doesn't belong. I think we need to step back and actually do this properly, regardless of what the content is or what one would say about that.

● (1855)

We believe that's the only way to ensure that the proposed new legislation is reviewed and modified in a fact-based, scientifically, legally defensible way. I know that some members of this subcommittee have spoken about the desire to move away from talking points and rhetoric in drafting a report. I would certainly endorse that. I worry that there's actually a lot of facts, science, and law missing right now that would hinder one's ability to write such a fact-based report. I talked about missing regulations and missing schedules. We haven't heard a lot about how this is actually going to be implemented, and I think that if and when it is implemented, it's going to lead to a lot of uncertainty. People have talked about that as well in terms of what this means on the ground to proponents. What does it mean to the public? What does it mean to first nations? Timelines are uncertain, the process is uncertain, public servants are probably uncertain, so I think things need to be thought out a little bit more thoroughly.

Should the subcommittee not take on our first recommendation, we would, as the alternative, ask that part 3 at least be delayed until regulations and schedules can be produced and people can review them properly. I think the one regulation that no one's heard anything about, the project list regulation, is really pivotal to understanding the legal, scientific, on-the-ground, economic and profit implications of the rest of this new act. It would really be a shame to see it introduced at the last minute and just thrown in without any consultation on it.

Related to this, another recommendation aims at increasing the transparency and accountability of the process. Just last year the Government of Canada signed onto the open government partnership, an international partnership to adhere to accountability, transparency, and open dialogue on controversial issues. While they have made some progress on that in terms of freedom of information, there's been a lot of things in this process, in reviewing and revising environmental regulation, that have flown in the face of that. Again, to put faith in the process, both from an environmental organization and a lot of proponents' perspectives, clearly, this proposed legislation is creating a lot of controversy. A lot of people are interested in it. We need to know more about it and where it's coming from, why it's so urgent. If it is so urgent, why weren't we doing it before when we were doing the review of CCEA?

Finally, our other main recommendation is that in drafting any environmental assessment and environmental regulation legislation, it should take account of the top ten principles for strong environmental law that West Coast Environmental Law and some of our partners released in February. These include things like smart regulation. We released the principles in February because we knew that changes to environmental assessment were coming. We are currently in the process of creating a report card for this bill and whether or not it matches up to those principles. Not surprisingly, we don't think it does, but we do think that working towards those principles—those are public participation, increasing the legitimate role for aboriginal peoples, and the sustainability approach.... In fact, the sustainability approach is a key one, because we see a lot of compartmentalization in the new CCEA 2012 and not a lot of understanding or respect for the fact that we live in ecosystems that are connected. That's not just in CCEA 2012, but in the rest of the bill as well.

You'll see in my written brief that we actually have ten recommendations that are small amendments to the existing part 3 of the legislation that we would like to see made if that part is goes forward. It's things like allowing the National Energy Board to retain its independence, rescinding proposed amendments to the Fisheries Act, and going back to the drawing board with those. It also includes some things about species at risk, permits, and retaining the current triggering approach for environmental assessment rather than going to a project list. There are some other ones in there.

I think I'm probably running out of time No? I can keep going. All right.

● (1900)

The Chair: You have 15 more seconds.

Ms. Rachel Forbes: Furthermore, you should include timelines in the environmental assessment process that hold proponents to a predictable, certain timeline, not just that other people who are participating in the process. I think that's a huge problem. From our perspective, it's often the proponents, when they're needing to provide more information or asking for delays, who cause delays in the process and we'd really like to see those kinds of timelines, if they're going to be out there, applied equally to all parties.

The Chair: Thank you, Ms. Forbes.

Our final presentation is from Mr. Geoff Smith from the Canadian Electricity Association.

Mr. Smith, I believe you will be doing the first part of the presentation. Then Mr. Terry Toner will come to the table to finish and take questions.

You have up to 10 minutes, please, Mr. Smith.

● (1905)

Mr. Geoff Smith (Director, Government Relations, Canadian Electricity Association): Thanks, Mr. Chair.

We often talk about natural resources being the backbone of Canada's economy, but rarely discussed is the central role that electricity plays in our daily lives. Every day CEA members generate, transmit, and distribute electricity to industrial, commercial, residential, and institutional customers across Canada. The energy we make, move, and sell is essential to our homes, hospitals, airports, and businesses, including needed power for resource development.

Founded in 1891, CEA's membership includes publicly- and investor-owned major electric utilities across the country, provincial system operators, power marketers who trade and sell electricity, and more than 40 companies representing various aspects of the electricity value chain. This includes technology providers; manufacturers of electricity meters, cables, and transformers; and representatives from the legal, financial, construction, and consulting fields.

While the integral role of electricity in our society seems fairly obvious, most Canadians take the convenience and reliability of our product for granted. That is likely a result of our industry's excellent record on reliability, of which we are very proud. You flip the switch and there it is.

Even lesser known are the attributes of our actual electricity grid in Canada. If you can just pretend for a moment that I'm Alex Trebek and it's time for final *Jeopardy!*, today's topic is electricity. Your clue: this percentage of Canada's electricity is generated from non-emitting sources. The answer is that over 80% of Canada's electricity today is generated from non-emitting sources such as hydro, nuclear, and increasingly from renewable sources such as wind, solar, and tidal.

As we move toward the future the demands placed upon our sector will result in innovation and cleaner use of fossil fuels, and extensive construction of other generation including natural gas, wind, solar, tidal, and other distributed generation—of course, all matched with enabling transmission and distribution infrastructure. Additionally, electricity will play an assisting role for other sectors that are also reducing emissions. I'm talking, of course, of electric vehicles and the transportation sector being a great example.

In addition to all of that, our reliable but aging electricity system, the grid itself, requires replacement and renewal. The Conference Board recently released a report projecting that $347 billion in investment will be necessary between 2011 and 2030. It's somewhat fitting that the significant investment in and transformation of our electricity system and its infrastructure is paralleled by the modernization of federal environmental legislation taking place today and through Bill C-38.

Individual CEA members are focused and committed to a vision of sustainability that includes environmental, societal, and economic considerations as part of a holistic approach to managing impacts. CEA's sustainable electricity program is the embodiment of this approach. It's a mandatory sector-wide sustainability initiative that measures performance in all three areas of sustainability. It is externally verified and guided by a public advisory panel comprised of several distinguished Canadians and chaired by the Honourable Mike Harcourt. The program is just one reflection of the commitment by CEA members to provide electricity to Canadians in a sustainable manner.

Our appearance today at the subcommittee is a suitable bookend to our presentation to the finance committee back in September. As part of pre-budget consultations we outlined some recommendations to the Environmental Assessment Act, the Species at Risk Act, and the Fisheries Act to help enable investment in the renewal of our system. That brings us to the changes we're discussing today in part 3 of Bill C-38.

I'm joined by Terry Toner. Terry is the director of environmental services for Nova Scotia Power, which is an Emera company. He chairs our CEA stewardship task group and is the vice-chair of several working groups we have with our friends at the Canadian Hydropower Association that focus on the Environmental Assessment Act and the Species at Risk Act.

I will call on Terry to join me to go into a little more detail.

Mr. Terry Toner (Chair, Stewardship Task Group, Director, Environmental Services, Nova Scotia Power Inc, Canadian Electricity Association): Thank you.

Since the inception of the Canadian Environmental Assessment Act, the world, the economy, society, and environmental legislation and policy have changed considerably. Provincial governments have refined their laws and regulations not only to address emerging issues but also to make the review processes more nimble.

The federal government has added the Species at Risk Act and numerous policies, including wetland policy. At the staff professional level, the government has developed appropriate tools such as a risk management framework, an ecosystem approach, and many best practices and standards to manage day-to-day work. However, until Bill C-38 was introduced, federal law had not kept pace. Duplication of process and unnecessarily long timeframes introduce costs, delay, and uncertainty, with limited additional environmental benefit.

In some cases, regulatory approval processes, combined with construction periods, have totalled more than 10 years from project initiation to grid connection. Of those 10 years, approximately four years are spent in the federal EA process. Delays often take place before a review has even begun. Under the current system, it can take a surprisingly long amount of time to mobilize federal officials from the various agencies and departments that are required to be involved, and for them to decide whether they're going to participate at all, and if so, to provide early input such as terms of reference for an assessment.

The changes in part 3 of Bill C-38 represent a major step in the direction of having the right process evaluating the right project. The term “fit for purpose” comes to mind. Clarity of who leads the major environmental assessments has been achieved, and consistency among the process leaders—the Canadian Environmental Assessment Agency, the NEB, and the Canadian Nuclear Safety Commission—has been improved. Subject to defined criteria, review under provincial process is also possible under certain circumstances, and where it makes sense. And the new focus on larger project EAs within the federal jurisdiction will focus resources more appropriately and on projects of national interest. Existing acts can be used for many of the more straightforward projects, for example, the Fisheries Act.

The efficiencies realized by the changes in Bill C-38 will in no way diminish the efforts and actions of the Canadian Electricity Association's member companies in protecting the environment throughout project design, construction, and operation. In addition, public consultation is essential and an ongoing exercise for electricity companies, and it is an important element of the project approval process. Our companies already engage the public on potential projects before any federal or provincial reviews have even been initiated. The very nature of our business has created a culture of consultation. Almost everything that an electric utility does requires some element of public consultation, from rate applications, to integrated resource planning, to simple day-to-day consultation and interactions with constituencies and our customers. We want to make sure that we are getting things right.

The CEA, in concert with the Canadian Hydropower Association, has identified a few areas where the process can be further optimized, either within the bill or in subsequent regulations. Two examples would be better alignment between the EA conditions and those of downstream authorizations, and the ability for the minister to amend conditions in a decision statement to reflect new information that might come to light.

With regard to Bill C-38's changes to the Fisheries Act, the CEA believes that the changes are positive in that they do the following things: they retain a strong focus on protection of fish and fish habitat; they focus DFO efforts more toward commercial, recreational, and aboriginal fisheries, the original intention of the act; they provide mechanisms to take full advantage of best practices and standards; they place an emphasis on more holistic management, looking at permanent harm and an ecosystem approach and overarching fisheries management objectives; they also introduce the concept of ecologically sensitive areas, a positive step toward protecting those areas that are in the most need; and they encourage partnership and innovative thinking.

We look forward to the opportunity to engage in the development of regulations that will implement these changes. CEA members are in unanimous agreement that the proposed changes in part 3 of Bill C-38 to the Canadian Environmental Assessment Act, the Fisheries Act, and the Species at Risk Act, have the potential to greatly improve regulatory processes for existing electricity operations and to improve approval timelines for projects in development.

● (1910)

The Chair: Thank you very much, Mr. Toner.

We will now proceed to the question and answer portion. We'll start with our first round. Members will have up to seven minutes for their questions and answers. If we can get the witnesses to keep their remarks brief and concise, we can have as many questions and answers as possible.

We will start now with Ms. Ambler, for up to seven minutes, please.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thank you to all of our witnesses for appearing here this evening. My questions are for Mr. Everson.

Chambers across the country have been very supportive of this legislation and of our responsible resource development plan. Why is it so important that we act now to improve Canada's regulatory system in order to attract investment and see resource projects move ahead safely in the years ahead? In other words, when major projects are stuck in an inefficient regulatory system, what is the impact upon job creation and economic investment?

● (1915)

Mr. Warren Everson: That's what we used to call a leading question.

Mrs. Stella Ambler: Indeed it is.

Mr. Warren Everson: I think all of the people who have supported the legislation have made the point that delay in an answer, on an assessment in particular, is destructive of investment opportunities, employment, and development, whether the answer is yes or no.

I don't believe we want to say that a project should go ahead if it's destructive of the environment, but the longer a delay occurs, the more the market finds some other place to invest its money, either somewhere else in Canada or somewhere else around the world.

I think you heard testimony from the hydroelectric association pointing out that the process to approve a hydroelectric development typically takes up to four years, and in that time investors can go into other forms of energy generation—maybe less clean energy generation—and invest their money there.

Obviously we believe that, especially now, Canada has a remarkable opportunity to exploit its natural resources successfully and professionally, and that this is a requirement for our economy.

Mrs. Stella Ambler: In fact, the president and CEO of the chamber, Perrin Beatty, identified, as you did tonight, regulatory inefficiency as one of the top 10 barriers to Canadian competitiveness. He talked about drawn-out, duplicative reviews, which are, he said, bad for everyone.

I'd like to also ask you whether, as part of a national organization, you would agree with my colleagues opposite that when the economy in western Canada is doing well, it must necessarily be to the detriment of central Canada's economy? Or would you agree that the abundance of natural resources from coast to coast to coast means that investment in resource projects can benefit many or all regions and many sectors of the Canadian economy?

Mr. Warren Everson: I certainly agree with the second part of your question.

I think that one of the challenges Canada has is adjusting to how very significant the oil and gas industry has become in our economy. I calculate that it's almost twice as large now as the auto industry. I think it's relatively easy for us in eastern Canada to think of it as a western phenomenon, but the more I learn about it, the more I realize that the implications of that industry are being felt all across the country, in every line of work.

One of the ones I mentioned is that there is a huge preoccupation of our membership with human resources and skills. There aren't enough people in western Canada to service just those industries, let alone all the other industries that are supported by it. So an entire national agenda, a national strategy around manpower related to natural resources, is appropriate.

But I also want to make the point—and I'll keep my answers shorter in the future—that I was in Newfoundland a couple of weeks ago. It was an under-employed province for all of my life; now it's an over-employed province. They have massive natural resources projects that are going to make it possible for the province to be entirely employed and will require many immigrants.

In P.E.I., one of their major plans is to move to wind energy in a very big way—I think it's up to 40%. And there are oil and gas developments all over the east coast.

There's the Ring of Fire, the Plan Nord, there's no part of this country that is not heavily involved in effective and efficient exploitation of natural resources.

Mrs. Stella Ambler: Thank you. I appreciate the examples. I'm sure you could give many.

How would you describe your stakeholders' commitment to caring for Canada's great environmental endowment?

Mr. Warren Everson: The chamber network, representing all the chambers and boards of trade across the country, routinely produces quite a bit of policy on environmental protection and the sanctity of environment. I think the organization generally reflects Canadian values, that you don't get a do-over when you are assessing environmental impact.

I can't think of a business client who has come to us and said we need weaker regulation. The frustration is almost always with the operation of the regulation.

Mrs. Stella Ambler: How would part 3 of Bill C-38 affect your stakeholders' ability to do business and create jobs?

What I'm getting at is to ask whether there is a downside. Or is there a part of the legislation that you think is really great in terms of your stakeholders' ability to create jobs? I'll stop there.

● (1920)

Mr. Warren Everson: There are two that I mentioned.

The duplication between governments is a necessary change. We look, in my view, ridiculous in this country having duplication in the way that we do.

I think the establishment of timeframes is very critical for all parties. Rachel just said that the proponents also have to adhere to timeframes. I think it's very salutary for all parties to realize that a decision needs to be made promptly, with appropriate information.

We've published editorials in which we've said that this bill will not be any walk in the park for proponents; it's more like a trial than the current more leisurely process, in which you massage your proposal.

Mrs. Stella Ambler: I think there are folks out there who believe that we're reducing timelines with this legislation, when in fact we're implementing timelines where they did not exist before. I'm going to assume that the two-year time limit for major projects is something you think will help Canadian businesses, and your stakeholders in particular.

Mr. Warren Everson: I think it will help all the parties involved, proponents and opponents.

The Chair: Thank you, Ms. Ambler.

We now have to move on to Mr. Chisholm, for up to seven minutes, please.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): Thank you, Mr. Chairman.

I want to thank the witnesses for coming forward today to share their thoughts and knowledge with us.

I have been sitting here now for 13 hours or so listening to a great deal of very interesting testimony. I don't think I've heard anybody say anything contradictory about the four principles of resource development in terms of streamlining the process, that is, being predictable and timely, reducing duplication and regulatory burden, strengthening environmental protection, and having meaningful consultation with aboriginals. I don't think I've heard anybody say they disagree with those.

Right now, we have a process and we need a process that allows for a debate and discussion of how that development is going to happen. So you have the proponents—that is, Mr. Toner and others—coming forward and presenting what they want to do, and you have the others who are affected and who also have knowledge bringing fact-based science to the table, where you would have a discussion and then a rules-bound process for determining how to move forward. What we need to do is to make sure that is streamlined and that everybody's interests are properly taken into consideration.

There are different interests on how we protect the commons that need to be fully aired, and yet we're engaged in a process here that's based on power, I would humbly submit. The government is unilaterally bringing forward changes to 70 pieces of legislation, some extraordinarily impactful pieces of legislation that we're talking about—the Fisheries Act, the Canadian Environmental Assessment Act, and others. They are bringing them in. They are jamming them through an omnibus bill where we get to talk about it for a full 12 hours. We already had 2 hours, so it's 14 hours altogether.

It's not setting a good example for how we're going to sort out the different interests that come forward in the future, because now, it seems to me, that with the unilateral changes that we're making in this legislation, which are not taking into consideration what we've heard here and are completely one-sided, this is not setting a good example. It means that when we go forward it's very much going to be a power-based system.

Mr. Toner—and I only refer to him because he's Nova Scotian, which I want to point out—and other proponents are going to come forward and propose the development of projects, and others will come in and raise questions about those, but in the final analysis it will be the minister or the cabinet that will decide.

That simply blows me away. In terms of setting an example for how we talk about being cooperative, working together, and making science-based decisions in protecting natural resources and so on, everybody wants to do it in a timely, efficient, and effective way. Why don't we sort those problems out together and achieve it that way, rather than following this power-based process where we'll come out the other end with the same people for and against it?

What do you think is going to happen when the first project comes forward under these changes? Do you think there is going to be any uncertainty? Do you think there are going to be any challenges? Do you think there are going to be any delays? And that is simply based on the process we have gone through here. That is a huge concern of mine.

I'll shut up now and ask a question. I'm sorry.

A voice: Can I answer that?

Mr. Robert Chisholm: I want to ask Mr. Maas and Ms. Forbes to speak to the frustration with the process. I do that for this reason.

● (1925)

The people—I'm not saying necessarily the folks who are here—who have been for this legislation have had access. The people who are against it have not had access, and there is great frustration, I feel.

I'd like to ask the two of you who are here today, who have raised concerns about this process and this bill, if you would speak for a moment—I hope I've left you with a couple of minutes—to your concerns with the process.

Mr. Maas.

Mr. Tony Maas: Sure, and I'll happily be brief.

I think the point to be driven home is the process at this stage, the means by which these changes are being brought forward, as I said in my brief. It seems to presume that groups like ours, and others in our sector, if you will, are unable or unwilling somehow to sit down with industry representatives and have a reasoned dialogue and multi-stakeholder, science-based consultation about these issues.

That's simply not the case. I mean, we're in constant contact with many of the industry groups that have been represented here over the last few days in a very, very collaborative manner, including formal partnerships that we've had with organizations in the forest sector. We have ongoing dialogue with hydro power companies across the country.

I think there's certainly, in my view, a different way forward, and one that will result in a much more constructive outcome if we factor in due process.

Mr. Robert Chisholm: Ms. Forbes.

Ms. Rachel Forbes: When you said that the people who are for this proposed legislation have had access and those who are perceived to be against it have not, I think that really hit it on the nail. Who are the groups who have had access? What kind of access have they had? What's the legitimate process by which they've had access and other people have been shut out?

As Tony Maas just said, I do think we have experience in being involved in the process. If you're trying to make things more efficient or make things more productive, nobody is against that, as you said. We've been there. We've seen the inefficiencies. We've seen different ways. We have other ideas about how to do it in a more conciliatory and less full-frontal-assault kind of way.

The Chair: Thank you, Ms. Forbes.

Mr. Chisholm—

Mr. Robert Chisholm: That's it?

The Chair: —that was a little over seven minutes.

Ms. Duncan.

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

I'd like to thank all the witnesses for coming.

To Ms. Forbes, when one considers that the Supreme Court of Canada ruled that transferring authority for aquaculture from DFO to the B.C. government was not acceptable under the Constitution, do the provisions to transfer fisheries management to the provinces appear sound to you?

Ms. Rachel Forbes: I think you're referring to the Alexandra Morton and B.C. court case. The company involved in that was Marine Harvest.

In B.C., if you're not familiar with this, the aquaculture fish farms were for awhile a little bit like a child of divorced parents who were fighting: nobody knew who was doing what with the fish. Sometimes they were on land and under the B.C. Ministry of Agriculture, and sometimes they were in the ocean, obviously, and then under federal authority.

Alexandra Morton, a scientist with decades of experience in this area, brought a challenge. The court decided that it was not constitutional for the province to deal with aquaculture, that it was exclusively a federal head of power, and that it was ultra vires subsection 91(12) of the Constitution for the province to attempt to regulate that.

I do know that there are potentially other issues with delegating authority over fisheries to the provinces—among them, that different provinces have different ways of dealing with fisheries right now. We have a lot of different types of water bodies in Canada, a lot of different species of fish, and a lot of different types of development that happen in those water bodies. If we're trying to actually make a consistent, predictable process across Canada, I don't understand how delegating it to different authorities under different provinces and territories actually accomplishes that.

Moreover, there are potentially constitutional problems with it.

● (1930)

Ms. Kirsty Duncan: Thank you, Ms. Forbes.

As well, how does the repeal of CEAA and the focus on commercial, recreational, and aboriginal fisheries align with assessing biodiversity and ecosystems?

Ms. Rachel Forbes: I think I suggested in my main presentation that one of the themes we see in part 3 of Bill C-38 is a lack of respect for, or appreciation of, or knowledge of the fact that we live in an ecosystem. Labelling different types of fish, the ones that are commercially or culturally valuable, really ignores that those fish also rely on other fish and other aquatic species and plant species and a healthy ecosystem to live in.

Taken together, all of the amendments in part 3, particularly the ones with the new CEAA and Fisheries amendments, as well as the Species at Risk ones, culminate in this very closed perspective, as though each project happens in its own little room and doesn't impact anything outside of it. We don't look at cumulative effects properly. We don't look at biodiversity. We don't look at ecosystems.

This actually could help industry in the longer term. We need to take proper care of our resources if we want to use them for a longer term. We need to keep proper care of our water if we want people in agriculture or in the extractive industries to use water. We need it to be available.

We need to look at the bigger picture and how things actually influence one another.

Ms. Kirsty Duncan: I'm going to ask Dr. Steedman three very brief questions. I'm looking for yes or no answers for each one.

For the NEB, is the legislation being backdated to July 2010, yes or no?

Dr. Robert Steedman: No.

Ms. Kirsty Duncan: It's not. When is it—

Dr. Robert Steedman: The legislation would come into effect when it comes into effect.

Ms. Kirsty Duncan: It's been a concern that it was being backdated. Thank you for that.

I'll go back to Ms. Forbes. Grand Chief Atleo has said that non-recognition of treaty rights is a deep concern. Bill C-38 puts our first nations in a deeply reactive position. Two days ago, we heard directly from Grand Chief Atleo that he does not know what, beyond $1.5 million, the government will do to improve aboriginal consultations.

The Union of B.C. Indian Chiefs has written an open letter saying that they do not accept requests for comments on proposed regulations to implement CEAA 2012. They say that they strongly contest “the federal government's current request for comments on the proposed regulations...based on the lack of consultation with First Nations”, and they will not participate in this flawed process because they do not want to legitimize it in any way.

That continues.

They strongly urge the government “to engage in regulatory overhaul for environmental laws that respect constitutionally protected Aboriginal Title, Rights and Treaty Rights, with appropriate engagement across the country”.

I'm wondering if you could comment on that, please.

● (1935)

Ms. Rachel Forbes: I think first nations consultation is one of the aspects where the timelines really don't make sense.

I appreciate that in your average environmental assessment, things can probably happen within a certain timeframe. What we're looking at here are the unknowns and the variables. Science can be an unknown and a variable.

With aboriginal consultation, every aboriginal group will have different interests that have to be known and examined. I think it's fair to say that probably most aboriginal groups, at least it's the case in B.C., are bombarded, constantly, with multiple, different requests for comment on different projects that are crossing their territories every which way, whether that's for environmental assessment or for people who want to do a partnership deal with them. They don't have the capacity to deal with them. To tell communities that they need to respond to a process, and one in which their government will have no ability to participate in the decision-making, and they have to respond within 30-day timelines for 10 different projects at once, does not make sense. A municipality wouldn't do it, and we're asking first nations governments to do it. I agree with Chief Atleo's and the Union of B.C. Indian Chiefs' submissions on that. If I were them, I wouldn't be supporting it either.

The Chair: Thank you very much, Ms. Duncan, and Ms. Forbes. Your time has expired.

We now move on to our five-minute round.

We have Ms. Rempel. I think you're going to share your time.

Ms. Michelle Rempel (Calgary Centre-North, CPC): I'm not!

Voices: Oh, oh!

The Chair: You take it all then.

Ms. Michelle Rempel: Thank you, Mr. Chair.

Ms. Forbes, you said you have experience and that you'd like to be involved in the process, so it's great to see you here tonight. I'd like to get right into the bill. You said the bill would lead to uncertainties, specifically in timelines for proponents and participants. In section 54(2) it says this:

> the decision maker must issue the decision statement no later than 24 months after the day on which the environmental assessment of the designated project was referred to a review panel under section 38.

Would you characterize that change in timeline as more uncertain or less uncertain than the previous timelines?

Ms. Rachel Forbes: I think that timeline is more certain. What I was referring to is that under the current process, we in Canada experience more uncertainty with proponents delaying the process, and then the new CEAA doesn't address that because the timelines don't apply to proponents.

Ms. Michelle Rempel: Were you aware that there are no timelines in the existing legislation?

Ms. Rachel Forbes: Yes.

Ms. Michelle Rempel: So having timelines now leads to more uncertainty in timelines.

Ms. Rachel Forbes: There are still no timelines for the proponents to be held to.

Ms. Michelle Rempel: Actually, the timelines are what I just read to you.

Ms. Rachel Forbes: I believe you're talking about panels and the decision.

Ms. Michelle Rempel: So the decision point is now 24 months after its time. So how is this less certain than what it was before?

Ms. Rachel Forbes: If you can point me to a clause that says that proponents have to respond with additional information within certain times, or they have to submit enough information initially that the panel wouldn't have to come back to them for additional scientific studies and information that they're missing—which is what often happens—or their economic conditions aren't right so they requested delay, then I would be happy to see those clauses.

Ms. Michelle Rempel: So clause 54 speaks to the timelines and the requirements set out therein—the assumptions being completeness and fulsome review. So how is a panel review timeline decision for 24 months less certain for any participants? There is now a defined timeline.

Ms. Rachel Forbes: It's not less certain unless the proponent asks for a delay.

Ms. Michelle Rempel: Thank you.

Moving along, you also spoke about uncertainty in funding status. We've heard from the Commissioner of the Environment that 94% of screening reviews under the Canadian Environmental Assessment Act are deemed to be of little or no environmental import. He also said that by reallocating resources spent on those screenings to larger projects, we would have more robust review. The government also re-funded CEAA to its same level, plus increased funding for project review. Would you consider that funding uncertain?

Ms. Rachel Forbes: I don't think I said anything about funding in my submissions.

Ms. Michelle Rempel: In your statement you did. You made a statement about funding status.

● (1940)

Ms. Rachel Forbes: Not to my knowledge, I didn't.

Ms. Michelle Rempel: Continuing, Mr. Everson, you made some comments about the World Economic Forum calling the bureaucratic process an impediment to growth, and you referred to labour shortages and the need for training, and to pension funds being invested in energy firms, etc. Would you characterize those statements as perhaps indicating a need to have certainty, and thus the above as among the reasons why there is a rush to have certainty in the timelines to ensure that these projects can be reviewed?

Mr. Warren Everson: Absolutely, and I don't think it's much of a rush. I think this issue has been extant in Parliament for a couple of decades.

Ms. Michelle Rempel: Would you characterize a statement that Ms. Forbes made questioning the urgency for having these changes as perhaps false?

Mr. Warren Everson: My membership thinks these changes are timely and very appropriate.

Ms. Michelle Rempel: With regard to the question of access that came up, the finance committee will have had 50 hours of study, and there will be 18 hours in this committee. I'm told that the finance committee has had to cancel a couple of meetings because we haven't been able to have witnesses. During the statutory review of the Canadian Environmental Assessment Act, we had two months' worth of testimony. During these committee hearings we've had associations that have represented over three million Canadian jobs. We've had representatives from academia, law, aboriginal organizations, environmental non-governmental organizations.

How would you characterize this, Ms. Forbes, as not having access?

Ms. Rachel Forbes: I would characterize the seven-year review of CEAA very differently than you would. Factually there was a witness from an environmental group and a witness from the Assembly of First Nations, and there were multiple witnesses from industry. I guess you said you met over two months, but these were very short meetings, with a lot of them in camera. We were invited to present and then uninvited. The question was called 36 hours prior to the committee finishing its business.

Ms. Michelle Rempel: Were you aware that the process was open and that anyone in Canada was allowed to submit written briefs, of which we reviewed dozens upon dozens?

Ms. Rachel Forbes: We were aware, but I can tell you that most people in Canada were not. There was no effort made at outreach.

The Chair: Okay.

Thank you, Ms. Forbes.

Thank you, Ms. Rempel. Your time has expired.

Mr. Anderson, for five minutes, please.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, Ms. Rempel needs to finish a question.

Ms. Michelle Rempel: Thank you.

Ms. Forbes, you also mentioned there was a lack of legitimacy in the process. With nearly close to a hundred hours of government committee study, by my count, would you characterize a parliamentary committee that has reviewed these matters over many months—the better part of this parliamentary session—through budget consultation, written submissions, and parliamentary process as not legitimate?

Ms. Rachel Forbes: Yes, because reviewing CEAA, which had been enacted for however many decades before, is not the same thing as looking at an entirely new act that actually flips the process around.

Ms. Michelle Rempel: And a seven-year statutory review, which is embedded in the act and which people were aware of through a parliamentary committee, you would characterize that as non-legitimate.

Ms. Rachel Forbes: I think there are different ways you can carry out a review process, and I think the way that it was—

Ms. Michelle Rempel: Thank you. My time—

Ms. Rachel Forbes: —done in 2011 was not legitimate.

Ms. Michelle Rempel: Mr. Anderson.

Mr. David Anderson: Thank you.

Mr. Steedman, I want to ask you some questions about changes to the NEB Act. We've been talking a little bit about timelines here. I'm just wondering if can you tell us a bit about it. What are the new timelines being set in place for NEB reviews?

Dr. Robert Steedman: For facilities hearings, that is, on pipelines and power lines, there's a total time limit of 18 months. The National Energy Board would be required to complete its process within 15 months. The last three months would be for the Governor in Council to do their part.

Mr. David Anderson: Are there any provisions for extensions on that as well?

Dr. Robert Steedman: The minister can extend it by up to three months. Cabinet, upon recommendation of the minister, could extend it further.

Mr. David Anderson: Can we just get you to explain a bit, then, how the decision-making process is approached and what the process is that's carried out, just so we can get that on the record?

Dr. Robert Steedman: The NEB would conduct a public hearing that integrates environment, economy, and social issues the way it always does. We call that the public interest assessment. It's fact based. It's fully transparent, like a court of record. It's based on an advanced, very clear statement of what the filing requirements are.

The NEB would collect its evidence. It would have an oral hearing, with participant funding. It would produce a recommendation report and give that to the Governor in Council for the Governor in Council to direct the NEB to issue a certificate, to dismiss the application, or to reconsider the report.

● (1945)

Mr. David Anderson: Okay. Can you tell me a little bit about enforcement, then? I think there are some new provisions for enforcement. Can you go through those and talk a little bit about the changes and I would say improvements in that area?

Dr. Robert Steedman: The act has always provided for criminal sanctions: indictment or summary conviction with substantial fines. The NEB does not do that directly; it would do that through Justice.

The bill gives the NEB administrative monetary penalties. This is a new tool. These are designed to encourage compliance. In our compliance ladder, which ranges from requesting compliance and ends with asking them to shut down their facility or criminal prosecution, the administrative monetary penalties would provide a fairly rapid way of imposing a fine on someone who violated the act or a term or condition of an approval.

Mr. David Anderson: I have a minute or so left.

Mr. Everson, we've heard time and again here from people—usually the people who've taken the time to look at the bill—that the EA system needed to be changed and is being changed in a good way. What we've heard is that the main change is not to outcomes, so there's no lessening of the rigour, demand, and the outcome. The changes that are taking place are in the process part of it.

I guess that's my question: isn't it the process that has really been the issue here?

Mr. Warren Everson: I think that most of our members, if they were here, would say to you that if there's a difference between the regulatory authorities in provincial and federal governments, it would be that the regulators in the province are a little more aggressive. We do think there's just a lamentable amount of duplication; it seems a tragic waste of the environmental resources and the human capital we have that they're duplicating the process. So to that extent, for sure—this is a much desired bill in our membership and we've lobbied for it for a long time.

Mr. David Anderson: Mr. Smith, you'd concur with that, would you?

Do you agree with that?

Mr. Geoff Smith: I think it's the result of a lot of input over the years and challenges that we've been looking at.

Mr. David Anderson: So you're comfortable with your access. You feel you've had access in terms of participating—

Mr. Geoff Smith: Yes.

The Chair: Mr. Anderson, your time has expired.

Thank you, Mr. Smith.

We will now move on.

[*Translation*]

Ms. Quach, you have five minutes.

Ms. Anne Minh-Thu Quach (Beauharnois—Salaberry, NDP): Thank you, Mr. Chair.

Thanks to the witnesses for being here.

I would like to ask Mr. Maas some questions. We are talking a lot about the impact of Bill C-38 on environmental assessment. Under this bill, responsibilities would be delegated to the provinces on the ground that there is duplication. However, the Canadian Environmental Assessment Agency has told us today, through an internal document, that there is in fact no duplication.

In that case, what risks would be incurred? The federal government is transferring these responsibilities to the provinces when there are no uniform standards. This causes a lot of predictability problems. What do you think about that?

[*English*]

Mr. Tony Maas: Well, my crystal ball is as good as anyone's, so I can only speculate, of course.

Specific to the Fisheries Act, it's important to recognize that there are many, many agreements already in place between the provinces and the federal government around how the federal Fisheries Act is administered, and likewise for conservation authorities.

The question that arises for me is two-fold. One, when considering further delegation to the provinces, there may be questions around the legal authority, the constitutional authority, of provinces to manage fisheries, because that is a federal constitutional responsibility.

From a much closer to the ground perspective, as I said in my opening remarks, there are some very serious issues of resources, whether in the private sector, in the sector that I work in, or in the government sector.

As responsibilities shift, I would feel much safer and more compelled by those changes, if there were some analysis of the degree to which gaps exist in terms of the capacity to respond and protect water resources in fisheries, and some indication of where the resources will come from to fill those gaps.

● (1950)

[*Translation*]

Ms. Anne Minh-Thu Quach: Thank you.

I will continue. There could be resource-related risks, that is to say risks of potential contamination, since we would be letting the provinces manage that or letting the industry manage itself, which is completely senseless.

How could that negatively affect the economy? People do not stop saying that you have to be productive, you have to be competitive, but if we exploit all the resources any way we want, what will be left of them in three generations? Will people still be healthy? How can that affect the economy?

[*English*]

Mr. Tony Maas: Again, the answer to the latter part of your question is that it remains to be seen.

As an organization, we are very willing to engage in a constructive conversation about how to improve the effectiveness and efficiency of administration of the federal Fisheries Act. But as I said in my opening remarks, I see no reason for the rather sweeping changes.

One of the key challenges I have in understanding what might come to pass, or even speculating on it, is that there are so many undefined terms. While recognizing there's a regulatory process to follow and a commitment by Minister Ashfield to engage and consult with stakeholders—in a written statement, I believe, that he made—it's very challenging to even begin to wrap one's head around, particularly in the very short timeframes that are being proposed, complete definitions of terms that are not common in the current framework around fisheries management, such as “serious harm”, “permanent damage”.

It's a new game. As I said in my opening remarks, I have every faith that the scientific community would be willing to tackle that question, our organization included, but I think those definitions should precede enactment into law.

[*Translation*]

Ms. Anne Minh-Thu Quach: I have one final question, which concerns the Fisheries Act. The government eliminated more than 1,000 positions at the Department of Fisheries and Oceans this week. We have also learned that toxicology specialists, who are responsible for monitoring pollution in waterways, will be laid off or relocated.

Do you believe that Bill C-38 will help protect these lakes and rivers or that it will exacerbate the situation? What should this bill contain to improve the situation?

[*English*]

Mr. Tony Maas: I'm a member, in another kind of side gig, if you want to call it that, of a group called the Forum for Leadership on Water, or FLOW for short. In 2007 we released a report called *Changing the Flow* that identified, even at that point, the declining trend over the last two to three decades in the scientific capacity of the federal government to monitor and undertake scientific research. The recent reductions in DFO staff and staff in other agencies is just a further slide in that direction, raising significant concerns about the role that science can and should be playing in making these decisions.

The Chair: Thank you, Madame Quach. Your time has expired.

We now move on to Mr. Allen, for up to five minutes.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you very much, Mr. Chair, and thank you to our witnesses for being here.

I'm going to focus my questions on the Canadian Electricity Association. I would like a clarification, following up on one of Mr. Anderson's questions.

Mr. Smith, you said in your opening remarks something about how you put your suggestions with respect to changes in the regulatory process as part of the pre-budget consultation. Was that part of a round table? Was that in a brief submitted to the finance minister or the online system that all Canadians had access to?

Mr. Geoff Smith: It would probably have been all of those. We take advantage of every opportunity available to the public and, of course, we pursue meetings with ministers' staff and parliamentarians at all levels and with officials. So if we have an opportunity to feed in our recommendations, we try to take advantage of and use that opportunity.

Mr. Mike Allen: Thank you very much.

Mr. Toner, you talked about $347 billion of investments in energy assets that have to be made between 2011 and 2030 to address some of the aging energy infrastructure and those types of things, and you said that right now, it's 10 years from initiation to grid with some of these projects.

With that in mind, can you give me some examples of how this has played out under the current legislation. What I'd specifically like to understand is that if we don't have better, smarter regulation, what is going to be the impact on our electricity grid and the aging infrastructure?

The second part of that question is do you see any less rigour under this legislation than you now see to approve projects?

● (1955)

Mr. Terry Toner: I'll answer the second question first, which is simply that we don't see less rigour. Of course, people can interpret it as they see fit, and we don't predict that we're going to do anything less rigorous in terms of meeting our responsibilities, balancing social, environmental, and economic concerns.

As we outlined in our brief, it's a very important direction in consultation with stakeholders and also engaging with first nations well in advance. All of our companies are doing that in an attempt to do the very best we can to accelerate the possibility of reaching solid agreements, even before the processes come to the regulatory forum —and that is a common practice that we take. So industry has done that. We think it's the right thing to do.

The consequences in terms of the changes that we're going to have to undergo as a sector could be significant. Large projects, obviously, gain most of the attention but there are many medium sized and smaller projects that make up the day-to-day work that has to take place. Getting the process aligned so that the right amount of review is taking place, and indeed that we do engage with good science people and that people have a chance to bring forward their concerns and issues, we're in favour of, but we think that given the number of projects to replace some of our aging transmission across the country.... We've seen examples in the last few years of problems that have occurred there, and getting permission to do transmission projects is one of the challenges that we face. But dealing with the replacement of our fleet to address environmental air emission requirements is also going to cause a fairly substantive change in the type of generation that we have.

Mr. Mike Allen: If the timelines continue the way they are, do you see any risk to our existing infrastructure grid and the stability of our electrical system?

Mr. Terry Toner: We do see risk and, as the previous speaker said, risk is a hard thing to assess. We assess it every day in terms of the reliability of our system, and across some of our major utilities in the country there's a tremendous amount of infrastructure that has been in place for a long period of time. A six or 10-year period to get those projects moving forward would put that at risk.

Mr. Mike Allen: When you look at your membership and the membership profile, how many of your members are private investor utilities and how many are crown corporations such as NB Power, or Hydro-Québec, or others? Can you give me a rough number? The reason I'm asking you that question is that when you look at the process for approvals, we want to make sure that it's one project, one review, and there's the possibility of some of this going to the provinces.

Do you see—and I ask this question of hydro power—any potential for a conflict with the province being responsible for its own review of an electric utility that is a crown utility?

Mr. Terry Toner: The first question you ask is what type of membership makeup we have. Obviously several of our members are crown corporations—BC Hydro, Manitoba, Saskatchewan, New Brunswick, OPG, and parts of Newfoundland—but there are also a number of us that are privately held. Nova Scotia Power would be one, and many of the utilities in Alberta, and some of the other utilities across the country, Fortis, for example. So the answer is that we have a mixture.

We don't see a difficulty with the provincial government's having a substantive role in these projects because today, on many projects, we take them through processes that are controlled by the province. The provinces have robust legislation and we follow that. We think we develop good, safe, and environmentally responsible projects.

The Chair: Mr. Allen, your time has expired.

Mr. Nicholls, go ahead for five minutes, please.

Mr. Jamie Nicholls (Vaudreuil-Soulanges, NDP): Mr. Everson, you cited the World Economic Forum report on competitiveness. I know it well. You also cited regulatory overburden as the main problem for Canada's competitiveness.

I want to point out to the committee that this is drawn from an executive opinion survey part of the report. It's based on perception and not science. It has a sample size of only 98 people from an online survey.

Now a quote in the main body of the report on Canada's competitiveness says that the main challenge is this:

> As we have noted in recent years, improving the sophistication and innovative potential of the private sector, with greater R&D spending and producing goods and services higher on the value chain, would enhance Canada's competitiveness and productive potential going into the future.

Would you agree with this section of the report? Just a simple yes or no would do.

● (2000)

Mr. Warren Everson: Absolutely, I agree.

Mr. Jamie Nicholls: Thank you.

So, given that many of the large oil development projects entail the export of raw resources rather than value-added products, this seems to be an especially misguided strategy to increase our competitiveness.

Would you agree with that, Ms. Forbes?

Ms. Rachel Forbes: Sorry, that the current strategy is misguided?

Mr. Jamie Nicholls: Given that competitiveness shows that value-added is better, wouldn't you say that the current strategy of exporting all our raw materials outside of the country is misguided?

Ms. Rachel Forbes: Yes, and I do think it's a very short-term strategy. I think that part 3 ignores long-term costs, which is part of the problem with it.

Mr. Jamie Nicholls: I want to return to an issue that Ms. Rempel seemed to misunderstand from your previous response. I understood you to say that there are timelines in CEAA 2012 for everyone except the proponent.

Why is this a problem?

Ms. Rachel Forbes: It's a problem because it's not applied fairly. I still think that's an area of uncertainty. It doesn't allow the public, first nations, or, potentially the civil servants involved in the process, the same certainty as it allows proponents.

Mr. Jamie Nicholls: I want to return to the subject of pipelines in view of this idea of value added versus raw exports. If these projects are going to be fast-tracked, there might not be the proper consultation with first nations groups, with ordinary citizens, and even with economists. Economists might disagree with these projects because the projects might be lacking sound economic principles in the long term, as you mentioned. And because the power is passing to politicians rather than scientific bodies, these misguided principles might lead to decisions that override NEB decisions.

This is a problem, is it not, Ms. Forbes? The power is being taken away from the scientific body and given to politicians and cabinet. Can you elaborate on the problems this poses?

Ms. Rachel Forbes: I think it discredits the entire review process for pipelines and tanker projects. You could spend your 24 months reviewing it, and have economists, scientists, and first nations—everybody involved—have the NEB make a recommendation and then the government completely overturns it. So if you're talking about a waste of resources and people's time, then that would be an absolutely massive one.

Mr. Jamie Nicholls: Given the misguided economic principles of a politician hell-bent on believing that the export of our raw natural resources is the best way to go, contrary to all international bodies such as the World Economic Forum, that 24-hour timeframe where they're fast-tracking everything might lead to very poor economic, environmental, and social decisions. Is that not the case?

Ms. Rachel Forbes: I'd agree with that. For example, the current review process for the notorious Enbridge Northern Gateway pipeline project doesn't look at long-term costs. You have to consider seepage as well as spills. It doesn't look at downstream effects. We're not looking at the full economic, social, cultural, and environmental costs of that project. I think it's a short-sighted one. I think that's why you have already seen a lot of parties remove themselves from it, as they don't believe it's legitimate.

Mr. Jamie Nicholls: This bill adds powers to the NEB to establish violations and set fines of up to $100,000 for a company. The existing NEB Act already allows for criminal prosecution of offences.

Considering that a company charged with a violation cannot be charged with an offence, do you have any concerns that this change would weaken enforcement?

Ms. Rachel Forbes: I don't know that it would weaken enforcement, necessarily. I think there are bigger problems with addressing spills. Who's paying for them? Who's liable for them? We have a big problem with both the national and international liability insurance funds. They don't actually cover the costs that would result from a significant spill, whether it's on land or on the coast. We have one happening right now, and taxpayers are going to end up with a lot of the cost of cleanup. And remember, cleanup is not possible for a lot of those types of spills. It's a huge risk that no amount of enforcement or safety enhancements can effectively address.

● (2005)

The Chair: Thank you very much, Ms. Forbes.

Mr. Nicholls, your time has expired.

We now move on to Mr. Kamp.

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Thank you, Mr. Chair, and my thanks to you witnesses for appearing. We appreciate the time you've taken out of your busy schedules.

Let me begin with Mr. Maas. I want to make sure I understand what you're saying. Is it your view that for every piece of water that has a fish in it, that habitat needs to be protected?

Mr. Tony Maas: Yes, it is.

Mr. Randy Kamp: Would it surprise you that historically that has not been the view of the Government of Canada, or within the policy framework of the Government of Canada?

Let me just read from what is still in place. “The Department of Fisheries and Oceans Policy for the Management of Fish Habitat”, 1986, says:

> The policy applies to those habitats directly or indirectly supporting those fish stocks or populations that sustain commercial, recreational or Native fishing activities of benefit to Canadians.

It goes on:

> In accordance with this philosophy, the policy will not necessarily be applied to all places where fish are found in Canada, but it will be applied as required in support of fisheries resource conservation.

I want your comment on that, but let me add that a supporting policy document a dozen or so years later, in 1998, said this about section 35 of the act, about how that's to be interpreted:

> Section 35 is not about the protection of fish habitat for the benefit of fish, but of fisheries.

It goes on to talk about those fisheries: recreational, commercial, and aboriginal.

What do you think of this?

Mr. Tony Maas: You asked me if I believed if all waters that contain fisheries—

Mr. Randy Kamp: All waters that contained a fish, I said.

Mr. Tony Maas: —should be afforded protection, which is different from a discussion of what the existing policy framework is. I said it was far from perfect. I'm a practical person. I recognize we're not going to protect all fisheries or all waters where a single fish exists. We need to be able to set priorities, and we need to do that on a scientific basis, with clear criteria. I see no criteria in the legislation of what constitutes a decision to list a fishery or body of water as a commercial, recreational, or aboriginal—

Mr. Randy Kamp: I'm sorry to interrupt. My time is short.

We realize as well that we do not have the resources to protect every marine species and the habitat that supports it. This legislation is focusing on what this policy document said about these fisheries, namely, these commercial, recreational, and aboriginal fisheries that are of benefit to Canadians.

You're saying that's misguided, or do you support it?

Mr. Tony Maas: I'm saying that if there were some substance for me to have in hand behind the criteria that will exist, or a process to develop them—and that's what you're saying, that the existing policy documents in your hand are the proposed criteria against which we'll define these fisheries, then.... I think what we're looking for is an opportunity to engage in a conversation about where to put our priorities around limited resources, so that we can develop constructive collaborative solutions.

Mr. Randy Kamp: We look forward to doing that. To be clear, what I'm saying is that this was an interpretation of section 35 of the act, which everyone seems to want to keep. We're actually enshrining in legislation the focus that is in the current habitat policy that was the historical interpretation of section 35.

Do I have some more time, Mr. Chair?

The Chair: By all means. I'll let you know.

Mr. Randy Kamp: I'm sorry about that.

The Chair: Keep going.

Mr. Randy Kamp: I know partly what you don't agree with. Let me see if I can find some things that you do like in Bill C-38. There's clause 147 where it aligns the Fisheries Act with the Environmental Enforcement Act, so there will be increased fines, minimum fines and so on. Nod if you like this. Okay, he likes it.

There's a section on creating enforceable conditions for ministerial authorizations, because up till now we had no legal authority to make somebody do what they said they would do when they got the authorization. Do you think that's a good idea?

● (2010)

Mr. Tony Maas: I'll have to add another option to the answer to this: I'm not familiar with that element of the budget bill.

The Chair: Now you're out of time.

Mr. Randy Kamp: I was just getting—

The Chair: I know. We heard you in question period today, so we think you are just getting going.

Mr. Toone for up to five minutes.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): I'll continue from where Mr. Kamp left off.

Mr. Maas, let's get back to the question of serious harm. How do you feel about the question that we've now got a concept that seems largely undefined and highly discretionary, in my opinion? Can you elaborate as to where this new definition might bring us?

Mr. Tony Maas: I can't even begin to speculate. Again, that's a recognition or understanding that things will be forthcoming in regulations. As I said in my introductory remarks, in my view such underpinning terms as changing a test essentially for the validity of an authorization or prohibition from one that we understand and recognize to a new term that has yet to be defined makes it's very difficult to give effective support to the changes relating to that term. It's just very difficult to do that.

Mr. Philip Toone: I share your concern. Thank you.

Mr. Steedman, perhaps I could ask you a question. Regarding the proposed NEB assessments under the act, interested parties are going to be defined as persons "directly affected by the carrying out of a designated project" or if the person has "relevant information or expertise". We also know that under Bill C-38 the minister is going to have the power to dictate who should be defined as a directly affected person, therefore giving him the power to specify who will be allowed to speak, for instance, in pipeline reviews.

Given that the current minister and this government seem to have made unprecedented attacks against environmental groups, I'm really worried that this is quite an undemocratic principle. I'm wondering how you feel about the minister's ability to define "directly affected" persons, and what is your definition? Do you expect to have any conflict with the minister on this?

Dr. Robert Steedman: Thank you for the question.

Our reading of the bill is that it's quite clear that a panel of the National Energy Board struck for a facility hearing would make the call, based on the individual circumstances, as to who is directly affected. That's how we read the bill.

Mr. Philip Toone: So it's not of concern to you that the minister could simply come in and decide for you who the directly affected person is?

Dr. Robert Steedman: That's not how we read that bill.

Mr. Philip Toone: That's not how you read the bill.

So if the minister came down and told you his definition of a "directly affected" person, you would be comfortable in saying that you disagreed, and you would be able to counter what the minister has directed to you.

Dr. Robert Steedman: It wouldn't be me; it would be the panel that had been struck.

Mr. Philip Toone: Yes indeed, it would be the panel. But I'm asking you, in your opinion, if you believe that the NEB would be able to say no to the minister and that you could countermand a decision made by the minister as to his definition of what a directly affected person could be.

Dr. Robert Steedman: I believe a future panel would be well advised and would take their own decision on that.

Mr. Philip Toone: I think there will be some very unhappy people in the future. I am very concerned that the NEB will be left powerless.

Ms. Forbes, under sections 71 and 83 of the proposed NEB Act the minister will be given the power to remove or replace any panel member in the middle of a review, and hand-pick a single member to complete the review.

What do you think the impact of that will be?

Ms. Rachel Forbes: Being a lawyer, I'm thinking of levels of a court. For example, at one level you have a judge, and as the matter becomes more serious you have three judges. Then you have five to nine judges reviewing it, because more people can provide you with additional analysis and perspective on difficult-to-make decisions.

On these larger projects like pipelines, where the NEB is looking at them, we have derived a great benefit from having more than one mind making decisions. If we have one mind making a decision about who is directly affected, and making an entire recommendation on a project that could affect multiple provinces, hundreds of first nations, and thousands of waterways, that's a lot of responsibility to put on one person. Ultimately we're putting it on the minister anyway, so maybe it doesn't matter.

But we are definitely in favour of having a three-person panel, and including first nations representation on every panel.

● (2015)

Mr. Philip Toone: We heard from Chief Atleo earlier that as far as consultations on the process in front of us today, he was completely unsatisfied.

Would you speak briefly on the process that brought us here today and the ability to fan out the concerns people have on Bill C-38? Do you think the process we have here is adequate?

Ms. Rachel Forbes: I do appreciate being here and I think this committee is doing a good job hearing from a diverse variety of witnesses. The breadth of the budget bill in its entirety, even just part 3, is so enormous and such a policy change for Canada—and, admittedly, the government has said that this bill will change the direction of Canada in many ways—it's difficult to wrap your mind around how many changes are happening and what they will really mean.

The Chair: Thank you, Ms. Forbes. We're well over a minute.

We're over six minutes now, Mr. Toone. I've been very generous. I thank you for your acknowledgement. I blame the chair for the fairness of this.

Voices: Oh, oh!

The Chair: Mr. Jean is next for up to five minutes, please.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair, and you would be accurate in your assumption that we are all blaming you for the fairness.

I am a member of the finance committee as a whole and I have to tell you that I found it amusing when I first came in here. I wasn't going to say anything when I heard words like "not properly consulted" and "not enough hours spent on this bill".

To put it bluntly, I've never spent more time on any bill in my eight years here, and I think this is actually the most time that any committee has ever spent on a budget implementation act since I've been here, for certain. So I do want to thank this committee for all the hours they've put in. Today, we didn't have enough witnesses so we had to cancel the meeting. Yesterday we had to do the same thing. So we are hearing from a lot of Canadians, and as you say, it's a very diverse group. I'm glad of that because I think it is an important issue, especially because it is a milestone in relation to some particular pieces of legislation.

I'm also glad to hear the NDP is interested in creating more jobs in Canada. Certainly I think that's important, to have value added that actually pays for itself. Here I just want to let the member know that with the glut of refining capacity in the United States right now, it's not a competitive industry so it would be very difficult indeed for a Canadian to make a profit on refining some of the raw materials we do have, because the refining can be done much more cheaply in the south—without government subsidies, of course, which I'm not into.

I do want to talk about something that was brought up and that has, to my mind, not received enough time, and that is the impact of this particular legislation on aboriginal people.

I come from Fort McMurray. There were 1,500 people when I moved there in 1967. Today there are about 130,000. A large component of my family is aboriginal in background, from three reserves in the area. I have seen tremendous changes in that group of individuals in the last 10 to 15 years since we've had economic development there, and I'd like to tell you a story about my nephew. He served some serious time in jail, lived on the streets for a period of time, and is a full treaty Indian from the Janvier Indian Band. Today, at 33 or 34 years of age, he has a family of five children and over a million and a half dollars in the bank. He has a very successful business, after three years, and that is because in Fort McMurray there is a pro-aboriginal hiring policy. Syncrude, for instance, has a policy that 15% of its workforce be aboriginal, for Suncor it's 8%, and there are another 28 companies up there with similar policies of hiring aboriginals because it's very important to them.

We have seen a tremendous change in the communities around us —not the chronic alcohol and drug problems as there were back in the seventies and eighties. There has been tremendous improvement in people's lives, and in going to some places in Canada, I've not seen that same reflection of success in aboriginal lives. And here I'm not just talking about economic success; I'm talking about success in families, success in their general quality of life.

I wanted to address the Chamber of Commerce especially.

The Northeastern Alberta Aboriginal Business Association, which has over 300 members, has the following mission statement: Aboriginal Business in partnership with Industry; enhancing opportunities by supporting economic development of Aboriginal people in the Wood Buffalo region.

I have to tell you, the relationships between the aboriginal bands and the aboriginals in northeastern Alberta are very good, leading to tremendous success for aboriginals.

Now, is that what you see taking place in the rest of Canada in areas that don't have economic development right now and have high percentages of aboriginals? Do you see their coming into the work force and having economic success and quality of life improvement, which is very important to me?

● (2020)

Mr. Warren Everson: Well, there's much to be hoped. Thanks for the question.

The issue of access to, and integration of aboriginal communities into, the workforce is itself a huge preoccupation with members of the Chamber of Commerce, especially in the natural resources sectors. I would think that most of my corporate members would say that they appreciate the legislation addressing the aboriginal consultation process but that they don't necessarily believe the solution for this lies in Ottawa.

I hear all the time that the only thing that works with respect to forging good relationships is forging good relationships. You have to be there and it's on the ground and it's over a long period of time and it's about acting in a trustworthy fashion.

Mr. Brian Jean: But what the federal government can do with the provinces and with consultations with aboriginal bands and leaders is to provide them with the proper tools. I have to tell you that from what I've seen, the tools are education; pride in themselves, which comes as a result of that; and jobs, which make a huge difference.

Could you comment on that?

Mr. Warren Everson: I completely agree. There's an ongoing debate, which I think the country has to face up to, about the adequacy of educational support for aboriginals. Once that issue is addressed, there is also a whole raft of cultural and societal relationships that has to be worked out. I've seen a big difference just in the last few years among corporate members in respect to that.

Mr. Brian Jean: I would agree with you. I have many aboriginal friends who have successful businesses there.

Thank you.

The Chair: Thank you, Mr. Jean. This is much appreciated.

Thank you, Mr. Everson.

Colleagues, I'm not typically a clock-watcher at work, but here is the reality. We have scheduled this section of the meeting to go until 8:30. Given that we have now completed the second round of questioning, we have about seven minutes left. If we want to do a third round to let each party have at least one more opportunity to ask questions, it would mean that we would have a little over two minutes for each.

Is that worth our time, or shall we simply suspend now and move on?

I'm sensing that we're ready to go.

Okay, going in the order in which we're mandated, I will go with Mr. Allen for two and a half minutes.

Mr. Mike Allen: Thank you very much, Mr. Chair.

I have just a very quick question, and then I know Mr. Kamp wants to ask a question.

I want to go back to the electricity association again. I asked this question to the Canadian Hydropower Association.

Proposed sections 20 and 21, which are in clause 136 of the budget implementation act, talk about fish passage. Are there any concerns or issues with respect to that? I got the drift from the Hydropower Association that they might be a little bit nervous about that.

Mr. Terry Toner: We think there's an opportunity to amend it to the extent that a mechanism be put in place, which doesn't appear to be there, to deal with existing fish passage that might be in the system.

I think there is an interpretation issue afoot, and we would be interested in understanding how that will unfold.

Mr. Mike Allen: Okay, thank you very much.

Mr. Kamp.

Mr. Randy Kamp: Thank you, Mr. Chair.

Both Ms. Forbes and Mr. Maas seemed somewhat concerned about passing legislation without seeing the regulations—which almost always follow in that order, so I'm a little surprised at that concern.

In this particular piece of legislation, section 35, which is a key focus of the critique of this act, has the odd situation whereby we amend section 35, and then we have a subclause to actually repeal it, but we repeal it at a later date, and that later date will be when the regulation-making process is complete.

Does that provide any greater comfort for you?

● (2025)

Mr. Tony Maas: Yes.

Ms. Rachel Forbes: No, it doesn't, because the proposed additional amendment to section 35 is much worse than the one that's first proposed in the budget bill.

Mr. Randy Kamp: In what respect?

Ms. Rachel Forbes: It minimizes even more the protection to fish habitat that we rely on the Fisheries Act and the federal government for.

Mr. Randy Kamp: So you'll look forward to the new section 35, which is a consolidation with section 32 as well.

Ms. Rachel Forbes: I'm sorry? I'm looking forward to it?

Mr. Randy Kamp: Well, you don't like the amended version that will be in there temporarily, so you will prefer it when we finally get the new section 35 in place.

Ms. Rachel Forbes: No, I'm not looking forward to any of it. I think it's all a several-decades step backwards in environmental protection. It's messing with what I think has been referred to as a piece of environmental legislation that most people really resonate with.

In industry, I have friends who build bridges in the Okanagan. My family are fishers, and everybody knows section 35. They know what it is; they know how it works. We're rolling back the clock and throwing out all the case law on it.

Mr. Randy Kamp: Well, if they're in the Okanagan, it would be a recreational fishery, which will be protected.

The Chair: Thank you, Mr. Kamp. We have to move on.

Mr. Chisholm, you have two and a half minutes.

Mr. Robert Chisholm: Thank you,.

On that point, Mr. Kamp tried to suggest to former fisheries minister Siddon last night that what they are doing is very similar to or exactly what the policy and the definitions from back in 1986 represented. Of course, Mr. Siddon said very clearly that it's not, that it's a—I think he used the words “devious and scary”—process and change.

We don't have a lot of time, but I would like to ask you, Ms. Forbes, to talk a little bit about why you have the kind of concerns you have concerning the new concepts that are in this newly amended section 35.

Ms. Rachel Forbes: It's probably because they're just that: they are new concepts. I think my colleague referred to the fact, and concerning the regulation point too, that the thing that's unique about this process is that so much of the substance is being left to regulation.

While it's okay to do regulations after you've passed the act, we can't have any certainty about what the act really does until we know what these terms really do. I can't say with certainty that it is a rollback of environmental laws and that we are going to decrease fish habitat protection and are going to decrease the ability to protect our commercial, aboriginal, and cultural fisheries for the long term.

Mr. Robert Chisholm: Thank you.

This is a last point, probably. It's Interesting that Mr. Jean said everything is going well with first nations. We had the Grand Chief in here the other night talking about the fact that he was appalled at the changes that are being proposed in this legislation and that there has been absolutely no consultation with the first nations and that there are no provisions in this legislation to consult with the first nations. He also questioned the constitutionality of the designation to the provinces.

I know you have experience working with first nations communities, Ms. Forbes. Would you comment?

Ms. Rachel Forbes: I'd agree with that. I don't know that I can speak with any more specificity about it; I'm not from a first nation.

I think there is danger in using particular examples of first nations as success stories, because I am even less able to make generalizations about them than I am about white Canadians in this room. We clearly come from different communities and have different interests and different values that we protect.

The Chair: Thank you, Ms. Forbes.

Thank you, Mr. Chisholm. Your time has expired.

Ms. Duncan, you have two and a half minutes.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

My final question will be for Ms. Forbes.

We were told by Stephen Hazell that by his reading of CEAA 2012, it does not require any evidence of equivalency before a substitution to a provincial process occurs.

I'm wondering what your reading is of that.

Ms. Rachel Forbes: I feel that the whole provincial-federal question needs to be looked at further, as I think many things in this bill do. In terms of looking at the gaps and substituting things, there was reference made before wondering who will fill the gaps.

There's actually no legal responsibility for anybody to fill the gaps, and so things will fall through them. That's the whole point about this patchwork of provincial regulations: they're all different. Ontario does, by and large, only government projects; B.C. has a threshold approach, and if a project is given to B.C. to do and it isn't triggered by the legislation there, then it doesn't have to be assessed.

So there's no legal responsibility for people to step up to the plate. We hope that they will, but they may not. That's a big problem.

● (2030)

Ms. Kirsty Duncan: Are you aware of any assessments of the adequacy of the environmental assessment process in each of the provinces and territories?

Ms. Rachel Forbes: Yes, I'm aware of some in B.C. where I have identified some systematic problems in terms of consultation and the thresholds. We have a project list approach in B.C., much like the one the federal government is proposing. It can either anticipate different types of projects or leave it to the proponent to tailor-make their project so that it is not triggered by an EA.

The Chair: Thank you, Ms. Duncan.

Colleagues, that brings to a conclusion this particular panel.

I would like to thank Mr. Smith, Ms. Forbes, Mr. Everson, Mr. Steedman, Mr. Maas, and Mr. Toner for making the effort to come here to Ottawa to share with us your knowledge and expertise on this most important subject. Thank you very much for your time.

Colleagues, this is something that I think we all appreciate as members of Parliament. I would like you to join me in thanking our staff who have been so wonderful in supporting us here for the last four nights.

I am going to specifically thank our clerks: Mr. Jean-François Lafleur, Michelle Tittley, Julie Lalande Prud'homme, and Jean-François Pagé; and the analysts who have joined us throughout this, those being Ms. Kristen Courtney, Penny Becklumb, Mark Mahabir, and Brett Stuckey.

The translation services have been absolutely phenomenal, and not only for the simultaneous translation but also for the bunch of documents and the blues that have come out on the following day from four hours of meetings, so that we're able to look at them. I would like to thank Dominique March, Josette Noreau, Nadine Chouinard, Catherine Richard, Denis Samson, Yvon De Repentigny, Paul-André Gravelle, and Josée Deschênes. If I've missed anybody, I apologize.

I also thank the staff who look after us here in the rooms and bring us our cards and keep the water filled, the staff who have kept us nourished during some of these marathon sessions. It's been an absolute privilege to be here and have you serve us so capably. Thank you so much.

[*Applause*]

The Chair: Colleagues, we will now suspend and move into the consideration of the report.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): With your permission, I'd just like to thank you as chair. I think you've been handling this very well.

The Chair: Thank you, Ms. May.

[*Proceedings continue in camera*]

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