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## Tuesday, April 17, 2018

## Chair

**Mrs. Deborah Schulte**

# Standing Committee on Environment and Sustainable Development

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● (1100)

[*English*]

**The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)):** I'd like to get started. We have two panels, and there is always the possibility of votes. Our guests have taken a lot of time to prepare for this meeting, so I want to give them as much time as we can to share their wisdom on this very important topic with us.

We weren't able to make complete panels of indigenous or industry representatives, or individual presenters. We've had to do some mixing because not everybody was available at the same time to accommodate that.

We have, as an individual, Martin Olszynski. He's an Assistant Professor in the Faculty of Law at the University of Calgary.

From the Canadian Parks and Wilderness Society, we have Alison Ronson, National Director of the Parks Program.

From Smart Prosperity Institute, we have Stewart Elgie, the Executive Chair.

From Suncor Energy Inc., we have Virginia Flood, Vice-President of Government Relations.

Welcome to each of you. We are going to be running this session until 12:30, and we'll start the next panel after that.

I'll give you just a little bit of information. I don't like to interrupt people, so when you have a minute left in your speech or in the questions—my colleagues know all about this—I put up the yellow card. That tells you you have one minute left. When I put up the red card, it means you are out of time. I don't want you to stop immediately, but just wrap it up quickly so that I don't interrupt you.

Who would like to start?

Go ahead, please, Martin.

**Mr. Martin Olszynski (Assistant Professor, Faculty of Law, University of Calgary, As an Individual):** Good morning, Chair and committee members. Thank you for the opportunity to be here today with you in your review of Bill C-69, and the impact assessment act in particular.

Briefly by way of background, I am an assistant professor at the University of Calgary faculty of law. Prior to joining the law school back in 2013, however, I spent almost six years as counsel at the Department of Fisheries and Oceans, where my practice included advising that department with respect to its environmental assessment responsibilities under both the previous Canadian Environmental Assessment Act and the current CEAA 2012.

I hold bachelor degrees in science and law from the University of Saskatchewan, and a master of laws degree from the University of California at Berkeley. I have been an active participant in this reform process for the last two years, having filed submissions with both the expert panel and with the government directly.

With the time I have I will focus on what I believe to be some specific shortcomings in the current bill as drafted, especially with respect to the role of science in impact assessment. I will not be tackling the IAA's general architecture in my opening remarks, but I am prepared to speak to that. As context, essentially I think it's fair to describe the Impact Assessment Act as a kind of CEAA 2012 plus. It has essentially all the same parts as the previous act except for certain parts that have just been expanded.

My comments will track my written submission to the committee. I understand that has been translated and provided to you. I also brought a small supplemental brief. There are three figures in that brief. I don't know that I'll get to all of them, but I wanted to have them with me just in case and to have them for you for your record.

As noted in part II of my brief, one of the more important themes to emerge in the context of the current reform process is that the science of impact assessment needs more rigour. In a 2015 piece in *BCBusiness*, for example, one professional biologist described these as dark days for his profession, including having his professional opinion heavily pressured, and his wording, results, and interpretations changed.

The expert panel on environmental assessment heard this message loud and clear and concluded that stronger guidelines and standards are needed.

The government itself, in its 2017 discussion paper and in the various policy documents that have accompanied Bill C-69, also seems to understand this issue, yet Bill C-69 falls far short on this score. The terms “science” or “scientific” are only mentioned five times, and in no case are they given any real work to do.

I want to refer the committee members to the first figure in my supplemental materials which is a little triangle diagram that we came up with. The idea basically here is straightforward. Science is foundational to the entire impact assessment exercise. Every step and subsequent step, whether planning phase, assessment, or decision-making, relies on scientific information. The flip side of this of course is that an error or flaw in the science has the potential to compromise the entire process.

As a starting point, Bill C-69 should be amended to include a “duty of scientific integrity” on those persons involved in the impact assessment process, which at a minimum would capture the principles of objectivity, thoroughness, and accuracy.

A further amendment should give the government the power to develop regulations to further flesh out what this duty requires, including guidelines and standards for such things as the design, data collection, and analysis of baseline sampling, as well as monitoring during and after projects.

I want to reiterate here a point that has been made by others in their briefs. There is nothing new under the sun about having a duty of scientific integrity. References to scientific integrity can be found in numerous American environmental laws, regulations, and policies.

A second critical shortcoming along this line of science is the continued gap between the legislated contents of the public registry and the agency's internal project files.

To ensure transparency and open science, the registry provisions —and these are at clause 105 of the proposed impact assessment act —should match the provisions for the agency's internal files which are described at clause 106. The act should also make explicit that all scientific information submitted in the course of an impact assessment is presumptively public unless a request for confidentiality is made and granted pursuant to narrow terms. This would require an amendment to the current clause 107, which appears to create a presumption of confidentiality.

I really need to stress this point. I have never received any explanation, let alone a compelling one, as to why proponent data and models should not be readily available. I can understand that some data and models may be proprietary, but that does not mean they need to be confidential. It simply means their use would be governed by the Copyright Act, which of course includes “fair use” exemptions for academic and other public purposes.

My next set of recommendations has to do with mitigation measures and how they have been dealt with under both previous CEAAs.

● (1105)

Here it is important to recall the basic nature of this regime. I'm referring to 1992, 2012, and the current proposed impact assessment act. Like all of its predecessors, the IAA does not draw an environmental, or any other, bottom line. The whole regime boils down to the consideration of effects, which is then supposed to enable political accountability for project approval or refusal. You need to keep this in mind when I discuss my next recommendations.

While a lot of attention falls on baseline studies—how we decide what the state of the environment is before a project proceeds—mitigation is also a critical aspect of the IA process. Mitigation includes the strategies that a proponent might implement to reduce known adverse environmental impacts or others. It may come as a surprise to the committee, but there is actually a long and troubling history of proponents and EA panels relying on unproven mitigation measures to avoid concluding that a project will result in significant adverse effects.

In my view, this fundamentally undermines the assessment process and the public accountability it is intended to enable. Consequently, I recommend provisions aimed at ensuring that mitigation measures be demonstrably effective or their effectiveness be reasonably certain based on the best available science. Again, this would not mean the projects that cannot meet this threshold would not be approved. There is no bottom line set out in the IAA. It just means Canadians would have a more honest and accurate assessment of a project's likely impacts.

I would also allow some reliance on mitigation measures whose effectiveness is uncertain, but only if a proponent commits to a structured process of learning, otherwise known as “adaptive management”. Here I refer committee members to page 5 of my brief. There is a figure at the top of the page indicating the adaptive management cycle. Adaptive management has a long history. You can pull up any number of joint review panel reports; last summer we did a quick word search, and 90% of the projects on the CEAA registry contained a reference to adaptive management.

The problem is that it's not actually being done. Adaptive management is a good idea in theory, but it's not being done in practice. To substantiate that, I looked at 18 projects in a recent research project at the University of Calgary. We looked at the environmental impact statements filed by proponents where they claimed to rely on impact assessments. Now I'm referring you to the second figure on page 5, which shows the percentage of completeness of the adaptive management cycle by project type. We find that whereas adaptive management is supposed to be this rigorous process for learning that requires identification of objectives, of indicators, of planning and rigour, none of that work is being done. Proponents say they're going to do adaptive management as a way of convincing regulators that everything is going to be fine, but then they never do it.

At appendix A of my submission, I propose some basic language to ensure that adaptive management will actually be done where proponents say they will do it. I pause to note that I submitted a much more detailed set of provisions, three pages' worth, back to the government in August 2017. I've scaled those down considerably for you. They are about three-quarters of a page now. I'm hopeful that the committee will see their merit.

Alternatively, if the committee is not prepared to prescribe some process around adaptive management that would ensure its actual implementation, then I suggest that the IAA should be amended to explicitly bar reliance on it. As things currently stand, it is essentially being used as a smokescreen when proponents don't know how to deal with environmental effects.

Those are the main points I wanted to make. I have five or six remaining recommendations that I will briefly cover. I'd be happy to discuss more during the questions and answers.

Recommendation five is a reflection of existing case law and specifically the problem of what “consideration” means. A series of cases in the last couple of years have basically said that so long as there is some consideration of an environmental effect, then it's not reviewable. There's no error of law. In other words, there would have to be no consideration whatsoever. I think everyone would agree that it's not a very high threshold. I suggest that some kind of modifier needs to be added to the beginning of the term “consideration” at, for instance, proposed sections 22 and 63 to ensure that it's meaningful. Whether it's “meaningful” or “robust”, either of those would be useful.

I think the mandate provisions at proposed subsection 6(2) should be cross-referenced to specific process points in the IAA to make sure that the mandate is being followed. I also am concerned with the total jettisoning of the term “significance”. I think overall it's a good idea that we would frame our environmental assessment or impact assessment around a basic binary significance; non-significance would be problematic. At the same time, however, not having anything also creates real problems and the potential for ambiguity.

● (1110)

I see that my time is up, so I'll wrap up there.

**The Chair:** It's amazing how fast 10 minutes go by when you're trying to impart a lot of information, but I'm sure much more will come out in the questioning.

Alison.

**Ms. Alison Ronson (National Director, Parks Program, Canadian Parks and Wilderness Society):** Good morning to the committee, and thank you for asking me to appear today.

I'm the Director of the Parks Program at the Canadian Parks and Wilderness Society, a charitable non-profit, as many of you may know, with over 50 years' experience in advocating for the protection of Canada's wilderness and wildlife. On a personal level, my background is in environmental sciences and biology, law, and international affairs, with a focus on environmental governance. I've spent the last four years working with CPAWS.

I will be limiting my comments to part 1 of the bill, the impact assessment act. My comments will relate specifically to federal protected areas in general, but I will be referring a lot to our national parks.

Parks and protected areas are what make our country special. They safeguard our natural heritage, protect iconic wildlife, provide us with clean air, fresh water, and traditional foods, and provide opportunities to us for both quiet contemplation in nature as well as life-altering backcountry experiences.

There's a growing scientific consensus that we are currently living in the midst of the world's sixth mass extinction event, and this is being exacerbated by human activities, including resource extraction and development. We're already seeing the impacts of this event here in Canada.

Globally, parks and protected areas are one of the best proven solutions to slowing down this extinction event, as they safeguard habitat for iconic species here in Canada, such as moose, caribou, and grizzly bears, and also the suite of biodiversity represented across our country.

The pieces of legislation that create our protected areas in this country create them for nature and for protecting ecosystems. Given this, and given that they're also so important to our own well-being and are supposed to be our most treasured and valued places, it is logical that the highest possible standard of impact assessment should be applied in these areas.

Unfortunately, in our estimation, Bill C-69 falls short of providing that high standard. The bill largely follows the structure of CEAA 2012. If a project on federal lands is not listed on the designated project list, a federal authority—in the case of national parks, Parks Canada—must determine whether that project or work is likely to create significant adverse environmental effects. This determination regime watered down impact assessment in protected areas and has led to problems with transparency, accountability, and public consultation related to private, commercial, and infrastructure development in our parks.

CEAA 2012 and, likewise, Bill C-69 do not provide provide adequate guidance as to how a federal authority should conduct their determination of a project. In national parks, our impact assessment regime is currently conducted by Parks Canada in accordance with an internal policy that is open to interpretation and applied in an inconsistent manner across the country.

Under their regime, there are developments such as the massive expansion of the Lake Louise ski area, which has been determined not to cause significant adverse effects to Banff National Park even when scientists and the public clearly expressed concern about the impacts of this development on the habitat of important species such as mountain goats and grizzly bears. In fact, in an access to information request submitted by CPAWS, we've learned that since 2012 over 1,500 development projects that were assessed by Parks Canada were considered not to have significant environmental effects, including the Lake Louise expansion.

Under CEAA 2012 and the Parks Canada policy-based approach, CPAWS has observed less rigour, less opportunity for public engagement, and inconsistent application of the policy. In contrast to this, the 1992 act contained provisions that aimed to recognize the special status of federal protected areas and to provide safeguards related to development projects.

Under CEAA 1992, there was an immediate presumption that projects in national parks and federal protected areas would undergo an impact assessment. This presumption was then informed by the regulations. For example, the exclusion list provided which projects in parks would not have to go through an impact assessment, and that included things like routine maintenance, painting of park benches, and so on.

The comprehensive study list regulations provided guidance about which projects required a more rigorous impact assessment. This list included physical works that we obviously wouldn't and shouldn't accept in protected areas, such as dams and mines, and projects that were likely to have significant long-term effects, such as ski area expansions. Under CEAA 1992, the expansion of the Lake Louise ski area would have been subject to a comprehensive study, would have been coordinated by the Canadian Environmental Assessment Agency, and would have provided resources for public consultation.

● (1115)

That act also contained language that required the minister to consider ecological integrity of a protected area when deciding whether a project would have adverse environmental effects.

In CPAWS' opinion, CEAA 1992 was much more protective of our national parks and federal protected areas than CEAA 2012.

Bill C-69 largely maintains the same structure as CEAA 2012 and will perpetuate the same problems with development in parks and protected areas as we are currently witnessing. Those problems include lack of transparency, lack of consultation, proponents conducting their own impact assessment and soliciting only positive feedback on their projects, incredibly short timelines that don't provide the public with enough time to read highly technical documents, and a lack of scientific rigour.

Clause 86 of the bill now obligates the federal authority to provide notice of their intention to conduct a determination. However, it then allows them to make that determination within 15 days. In our estimation, that's wholly inadequate.

To improve Bill C-69, we suggest the following: that the committee include language in the bill that creates the presumption that all projects in national parks and federal protected areas are subject to impact assessment, unless the minister determines, with an adequate notice period, that such projects are likely to cause insignificant adverse environmental impacts; ensure that impact assessment is carried out by the impact assessment agency or, where appropriate, by Parks Canada when Parks Canada is not the proponent of the project; and that the assessment follow legislated process and consultation guidelines. The bill, unfortunately, contains limited guidance as to how the determination process by a federal authority should be conducted.

There should be an option to reject the project, not just apply mitigation procedures, which is what's largely happening with every development project in our national parks at this point.

We should ensure that ecological integrity is the number one priority of the impact assessment agency or the federal authority when they are conducting impact assessments in federal protected areas. We should increase resources available to ensure all Canadians can be consulted on impact assessments in our federal protected areas.

Many of the projects we're seeing right now in national parks will inform the local communities only about the project rather than ask what all Canadians think. CPAWS would argue that our national parks are in the public trust. They are here for all Canadians to enjoy, and therefore, all Canadians should have a say in how they're managed.

More specifically, in clauses 22, 63, and 84 of the bill, which set out the factors to be considered when impact assessment is ongoing, we need to include that the impacts of the project on an ecosystem's biodiversity is a factor. Currently those sections consider climate change, but biodiversity and biodiversity loss in particular are crises that are facing the global community, and we need to address them here in Canada.

On clause 86, making the notice period at least 30 days when a federal authority is conducting a determination would provide adequate time for members of the public to read the information that is provided and provide feedback.

Finally, I would like to stress that nowhere in the bill is there any recognition that Canada is home to some amazing world heritage sites. Many of our national parks have been designated as globally important and as having outstanding universal values. Bill C-69 does not recognize this.

The International Union for Conservation of Nature provides guidance for how a state party should conduct impact assessment when a project is in or near a world heritage site. Our impact assessment regime should incorporate and adopt this guidance.

For the sake of our well-being and that of future generations, I urge this committee to recommend changes to Bill C-69 that would restore the presumption that projects in national parks and federal protected areas require impact assessment by the impact assessment agency.

I would also like to suggest to this committee that trust in the system and government accountability cannot be restored to the impact assessment regime when parks and protected areas, supposedly our most valued and conserved places, are not subject to the same or better requirements than the rest of our landscape. They must be elevated above the rest of the landscape and truly protected for the benefit of both current and future generations.

● (1120)

Thank you.

**The Chair:** Thank you very much.

Next we have Mr. Elgie.

● (1125)

**Professor Stewart Elgie (Executive Chair, Smart Prosperity Institute):** Thanks.

I'm Stewart Elgie. I'm here wearing two hats today. One, I'm a Professor of Law and Economics at the University of Ottawa. I've taught environmental assessment law for over 20 years. I was involved in the committee process that created the original CEAA in 1992-94, along with Ms. Duncan, as I recall. When I wore my former hat as an environmental lawyer, I litigated six or seven CEAA cases, including two successful ones at the Supreme Court of Canada, so I have had some experience with environmental assessment law.

My second hat is that I am now the founder and chair of something called Smart Prosperity, which is an economic think tank that focuses on green growth. We are led by a leadership council that has 30 prominent CEOs from across the economy, including mining, oil and gas, manufacturing, and banking. The goal of Smart Prosperity is to build a Canadian economy that is stronger, cleaner, and more innovative on the belief that that will be critical to competitiveness for all parts of Canada's economy in the years ahead.

It's from that perspective I'll offer my comments on the act. How does it achieve both better environmental and economic outcomes? I would say at a high level that this act is an improvement over CEAA 2012 from both an environmental and an economic perspective, but it could be better. Let me offer six thoughts, and I'm happy to submit more detailed wording in a brief following my testimony today.

I'll start with the purpose of the act. The big change is that this act is much more explicit in making sustainability the purpose of the act with regard to its economic, environmental, health, and social outcomes. That's a good thing. Sustainability should be the litmus test of development, and developments that meet this test are likely to be more beneficial to Canada and more socially acceptable to Canadians, and therefore give more certainty to proponents.

The challenge, I think, will be to meet this broader mandate in a way that is also efficient and doesn't add time and cost to the approval process. The act can't answer that question. That's going to be answered mainly by how well the agency applies this mandate. The agency has a stronger role in the new act, which is also a good thing. I would suggest that in a couple of years we'll know more about whether or not the agency has applied this broader mandate in the efficient way we hope it will, and it's probably worth coming back and looking at it at that point.

Let me turn now to five key things in the act which I think could be improved.

The first and most important is strategic and regional environmental assessments. To me this is the most important part of the act. I say that as someone who has litigated a bunch of cases. Most of the cases I litigated in my former life involved larger regional issues that had no place to be dealt with so they were shoved into a project-based approval. That wasn't good for the proponent, because they had to carry all the weight of a larger regional issue on their proposal. It also wasn't good for the intervenors, because they didn't have a proper forum in which to debate larger proposals, so issues about a mine were really about planning for the eastern slopes of the Rockies, and issues about oil sands were really about Canada's climate change direction.

One of the most important things this act does is to actually create a place to deal with those larger regional level and strategic level processes. That's a very good thing.

The weakness of the act is that it doesn't actually require that these happen at all. I can say from experience that what's likely to happen is that the urgent takes priority over the important, and these project level approvals are likely to get more and more mindshare and budget of the agency, and these larger regional and strategic assessments are likely to get squeezed out. I would put things in the act to try to guard against that and to create a momentum to encourage doing more regional and strategic assessments, in a few ways.

One is I would actually create a priority list for regional and strategic EAs, the same way we do under CEPA for our priority substances list. I'd make it an explicit requirement that the advisory council advise on priorities for regional and strategic assessments, and perhaps even state in the act that the agency should create a fund in its budget that is set aside for doing regional and strategic assessments. It will help protect what I think is the thing that will actually be the biggest win-win in this act.

The second thing is what gets assessed. An act is only as good as the project it covers, just as the greatest house in the world is only good if there's a doorway into it. In this act, designated projects are what gets assessed. What's surprising is that the act gives no guidance as to what should be a designated project, what should get in the door. I would say this could be improved in a couple of ways.

One is that the act could specify that any project that is likely to cause significant adverse effects should be on the list of designated projects. It could even go further and ask the minister to create criteria for identifying which projects are likely to have significant adverse effects. I note that the minister has done that in a separate document right now. Putting that into the act would simply codify what's already happening. That would give a lot more predictability, certainty, and consistency as to what types of projects get in the door of this very important act.

● (1130)

Next is the issue of ensuring that you actually assess all parts of a project, or avoiding what's called project splitting. It has been a fairly common practice over the years, which has undermined the purpose of an environmental assessment, and it's been to assess only one component of the overall project or scope of activities that you are in fact approving. There have been a bunch of examples that have been litigated in the courts, for example, looking at the movement of electrons along a wire, instead of looking at the Great Whale River dam in Quebec that generated those electrons. That was struck down by the Supreme Court of Canada. Another example is looking only at a new bridge across a river instead of the logging road and the logging activities at a new mill, which were actually being approved by approving that bridge. That was struck down by the courts. Another is looking only at a mine's tailing facilities and not looking at the mine itself. That was struck down by the Supreme Court of Canada, too.

This idea of project splitting really undermines the whole goal of environmental assessment. It's easy to fix, and the act hasn't fixed it. The simplest solution is the one the U.S. has used for over 30 years, and it has worked fine down there, which is simply to say that an assessment should look at all connected actions. The U.S. act even defines connected actions, and I'll put the wording in my brief if you want it, but it basically says to include all interdependent parts of a larger action. In other words, if approving one thing necessarily means other things must happen, look at those other things too, because that's in effect what you're approving. Therefore, avoid project splitting and look at all interconnected parts of an action.

Fourth is to try to strengthen the requirement for sustainability and transparency at the approval stage of projects, which is really the critical part. This act does a much better job than CEAA 2012 in setting out criteria that will guide project approval. That's a good thing. Having more guidance actually provides more predictability for proponents and more consistency in decisions. Ultimately, the goal is sustainability, which is a good thing.

The challenge is that sustainability by its nature involves economic, environmental, and social considerations, and there's generally some kind of a trade-off, usually economic and social benefits for environmental costs. The act would be improved if it were more explicit about what that trade-off was, why the choice was being made to see a project as beneficial to Canada. What I would suggest is a simple revision to clause 63, which is the approval section, to consider whether the project's benefits substantially outweigh the adverse effect, in other words, requiring a justification saying why the benefits of a project are substantially more important than the adverse effects. Just more transparency would be good for everyone, I think.

Fifth is innovation. Smart Prosperity Institute just put out a major report on how you drive clean innovation across all parts of Canada's economy, seeing this as critical to the economic success of resources, manufacturing, and high tech. This act could do more to hard-wire innovation and the use of environmental assessment as a way to support and encourage innovation. Let me give you a couple of examples.

In the list of factors that must be considered in an EA, it's good that it says to include “best available technologies”. It should say “best available technologies or practices”. Many innovative practices are not technologies. They simply are practices that are also a critical part of innovation.

The second thing I would say is that, if it's determined it's not feasible for a project to use best available technologies that are commonly used elsewhere, I think there should be a justification. If we want Canadian businesses to be at the leading edge of clean performance and innovation, if a project is not using technologies that are considered best in class elsewhere in Canada and the world, there ought to be a justification for why we're approving that. Maybe there will be a good justification, but that at least ought to be addressed. That's pretty fundamental.

Also, I would put it in the approval criteria as well. It shouldn't just be something we assess. Using innovative practices and technologies should actually be a factor in favour of approving a project, so I would include as one of the criteria in clause 63 whether a project uses innovative practices and technologies, either best in class or better than best in class.

The other thing I would add, building on Martin's comments on mitigation measures, is that one of the biggest impediments to innovation is overly rigid compliance procedures. I would say allowing for flexibility in compliance is important.

Last but not least, I'm going to open the Pandora's box of the Constitution and jurisdiction. This act tries to define federal jurisdiction. That is a perilous exercise, one that is not necessary and is likely to lead to a too narrow application of the act. It's automatically implied in any federal law that it must act within its jurisdiction. You don't have to say that, and that's why acts don't say it.

● (1135)

To try to set out and define every element of federal jurisdiction is a mind-bogglingly complex task. Think of all the subjects listed under CEPA, everything listed under the Hazardous Products Act, and all the pesticides and health products registered. You could spend your career trying to identify it all, and you don't need to.

The previous act didn't do it. It simply said “environmental effects”. In 20 years, not once did a court strike down a federal environmental assessment for exceeding federal jurisdiction. This is not a problem; there is no need to fix it.

The previous act brought in this requirement in 2012, but it did it the same way this one does. It listed just three areas of federal constitutional jurisdiction, and it said the other ones would be listed by regulation.

What's interesting is that in six years they didn't list any, so for the past six years we've been doing environmental assessment with a dramatically under-scoped approach to federal jurisdiction, because it's an approach you don't need.

I would say go back to the approach that worked well for 20 years. Simply assume, as with every other law, that the federal government will apply it within its jurisdiction, or at the very least have the government come forward with that magical regulation that's going to identify all areas of federal jurisdiction now, before we pass the act, as it's doing with the draft project list.

Thank you.

**The Chair:** Thank you very much.

Ms. Flood.

**Ms. Virginia Flood (Vice-President, Government Relations, Suncor Energy Inc.):** Madam Chair, thanks for inviting Suncor to participate in the work of the committee as you complete your examination of Bill C-69, the impact assessment act.

My name is Ginny Flood. I'm the Vice-President of Government Relations for Suncor. Previous to Suncor, I was with Rio Tinto, and previous to that, I was with the federal government as a regulator for environmental assessment.

I would begin by acknowledging that the land on which we gather here in Ottawa is the traditional unceded Algonquin territory.

Suncor is Canada's largest integrated energy company and a significant contributor to Canada's economy. We are best known for our oil sands production, but we also operate three refineries in Canada, 1,800 Petro-Canada retail and wholesale locations from coast to coast to coast, four wind power projects in three provinces, and the largest ethanol production facility in Canada, which is in Sarnia, Ontario. We are the only company engaged in all four of the major east coast oil exploration facilities, making us the largest producer of oil off Canada's east coast. Together, Suncor's operations are located in every region of the country and in the traditional territories of more than 140 aboriginal communities across Canada.

Suncor has been an active participant throughout the many stages of the consultation held across Canada to provide our views and our experience with CEAA, 2012, the renewal of the NEB, and the Navigation Protection Act. Today we are pleased to share with you our thoughts on Bill C-69.

As part of the committee's call for written submissions on Bill C-69, Suncor did provide a detailed written brief, but today it's not my intention to go through all of those points. I would rather highlight some of the key points. I'll focus my comments on three key themes that are related to the outcomes of Bill C-69.

The first is maintaining competitiveness in the industry. In terms of overall competitiveness, the perception is that the pace, scale, and scope of environmental regulatory change in Canada today is rapid and vast, and is likely unprecedented.

We recognize the need to address environmental concerns related to climate change, and the desire of government to restore confidence in the regulations related to the impact assessment. We recognize the importance of Canada doing its part, but we also are committed to doing our part to advance this agenda and meet Canada's commitments. However, we believe it is absolutely critical for the future of Canada that the federal legislative agenda proceed with great care and deliberation so that environmental policy is enacted in a way that best maintains our competitiveness in a highly fluid, mobile, diverse, and competitive world.

We support broad-based carbon-pricing mechanisms as a tool that can achieve desired outcomes, if they are balanced with other regulatory and fiscal relief, as well as taking into account competitiveness pressures from other jurisdictions that don't have the same costs. We will continue to lead in Canada, but we need to lead with one eye on the environment and one eye on the economy.

New regulations, such as those that will eventually accompany Bill C-69, should strike the optimum balance between improving environmental performance and at least maintaining, and ideally increasing, our competitiveness. We must advance our economy with the same diligence as we protect the environment.

As a producer of a global commodity, we compete on the world stage. We strive to be leaders in sustainability, but limited market access and restrictive policy measures lead to project uncertainty and a diversion of investment outside of Canada. Statistics Canada's latest report shows that direct investment in Canada fell dramatically, with the retreat of investment in the oil sands as a key contributor.

The bottom line is that the cumulative cost and complexity of all the recent regulatory policies across the federal and provincial jurisdictions and the related regulatory uncertainty will have a negative impact on the competitiveness of Canada. While we support strong environmental policy and Canada's ambition to do its part in meeting the 2030 Paris commitment, we also believe that the goals are not mutually exclusive from a competitive regulatory framework.

● (1140)

The second area I want to focus on is to draw your attention to the transition from the CEAA 2012 to the new model that will be put in place under the impact assessment act. By its nature, legislative change introduces uncertainty for project proponents, investors, and the communities where resource development projects are proposed. Bill C-69 needs to clarify the transitional provisions to mitigate uncertainty to the greatest extent possible.

At this time, there is considerable uncertainty with respect to the final wording of the act, the coming-into-force date for the act, the regulations designating physical activities it will include, as well as what guidance will be associated with the new act and the regulations.

Suncor currently commits significant resources and effort to indigenous engagement, discussions with local communities, engineering design, modelling, and the collection of baseline data in the development of impact assessment reports. It is therefore imperative that this work be allowed to continue under the current CEAA 2012 unless a project proponent elects to transition to the new impact assessment act.

Providing this flexibility sends a positive message to industry and the investment community that the government recognizes the value and importance of early engagement work already undertaken by proponents and is willing to provide a level of certainty with respect to project development.

As specified in our written submission, we are formally recommending that the committee consider a change to the transition provisions of the impact assessment act, that the projects undergoing CEAA 2012 assessments will continue under CEAA 2012 unless the proponent requests a transition of the assessment to the IAA. This amendment will clarify the process and mitigate negative impacts related to uncertainty of projects currently undergoing CEAA 2012 review.

The next area I want to talk briefly about is the original intent and spirit of impact assessment. We believe that the original intent of environmental assessments, what we will now know as impact assessment, was never intended to impede development, but it was a mechanism to ensure proponents worked with aboriginal communities and those impacted by the project to mitigate the residual environmental impacts of any project. We strongly recommend that the current IAA clearly articulate this intent to avoid lengthy delays caused by interested parties seeking an avenue to challenge broad policy initiatives of the government of the day, for example, whether to develop our energy resources.

The focus must remain on individual projects, and in fact, should be even more carefully focused on those parts of the project which cannot be mitigated through other activities.

Suncor has stated in its position that where robust provincial environmental assessment processes exist, a harmonized process respecting jurisdictional powers would reduce the risk of duplication and allow the federal government to focus on mitigating residual impacts that fall under their jurisdiction, such as fisheries or navigable waters. We support the proposed impact assessment act's ongoing commitment to coordinate among relevant jurisdictions with the objective of one project, one assessment.

With respect to Suncor's assets, the majority of our resource projects are located in provinces that have proven robust and effective project review processes that are designed to thoroughly assess potential environmental and socio-economic impacts. Provincial governments have the right over the natural resources and some, for example, such as Alberta, have significant experience in weighing the overall economic benefits of the project and assessing the proposed mitigation measures against potential environmental, social, and cultural impacts.

One area of particular interest comes from projects offshore Newfoundland and Labrador that require of Bill C-69 a panel review of offshore projects. This represents a significant change, potentially doubling the review timelines from the current process.

Based on past projects and effects and potential risks associated with offshore development, these are well understood and the environmental assessment process is a standard practice.

For this reason, Suncor would recommend that the requirement of offshore projects to undergo a panel review be removed upon recognizing a rigorous assessment process and the codes of practice currently in place.

● (1145)

I do look forward to your questions.

Thank you.

**The Chair:** Thank you very much. We do have quite a few lined up to ask questions.

First, I want to recognize some new faces around the table. We have Colin Carrie, Sean Fraser, and James Maloney, Chair of the Natural Resources committee. Thank you very much for being here today.

We're going to start with Mike Bossio.

**Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.):** Chair, I'm going to be directing my questions primarily to Mr. Elgie and Mr. Olszynski.

Mr. Elgie, I'm going to ask you a number of questions, and then I'll have you comment on them.

Do you support the new early planning phase? Should there be meaningful public participation in this phase? Should participant funding be available in this phase?

In your experience, why is meaningful public participation important? Are you satisfied with the public participation provisions within the IAA ? If not, what are your recommendations for reform?

**Prof. Stewart Elgie:** I'll try to answer the questions as quickly as you asked them.

I'm not a deep expert in the public participation part of EA. I won't say that much on it. I would say this though. The early planning stage is vital. By providing that clarity, scoping, and direction for an EA, you actually solve a lot of problems later. It is a measure twice, cut once kind of approach.

Doing the early planning is really important. Again, the proof will be in the pudding. If the agency does it right, it should scope the project in a way that all the key concerns identified by experts and affected communities are identified. At the end of the day, you should have an outcome that gets more social buy-in and is a better project. You can't legislate good performance in an act. I think the goal is good.

As for public participation, most of the cases that I have seen that have gone to court have been a result of a group or a large community feeling that their legitimate concerns about a project didn't have a venue to be heard. Most times when people feel that they've had a chance to air their concerns, that they were listened to impartially, and even if they don't win but were at least taken seriously, they can accept the outcome.

I think it is vital in terms of outcomes.

**Mr. Mike Bossio:** Would you like to add anything to that Mr. Olszynski?

**Mr. Martin Olszynski:** There's scholarship on this point exactly, that in fact, public participation provides an opportunity for groups to.... Essentially, it creates a bubble, if you will, where contentious issues can be resolved. If they are done in an impartial way, then they actually in the long run secure greater acceptability of the project and those kinds of things. There's definitely literature on that point.

I would just reiterate what Professor Elgie said. The more you can do at the front is beneficial. The concern here is about efficiency, and I get that, but a little bit more pain at the beginning can lead to a more streamlined and effective process down the road.

**Mr. Mike Bossio:** Thank you both.

The second part of it is around proposed section 63 factors. I've been involved in the environmental review tribunal process in Ontario. Mr. Elgie, I'd like to direct this question once again to you, as well as to Mr. Olszynski.

One, should we be establishing a statutory right of appeal that lies from the ministerial cabinet decisions on designated projects to a specialized or independent body established under the act or, in the alternative, to the Federal Court on questions of law and mixed questions of law fact?

Are there any other recommendations for improving proposed section 63 factors that should be considered in the decision-making under the act? What else is needed for accountability purposes?

Once again, Mr. Elgie, I know you've had experience in this area. If you could start, then Mr. Olszynski, you could feed off of that, please.

● (1150)

**Prof. Stewart Elgie:** The first goal, obviously, is to do hearings right in a way that you don't need an appeal or a lawsuit about them. Let's try and make that the main goal. Inevitably, some of these things do end up being taken to court. I guess my experience, having seen jurisdictions where these issues either go to court or go to a specialized review tribunal, is you get better outcomes from a specialized review tribunal.

Australia is a great example. It created a specialized land and resources review tribunal decades ago. It's produced much better outcomes from the perspectives of both sides over the years than having it go to a judge who simply doesn't know this area.

Yes, the experience in Ontario is one you could draw on. Alberta has a review tribunal. Many provinces do. If you're going to have cases that end up being appealed, you're probably better to have a specialist tribunal than leave it to the whim of courts.

**Mr. Mike Bossio:** Mr. Olszynski.

**Mr. Martin Olszynski:** I would second that.

In fact, right now, it's clear that the Federal Court of Appeal has essentially.... There is jurisprudence that really cemented in the last couple of years—and this goes back to what I said in my submission—where they have essentially said they're not going to look at the science. They're not really terribly interested in how this is being done because this is outside of their wheelhouse. They don't totally understand it. The idea is that there would be no consideration of an environmental effect in order for a review or report to be challenged.

I take the point, of course, that yes, we don't want to see these things being challenged. At the end of the day, we recognize that courts have a role in all of this. They ensure the rule of law, and they ensure compliance with the legislative regime. I totally support the notion that a specialized tribunal would be much more sensitive to those issues, and have a better ability to hold all parties to account to the spirit of the law.

In terms of whether or not you have that explicitly laid out in the legislation, that would not be a bad thing at all to make clear that there's a review on questions of law and questions of mixed fact and law. Absolutely.

**Mr. Mike Bossio:** Are there any other things like that on the factors?

**Prof. Stewart Elgie:** You used the word “appeal” and I know you were using it colloquially. I certainly wouldn't give an open-ended right of appeal, so that you could simply get a court of second opinion any time you wanted it. It should be narrowed to substantial and serious errors, obviously. I think you probably feel the same way.

**Mr. Mike Bossio:** Thank you both very much.

**The Chair:** Thank you.

Go ahead, Mr. Fast.

**Hon. Ed Fast (Abbotsford, CPC):** Madam Chair, my questions will be directed to Ms. Flood.

Is your CEO still Steve Williams?

**Ms. Virginia Flood:** Yes.

**Hon. Ed Fast:** In your comments, you had referenced competitiveness and I don't think it was by mistake that it was the first item on your list. You suggested that, at present, there's a diversion of investment taking place in Canada, as well as the retreat of investment in Canada. This is something that's been echoed by economists and other commentators across Canada. We've seen a massive exodus of investment from Canada.

I want to read a quote from your CEO, Mr. Steve Williams. He said, "Absent some changes and some improvement in competition, you're going to see us not exercising the very big capital projects that we've just finished."

What did he mean by that? Can you explain to this committee why a company would spend billions of dollars in building production capacity and then be forced not to exercise those projects the way that Mr. Williams suggested?

**Ms. Virginia Flood:** It's not just the environmental assessment. There are lots of different pieces of regulations and policy happening in this space. I think it's a combination of.... We have just finished our Fort Hills mine which was a $17-billion investment. In our industry, what we have to realize is that these are long-life assets. These are 50-year assets, so when we're going in, we're making a number of assumptions at the front end of these investments.

I believe there are a number of other areas that are actually contributing to that, like lack of market access, obviously, and the low commodity prices. On top of that, as I said in my remarks, there is the uncertainty that every time you have new regulations or policies coming out, it creates more uncertainty, particularly if it's very vague and there's not a lot of detail to them.

I just want to state that we're very clearly supportive of many of the policies of government and what they're doing. We're very supportive of the climate change work and a price on carbon. Our CEO has been out there publicly talking about putting a price on carbon. We're a strong believer in that. I think it's just the cumulation of all of the changes all at once and the pace, scope, and scale of that. We have to sit back and ask what this mean to other investment decisions.

● (1155)

**Hon. Ed Fast:** I'm glad that you used the word "cumulation" because I'm going to mention another quote from that very same CEO, Steve Williams. On February 9, 2018, just a couple of months ago, he said, "The cumulative impact of regulation and higher taxation than other jurisdictions is making Canada a more difficult jurisdiction to allocate capital in."

You just, at least faintly, praised the policy of the current government on carbon taxes. What then did Mr. Williams mean when he referred to higher taxation in Canada resulting in a more difficult jurisdiction to do business in?

**Ms. Virginia Flood:** I don't think his comments were specifically focused on the taxation. That's just part of the overall cost in our environment. When you look at where we compete, we compete with the U.S., so I don't think that would be any surprise when we look at what's happening south of us. They used to be our biggest customer. Now, they're our biggest competitor. When we're looking at investment decisions, we have to look at the whole picture.

**Hon. Ed Fast:** I totally understand that, but Mr. Williams expressly referred to higher taxation. What taxation should be rolled back then to make our economy and our investment environment more attractive?

**Ms. Virginia Flood:** Given that I'm here on environmental assessment, I would like to stick with that and not get into the specifics of the taxation regime, because I would have to get back to you on that.

**Hon. Ed Fast:** You did praise the taxation regime and your CEO has actually lamented the fact that higher taxation in Canada is undermining our investment—

**Ms. Virginia Flood:** I did mention that we are supportive of a broad-based carbon tax.

**Hon. Ed Fast:** Yes.

You also mentioned regulation, so let me ask you, do you believe that Bill C-69 as presently drafted is going to improve Canadian competitiveness?

**Ms. Virginia Flood:** As I stated, I think there are some aspects within Bill C-69 that need improvement in order to provide better certainty and better clarity in a number of areas. However, we do support many of the aspects within Bill C-69 around the focus on aboriginal communities.

**Hon. Ed Fast:** I have one last question.

As you know, the Liberal government has announced that it will be spending $300,000 to "discern the reason behind the lack of investment in Canada's energy sector". I'm wondering if you can explain to this committee whether we are going to have to spend $300,000 to determine why capital investment is fleeing Canada, or whether you can already tell us here at this table what those reasons might be.

**The Chair:** You have only seconds to answer. Do you want to give a one-word answer or maybe a follow-up?

**Ms. Virginia Flood:** I'll do a follow-up.

**The Chair:** Thank you very much.

Next up is Ms. Duncan.

**Ms. Linda Duncan (Edmonton Strathcona, NDP):** I only get one chance because there's just little old me for my party, so I have a lot of questions for you. I'd like to thank all of you for your presentations. They're invaluable.

I want to also thank you, Professor Olszynski, for your initial analysis and then for your submission, as well, because it has been very helpful.

Professor Olszynski, thank you for your input on clauses 84 and 22. There's one aspect on ensuring efficacy of the mitigation measures on which I would welcome any additional advice you have in order to redraft clause 84 and clause 22, which I notice also deal with that. The provision does mention that, but perhaps you don't think it's clear enough. There's one aspect to clause 84 that is deeply troubling to me. It only speaks to “significant adverse environmental effects”, and yet this bill is supposed to be dealing with sustainability.

You may be able to offer us some advice on how those sections can be redrafted to actually reflect what the act is supposed to be doing.

I've a question for probably the three of you, Ms. Ronson, and professors Olszynski and Elgie, on the strategic and regional assessments. A lot of people have raised this as a concern. It's just kind of an add-on, but there's no detail.

With regard to the strategic and regional assessments, do you think that when to call one should be simply up to the agency's discretion or up to the minister? Do you think it should be specified in regulation or in statute? Should the statute require regulations to specify the criteria for regional or strategic assessments? For example, it might say that, where information is available, a region or sector may pose cumulative impacts.

Should the law also specify the timing? In other words, should the law be providing that these strategic and regional assessments should be done before specific project approvals? I'm sure Ms. Ronson would like to speak to that, given the fiasco around the approval of the Site C dam, where there was absolutely no consideration of transboundary impacts and no consideration of the ongoing cumulative impacts to the world heritage site at Wood Buffalo via ongoing oil sands applications.

I would welcome your input, and if there's time, I'd love to hear from Ms. Flood on that as well.

● (1200)

**Mr. Martin Olszynski:** I think it's pretty unanimous, at least on the side of colleagues that I've talked to, that the more legislative criteria on these points you have in the act, the better. Again, it just provides, as Professor Elgie said, certainty and predictability to the regime.

I know several submissions to the expert panel and then to the government itself listed several criteria that could be useful, for instance, where a region is of particular importance from an ecological perspective. That might be an area where you would want to prioritize regional assessment. Another example might be where there is an area that has been demonstrated already to be under significant development pressure or soon will be. That might be another place where you might want to apply. Of course, the obvious examples, like the Ring of Fire in northern Ontario, have been discussed.

On the strategic side as well, we've talked about.... Under CEAA 2012 we refer to regional studies, and we've had the cabinet directive on strategic environmental assessment, neither of which has ever been used. With regard to regional studies, it's never, and with regard to strategic assessments, every CSD report on this topic shows clearly that the government is not complying. When it's not this government, it's previous governments; it's all governments. Again, the more meat in the act itself, the better, on that front for sure.

**Ms. Linda Duncan:** Thanks.

Professor Elgie.

**Prof. Stewart Elgie:** I agree with everything he just said, strategically. I think this is the most important part of the act. We thought about the options, and I don't think you can legislate that they must do a certain number, because then you just get back-of-the-envelope ones to meet the number. It's hard to do criteria and the reason is that, as you know Ms. Duncan, many of these regional assessments end up putting prescriptions in place for areas that are mainly within provincial jurisdiction. If you were to do an assessment of woodland caribou or the prairie ecosystem, the federal government couldn't unilaterally come in and give you a recommendation for how you should manage the tallgrass prairies.

One of the realities of this is that these will work best, other than in a federal jurisdiction like marine, when they work co-operatively with provinces, and you can't legislate that. The reality is that you have to encourage that as many be done as possible. That's why the recommendations I put forward are the best I can think of. One of these is that you have a list of what they identify as priorities, assuming there's been some negotiation with provinces. Another is that the advisory council will do its recommendations for the criteria and priorities. At the end of the day, however, a lot of this is going to depend on which provinces are willing to dance with the federal government on this stuff.

**Ms. Linda Duncan:** Ms. Ronson.

**Ms. Alison Ronson:** It is difficult to figure out how to trigger a regional assessment when you're looking at cross-boundary effects, and some of our national parks do cross boundaries in this country. You could suggest an ecoregion-based approach, an ecosystem-based approach, or a watershed-based approach. One thing that is glaring, though, is that what we should be looking at is whether a project is going to impact our parks, especially parks that have world heritage status. If they do, then that could be a trigger for a regional assessment.

**Ms. Linda Duncan:** Before I let Ms. Flood respond, I have a second question. In fact, I have a million questions for you that I won't get a chance to ask.

There is a lot of concern with the designated project list and with the loss of what was known as the law list. Do you think that the solution simply is to keep expanding the ways to add projects to the designated project list or should we be going back to other triggers that include the law list? Is there a law that applies to federal lands or impacts adjacent lands and waters and federal spending?

● (1205)

**Prof. Stewart Elgie:** That's a great question. The law list meant that you used to do thousands and thousands of screenings each year. Those screening-level projects, other than in federal lands, have been largely eliminated. In my view, if the trade-off for not doing all those screenings is that you actually do a number of good-quality regional assessments, I think it will be a better outcome environmentally and economically.

These used to be mostly box-ticking exercises that didn't really look at the context of a project. If you took a whole watershed and looked at overall thresholds in that watershed, instead of every little bridge and jetty that went into it, and you did it well, you would get a better outcome for both the environment and the economy. That's why I say that ensuring these regional assessments get done is really important and that all the cost savings from not doing all the screenings should be rolled back into doing regional assessments.

**Ms. Virginia Flood:** Suncor actually does support the idea of strategic regional assessments. We do them in our part of Alberta. I think the trick is to do them in a way that they're going to do what Stewart just said. When I was with Fisheries and Oceans, we did over 10,000 of these small screenings a year. I think regional assessment would be good as long as they inform and support other decision-making so that you're not repeating it all again in an environmental assessment process. How they work together will be a very important aspect of this, together with the timing.

**The Chair:** Thank you for that. That was good.

Next up is Mr. Amos.

**Mr. William Amos (Pontiac, Lib.):** Thank you, Madam Chair. Thank you to our witnesses. It's a real privilege to have this opportunity.

Mr. Olszynski, could you opine on Professor Elgie's contributions around the constitutional jurisdictional questions? This is a really important issue. Recently, the last 30 years of environmental federalism politics seems to be bubbling up to the surface again, and I think we need to have a healthy conversation around how this bill is asserting or not asserting appropriate federal jurisdiction and what's the proper way to go about enabling it.

**Mr. Martin Olszynski:** There are two big points. The first is that Professor Elgie is right. The last word on this is from the Supreme Court in 2010, and that's the MiningWatch decision. In that case, you had a mine that was triggered by a Fisheries Act permit, and the issue was whether DFO could somehow reduce its environmental assessment responsibilities to just those parts that were going to have an impact on federal jurisdiction.

The Supreme Court decided ultimately that actually there was no ability to do that under the act. We had an example of a mine triggered by a fisheries impact assessment that nevertheless constitutionally enabled the federal government to assess the whole thing and base its decisions on that assessment. That's the Supreme Court's last word on that point in 2010.

We actually have a perfect example also, which Professor Elgie described as such a laborious task. I recommend that the panel read the New Prosperity panel report. That's a federal panel report on what was then called the New Prosperity mine. You see the panel, in a very thoughtful way, burning all kinds of ink and time in this exercise of trying to figure out what the federal, provincial, incidental, or indirect federal effects are. At the end of the day, notwithstanding the fact that again the project was triggered presumptively on the basis of a section 35 Fisheries Act authorization, the panel ultimately concluded that the effects on grizzly bears, which most people would normally think of as being provincial in nature, were a federal issue that had to be considered, because it was the destruction of the lake that was going to have an impact on their habitat.

Again, I can only commend you to read the panel report. It is a huge intellectual endeavour. At the end of the day, as Professor Elgie pointed out, there are so many hooks provincially and federally on almost all of these projects. You have to add the interconnectedness and the basic issue of science and ecology: all these things are linked, and you can't take one species out of the environment without it having a cascading effect on something else. It just becomes a very difficult exercise.

I totally agree that it essentially becomes a.... Again, it seems like there's nothing broken here that needs to be fixed.

**Mr. William Amos:** I'd like to continue down that avenue.

Professor Elgie mentions the issue of project splitting, which has been litigated many times in the past. His recommendation is to adopt a solution through a connected actions approach, where the interdependency is brought into play. I wonder if you could comment on the appropriateness of that.

I take the point that at the end of the day, the interconnectedness of all these components is going to be brought to bear in both a provincial and a federal assessment setting, and the end goal has to be one project, one assessment. The trick that has to be turned is getting to a federal law that best encourages the strongest possible impact assessment approach, yielding public acceptance of good projects and weeding out bad ones.

Please comment on that interdependency, the project splitting, and the connected actions aspect.

● (1210)

**Mr. Martin Olszynski:** It's very clear that the “one project, one assessment” mantra is there. We can take lessons from the U.S. on this point. This notion of co-operative federalism has been bandied around a lot lately.

The point is that if the federal government has a jurisdiction, and the Supreme Court has clearly said it does, then the federal government can set a baseline in terms of what is a strong, rigorous environmental assessment. It can then absolutely invite the provinces to co-operate, harmonize, and collaborate on those impact assessments. It is absolutely true, it is both governments.

In fact, as long ago as 1992, at the time of the Supreme Court's decision in Friends of the Oldman River Society, constitutional law scholars maybe didn't have a ton of sense of what was going on on the environmental side, but they said it seemed plain that there should essentially be these joint agencies—federal and provincial—doing this work in every province. Of course they didn't recognize the long pattern of federal deference to provincial interests, but the case is there.

That's what I see reflected in the impact assessment act, essentially. It is saying we're going to set out a baseline standard in terms of what is good EA. If provinces are prepared to meet us there, then we can work together, ensure efficiency, reduce duplication, and all those kinds of things.

**Mr. William Amos:** I'd like to conclude by asking Ms. Flood for her thoughts on this notion that a specialized review tribunal, or some kind of recourse to be used in limited circumstances, could be established so as to avoid what seems to be a historic pattern of having panel reports get litigated and spend years languishing in the federal court system, often percolating up to the Supreme Court.

**Ms. Virginia Flood:** It's actually a very good idea in the sense of involving people who are knowledgeable and looking at all the facts. Litigation takes time and creates more uncertainty. Having a tribunal in those areas would really help the system. You would feel like all the relevant information is being presented to knowledgeable people who understand what the project is. They would bring in their expertise, whether it's scientific or aboriginal traditional knowledge.

**The Chair:** Thank you very much.

Mr. Sopuck.

**Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC):** Thank you.

I'm a rural member of Parliament. I represent a natural resources constituency, so I can't help but think about people in communities. I am actually quite shocked at how little discussion there was now on the effect on people and communities.

Just for the record here, I'm going to read something about the natural resources sector:

> It accounts for 13 percent of gross domestic product (GDP) and 50 percent of exports. When spinoff industries are added, the contribution of natural resources to GDP jumps to nearly 20 percent. About 950,000 Canadians currently work in natural resource sectors, and another 850,000 workers, spread across every province and territory, provide supporting goods and services to the sector. Combined, this amounts to 1 in 10 jobs in Canada. In addition, the energy, mining, and forestry industries provide over $30 billion a year in revenue to provincial and federal governments.

From Mr. Elgie, Ms. Ronson, and Mr. Olszynski, I heard a very academic discussion, but the effect of these processes on people and communities when they fail is absolutely devastating.

Ms. Flood, Chris Bloomer, from the Canadian Energy Pipeline Association, spoke at one of our previous meetings, and he was extremely blunt. He talked about Canada's “toxic regulatory environment”. Those are his words, not mine, a toxic environment. We have a poisonous regulatory environment.

He also pointed out, and I'm quoting him again, that if the goal is to “curtail oil and gas production, and to have no more pipelines built, this legislation”—Bill C-69—“may have hit the mark.”

Do you think Mr. Bloomer overstated the case? He was extremely forthright in his comments.

Ms. Flood.

● (1215)

**Ms. Virginia Flood:** What I would say is that I think we need to have a very comprehensive process. I think there is a lot of work that happens with companies, so I won't speak for the pipelines. I'll actually speak for Suncor.

We work within those communities. We are part of those communities. We take a lot of pride in working with the communities, so we understand, and we're a member of those communities. For us, it is critical that we actually have a process where we engage with community members.

I don't want to make comments on what Mr. Bloomer said. I think those are his comments. I would say that we need to have a robust environmental assessment that does actually provide confidence. I think there is a very big difference between a pipeline project and a mine project or an oil sands projects that is much more in a region where we all live.

Linear projects, whether they are transmission lines, roads, or pipelines, are very different because they're long projects. They involve very many communities and not all communities have the same views. I think they come with a different set of risks, I guess is what I would say, in the sense of how you work with those communities, because it's very hard to have every community agree to a project.

**Mr. Robert Sopuck:** My colleague, Mr. Fast, quoted your CEO, Steve Williams. David McKay, the president of the Royal Bank, recently urged Ottawa to act to stem the outflow of capital, which he described as leaving the country in “real time”, so I think you're understating the seriousness of these processes in terms of their effect on our economy.

I will quote from the same article, “Investment by foreigners has collapsed. Foreign direct investment (FDI) in Canada clocked in at $31.5 billion in 2017, down 56 per cent since 2013”—when we were in government, by the way—“when it totalled $71.5 billion.” Foreign direct investment is down 56%.

Again, I don't think Mr. Bloomer spoke as an individual. He spoke for his association.

With these processes and the effect that they have on our economy, I can't help but think about people, jobs, families, and so on. Can you comment on the people aspect, and the investment aspect, of what we're seeing here in Canada right now?

**Ms. Virginia Flood:** What I would say is that it's very important. Whatever we do in Canada, if we don't have a robust economy, we won't have a robust environment. They actually do work hand in hand.

What I would say is that we need to have processes that actually look at all aspects of it, the economic, social, and environmental aspects. We need to figure out how we make that work in a way that works for Canadians, so that we get the best projects going forward.

**Mr. Robert Sopuck:** Well, nobody's arguing for reduced environmental standards. As for my background, I managed an environmental licence for a paper company. I spent a winter in the oil sands doing environmental assessment. I also did pipeline assessments in the Mackenzie Valley. What you have seen in Canada is that environmental quality has continued to rise over time as we've grown as an economy. In my view, in advanced industrial societies, we have to have a robust economy in order to have a clean environment.

Thank you.

**The Chair:** Thank you very much.

I want to thank our panel and guests for their thoughtful and informative briefs and testimony today. I'm going to try to give both of today's panels a chance to have as much time as possible in front of the committee, so I'm ending this panel now. I will give a few minutes for the other panel to get into their spots.

I'll suspend the meeting.

● _____ (Pause) _____

●

● (1220)

**The Chair:** I need to get everybody into their seats. I want to make sure we get in as many questions as we can, so I'm watching the clock.

I want to welcome our second panel for today.

We have, from the Assembly of First Nations, Kluane Adamek, Interim Regional Chief, Yukon Region; Sara Mainville, Legal Counsel; and Graeme Reed, Senior Policy Analyst.

With BC First Nations Energy & Mining Council, we have Terry Teegee, Regional Chief, British Columbia Assembly of First Nations. He's with us by video conference.

From Fort McKay First Nation, we have Chief Jim Boucher; Alvaro Pinto, Executive Director, Sustainability Department; and Michael Evans, Senior Manager, Sustainability Department.

We really appreciate that you have all made the time to come in front of us today.

With the Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping, we have Chief Ernie Crey, Indigenous Co-Chair. Welcome back to the committee. We appreciate having you here. We also have Tim Dickson, legal counsel, indigenous caucus. Thank you for being with us.

We will start with you, Chief Adamek, and then we will go from there.

You have 10 minutes. I will let you know when you have one minute left. Thank you.

● (1225)

**Chief Kluane Adamek (Interim Regional Chief, Yukon Region, Assembly of First Nations):** Good morning.

[*Witness speaks in Tlingit and Southern Tutchone*]

My name is Kluane Adamek, and I am from Kluane First Nation in Yukon Territory. I am the Interim Yukon Regional Chief. I introduced myself in Tlingit and Southern Tutchone. I come from the Dakhl'aweidí killer whale clan and my traditional name is Aagé.

Our territory in Kluane First Nation also encompasses Kluane National Park, which many of you may have been to.

This morning, I am pleased to be here on behalf of the Assembly of First Nations. To members of the committee, thank you for inviting me here today to share the perspectives of the Assembly of First Nations on Bill C-69, an act to enact the impact assessment act and the Canadian energy regulator act, to amend the Navigation Protection Act and to make consequential amendments to other acts.

In the next 10 minutes, I am going to speak about three things.

First, I will speak to first nations participation in the environmental and regulatory reviews, the mandate of the chiefs and assembly, and the role of the AFN in this regard. Second, I will talk about perspectives on framing where we are and why we feel we must continue to press for reconciliation, given your commitments to the United Nations Declaration on the Rights of Indigenous Peoples. Third, I will speak about the 10 principles and the rights recognition framework, and propose critical amendments to improve on the reforms that have been tabled by the government in this part of Bill C-69.

With cautious optimism, in 2016, first nations overwhelmingly participated in the legislative reviews that laid the foundation for the bill you have in front of you. This work illustrates how first nations envision the complete overhaul of key environmental legislation and regulations.

Concepts such as jurisdiction, inherent and constitutionally protected rights, nation-to-nation relationships, and reconciliation come up over and over again. Unfortunately, many of these concerns are not yet addressed in the current legislation. Issues such as maintaining ministerial or cabinet decision-making and approving major projects using a public interest test remain red flags for first nations and the proposed nation-to-nation relationship. Moreover, from the perspective of many Yukon first nations and other self-governing nations, these provisions are inconsistent with our expressed jurisdictions and agreements, which languish with the failure of Canada to fully invest and respect commitments to implementation.

As a result, Bill C-69 does not withstand an analysis using the 10 principles respecting the Government of Canada's relationship with indigenous peoples. We recommend that the government ensure that the legislation is a beacon for all of Canada to signal that we are in a new era, where first nations rights, interests, and jurisdictions are promises kept by this government, not ignored and not overlooked. This would serve to support that reconciliation called for by the TRC, including observing and implementing the UN Declaration on the Rights of Indigenous Peoples.

Chiefs and assembly have passed numerous resolutions about this process, calling on the AFN to work with Canada to ensure the legislation respects first nations treaties, rights, title, jurisdiction, agreements, and recognizes the responsibilities to their traditional territories. However, the chiefs also made it very clear that any phase in this engagement process cannot be construed as consultation, and additional time must be afforded to consult directly with rights holders in a manner that is respectful to their unique protocols, processes, and elements.

To be clear, AFN plays a role in communication, coordination, and facilitation for first nations across the country, but we are not a rights holder.

Before I get into the specific amendments, I want to start by framing where we are and why this is an opportunity for real reconciliation. First, as you are all aware, Canada has announced its full and unqualified support for the UN Declaration on the Rights of Indigenous Peoples. This doesn't create any new rights, as these rights are inherent and pre-existing. The UN declaration simply affirms indigenous peoples' human rights. However, this does not mean that Canadian law, even the common law, is meeting these minimum standards, and we are committed to work with you on that effort.

Legislators should not forget that they are here to legislate about section 35 as well, and that we have been frustrated by government officials telling us this law includes common law standards, without clear legal language that pushes our rights forward. Across government, including Bill C-262, we are talking about realizing those rights and finding a better way to work together, so that we don't have to spend millions of dollars and waste years fighting in courts.

● (1230)

Indigenous lawyers are discussing how the bill could be strengthened to assist the inevitable judicial reviews because of the continuing use of a public interest test and the regulatory choice of a project list. To be clear, we are not satisfied with these policy choices, but we realize that real legislative time limits require us to make this bill a workable law that will actually achieve free, prior, and informed consent.

This bill must enable first nations to realize our rights and fulfill our responsibilities. It's about working with us to establish the laws, policies, and practices needed to respect our rights and our status as self-determining peoples.

Inevitably, the conversation will slip to the challenge of achieving the standard of free, prior, and informed consent, FPIC. To be very clear, FPIC was not created in the UN declaration. It was not created in this bill nor in Bill C-262. It already exists [*Technical difficulty—Editor*] in treaties in Canada. It is an essential element of the right of all peoples, including indigenous peoples, to self-determination, which Canada has recognized for decades, for example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Consent is the essence of mature relationships and was and is the premise of treaty-making between self-determining nations.

The UN declaration set the standard [*Technical difficulty—Editor*] of partnership, detailing the right to participate in decisions that can affect our rights, property, culture and environment, and our [*Technical difficulty—Editor*]

**The Chair:** We're losing you. I don't know if you can hear me, but we can't hear you anymore.

We're going to suspend for a second to see if we can get you back in a strong signal.

**Chief Kluane Adamek:** Can you hear me now?

**The Chair:** Okay, carry on, please.

**Chief Kluane Adamek:** Thank you.

What does this mean in the context of this act? It means that we need a better process, one that is designed with first nations and one that involves us from the very start.

We already have many examples of practical, co-operative jurisdictions being effectively and efficiently exercised, joint decision-making in our agreements in the modern treaty context, and an example such as the Arctic Council. This kind of process and robust dialogue is essential and possible within this bill.

The CEAA expert panel recommended a process for impact assessment that incorporated first nations as governments and decision-makers at all stages of the process in accordance with their own laws, customs, and required consent before a project could be approved.

It is important to understand that we are considering what the legislation actually said and requires, not what the current government describes as the spirit of the act, which it will implement through policy.

For first nations, laws must be written in anticipation of future governments that may be hostile to our rights, jurisdiction, and authority. In this context, legislation must constrain and/or require those governments to respect what has already been written in legislation. For example, in our submission to this committee, we begin to outline some of our suggested amendments to ensure that ministerial discretion, of which there is plenty, does not infringe on first nations' inherent and constitutionally protected rights, but rather moves us forward towards the new co-operative, respectful, jurisdictional arrangements consistent with our agreements, treaties, and rights.

Finally, I'd like to focus on three areas of amendments that are intended to strengthen the modest reforms that have been tabled by the government in this part of Bill C-69. More detail on our suggested amendments can be found in the submission. These include, first, protection of first nations' inherent and constitutionally protected rights; second, full inclusion and protection of indigenous knowledge systems; and third, full decision-making with first nations governing authorities.

Protection of section 35 rights, the inclusion [*Technical difficulty —Editor*]

● (1235)

**The Chair:** We've lost you again. We have a really bad line, obviously. We're trying our best. Can you hear me?

**Chief Kluane Adamek:** Yes.

**The Chair:** We can now hear you. Please, carry on. You have about a minute.

**Chief Kluane Adamek:** The inclusion and direct reference to impacts on section 35 rights is an important step. However, the overreliance on discretionary clauses such as “taking into account” or “consider any adverse effects” does not fully protect section 35 rights under the Constitution. None of these statements are aligned with current case law, nor do they meet the requirements of the constitutional duties outlined in Sparrow or Haida. There is no requirement or duty under the act to comply with the test in Sparrow for minimal impairment or justification for proven rights, or the test under Haida to accommodate impacts on asserted rights. The minister and Governor in Council must uphold and protect section 35 rights in decision-making under the act and when making regulations or orders under the act. Section 35 rights are constitutionally protected and regulatory regimes to truly reconcile our societies into Canadian society in a positive and lasting manner....

The Supreme Court of Canada advised against uninstructed regulatory regimes that can infringe on section 35 rights and advised governments to provide legal guidance to increase aboriginal rights and protections.

In terms of indigenous knowledge systems, first nations strongly support the inclusion of traditional knowledge of the indigenous people of Canada in the proposed acts. However, the current wording of the provisions across all three acts is problematic. To address this, we recommend the use of the term “indigenous knowledge systems” in order to capture the nature of indigenous knowledge and make clear the distinction between traditional use and indigenous knowledge, and improve the confidentiality and intellectual property protection provisions to align with article 31 of UNDRIP to ensure that indigenous knowledge that is disclosed will only be used on that regulatory process and shall not knowingly be, or permitted to be, disclosed without written consent, and improve existing confidentiality provisions to ensure that first nations knowledge will be treated respectfully and appropriately.

Last, in terms of joint decision-making—

**The Chair:** I hate to do this, but how much do you have left? We're really out of—

**Chief Kluane Adamek:** Thank you, Chair. I only need about 30 more seconds, and given the fact that I've been disconnected a number of times, I'd really like to be able to finish.

**The Chair:** We did give additional time in response to that situation, so please, if you could, be very brief. We really want to hear you, but we also want to get to questions.

You have 30 seconds.

**Chief Kluane Adamek:** Thank you.

Ultimately, the objectives of reconciliation cannot be achieved if the final decision to approve a project can be made unilaterally by one party without confirmation from an affected first nation that its views and concerns have been addressed. First nations' inherent jurisdiction must be recognized—

[*Technical difficulty—Editor*]

**The Chair:** We've lost you again. Sorry.

Go ahead.

**Chief Kluane Adamek:** —including the ability to make final decisions at all stages of impact assessment in accordance with their own laws and customs.

The impact assessment act and the Canadian energy regulator act must strengthen provisions to enable shared procedural decision-making points through the early engagement phase, assessment phase, decision phase, and monitoring phase. This will lay the foundation for when the Government of Canada begins respecting and fulfilling commitments made in treaties, both historic and modern. This is important work in the journey of reconciliation and is essential to enable us to move forward together in a good way.

That is what I will say. Thank you for the extra time. I very much appreciate that, and I look forward to answering any questions you might have.

**The Chair:** Thank you very much for your patience.

We'll turn to Chief Terry Teegee for the same challenge with video conference.

**Regional Chief Terry Teegee (Regional Chief, British Columbia Assembly of First Nations, BC First Nations Energy & Mining Council):** Thank you to the standing committee, chiefs, hereditary chiefs—

[*Technical difficulty—Editor*]

**The Chair:** Hold on a minute.

Go ahead, please.

**Regional Chief Terry Teegee:** [*Witness speaks in Dakelh* ]

My name is Terry Teegee. I'm the Regional Chief of the British Columbia Assembly of First Nations. I'm the political executive lead from the First Nations Leadership Council in regard to environmental assessment.

Considering the time constraints, I want to jump in with regard to this environmental impact assessment act, Bill C-69. First and foremost, I want to preface this discussion in regard to the comments Justin Trudeau made when he was first elected. He stated that the most important relationship that he has is with the indigenous peoples of this country.

As we go down the road in this era of reconciliation, last week, we came from a meeting where not only the Province of British Columbia but also the federal government were looking to fully implement indigenous peoples' rights and have them be recognized by the federal and provincial governments. We're in a time of reconciliation where our rights are being recognized, rather than continually going to the Supreme Court of Canada and having those rights reaffirmed and recognized.

As it relates to Bill C-69, this bill falls short in terms of recognition of the core principles of the United Nations Declaration on the Rights of indigenous Peoples. We have great concerns in regard to the legislation, as it fails to recognize indigenous jurisdiction and decision-making.

I want to state how important first nations jurisdiction as well as the ability to make decisions are in the development of many major projects. We're seeing that played out right now as it relates to Kinder Morgan, how first nations who have made their decisions aren't being recognized in regard to the final decisions of those major projects.

While the impact assessment act and its predecessor, the Canadian Environmental Assessment Act, 2012, recognize indigenous and aboriginal peoples' rights and entitlement, decision-making at all points is retained by the federal crown. This is a major point that I'm bringing up in regard to recognition of our indigenous peoples' right to make decisions.

This was brought up as part of the expert panel in regard to environmental assessment. There was a clear indication the panel stated that indigenous people need to be recognized in how final decisions are made on major projects. This bill falls far short in that regard.

It should be noted that the decision-making process needs to be recognized for indigenous peoples throughout the impact assessment act, from the preamble right to the definitions and provisions throughout the purpose of the act itself. This is quite important, especially in the age of reconciliation and the provisions for free, prior, and informed consent.

The second issue is that the provisions for indigenous-led reviews may be impossible to implement. Although the act states that there could be provisions in regard to indigenous peoples leading their own environmental assessment process, their governance may not be recognized in regard to the project of concern. Moreover, these opportunities may be lost if these first nations who want their own review process to be engaged are not properly resourced.

In my own experience, in my history as the tribal chief of the Carrier Sekani Tribal Council, I have had the ability to review not only one oil pipeline, but four LNG pipelines and two mining projects. In many of those cases, our indigenous people led environmental assessments of those projects. Moreover, it was quite difficult to get proper resources. More often than not, we had to use our own resources to review those projects.

● (1240)

The third issue is that there is a narrow approach to indigenous knowledge, traditional and ecological knowledge, as it is sometimes called. Moreover, the expert panel that reviewed it with regard to what should be brought into a new assessment act said that indigenous knowledge should be acknowledged and given the same weight as western knowledge. It's really important that our experts are indigenous peoples, such as elders and people who live off the land. It's important that those ways of knowing are given the full weight of all we acknowledge and utilize western science. It gives a different world view to these major projects and a better understanding of how our indigenous people use the land.

The fourth issue is that the core deficiencies we find in the impact assessment act are also found in the Canadian energy regulator act. There are many shortcomings in the Canadian energy regulator act in recognizing the jurisdiction and the ability for indigenous people to make decisions with regard to the United Nations Declaration on the Rights of Indigenous Peoples, and more importantly, their ability to make decisions with free, prior, and informed consent.

It's really important that throughout this whole process within the act, there should be provisions for resourcing funding for indigenous peoples, funding for elders to participate. It's really important to have a communication strategy for the indigenous peoples to fully understand some of the scientific explanations of environmental assessments.

It's very important that the free, prior, and the informed consent part of any environmental assessment be well understood. It goes both ways. The Government of Canada and the Province of British Columbia need to understand the indigenous world view prior to any major project being given the green light. We're seeing that play out with the Kinder Morgan project, which had been approved by the previous Environmental Assessment Act. It was reviewed by the Liberal government, but it doesn't meet the standards for some of the first nations. This is why there is this issue over the Trans Mountain oil project.

There is going to be a question and answer session, so I'll leave it at that right now. I'm hoping I'm ending a little early. I want to thank the standing committee, the indigenous people, and the many interested parties who presented to you, to make sure that we have a fulsome impact assessment act that represents all peoples.

*Mahsi cho*.

● (1245)

**The Chair:** Thank you very much. I appreciate your meeting the time requirements. I know it's not the right way to be doing things, but it is a constraint of the committee, unfortunately. We have limited time.

Next up would be Chief Boucher.

**Chief Jim Boucher (Chief, Fort McKay First Nation):** Good afternoon, Madam Chair and members of the environment standing committee. It's a pleasure to speak to you today about Bill C-69.

I am Jim Boucher, chief of the Fort McKay First Nation. With me are Dr. Alvaro Pinto and Tarlan Razzaghi, our legal counsel. They will help me answer questions that you may pose to me later.

It is my duty as chief of the Fort McKay First Nation to protect and advocate for the Cree and Dene people of our first nation and our cultural identity, values, traditions, and way of life. It is my job to ensure our constitutionally protected rights are recognized, respected, and upheld by Canada, other governments, and Canadians in general.

Fort McKay is located at the very centre of the oil sands in the Athabasca region in northeast Alberta. Our ancestors have lived in our traditional territory since time immemorial. For us, this is not merely a landscape or a location of exploitable resources. It is our home. It is sacred to us because it has provided the necessities of life: water, animals for food and clothing, and the materials for shelter.

Figure 1 on page 12 of our brief shows Fort McKay's traditional territory. In the 1970s, oil sands production was 250,000 barrels per day. Today it is 2.5 million barrels per day, a tenfold increase, the majority of that in the last two decades. Figures 2 and 3 on pages 13 and 14 show that growth, which has taken up 75% of our traditional territory through mineral leases awarded by the provincial Government of Alberta without proper consultation, which is shown in figure 4 on page 15.

Our sustainability department addresses scores of oil sands-related applications every year. We hire the best scientific experts available and blend that with our expert traditional knowledge to pursue what we view as sustainable development.

The United Nations' Brundtland commission defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Sustainable development means, of course, economic opportunity, but more important, it also means passing on our traditional lands and the traditional use of those lands to future generations, just as they were passed to us.

Bill C-69 affirms the federal government's commitment to nation-to-nation and government-to-government relationships that recognize our unique identity, rights, and traditions: the foundation for reconciliation. It has been easy for governments to talk about reconciliation, but more difficult to translate those words into action. I have yet to see a true example of reconciliation from this government. With its power and authority, we are perplexed to see Canada relinquish its fiduciary duty to first nations to assess and mitigate development impacts that adversely affect reserve lands and traditional territories, our first nations people, and our treaty rights to the lower orders of government.

Do not mistake me: Fort McKay is not opposed to oil sands development. We are, in fact, among the most proactive of first nations with respect to oil sands development. Working in the oil sands sector has brought to the first nation and its members opportunity, economic self-sufficiency, stability, and prosperity that are inaccessible to many first nations people across the country, but as I said earlier, Fort McKay is also surrounded by oil sands development that has increased 1,000% since the 1970s.

Working with industry to advance shared objectives requires mutual respect and an acknowledgement that section 35 grants to all first nations the right to continue a way of life. It also demands that we identify the full range of impacts to first nations and take action to mitigate and accommodate our concerns.

● (1250)

Our concerns with Bill C-69 relate to the expert panel recommended consensus-based decision-making process. Bill C-69 unfortunately does not reflect that recommendation. The bill does not require proponents, governments, and first nations to work together to ensure that impact assessments are meaningful or adequate with respect to first nations people or their lands, even though it defines “effects within federal jurisdiction” as any change to the environment that would impact the physical and cultural heritage, traditional land use, significant historical, archaeological, paleontological, or architectural features, and the health and social or economic conditions of Cree and Dene people. Bill C-69 cites transboundary effects but does not acknowledge that direct or indirect impacts on reserve lands arising from activity on provincial lands are, in effect, transboundary.

The oil sands developments that surround our reserve pose tremendous insufficiently regulated risks to our people. For example, existing tailings ponds contain 1.3 trillion litres of contaminated water, enough to fill an eight-lane Olympic swimming pool 11,000 kilometres long stretching from Ottawa to Beijing with 11,000 pools left over.

A tailings pond breach from any mine would devastate our homes and reserves. When approvals are granted, there is no longer any federal presence. In fact, in the mid 1990s, Canada effectively approved by default all future tailings ponds in anticipation of new treatment technologies that still have not arrived. Canada takes too little action with respect to tailings ponds. Canada must consider the life-cycle impacts of tailings ponds.

As another example, Environment Canada installed the most advanced mobile air quality monitoring station in the world at Fort McKay. Scientists chose Fort McKay for its unique exposure to intense industrial activity. Environment Canada conducts research on air quality features of national and international importance and releases its data to the public. However, action to protect reserve lands from airshed impacts is left to Alberta, which relies on embarrassingly outdated ambient air quality objectives that do not protect human health. After years of disappointment, the provincial regulator finally acknowledged frequent exceedance of provincial standards in 2016, but provincial action remains elusive.

Another example is For McKay's Moose Lake Reserves to the northwest of our community, which were set aside in 1915 to preserve our traditional way of life. These were expanded in 2004 when Canada settled our treaty land entitlement claim. To fulfill the promise made in Treaty 8, Canada must protect all reserve lands designated for the exclusive use of Cree and Dene people. Five years ago, Alberta approved a 260,000 barrel per day project on the border of those reserves, and the first phase of a 40,000 barrel per day project is in the provincial regulatory process. Other projects are in the planning stages. Fort McKay requested federal intervention, but Canada has done nothing to help us protect our Moose Lake Reserves.

Alberta exempts pilot projects of 12,000 barrels per day or less from impact assessments. Accordingly, many companies announce projects that begin with a 10,000 barrel per day pilot, which increase by 10,000 barrel per day increments, and so get away with completing no impact assessments at all. The federal government must recognize and act upon its fiduciary duty to protect first nations and Fort McKay's occupation, active use, and enjoyment of its reserve lands, including our traditional territory.

The act must enable our first nation to sit at the table with the federal and provincial governments and all project proponents to protect reserve lands and our people from the beginning.

I think I'm running out of time; therefore, I'm going to say that we made some recommendations, and I'll pass this over to you and leave myself open to your questions.

● (1255)

**The Chair:** Thank you very much.

The committee members at this point don't have the recommendations in front of them, because the document was only in English and we haven't got it translated. That's going to be a bit of a challenge.

We're going to share it by email afterwards. I don't know what else to do.

Next up is Chief Ernie Crey.

**Chief Ernie Crey (Indigenous Co-Chair, Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping):** Madam Chair and honourable members, I'm Chief Ernie Crey. I'm the Chief of the Cheam First Nation in the Fraser Valley of British Columbia, but I appear before you today as the indigenous co-chair of the Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping. Appearing with me is Tim Dickson of the JFK Law Corporation, who is legal counsel for the indigenous members of the committee.

We have provided a written submission, which we hope you will read and consider carefully. Today, we will make some broader oral submissions, and then we would welcome any questions you may have.

Turning to our recommendations in brief, we are making two recommendations with respect to Bill C-69. Mr. Dickson will speak to them more fully in a moment, but I will briefly state our recommendations.

The first concerns the provisions of the impact assessment act and the Canadian energy regulator act that allow for the delegation of authority to indigenous governing bodies. Our view is that the definition of which bodies may receive delegated authority is too restrictive and will, in many cases, defeat the objective of advancing reconciliation and indigenous involvement in the regulation of major projects.

Our second recommendation concerns ensuring that enough time is provided to form indigenous committees effectively.

As I said, Mr. Dickson will address these points in more detail in a moment.

First, I want to provide an overview of the committee, how it was formed, and what it is doing presently.

The committee was formed in response to a letter that Chief Aaron Sam and I wrote in June 2016, which was supported by representatives of over 60 indigenous communities, where we called for the establishment of an indigenous oversight committee to monitor and regulate the pipelines and marine shipping.

The federal government took up that suggestion, and when it approved the TMX project, it committed to co-developing an oversight committee with affected indigenous communities, and it approved a significant level of funding for it. Many of you might recall the amount. It was nearly $65 million over five years.

The terms of reference were negotiated and ratified in the six months that followed the announcement. We were formally established in July 2017. In my experience with these kinds of bodies, and I have a lot of experience with these kinds of bodies, that is extremely fast, a point I'll address more fully in a moment.

The committee is comprised of up to 13 indigenous members and six members from the federal government and National Energy Board. The NRCan member is the government co-chair. The indigenous members, which form what we call the indigenous caucus, seek to represent the interests of the 117 affected indigenous nations and communities. They do not formally and directly represent those nations; however, there are just too many affected nations to allow that to happen. Rather, the indigenous members are selected by the nations in particular regions to sit on the committee, and they seek to represent indigenous interests and perspectives broadly.

Related to that point, the terms of reference make clear that the committee does not replace nor reduce the government's duty to consult indigenous nations, and participation with the committee is without prejudice to a nation's position on pipelines.

The committee's main roles are to monitor the pipelines and marine shipping to make sure the rules and conditions are being followed, to give advice to government in the development and application of those rules and conditions, and to provide funding to communities for projects related to the pipelines and marine shipping, for example, spill preparation and response.

The committee aspires to having a more direct role in the regulation of pipelines and marine shipping in the future.

● (1300)

The indigenous nations want to see the committee be a forum for shared decision-making in respect of the pipelines, where government and indigenous nations can together regulate the pipelines and marine shipping to better ensure the protection of the environment and aboriginal title and rights. In our terms of reference at proposed section 14, the government committed to looking for ways to deepen indigenous involvement in regulation. Indeed, that direction for future involvement is part of why we're here today.

Last, the committee operates by consensus, except that the caucus, that is, the indigenous caucus, can formally give advice to government on its own where the government members are unable to sign on to it.

We have seen a great deal of success at the committee. Among other things, we have seen that it is possible to operate from consensus even where there are very different perspectives on the pipeline. Our committee not only has both government and indigenous members; the indigenous members come from nations that support the TMX and nations that oppose it—indeed, nations that are leading the charge to have the Federal Court of Appeal overturn the approval. Those folks are on this committee.

I want to mention a few points on why I think this kind of constructive consensus building is possible at the committee and why the committee has received a great deal of support among affected indigenous nations.

First, the committee's role is not about whether the pipelines should be—

● (1305)

**The Chair:** Chief Crey, I'm really sorry to do this, but the committee is very keen to get to questions. That's why we gave only 10 minutes for everybody to try to just set the stage.

We're over 10 minutes. How much more do you have?

**Chief Ernie Crey:** Just two minutes.

**The Chair:** It means that we're going to cut questions. Are you all right with that?

**Chief Ernie Crey:** Yes, that's fine.

**The Chair:** Fair enough. It's all yours.

**Chief Ernie Crey:** First, the committee's role is not about whether the pipelines should be there or not. Rather, it relates to making them and the marine shipping as safe as possible if they are going to be there. That is an objective everyone can agree upon. It is the kind of topic where there is real opportunity for government and indigenous nations to work together. On a highly contentious and divisive project like the TMX, there are issues on which we can find common ground.

Second, there is broad agreement that the committee is an important step in advancing reconciliation and UNDRIP in relation to the Trans Mountain pipelines. Indigenous nations have long called for more involvement in the regulation of activities on our lands. We know that we have to step up when those opportunities come along. The federal government, I think, also sees this committee in terms of reconciliation and UNDRIP, and it too has stepped up with very substantial funding and political support.

Third, it is important that the committee members do not purport to represent the aboriginal and treaty rights of the affected nations. As I have said, the federal government's consultation list has 117 nations, bands, and communities on it. I don't want to say it's impossible to form an entity that would represent all the affected nations for the purposes of their section 35 rights, but I think it is very, very unlikely, and even if possible, it would take a long time. If it were the goal to form a governing body representing section 35 rights, I very much doubt it would be formed.

That concludes my part of the oral presentation.

Thank you.

**The Chair:** Thank you very much.

I will let members know that even though we weren't able to have Fort McKay's notes in front of us as they weren't translated, the recommendations were part of what was given to us in advance, so we do have those, which is good. We also just got the one for the Assembly of First Nations. You should have that in front of you now.

We'll turn to questions, and we'll start with Mr. Aldag.

**Mr. John Aldag (Cloverdale—Langley City, Lib.):** Thank you.

I'd like to begin by acknowledging that we're meeting on the traditional territory of the Algonquin Nation. I am visiting this territory from where my home is, which is on the Coast Salish people's land, specifically the Kwantlen Nation, Katzie Nation, and Semiahmoo Nation, which are just down the valley from Chief Crey's traditional territory.

Welcome, everyone. It has been a very insightful panel, and I think you've done a wonderful job at outlining the complexity and the need for us to try to get right in this legislation the relationship in how we work with the indigenous communities across Canada on assessment of projects.

There were three areas that I was really delighted to hear each of you touch on. These three areas I want to explore are reconciliation, consent, and jurisdiction. In the six minutes that we have, we're not going to get into it, so if anyone has any additional thoughts from the brief discussion we'll have, and if you have any additional thoughts beyond the comments you've given, please feel free to send in any submissions to the committee.

The first area I'd like to talk about is how the impact assessment act specifically, or any of Bill C-69, could incorporate free, prior, and informed consent, which has been discussed, in a manner that could work in practice, given the large number of impacted communities on any project.

Chief Boucher, I heard you speak at the GLOBE conference. You talked about the work your community is involved in with the oil sands and moving that product through pipelines, and what we're seeing with Trans Mountain, which, as Chief Crey has said, involves many nations. I am interested in some brief thoughts about this question of free, prior, and informed consent, and how we do that when we have a large number of communities involved.

Mr. Dickson, would you like to start, and then we'll move to Chief Boucher.

● (1310)

**Mr. Tim Dickson (Legal Counsel, Indigenous Caucus, Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping):** Thank you, Mr. Aldag.

Our major recommendation here goes to the provisions in both the impact assessment act and CERA that allow for the delegation of decision-making authority. Our interest is in making sure that this is realistic and achievable. Right now the legislation defines the bodies that can receive delegated authority as indigenous governing bodies. That would be very appropriate in some circumstances, but when you have many nations impacted by a major project, and particularly a linear project like a pipeline, it is not going to be achievable. There are just too many nations for you to be able to form a body that is going to formally represent their section 35 rights.

Our submission is that the act should provide for more flexibility, because there may be times when there is sufficient support from the indigenous nations to form a body that is like our committee. It does not replace the duty to consult and does not formally represent section 35 rights, but indigenous nations would prefer that this body exercise some authority instead of it all being left with the regulator, and instead of only the government making those decisions.

Our position is that the legislation is drawing the box of where delegation can happen. Don't make it too small. Let the regulations, and most importantly the minister, make a determination on a case-by-case basis for when delegation is appropriate and to what kind of body. We recommend that you broaden the definition of “indigenous governing body”. We've suggested “indigenous organization”. It doesn't have to be that; we just suggested that because it's already in the bill. Make it broader than just “indigenous governing body”, and let the minister, in consultation with nations, decide when delegation is appropriate and to whom.

Again, we fully support the recognition of inherent authority by nations. That is the ideal, but sometimes it's going to be very difficult, if not impossible, to marry that with delegated authority. In the least we want to see the indigenous side involved in a serious way in making decisions.

**Mr. John Aldag:** I'm just going to jump in as the chair just told me we have one minute left.

**Mr. Tim Dickson:** Sorry.

**Mr. John Aldag:** I want to offer the opportunity to either of our video conference guests to make a comment.

You did speak about the idea of consent. Are there any additional thoughts you'd like to make before we run out of time on this round?

**The Chair:** John, please choose who you'd like to start, and then we'll go from there.

**Mr. John Aldag:** I'm trying to flip through to find names. Maybe our female panellist could start.

● (1315)

**The Chair:** Kluane.

**Chief Kluane Adamek:** Thank you.

In terms of how the federal government should go about obtaining free, prior, and informed consent, there isn't a one-size-fits-all. There needs to be dialogue among governments and indigenous peoples to establish how free, prior, and informed consent will be obtained and respected. I certainly would encourage the committee to look at the nation-to-nation relationship so that nations can identify how free, prior, and informed consent will be navigated with projects, how it will be obtained and respected.

I'll turn it over to Regional Chief Teegee.

**The Chair:** Thank you.

**Regional Chief Terry Teegee:** In our experience with projects such as the Pacific Trails pipeline, which required the agreement of approximately 15 first nations, it takes quite a while with regard to communications and resourcing the first nations to look at them. In the end, that project was supported. There were 15 first nations communities that came together, and they realized that the benefit package was quite substantial. Also, the resourcing to review the project was quite important. Although the project is still in the queue and hasn't gone forward, it was approved by 15 first nations.

However, that doesn't mean these linear projects, which require up to 50, 60-plus first nations communities.... The difficulty is that it's quite...too many first nations communities. Those first nations should be allowed to create groups, as the league of representatives stated, but there may also be some independents that require more resourcing. Smaller groups or independent first nations require the resourcing to look at the projects to really assert their right to make decisions.

Overall, and I see a common theme here, we're trying to implement the free, prior, and informed consent as well as the ability to make decisions for our indigenous peoples. I think that's what all the presenters stated today.

**The Chair:** Thank you.

Mr. Fast.

**Hon. Ed Fast:** Thank you to all of our guests here today. We very much appreciated your testimony in front of the committee. Particularly refreshing were Chief Crey's comments. I have followed some of your engagement in the media, highlighting the prosperity objectives that you promote in your first nation.

There's an underlying assumption amongst many Canadians that first nations are opposed to development. That's not true, correct?

**Chief Ernie Crey:** Yes.

**Hon. Ed Fast:** I've been very encouraged by the fact that you've made first nations' prosperity an integral part of the broader process of reviewing projects that have serious environmental impacts.

In an April 13 article, you indicated that the cancellation of the Trans Mountain pipeline would cost B.C. first nations hundreds of millions of dollars in benefits, job training, and employment and business opportunities. Can you briefly explain to this committee the benefits that energy projects can have for communities like yours?

**Chief Ernie Crey:** Madam Chair, I'll take off my hat as co-chair for the indigenous advisory committee, because I think you're asking me to put on my chief's hat.

**Hon. Ed Fast:** Yes.

**Chief Ernie Crey:** Yes. In my opinion, if Kinder Morgan TMX doesn't proceed, hundreds of millions of dollars will be forgone for first nations all the way along the pipeline route.

Why I say this is that, taking my own community as an example, we negotiated really hard. It was really my young council—they're a little over half my age—that negotiated this agreement. It didn't consist of Ian Anderson driving through our reserve, rolling down his window, saying, “Hey, Chief, here's the cheque, and you approve of our pipeline, right?”, and then driving off.

Nothing could be further from the truth. My young council negotiated for a year and a half or more, night and day in some instances, with a pretty tough team on the other side, Kinder Morgan's team, and yet we reached a mutual benefits agreement. I want to stress mutual benefits: benefits to the proponent and benefits to our community.

We got busy after we signed that agreement. We're striking bargains and arrangements with nearby companies owned by Canadians and British Columbians. We've partnered up with them to compete for contracts—to compete—with the prime contractors that Kinder Morgan has and we're having success.

I want to tell this committee that the jobs that result are not one-shot jobs that are there for a year or two and then are gone when the pipeline is concluded. That is a terrible misrepresentation of things. What we've negotiated will be lasting training and lasting jobs and, I might add, over the entire life of what I hope will be the new pipe that will come from Alberta to tidewater in British Columbia.

Already our community is alive with excitement. Every day our young people come to me and say they want to get trained, they want a job, and they want to say goodbye to welfare. They say, “Keep at it, Chief, because this means a lot to us.”

To us, it means millions of dollars to my band alone, a community of approximately 540 people. I know that it also means a lot to many other first nations who haven't stepped up and spoken out, but who also have agreements that are perhaps comparable to ours.

● (1320)

**Hon. Ed Fast:** You've called out environmentalists as being red baiters. Do you want to explain that comment?

**Chief Ernie Crey:** Yes, that's close. It's halfway there. I accused them of red-washing their particular agendas and goals. All I meant by it is that in a sense they slip their own agendas, as it were, through customs, take their agendas to first nations, and try to fly their particular agendas under an indigenous flag in many instances, but not in all cases.

I've cautioned first nation leaders and communities in British Columbia about this. I point out and give examples of where that has happened. In Canada's north, commercial trapping was basically trashed by these people, not by all of them, but by some of them. On the east coast of Canada, commercial sealing was scrapped, trashed by these people, which deeply affected indigenous and non-indigenous communities alike. I could give other examples.

My point is that while we sometimes see eye to eye with these groups, often our agendas differ. That's what I'm trying to say.

**Hon. Ed Fast:** I have one last thought. You've talked about how Bill C-69 should be amended to reflect that the delegation of power should be broader than just the indigenous governing bodies, so that the views of individual first nations, reserves, and chiefs are reflected when these projects are consulted on. Again, it's refreshing to see that there is thought being given to how we incent prosperity within the approval process so our first nations can participate in our national prosperity.

**Chief Ernie Crey:** That goes to the points that our legal counsel, Tim, mentioned earlier, that we want to see this succeed. We want to see there be a lot of sensitivity on the part of this committee to some of what Mr. Dickson had to say, that we don't construct legislation that precludes the first nations themselves. I also echo what Chief Terry Teegee mentioned earlier. It has to be constructed in such a way that we can form these larger groupings of first nations and that they operate, as it were, under one tent.

It isn't always possible. It won't be possible if the legislation as it's currently contemplated goes ahead as is. We want to leave the doors ajar there so that we can form entities that broadly represent a large number of first nations where these linear projects are concerned such as TMX.

● (1325)

**Hon. Ed Fast:** Thank you.

**The Chair:** Thank you very much. We appreciate that.

Ms. Duncan.

**Ms. Linda Duncan:** Again, there's so little time.

Thank you to all of you for your important testimony and also for your briefs, because they will give us more ideas on how this act can be amended to strengthen it.

There are two issues I hope I can get to, because I would like to hear from all of you.

Chief Adamek, do I presume that you're from Kluane First Nation because you are Kluane?

**Chief Kluane Adamek:** Yes, I am.

**Ms. Linda Duncan:** I had the honour of working with Kluane when you were negotiating your first nation final agreement when I lived in Yukon.

Thank you, Chief Adamek, for raising your concerns about the adequacy of adherence to section 35 and the UNDRIP responsibilities, where the government and the agencies are only required to take into account the section 35 rights. These issues have also been raised by Fort McKay, and Fort McKay recommended that any of the consultations and accommodations on those rights and interests be at the planning stage and resolved before you go into the hearing.

I would like to hear from Chief Boucher, Chief Teegee, and Chief Adamek, if we have time, on whether you support some other intervenors who have recommended, as did the expert panel, that the UNDRIP also be referenced specifically in the purpose and substantive provisions of the act.

**Chief Kluane Adamek:** I'd like to turn it over to leadership first to respond, and then if there is time, I'll respond at the end. Thank you.

**Ms. Linda Duncan:** Chief Adamek?

Well, Chief Boucher.

**Chief Jim Boucher:** Yes, I think the resolution we are seeking is that there should be free, prior, and informed consent with respect to a project, and that first nations need to be involved right at the start, which includes capacity development in the communities. We need to have a really strong focus on the environmental impact assessments of that. For example, Canada wants to abrogate its jurisdiction with respect to in situ projects and delegate that to a lower form of government assessment at the provincial assessment process.

We think there needs to be clarity with respect to what should be assessed. We should be pretty clear in terms of what projects get on the impact list. There should also be a formal impact assessment which involves first nations people, and we should have the capacity to address the issues and concerns that arise with respect to an impact assessment process.

With a better understanding of what the project entails, there should be a comfort margin with respect to what that free, prior, and informed consent would be.

**Ms. Linda Duncan:** Do you think the reference to section 35 is sufficient, or do you think the act should also specifically reference the rights accorded under UNDRIP?

**Chief Jim Boucher:** I think the act should be very specific and reference those points I made.

**Ms. Linda Duncan:** Okay.

Could I hear from the regional chief?

**Regional Chief Terry Teegee:** Yes, this is Terry.

Throughout the act, the United Nations Declaration on the Rights of Indigenous Peoples needs to be addressed from the preamble right through the whole document. Right now we've had several meetings with Minister Bennett , as well as Minister Philpott, as well as former regional chief of British Columbia, Jody Wilson-Raybould, in regard to a recognition of our rights. Throughout the documents that we're proposing to the federal government is that within that recognition, the United Nations Declaration on the Rights of Indigenous Peoples and free, prior, and informed consent be within the recognition of our rights and title.

Section 35 needs to be there as well. It was already reaffirmed in many of our court cases, whether it be Tsilhqot'in or Delgamuukw . More often than not, the court cases that were won by many first nations, well over 170, just reaffirm our rights, and that should be recognized, and it has been recognized by the highest court.

Thank you.

**Ms. Linda Duncan:** Thank you.

**Chief Kluane Adamek:** In addition, it also needs to go beyond section 35. Of course, section 35 needs to be included. We look to international law. We look to UNDRIP. We cannot merely consider just the adverse impacts on section 35 rights. It's incredibly important that this piece of legislation also consider that we're looking at a rights recognition framework. Certainly to continue to advance the recognition of rights in this country, it must be included and provisions found.

I made mention of subclauses 9(2) and 16(1), paragraph 84(a), and CERA. Those are some considerations outlined in our submission that we recommend you take a really strong look at to ensure that everything is aligned. As mentioned earlier, considering these adverse effects, the impact on section 35 rights has to be at the forefront of this legislation.

● (1330)

**Ms. Linda Duncan:** Thank you very much. There's not a lot of time left.

**The Chair:** You have less than a minute.

**Ms. Linda Duncan:** Chief Boucher, thank you for your brief and your presentation.

Clearly you are within a region where you're majorly impacted by regional assessments. We've heard other witnesses call for some kind of an obligation to enter into regional assessments before specific projects are reviewed. Would you recommend some kind of a provision in the bill that would have specific triggers for when there needs to be regional assessment to set the context for the specific projects?

**Chief Jim Boucher:** I think regional assessments are very important and they should be included within the bill. I think it's incumbent upon Canada to ensure that the jurisdiction is not only related to reserve lands, but that you're also looking in terms of what's contained within Treaty No. 8, for example. Our right to hunt, trap, and fish, for example, is guaranteed and enshrined in our Constitution and any effects on those rights and our ability to practise those rights should be assessed.

Right now in the Athabaska River, for example, the river contains fish that we are not allowed to eat. That's the result of industrial activity. I think the environmental assessment act should contain some language that would address those types of issues of how it affects our treaty rights even though it's not directly on federal lands. These impacts occur outside of federal jurisdiction. They occur within provincial jurisdiction, and therefore, they should be assessed in relation to the environmental assessment act.

**Ms. Linda Duncan:** Thank you very much.

**The Chair:** That's it. That was an additional couple of minutes.

Next up we have Mr. Maloney.

**Mr. James Maloney (Etobicoke—Lakeshore, Lib.):** Chair, I think I'm splitting my time with Mr. Bossio, so I'll get right to the point.

**The Chair:** Yes, you are. I'll give you a three-minute warning.

**Mr. James Maloney:** Thank you.

My questions are for Chief Crey and maybe Mr. Dickson.

First of all, thank you for your support of the Trans Mountain project. The government is fully supportive of it as well and we're grateful for your comments in that regard.

I come to this committee as a visitor. I'm actually from the natural resources committee so I appreciate your comments in that context. At our committee, we've heard conflicting opinions about how projects are received and how they've impacted different communities. This gets compounded when organizations co-opt other people's voices, if you will. I think the two of you alluded to that. Recognizing some of the comments you made about amendments that you feel are necessary, can you tell us generally how you think the proposed legislation impacts the indigenous participation in the process?

**Mr. Tim Dickson:** There are clearly some steps in the right direction with Bill C-69, and lots of room for improvement, hearing some of those voices here.

It's important that the legislation look specifically not just at section 35 rights, but UNDRIP, and create all sorts of avenues for participation by indigenous peoples. Regional Chief Teegee stressed in his comments there has to be sufficient funding to make that happen. That has to be a major pillar allowing for indigenous involvement in these processes.

We're focused on advisory committees and the like, and the formation of groups that can effectively engage with resources in the regulation of these projects, whether it's through advisory committees advising on the approval process. Our committee is more the post-approval process where the effort is to make sure that the regulation is as rigorous as possible so the project is as safe as possible. We're talking about having flexibility to form these committees and let the indigenous side speak for itself through the formation of large groupings where there is the desire to do that on the part of the individual nation.

This legislation has to provide that kind of flexibility, and it has to provide funding.

● (1335)

**Mr. James Maloney:** Thanks.

**The Chair:** Mr. Bossio.

**Mr. Mike Bossio:** Thank you, Chair.

Thank you to all of you for being here this afternoon.

I want to look at free, prior, and informed consent, the impact of FPIC in practice, and how it should be reflected in the IAA.

I'm looking at one side that says free, prior, and informed consent is a veto, and the other side says that one set of rights of individuals doesn't abrogate the rights of others. I would like to get your thoughts on that.

We can go round the table. We'll start with the video monitor first. If Kluane could please give us her thoughts, and then we'll go to Terry and then the others.

**Chief Kluane Adamek:** Thank you so much.

I want to introduce Sara Mainville and Graeme Reed with the Assembly of First Nations. I apologize. I should have introduced them earlier. I'd like to ask them to provide a response from the Assembly of First Nations.

**Ms. Sara Mainville (Legal Counsel, Assembly of First Nations):** *Meegwetch*.

We've been working on processes with the federal government to try to better inform the federal government on having a process that fits in a bunch of diverse processes, because indigenous nations, of course, have their own laws and legal traditions. For the most part, we've almost been establishing placemats or schematic designs where we would diagram the decision made in the impact assessment act, and if there is room for a joint decision, if possible, with a committee or a joint decision-making group with the indigenous groups involved.

We also don't want to miss the fact that because of the strong commitments with the UN declaration, we really would like to see strong recognition of inherent governing authority. I think there's a big capacity piece that we need to talk about with the federal government that not only involves the Minister of Environment and the Minister of Natural Resources , but also Minister Bennett. We have some discussions in our submissions, especially at the joint review panel stage, which includes a very friendly suggestion about the minister engaging with Minister Bennett on a specific building piece within the legislation so that happens.

We also want to see, as far as free, prior, and informed consent is concerned, capacity for the first nations, because that's where the consent happens within the indigenous process. The indigenous government makes a decision. That's very clearly some of the engagements we are doing, but we are also depending on the first nations leaders themselves to very much articulate that work.

**Mr. Mike Bossio:** If I could just add a—

**The Chair:** No, that's it. Sorry, Mike.

We will get to one more question and then we'll.... I know, there's so much to ask.

Mr. Carrie.

**Mr. Colin Carrie (Oshawa, CPC):** Thank you very much, Madam Chair. I want to thank the witnesses for being here. I'm going to get right to the point.

I'm not normally on this committee either; I'm with international trade. Interestingly enough, this morning we had a topic on foreign direct investment in Canada, and the numbers are shocking. For 2017, the last year for which we have numbers, it was $33.8 billion. To put that into perspective, it's half of what it was in 2015, and just a free fall from what it was in 2007, which was $126.1 billion. Much of this investment really does affect development in your neighbourhood.

We had an interesting witness. His name is Ian McKay. He was the former CEO of the Liberal Party, but now he's working on a new body to help increase foreign direct investment. However, he said "perception is reality", and I told him I was going to use that quote.

Chief Crey, I appreciate your comments earlier, because I think our indigenous people are not getting a fair rap as far as development is concerned. I remember the cringe when the Prime Minister said in Peterborough, just up from where I am in Oshawa, "We can't shut down the oil sands tomorrow. We need to phase them out."

The reality out there and the perception has been expressed quite clearly by Douglas Porter, the chief economist at BMO Financial. He said, "People are giving up on Canada as a safe place to invest in natural resources. It's seen as a very hostile environment now." He also said, "I think we're going to get crushed in the next recession."

I'd like to ask a practical question, and maybe we could start with you, Chief Crey, and then Chief Boucher. I also noticed Mr. Pinto nodding his head a little earlier.

Is there anything in Bill C-69 that's going to help your communities work to attract more foreign investment or more investment in your communities and get rid of some of the uncertainty and increase the competitiveness of your communities for this type of investment?

If I have some time left over, Mr. Sopuck wanted one minute.

● (1340)

**Chief Ernie Crey:** Here's my observation. At this time in Canada and in British Columbia, often aboriginal people are cast in the role of folks adamantly opposed all the time to development. As we know, what precedes development is investment. We know that Canada is a resource rich nation and that it needs, if it's going to maintain its current healthy lifestyle, its status in the world as a leading nation at a high level of development, with a citizenry that enjoys jobs, educates its children well, is well-housed, and yet at the same time has certain values that it wants to protect and uphold around the environment.

We are separate communities, the indigenous people and larger citizenry in this country, but we know full well that our economic well-being is linked to that of other Canadians. We know the importance of foreign investment in this country and all the benefits that flow from it. Sure, we may have differences from time to time about what kinds of development, but I am deeply troubled by what you just said, if foreign investment is on the decline because foreign investors feel that there's too much uncertainty in the current climate, or a climate to come in the very near future. That concerns me a great deal.

How it would affect Canadians generally is also reflected in the microcosm of my very small community. If there isn't any investment in Canada in major projects like TMX and others, and there are many, many others, then that plays out in our community in high levels of unemployment, poor housing, and water that needs to be cleaned. It plays out in a lack of infrastructure improvement and maintenance in our communities. It means a lot to our children who go to your schools with other Canadians. When we send them to school, we want to make sure that they enjoy the same living standards that we can get there along with other Canadians.

**Chief Jim Boucher:** That is a very relevant question.

First, we need to establish what we need, what we consider to be what's important for Canada with respect to encouraging investment from the outside. We need to set the stage to allow that investment to occur in which stability is, at the end of the day, ideal.

The Canadian Environmental Assessment Act is one of the most important pieces with respect to having that stability. If you have people who are confident, they will not be powerless with respect to their concerns regarding a project. The ability to resolve those concerns within a regulatory process is very key and crucial.

There are other issues that have surrounded us for many years now in terms of our rights, our constitutional rights and our treaty rights. Those issues need to be resolved and dealt with by the Government of Canada. It's incumbent upon the Government of Canada to resolve those concerns. The government is the direct signatory to treaties, and it is directly responsible for constitutional issues. Provincial governments have a say. They have a part. They have a duty to consult with first nations whenever they initiate projects so, at the end of the day, Indian people are not the ones left holding the bag and bringing out all these concerns with regard to these projects and project proponents.

We need to develop capacities within the communities so that people are educated and can participate in the economy. The communities need to be independent. We've done that in Fort McKay. We've increased our standard of living so that our standard household income in Fort McKay is $73,000. The provincial average is $50,000, and the Canadian average is $33,000. We can do that.

The message to Canada is that it needs to deal with all the thorny issues that are out there. We need to find a way to accommodate the people. It's important to make sure these projects happen.

We have to make sure the projects are going to benefit the communities. It's simple.

● (1345)

**The Chair:** Thank you very much.

I have to bring the committee meeting to an end. We have to be in the House at two o'clock for question period.

*Meegwetch*.

I want to thank each of you for your wisdom, for your recommendations, and the time that you spent with us today. There's never enough time to get to all the questions. You've given us a lot in writing as well to think about. If there's anything else you'd like to share with us, we're willing and interested in anything that might have been spurred by the questions you heard today. You've given us a tremendous amount of information and recommendations. They will be considered.

Thank you.

The meeting is adjourned.