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Chair

Mrs. Deborah Schulte

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● (1105)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): Thank you very much.

I will just remind everyone that we're on television. Welcome, everyone. Today we will be continuing our study on Bill C-69.

I want to welcome our guests today. We have Meinhard Doelle from the Schulich School of Law from Dalhousie University. We have, from the Federation of Canadian Municipalities, Brock Carlton, Chief Executive Officer, and Matt Gemmel, Acting Manager, Policy and Research. We have, from the Ontario Federation of Anglers and Hunters, Matt DeMille, Manager, Fish and Wildlife Services. We have, from the Quebec Environmental Law Centre, Karine Péloffy, Managing Director. We have from Teck Resources Limited, Sheila Risbud, Director, Government Affairs, and Mark Freberg, Director, Permitting and Closure.

Thank you all very much for being here today.

You each have 10 minutes and then we'll move into questioning. We'll hear from all of you and then we'll go to questions. Who would like to start?

Mr. Doelle, go ahead.

Dr. Meinhard Doelle (Professor, Schulich School of Law, Dalhousie University, As an Individual): Thank you.

Madam Chair, members of the committee, thank you for the invitation to speak to you about the impact assessment portion of Bill C-69. To ensure efficient use of my time, I will read from a prepared statement.

Very briefly, my background in EA goes back to work on CEAA in 1992 as a policy adviser to the Canadian Environmental Assessment Agency. Since then, I've offered legal advice to proponents, panel members, and intervenors involved in EAs. I served as a panel member on the Lower Churchill joint review panel, and have designed and shared strategic assessments on tidal energy and aquaculture in Nova Scotia.

Of course, I cannot cover the range of issues that arise from the proposed impact assessment act in 10 minutes. Impact assessment legislation is by its nature complex, and Bill C-69 is no exception. In the interest of time, I therefore refer you to my written submission and to a number of blog posts that I have published with colleagues, some before and some after the release of Bill C-69. I have recently added some specific proposals for amendments to my blog. You will find a link in my written submission. In the time remaining, I'd like to highlight a few key issues and invite members of the committee to follow up during Q and A.

When CEAA was drafted in the 1990s, we had limited experience to draw on. As a result, it's not surprising that the original act was largely enabling, with broad discretion to make decisions on the key aspects of the process, from the scope of the project, the scope of assessment, public engagement, process options, and the final project decision up to follow-up. We now have 25 years of experience with a legislated federal EA process to draw on, and we need to implement lessons from that experience in the new act.

What have we learned? First, we have learned that broad discretion without direction in law over time leads to bad decisions. This is the case in spite of good intentions at the time that legislation is passed, and is at least partly a reflection of the fact that the purpose of the assessment process is to push decision-makers out of their comfort zone to look beyond the obvious short-term benefits of proposed projects to the full range of often less obvious longer-term impacts, benefits, risks, and uncertainties. This is hard, and the more discretion is built into the process, the greater the risk that the more obvious short-term benefits will win out over the long-term impacts.

The second thing that we've learned is that we can now offer strong statutory and regulatory direction to those tasked with making key decisions in the assessment process to better guide those decisions. If we draw properly on the experience, we can establish an appropriate mix of statutory and regulatory criteria to properly guide the exercise of discretion while leaving appropriate discretion where it is needed.

We also have to make good choices about when decisions should be made by ministers, when they should be made by cabinet, by the agency, and when by an independent tribunal or the courts. We need to build into the process opportunities for refining the statutory direction, and particularly regulatory direction over time. An appeal process to a specialized tribunal tasked with reviewing key decisions throughout the assessment process could ensure the quality of those decisions. Such a tribunal, by the way, could also serve to recommend improvements to regulatory direction over time.

Let me start with a general observation about Bill C-69. My overall reaction is that the bill generally provides the powers needed to implement a good assessment process, but too much of that power is left to the discretion of decision-makers—discretion without adequate direction. What Bill C-69 needs is a general rethink, away from merely empowering decision-makers, to instead properly directing decision-makers toward an effective, efficient, and fair process, and a good outcome. We need the process to demonstrably and adequately inform decisions, not justify decisions already made.

To achieve this, broad criteria for decision-making should be set out in the statute itself. Proposed sections 22 and 63 are a step in the right direction in this regard, but they need to be strengthened, in two ways, in particular by replacing considering with “based on”, and by requiring them to be refined through regulations. The criteria need to be refined through the regulations.

Similar statutory criteria are warranted in other areas, such as triggering, key process decisions, and follow-up. Beyond those broad criteria that should be in the statute, there needs to be more detailed principles, criteria, and guidance set out in regulations. That will require adjustment over time, which is why they should be in regulations.

● (1110)

Such criteria should be mandated in the statute but set out in regulations. This guarantees that we will have the benefit of the criteria while allowing the flexibility that regulations provide in making adjustments over time. Key steps in the assessment process that are largely discretionary and need this kind of direction include the following: when federal project assessments, strategic assessments, or regional assessments are to be carried out; determining the scope of the project or proposal to be assessed; determining the scope of the assessment; process decisions; project decisions; and follow-up decisions.

To be very clear, it is not enough to have the power to pass regulations in these areas. These regulations must be required in the statute. My plea to you during the clause-by-clause review is to do three things. Number one, identify these discretionary provisions throughout the bill and add general statutory criteria where possible. Number two, include clear language wherever there is discretion in the statute to require the discretion to be exercised in line with direction to be set out in regulations. Number three, include mandatory language—I would suggest in proposed section 112—to develop regulations to guide the exercise of discretion in each of these areas.

Finally, in the time remaining, let me briefly highlight three of the more specific topics I addressed in my written submission, starting with panel reviews. I think when we design the panel review process under this new act, we have to keep in mind that this is the highest level of assessment and is preserved for major projects. Projects assessed by panel review tend to involve billions of dollars in investments, and Canadians will be stuck with the consequences of the outcomes for decades. I'd be happy to talk about the Lower Churchill assessment as an example of that. Whatever compromises we make to other process options, we cannot compromise on the quality of the assessment for panel reviews. I would suggest five specific things in that regard.

First, we should replace the generic 600-day timeline with a requirement to set project-specific timelines at the conclusion of the planning phase. In some cases, that may be shorter. In other cases, it may be longer. Second, we need to ensure that panels get appointed earlier and are involved in the scope determinations and information-gathering decisions. Third, we need to ensure that panels have the budget and the power to hire experts and analysts. That is particularly important now with a broader scope. Fourth, we need to ensure that panel reports include conclusions and recommendations that properly inform determinations under proposed section 63 and the public interest finding. They can't just summarize the findings on the factors in proposed section 22. Finally, we need to ensure that transparency and accountability for decisions that do not follow the recommendations of review panels. The discretion should be there in my view, but there needs to be transparency and accountability when recommendations are not followed.

The second area is follow-up. In the interest of time, I will just say that this has been one of the most neglected parts of the assessment process over the last 25 years, and I think we're paying the price for this. We need a process that is transparent at the follow-up stage, and we need to make sure that we gather the information necessary to learn from follow-up in terms of ensuring compliance, adapting conditions for approval, and learning for future assessment. Again, I'm happy to talk more about that.

The final point I will make is with respect to strategic and regional assessments. There's been agreement among all major non-governmental stakeholders for at least 15 years now—since the 2003 review—that strategic and regional assessments are critical to improving the effectiveness, efficiency, and fairness of federal project assessments, but we can't seem to make meaningful steps forward in spite of this consensus. I think the act as currently proposed needs more clarity on when these higher level assessments will be required, on the process, and on how the results will be used.

I will end here. I thank you very much and look forward to your questions.

The Chair: Thank you very much.

You did have 30 seconds, so just remember the yellow card is not to stop. It means you only have a minute left.

Who would like to go next?

● (1115)

[*Translation*]

Ms. Karine Péloffy (Managing Director, Québec Environmental Law Centre): Good morning, Madam Chair.

I want to thank the committee for the invitation. It is an honour for me to testify on behalf of the Quebec Environment Law Centre, the QELC.

This bill will apply to an enormous territory and three oceans. This is an extremely important moment in our history. As regards climate and biodiversity, it has never been as urgent to act as it is at this time.

The QELC is the only independent organization that provides expertise in environmental law in Quebec, and it has done so since 1989. Over the past years, we have been involved in several legal cases regarding the now-dismantled Stephen Harper era legal regime, particularly cases related to the Energy East pipeline project, the protection of the beluga in Cacouna, the protection of the rights of francophones in the National Energy Board assessment process, as well as the application of provincial law to projects, and more specifically, to its public participation processes. These cases reflect the tenor of our recommendations.

In addition, since 2016, I have been a member of the multilateral advisory committee of the Minister of Environment and Climate Change, entrusted, among other things, with studying the reform of environmental assessment. I am actively involved in that process. I listened to most of the testimony from the English Canada environmental groups, as well as from indigenous groups. The QELC supports their proposals overall, including those made by Mr. Doelle.

I will focus my remarks on aspects specific to Quebec, for several reasons.

First, Quebec has had a unique experience. It began to hold public consultations to assess three dimensions of environmental projects—ecological, social and economic—in 1978, that is to say a good 10 years or so before the federal government introduced an environmental assessment act.

Second, the general framework of Quebec's environmental protection was greatly modernized in the past year, and there were breakthroughs on several fundamental issues discussed in Bill C-69; it could be useful to examine that in the course of your study.

Third, the structure of Bill C-69 is very similar to the structure of the Quebec regime; however, we have some major concerns. The document I provided to you summarizes the basic features that have allowed the Quebec regime to have some success. If some of those basic elements are absent from its federal counterpart, it may not work. I am referring particularly to public participation and the independence of the committees that will examine the projects.

I often refer to the model of the Bureau d'audiences publiques sur l'environnement du Québec, the BAPE, which will be 40 years old this year. It provides basic guarantees on public participation, and the public trusts it and has participated actively over those 40 years in the study of close to 350 projects.

I seem to be the only Quebec representative to testify before this federal committee, with the exception of a few Cree, Algonquin and Inuit representatives, although Quebec represents 22% of the Canadian population, and Quebeckers were very involved in the assessment of controversial projects under the dismantled 2012 federal regime. Moreover, in our area, we have a multitude of experts who could have come to inform the committee on some fundamental issues, and more importantly, suggest concrete solutions on the basis of what works in Quebec. I deplore the absence of those experts at the committee, and I invite you once again to invite them to appear before you.

I am going to present the QELC position. We have provided a bilingual summary in case our more complete brief has not yet been translated. Some detailed amendments will follow by next Monday. I will also refer to the brief submitted to the committee by Louis-Gilles Francoeur, the former vice-president of BAPE, particularly with regard to the BAPE procedure.

[*English*]

I will then briefly present collective recommendations of lawyers and scholars on considerations of climate in the two acts. Also, it will be my pleasure to take questions in English.

[*Translation*]

First, it's very important to respect the rights and laws of provinces and indigenous jurisdictions, including the right to assess and approve projects on their territory. When those projects must also be assessed by the federal government, the favoured process should be collaborative. Subsection 39(2) of the Impact Assessment Act forbidding this collaboration for pipelines, nuclear energy and offshore oil and gas must be removed. The second process to be favoured after collaboration would be duplication. That is constitutionally valid, but it is ineffective and does not lead to the best decisions. Finally, you could resort to substitution, but if it comes to that, it should be done according to the highest standards, in keeping with the expert committee's recommendations in that respect, and especially according to objective criteria. I am going to anticipate a question here and specify that the existence of an emissions limit in a province is not an objective criteria that justifies exemption from federal assessment.

The second important point is full participation in assessments. That is really at the heart of the success of the Quebec regime. The organization that performs the assessments in Quebec is called the Bureau d'audiences publiques sur l'environnement; the public's participation is thus the foundation of the exercise, rather than a public opinion survey to attempt to obtain so-called social licence.

According to Louis-Gilles Francoeur, public hearings result from the evolution of civilization. The BAPE model is inspired from direct participation mechanisms that were created after the American Revolution. The idea was that by forcing economic and technocratic elites to come and explain themselves before these direct democracy institutions, the public hearings would, according to Alexis de Tocqueville, neutralize the social forces that have the same frames of reference, the same cultures and sometimes similar interests, but rarely have to be accountable.

The real strength of the BAPE process is its first part, which is collecting information. I will describe it briefly. It is based on an investigative model where the commission and citizens play the role of attorneys, rather than the quasi-judicial adversarial model which seems to be in effect in the rest of Canada.

In the first phase, the public addresses its questions directly to the promoter. The public literally acts as counsel of the review commission. The commission then repeats the public's questions and puts them to the promoter. Afterwards, those questions have all of the weight of the commission's questions, and the promoter is obliged to answer them. It's a type of symbiosis between the work of the commission and the public's participation.

In addition to its active participation, the public sees the dossier being substantiated before it. It is a collective method of getting to know and owning the file that guarantees the briefs, that in turn guarantee the quality, the political power and the credibility of the report that will be issued at the end. In Quebec, we humbly believe that this type of public participation should be the preferred mode, because it is a better way of informing the public without the rigid constraints of a quasi-judicial process.

This power to compel all of the key actors to provide answers and documents, including the promoter and other parties, is really central to the BAPE commission hearings in Quebec. I have some concerns about the current bill, more precisely regarding subsection 53(6), where the power to compel is not strong enough. We will see this in the detailed amendments, but generally speaking, if you must go before a court in order to have one of the commission's orders applied, you have just basically completely abolished its power.

Another important point is that assessment commissions and the energy board should really be independent from the industry and the government. The bill maintains minimal numbers of appointees on review panels from the pipelines, nuclear energy and offshore oil and gas regulators, which in our opinion is unacceptable. In order to restore public trust, there has to be a new independent assessment institution for all of projects from all of the industries.

Personally, I have absolutely nothing against regulatory organizations, but they are not institutionally impartial, because their work depends on their being able to continue to regulate an industry. This implies that they will always agree to have projects going forward. It's one of the reasons why we can't trust them. Those individuals have no place being on a commission, but they can play a role as experts.

Since I have very little time left, I will quickly speak to the method of appointing commissioners. That process absolutely has to be depoliticized, either by creating a list of commissioners who are capable of acting as such, or by designating specific commissioners for a review commission. The minister is not the one who should do that. There should be a more independent process. It could be a committee made up of two-thirds of parliamentarians, a multipartite committee with the Auditor General or the Commissioner of the Environment.

● (1125)

[*English*]

Do I still have some time?

The Chair: You're almost out of time. If you just want to wrap up, that would be great.

I want to let you know that we got your paper distributed, so everybody has it in front of them, with the points you're making right now.

Ms. Karine Péloffy: There is a 10-page version but I guess it hasn't been translated yet.

The Chair: When did it get submitted?

Ms. Karine Péloffy: On April 6.

The Chair: Okay. We're working through the translation.

Ms. Karine Péloffy: Perhaps I could just make one last point.

[*Translation*]

We support the amendment proposed by Louis-Gilles Francoeur which consists in translating the word “sustainability” by “*viabilité*” rather than “*durabilité*”.

That is the last point I wanted to raise, for my francophone colleagues.

[*English*]

The Chair: Thank you very much. There was a lot in here.

Next up, would you please go right ahead.

Ms. Sheila Risbud (Director, Government Affairs, Teck Resources Limited): Good morning, Madam Chair, members of the committee, and fellow witnesses.

[*Translation*]

It is an honour for me today to be here to present Teck's recommendations on Bill C-69.

[*English*]

My name is Sheila Risbud and I'm the Director of Government Affairs for Teck Resources. Previous to Teck, I worked for the Canadian Environmental Assessment Agency and for Environment and Climate Change Canada where I was directly involved in federal impact assessments. I am accompanied here today by my colleague Mark Freberg, who also has extensive environmental assessment experience in both Canada and Chile. We'd be happy to answer your questions after our presentation.

Proudly Canadian, Teck is a diversified natural resource company.

[*Translation*]

We are proud to employ over 8,000 people in Canada.

[*English*]

In Canada, we have six steelmaking coal operations, the country's largest open-pit copper mine, a zinc and lead smelting complex, and have interests in several mining development and oil sands projects. We also own or have interest in mines in Chile, Peru, and the United States. In all jurisdictions where we operate, we focus on building strong relationships with communities, indigenous people, and other stakeholders.

We have significant business arrangements in place with Chinese customers and investors, and from our headquarters in Vancouver, we compete with many of the world's largest mining companies. Many of our activities require environmental assessments, and as a project proponent in Canada, we believe that the design and implementation of this legislation is critical. It matters to ensuring the ongoing protection of the environment and it matters as well to the long-term competitiveness of our business and the jobs that depend on our success.

We support the government's effort to strengthen public confidence in the environmental assessment processes and to enhance indigenous people's participation and decision-making. For Teck, the intentions in the government's legislation align with core business values. In many instances, they describe our existing approach to managing our relationship with the environment and the community at large.

New rules that result in greater public confidence in environmental protections will help support and attract investment in this country. However, this represents one part of the challenge as we see it. Project proponents need to know that approval processes will not only be rigorous but can be counted on and result in clear, timely decisions. We're encouraged by many elements within Bill C-69, but we would like to see more emphasis on a predictable process that delivers regulatory certainty for all parties.

[*Translation*]

This is specially important now, at a time when Canada has seen its share of global mining investments decrease significantly in recent years.

[*English*]

Getting this right can help turn the situation around.

Teck supports the amendments that the Mining Association of Canada highlighted in its presentation to this committee on March 29. Today, we'd like to briefly highlight areas of the legislation that we believe could benefit from additional clarity. I'll focus my remarks on the proposed early planning phase, enhanced indigenous peoples' participation and decision-making, and competitiveness in cost-recovery restructures.

First, let me say that we support the inclusion of an early planning phase. This reflect's Teck's existing approach to engaging early with stakeholders and indigenous peoples, and we believe it should be considered a best practice internationally. However, we're concerned that as currently written, the proposed early planning phase does not identify clear milestones within the 180-day period.

Defining milestones with clear timelines for the various steps would provide certainty and transparency for all parties involved in the assessment. Proponents need to understand what is expected of them in order to adequately meet early planning requirements. Without this clarity, the early planning phase could continue indefinitely.

For example, we recommend that the agency be given set times to deliver the summary of issues document. This is the document that describes the issues that the agency has heard to date and the decision on whether an impact assessment is required. We also recommend that the early planning phase contain a mechanism to incorporate information already collected by a proponent or another jurisdiction prior to the 180-day period.

Incorporating existing information could significantly streamline the process and incent proponents to conduct even earlier positive engagement with potentially impacted communities and indigenous peoples.

● (1130)

I also recommend that sufficient resources be allocated to the new impact assessment agency to manage this early planning phase well, ensuring it has the capacity to meet its expanded consultation obligations as well as to review scientific data and indigenous knowledge.

[*Translation*]

So, to summarize, while Teck supports early planning, clear and predictable milestones and sufficient resources are required in order to successfully meat this phase's intent of greater transparency and predictability.

[*English*]

Another aspect of this bill that we support is the early and inclusive engagement and participation of indigenous peoples at every stage of the impact assessment process. Teck has very positive experiences from early engagement with indigenous peoples, and we have formalized early, inclusive dialogue into our corporate-wide indigenous peoples policy. We believe this approach contributes to reconciliation while supporting the shared benefits of resource development.

However, this legislation needs to result in clear, consistent practices that governments, indigenous peoples, and proponents can rely on. We hope you will agree that for too long, there has been a positive discussion about the need to do better, but perhaps too little by way of clearly defining how we can make this work.

Teck supports the government's commitment to the adoption and implementation of the UN Declaration on Indigenous Peoples. Currently, however, it is not clear how Bill C-69 will be coordinated with the government's plans to implement the UN declaration, particularly with regard to free, prior, and informed consent. We recommend that the government engage with industry, provinces, territories, and indigenous governments to develop a process for the implementation of the UN declaration, with a focus on achieving complete clarity around what is expected when it comes to the terms “free, prior, and informed consent”.

Teck is also pleased to see crown consultation begin earlier in the impact assessment process. For this process to be successful, however, we recommend that there be clarity on the scope of consultation and the division or coordination of consultation efforts between the crown and the proponent.

[*Translation*]

Once again, we support the government's intent to meaningfully involve indigenous peoples in impact assessment but seek clarity on how this will be carried out.

[*English*]

We recommend that clear criteria be established that outline when and how the minister will delegate impact assessment responsibilities.

The last aspect of Bill C-69 we would like to comment on is the structure of cost recovery under proposed sections 76 through 80 of the legislation. We recognize that reasonable cost recovery is a standard practice in regulatory and permitting processes, and we have experience with cost recovery regimes. We believe that federal cost calculations must consider integration with provincial fees related to the same project. This would be consistent with the federal government's commitment to coordination with provinces to support the one project, one assessment principle.

We also believe that federal cost recovery should consider any other fees for mining projects under other federal legislation such as the Fisheries Act. Doing so would remove costly duplication and support greater cost competitiveness in Canada. One place to coordinate this would be in the proposed impact assessment coordination plan.

[*Translation*]

We therefore recommend that the agency should be mandated to coordinate cost recovery with other jurisdictions and other federal departments when costs are included under other legislation.

[*English*]

In conclusion, we want to reiterate Teck's overall support for this government's intent to improve environmental and regulatory processes.

● (1135)

[*Translation*]

We support the government's efforts in this regard. We are pleased to see that some of our recommendations are being considered in this bill.

[*English*]

We appreciate this opportunity to appear before you today and to highlight further recommendations that we believe provide clarity in Bill C-69. We want to see Canada succeed, becoming a greater destination for global mining investment and a leader in responsible project development, while protecting the environment, advancing reconciliation with indigenous peoples, and creating economic opportunities for all Canadians.

[*Translation*]

Thank you. I will be pleased to answer your questions.

[*English*]

The Chair: Thank you, Ms. Risbud. We really appreciate that.

Next up is Mr. Carlton.

[*Translation*]

Mr. Brock Carlton (Chief Executive Officer, Federation of Canadian Municipalities): Thank you very much, Madam Chair.

Thank you for receiving us today.

[*English*]

I look around the room and I see friends and colleagues whom I've worked with over many years. It's nice to see you, nice to engage in this conversation. It's so important.

FCM certainly welcomes this opportunity to bring Canada's municipal voice to your review of Bill C-69. As environmental and economic leaders, municipalities understand and support federal efforts to improve environmental assessment processes. Municipalities are uniquely impacted by these processes, sometime as proponents, sometimes as interested participants, but always as a level of government protecting the interests of our communities.

Municipalities are regular participants in environmental assessment where outcomes have a local impact on areas of municipal responsibility, such as environmental sustainability, emergency response planning, land use planning, and the construction and maintenance of municipal infrastructure.

At the same time, many projects, including those within the resource development sector, are important to economic prosperity and the quality of life in local communities. In addition to these, as participants, municipal governments are also project proponents directly affected by federal environmental assessments when municipal infrastructure projects are subject to federal approval.

Each of the expert panel and House standing committee reports, which inform the changes proposed in Bill C-69, noted the unique and growing role of municipalities within environmental assessment processes.

FCM has filed nine submissions over the last year with recommendations to improve environmental and regulatory review processes. Our recommendations reflect the views of the diverse membership of more than 2,000 municipalities representing over 90% of the Canadian population. With responsibility for 60% of the country's public infrastructure, municipalities help drive Canada's economic prosperity, environmental sustainability, and quality of life.

To address Bill C-69 I would like to walk the committee through each of the acts that are being changed, starting with the Navigation Protection Act. FCM has consistently recommended aligning the legislation with current transportation demands, which depend more on the construction of bridges and roads than expanding water navigation. In 2009, the former Navigable Waters Protection Act's scope was refined with input from municipalities to include an exemption for minor works and waters with little impact on navigation. Several amendments in 2012 brought aspects of the legislation closer to Canada's modern realities. These changes addressed municipal concerns about project delays and expenses caused by federal reviews triggered by small-scale projects.

FCM recognizes and shares concerns about the large number of lakes and rivers that no longer have oversight under the Navigation Protection Act. However, the proposed Canadian navigable waters act includes changes that FCM did not call for and will have significant impacts on municipalities. These include a new requirement that project proponents notify and consult on proposed works on all navigable waters, including both scheduled and non-scheduled water bodies, and a new resolution process that would allow the Minister of Transport to review navigation concerns on non-scheduled water bodies.

FCM expects these changes will result in significantly more municipal infrastructure projects falling under federal review, and we are concerned about the expansion of the scope of the legislation to include, effectively, a new class of works that will fall outside of the existing minor works and existing major works categories. These in-between works are likely to include municipal infrastructure projects that are critical to public safety, transportation, and commerce—for example, bridges, water control structures, and flood mitigation structures. We're not advocating that all bridges, water control structures, etc., be exempt, but we believe there is a consideration for the scale of a project and scale of the waterway that needs to be taken into account.

To address these, we recommend, first, that Transport Canada conduct a review of the existing minor works order, to assess whether more types of works need to be added. Second, we recommend that Transport Canada create a standardized mechanism for project proponents who notify the public in order to meet new requirements under the act. Third, we highlight the importance of enforcing the timelines for public notification and consultation outlined in proposed subsections 10(3), 10.1(1), and 10.1(3) as a means of reducing untimely delays. We recommend that these timelines are reviewed and amended as provided for in regulation, if they are deemed ineffective.

● (1140)

The second part of Bill C-69 that FCM is focused on is changes to the Canadian Environmental Assessment Act. FCM supports the proposed approach of having designated projects jointly reviewed by the proposed impact assessment agency of Canada and the relevant federal life-cycle regulators. We also support broadening the scope of assessments to include economic, social, and health impacts, and the “one project, one review” objective that Bill C-69 strives to achieve.

Still, we believe that Bill C-69 does not go far enough in recognizing the important role municipalities play in relation to designated projects. For that reason, we are proposing the following amendments: that proposed section 11 of the impact assessment act be expanded to expressly include consultation with municipal governments; that this phrase, “comments from a municipal government impacted by the designated project”, be added to the factors that must be considered by the impact assessment agency of Canada under proposed subsection 22(1) of the impact assessment act; and that, as a result of the above amendments, “consultation with municipalities” be added to the preamble of the impact assessment act, making it clear that this is an objective of the legislation.

FCM strongly believes that early engagement with municipalities leads to better outcomes. Therefore, we are also calling for consultation with municipalities to be a required component of the initial project description, which proponents must file with the impact assessment agency of Canada.

Finally, I'd like to turn to the National Energy Board Act. Municipalities interact daily with the existing network of NEB-regulated pipelines and power transmission lines. Communities of all sizes benefit from economic activity associated with resource development and energy transportation infrastructure. Municipal governments are directly impacted by pipelines through emergency response planning, land use planning, and construction. There are several changes the government is proposing that are in line with FCM's recommendations, but I'd like to address a few of the recommendations made by FCM that are not clearly addressed. Notably, FCM called for the NEB Act to be amended to recognize municipal bylaws and require pipeline companies and the NEB to abide by them, within the limits of the Constitution. We also said that the NEB Act should be amended to provide municipalities with a direct role in deciding the local route that proposed pipeline projects take.

While the proposed changes go a long way to improving the public consultation process, they do not go far enough. Codifying the requirement to consult with municipalities in the legislation will go further to address municipal concerns that have arisen during recent NEB hearings.

In addition, FCM is recommending that the impact assessment agency of Canada and the Canadian energy regulator be granted greater flexibility in determining the maximum time limits for conducting an impact assessment of a proposed pipeline. While FCM supports timelines for environmental and regulatory reviews, we recommend that these be determined on a project-by-project basis.

In conclusion, we want to stress that it will be necessary for the federal government to actively engage and consult municipal governments as regulations for these acts are created. As environmental and economic leaders, municipalities understand the need to balance economic activity and environmental protection as complementary priorities. We believe our recommendations help to achieve this balance.

We thank you again, and we look forward to your questions when they arise.

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

Now we'll go to Mr. DeMille.

Mr. Matt DeMille (Manager, Fish and Wildlife Services, Ontario Federation of Anglers and Hunters): Thank you.

Good morning, Madam Chair and members of the committee.

On behalf of the Ontario Federation of Anglers and Hunters, our 100,000 members, supporters, and subscribers, and our 740 clubs across Ontario, thank you for inviting us here today to talk about elements of Bill C-69 that are critically important to our organization.

Our primary interest in the bill is the Canadian navigable waters act. Although our organization has a very keen interest in the environmental considerations for projects that occur in and around water, our knowledge and experience in Ontario are related mostly to the Fisheries Act and provincial statutes and regulatory processes, such as Ontario's Environmental Assessment Act. Therefore, we will focus our comments today on the angler, hunter, and trapper perspectives on navigation protection.

From the time of the fur trade, and well before for indigenous peoples, navigable waters have been critical for accessing resources in Canada. Water-based navigation remains woven into the cultural fabric and social identity of many indigenous and non-indigenous Canadians. Approximately one-quarter of Canadians fish, hunt, and trap, and they contribute $15.2 billion to the Canadian economy every year. Fishing, hunting, and trapping are very relevant in Canada today, and the right to navigation is important to the Canadians who enjoy those activities.

The idea of a public right to navigation is almost as old as the country itself, with navigation legislation having origins dating back to the late 1800s. Although societal demand for water-based transportation has changed dramatically over time, there remains a demand for safe and accessible navigable waters. To achieve this requires strong legislative oversight by the federal government.

First, we must know what navigability means to Canadians—what are we trying to protect? The most obvious connection to navigability for some Canadians will be lake freighters on the Great Lakes or cabin cruisers on the Rideau Canal or the Trent-Severn Waterway—big waters and big boats.

When our members think about navigability, however, a high volume of traffic is the last thing they want to see. They are more interested in the navigable backwaters of Canada. Small rivers, streams, creeks, marshes, and other smaller watercourses are important gateways to fishing, hunting, and trapping opportunities. The definition of “navigable waters” in the proposed Canadian navigable waters act has been enhanced and now provides more detail, with specific recognition for recreational use. This is a positive amendment that better reflects our idea of navigability.

It is our position that navigation legislation is not intended to be environmental legislation. Are there opportunities for navigation protection to provide a checkpoint to ensure that environmental legislation and regulatory processes are happening as they should? Definitely. The projects occurring in and around water should be considered from both a navigation and an environmental perspective. But if we are relying on this act—past, present, or future forms of it—to be a significant line of defence for environmental protection, then we have to question the effectiveness of our primary environmental statutes, such as the Fisheries Act and the impact assessment act.

From our perspective, protecting navigability is not about adding red tape for proponents or slowing down development. Large-scale proponent-driven projects are already scrutinized under other legislation and often across multiple jurisdictions. These projects should absolutely be subject to navigability legislation, but the regulatory process must be done in conjunction with other federal approval processes to make it as efficient as possible for the proponent's and the agency's benefit. The proposed amendments to have the prohibition apply to major works in any navigable water is a step in the right direction, but more about that later.

We are concerned that regulatory processes tend to focus on these proponent-driven medium- and large-scale projects, for which prohibitions as well as permitting and approval requirements are well established in the development cycle. It is the smaller-scale obstructions that do not have the same proponent-agency relationship, because the responsible party is more likely to be a private landowner who won't be disclosing their intent to erect a fence, a wire, a rope, or other obstruction across a navigable water. In most cases, the individual is unaware that they are breaking the law or even that navigation legislation exists. These obstructions won't be flagged, but they will impede public navigation and create significant safety concerns.

For obstructions—and it is important to differentiate obstructions from works or projects—the presence of a legal deterrent and subsequent government recourse to address contraventions can be as important for protecting navigability as the regulatory and permitting process is for traditional proponent-led projects. We want to prevent obstructions to navigability to the greatest degree possible, because the average Canadian can't and won't fight these issues in the courts. When navigability concerns do arise, Canadians expect and rely on the federal government to protect navigability. For this reason, we are pleased to see that the amended act proposes to prohibit obstructions in any navigable water. In our minds, this is a very important change.

In addition to the legislative measures, navigation protection requires strong education and outreach to increase awareness among Canadians. This should accompany the implementation of the Canadian navigable waters act, particularly as it relates to obstructions that cause serious navigability and public safety concerns.

● (1145)

To maintain safe and accessible waters in Canada, we need strong legislation with clear and comprehensive provisions that outline where, when, and how the government will protect navigation. The following are a few more specific comments on the amended navigation legislation proposed in Bill C-69.

There has been much discussion about the 2009 and 2012 amendments to the navigation legislation. Much of what I have read so far has been negative, but that isn't entirely fair. The limitation of the legislation to a scheduled list of water bodies was considered a major setback for navigation protection; however, the 2009 amendments established a foundation for classifying different works or projects. This has been maintained in the Canadian navigable waters act and expanded with the inclusion of major works.

We believe a classification system that enables prioritization of projects being reviewed for navigation protection is necessary. First, there are differences in the level of scrutiny required for different types of projects. Think of the differences between a dock and a dam. In a perfect world, we would want all works, regardless of type, to be assessed and authorized by a regulatory agency. This may have been possible under the broad nature of the Navigable Waters Protection Act prior to 2009. However, we must acknowledge the fiscal realities of the navigation protection program and the fact that the administrative burden in reviewing all minor works may not be worth the added value to navigation protection. A regulatory triage is now commonly used by agencies to implement regulatory programs.

As always, the devil is in the details, and the amended legislation only tells part of the story. We can likely make relatively safe assumptions about what will be defined as minor works because of the existing minor works order under the Navigation Protection Act, but we do not know what types of projects will be included as major works. To achieve a complete and effective major works order, the minister will need to establish a transparent public consultation process. Only when we know what types of projects are classified as minor and major will we know what is left in between, in other words, what projects won't be subject to navigation protection in unlisted, or 99%, of Canadian waters.

We are still not convinced that special classification of waters in a schedule is necessary or appropriate. If the government can get the classes of works right, then classes of waters shouldn't be necessary.

I hope we have been able to illustrate a different perspective on the proposals to amend navigation legislation and have offered the committee value-added feedback that will contribute to your study and ultimately bring meaningful change to the bill and its implementation.

Thank you again, Madam Chair and members of the committee, for the invitation and for your attention today. I look forward to the questions.

● (1150)

The Chair: Thank you very much for your thoughtful presentation.

We will start with Mr. Bossio with questioning.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you, Madam Chair.

Thank you, guests, for being here today. We really appreciate the testimony you have brought to this committee and the huge efforts you have put forward in trying to address some of the concerns around this bill.

I want to address public participation, and I'm going to direct my question to Mr. Doelle.

Once again, thank you very much for being here today.

The act talks about public participation, but it doesn't really delve much beyond that. Do you feel there should be a definition for meaningful public participation, and do you feel there need to be parameters that are defined around meaningful public participation in different sections of the act, for example, a definition within proposed section 2 and parameters within proposed sections 6, 11, 22, 27, 31, or 51?

Could you provide some details there?

Dr. Meinhard Doelle: I think public participation is a good example of the kinds of issues I was talking about more generically, this question of how you move from empowering decision-makers to do the right thing to properly guiding the decision-making. The short answer is I think a definition for meaningful public participation would be a helpful first step, but I think then you need to work through the act and identify appropriate direction, statutory and regulatory, to ensure that good decisions will be made in the future about public participation.

For me, a good starting point for that would be to think about setting up an advisory committee for the planning phase and start to think about, and probably in regulation, who should be on those kinds of advisory committees. If you get it right early in the planning phase, and you get all the key interests involved in designing the process, designing the scope, determining what information you need to make good decisions at the end of the day, then I think a lot of the challenges can be overcome early.

But I think you want to also think about how you make good decisions as you go along. For example, as I said in my presentation, we often think and rightly so, of the panel review as being the ultimate and the highest level of assessment, but even in that context different mechanisms sometimes are most effective. It's not always most effective to have a traditional-style hearing. We've had provision for mediation, ADR, for a long time, and we've never used it. So thinking carefully about how we ensure the broad range of tools are used effectively to achieve good outcomes is critical, because often bringing people together.... I can talk at length about what we did with strategic assessments in Nova Scotia on very controversial issues, like aquaculture, where we brought people with opposing views together. At the starting point, people were saying a moratorium or nothing, and we came up with a design, with a solution, that everyone applauded.

Having good and effective public participation processes that work for the context is critical. Depending on what first nations or indigenous communities are involved, having public participation processes that work for them is critical to properly engaging them. If you want to avoid opposition and bring along those who are affected and have a process that results in a common vision at the end, public participation is critical, and providing the proper guidance in the statute and through regulations.

● (1155)

Mr. Mike Bossio: Ms. Péloffy, would you like to add to that?

Ms. Karine Péloffy: Yes.

To the extent the agency would act as a secretariat to the commission in all contexts, maybe you could add as a purpose of the agency significant, meaningful public participation. A definition could be helpful also, as well as insisting on public hearings, not just submitting comments online. Getting people in the room together is a great way to learn, much better than it being just based on paper, at least that's been one key success in Quebec.

To be fair, I've looked for a legal component that showed why the BAPE worked so well in Quebec. It's a question of institutional culture, so the first people who will be named as commissioners and will do reviews will set the culture of the new institution. That's not a legal requirement. It's the importance of the first people who will be there.

Mr. Mike Bossio: Thank you so much.

I was going to give Mr. Carlton an opportunity.

I know you had raised participation in your submission as well, in particular with municipalities. Meaningful public participation, would you agree, would capture that notion?

Mr. Brock Carlton: No, I wouldn't agree with that, not that I disagree with meaningful public consultation. I agree with meaningful public consultation. What I don't agree with is lumping municipal government into something as generic as public participation. Municipal governments are governments and thus our comments are to single out municipalities as unique creatures or features of any kind of consultation process.

Mr. Mike Bossio: Thank you.

The Chair: Thank you very much.

Monsieur Godin.

[*Translation*]

Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC): Thank you, Madam Chair.

I'd like to thank all of the witnesses for being here this morning. There is good representation from all over Canada. First, we have a representative from Nova Scotia. We also have the Federation of Canadian Municipalities which represents the entire country. Ontario is represented by the Ontario Federation of Anglers and Hunters. Quebec is represented by the Quebec Environmental Law Centre. And finally, we have people from Teck Resources in British Columbia.

I'll start with Mr. Doelle.

The project and comments you presented were interesting, but I'd like to go a bit further on the topic of the appeal process before a specialized tribunal. That is an interesting point, but it is at the end of the process.

Would it not be better to put clearer rules and guidelines in place to accelerate the process and lighten the administrative aspect, so that we don't have to get to that stage of the procedure?

[*English*]

Dr. Meinhard Doelle: If I understand your question correctly, I'm advocating for an appeals body that would potentially review decisions throughout the process, starting potentially from triggering decisions and then determinations on the scope, the information that is needed, and process options—all along the way. To me, the basic concept is that you want appropriate statutory direction, and you want appropriate regulatory direction. There will still be discretion. We need discretion to make good decisions.

Also, then, you have the opportunity to appeal the decision, if you're unhappy with it, to this independent tribunal. That independent tribunal, throughout the process, then can ensure consistent application and the responsible application of the guidance that is provided in the statute and regulations.

I'm actually not at all focused on the ultimate decision. The ultimate decision, in my view, should be a political decision. Even there, there can be aspects that can be reviewable. For example, whether or not the decision-maker has applied the factors in proposed section 63 should be reviewable, but the decision itself, in my view, shouldn't be.

I do see the appeals body as an efficient way of developing a consistent application of the statutory and regulatory criteria that are established for all the critical decisions in the process.

● (1200)

[*Translation*]

Mr. Joël Godin: Thank you.

If we create an act, we may as well define things as clearly as we can. The appeal tribunal — let's call it that — is indeed an option, but we try to use that as little as possible. The rules and laws should be very clear.

I will now address Ms. Péloffy.

I don't have a question for you, Ms. Péloffy, but I have to admit that I was very disappointed by one of your comments. Your are the only one to have spoken about the Harper government. Everyone who is here, around the table, is here to build the future. We are looking forward. I feel I must tell you that certain things were achieved in the past. I liked Mr. Doelle's comment that the act that was brought in 25 years ago was a step forward. The time has come for us to take other steps. I thank all of the parliamentarians who are working to do that. I didn't like your comment. I simply want to say, concerning Mr. Harper's record, that it is not a blank page; in fact, we would need more than a page to list all of the actions taken. I'd like you to hear this message.

As for representation, please know that the people gathered here represent all of Canada. I am very proud to be a Quebecker and a Canadian. The Federation of Canadian Municipalities represents some of the municipalities in Quebec. Other associations did so as well all throughout the hearings.

In addition, I must remind you that it was the Harper government — which you like to refer to — which, with scientists, did the research that led to the GHG targets the current government is applying. The work must have been well done, since the Liberals are using it.

Thank you very much, Ms. Péloffy. I am pleased to have been able to share that comment with you.

My third question is for Ms. Risbud.

Does the current process respect the principles and objectives of the law?

Ms. Sheila Risbud: I'm not sure I understood your question properly.

Are your referring to the current law?

Mr. Joël Godin: No. In fact, I'm talking about the bill we are studying today. Does it really meet the principles and objectives that have been set out?

The government claims that it will accelerate the process and will be attractive in the context of economic development. Do you think the bill meets those objectives?

Ms. Sheila Risbud: Yes. Overall, we support the intent of the bill. We think it reflects best practices in environmental assessment.

We presented a few suggestions today. Among other things, there should be more clarifications on the first phase, that is to say the planning phase, as well as on the role of indigenous people in the consultation. Once those details have been clarified, the bill will be going in the proper direction, we believe.

Mr. Joël Godin: In light of the experience and knowledge you have...

[*English*]

The Chair: Make it very short.

[*Translation*]

Mr. Joël Godin: Fine.

What is Canada's ranking among countries that are making positive efforts to establish rules to protect the environment?

Ms. Sheila Risbud: I don't have a list in front of me. However, based on our mining company's international experience, I would say that Canada has a very high ranking.

Mr. Joël Godin: Thank you very much.

[*English*]

The Chair: Thank you very much.

Ms. Duncan.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Most of my questions are going to be to Professor Doelle, but to Mr. Carlton, if I can offer a better suggestion to you, considering that you want municipalities recognized.... Although I have to share with you that my experience with municipalities involved in hearings and major projects is usually that they're supporting it exactly as it goes forward and rarely support more conditions on the project. That's my experience in Alberta.

It doesn't appear obvious in the definitions of “jurisdiction” that this includes municipalities. I think it would be a good idea for us to refer to the legal people, the legislative drafters, and ask them whether municipalities are included. If they're not, then I think it'd be a good idea to add them in. I fully agree with you that I don't think municipalities come under “public”. I have much bigger questions about the definition of “public”, because I don't think that indigenous peoples think they're “public”. There are even bigger problems with this bill than what you're identifying. I think you're raising a genuine point, and I think it'll be up to us to look at it if we want to make sure that the municipalities' issues are heard, and that we find the best ways to do that in the bill. I think this might be the best place to put it.

Professor Doelle, thank you very much for your papers, your blogs, and your submission. I am absolutely delighted that in your submission one of the areas you focus on is the panel. I'm deeply troubled by this bill because there's absolutely no clarity on when a review is going to be by the agency, when it's going to be by a panel, or when a panel is appointed. You're making some very good suggestions. We're challenged for time. We have to have all our amendments in by next Tuesday. I would welcome any suggestions that you recommend.

You're also recommending that a panel should provide in its decision a summary of the evidence in each of the factors and the recommendations for a response. Professor, what troubles me deeply is that whether the agency is going to review the matter, whether or not the matter should even be reviewed and assessed by the agency, whether it's reviewed by a panel, and whether it's in the public interest, they're all different factors. Do you think that's a problem? Do you think there should be consistency throughout on what the factors are that are taken into account and not just “considered”?

● (1205)

Dr. Meinhard Doelle: I'm not sure whether your question is specific to the choice about panel review, agency review, or something more general, but the approach I would recommend is that the broad criteria should be set out in the statute. You want to put in the statute the kinds of things that you know you're not going to have to change. Then you want to require regulations to provide the detail, and you want the detail to be adjustable. I would advocate having ministerial regulations provide the detail. That's a general recommendation, but it would apply to the choice of going to the agency or panel review, because, as you point out, it currently says "consider". These are very broad criteria. They're not inappropriate, but they do not properly direct decision-making.

We have 25 years of experience. We can give better direction to decision-makers than that. We can avoid bad decisions. As I said, I don't think this is the intent, but what happens over time is that there is pressure to approve projects. There is pressure to streamline because of financial constraints. There are all kinds of pressures on decision-makers that make it hard to make good decisions. Having proper direction in regulations is a good safeguard against that. I think the criteria are appropriate, but they're inadequate. That's what I meant when I said "early on". I think the act generally gives the powers that are needed to make good decisions, but it doesn't give proper direction.

Ms. Linda Duncan: Another aspect of the bill that you point out is that it's basically vacuous on the procedures of the panel. For example, there's no power in the panel to scope the review. Do you agree that there needs to be some kind of bringing together of the agency planning process? Normally my experience before review panels is that they sit down with all the parties and they say, "Okay, how are we going to scope this review?" That helps to reduce time.

Dr. Meinhard Doelle: In fairness, we've never been clear about that. CEAA 1992 wasn't clear on that. I do think, however, that it's time to provide some clarity on this, and I think there's more uncertainty now as a result of the planning phase. The planning phase talks about asking for information, which is a good idea, but it raises certain questions. Is that a scoping decision, or is it just inviting some information? It is less clear now when the scoping decisions are made and what the role of the panel is. I think one of the most troubling effects of practice over time has been that the role of the panel in scoping has been reduced.

Ms. Linda Duncan: It looks like we're almost finished. I also like your ideas about the bill prescribing a baseline for the time for the review. The actual time would be assessed when you know what kind of a project you're dealing with. You added that there should be expertise and assistance in the budget for the agency to work as a secretariat for the panel.

Thank you.

● (1210)

Dr. Meinhard Doelle: Thank you.

The Chair: Before I move to the next questioner, I just want to welcome Elizabeth May and Madam Pauzé to the table. Thank you very much for joining us today.

Mr. Amos.

[*Translation*]

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair.

I want to thank all of the witnesses.

I'm very pleased that that we have representatives from Quebec organizations. That is very important, and I agree with Mr. Godin on that aspect.

I have a comment to make. I know it's very possible to take inspiration from other processes that are used in the country including the BAPE process. We have been working on environmental impact assessment for a long time. The BAPE model in Quebec has also been criticized.

I'm wondering if we should not draw some lessons from the shortcomings of the BAPE model. For instance, the BAPE mandates may be too restricted or too controlled by the administration. There is also a lack of power regarding follow-up. In fact, any response is political and is not based on what is in the law. These are very important issues we are facing currently.

Could we hear your comments please?

Ms. Karine Péloffy: Some of these limits were addressed in the modernization of the Quebec Environment Quality Act. I would draw a parallel with the preamble of Bill C-69 which indicates that the public will now be consulted on the content of the impact study guideline, at the very beginning of the process, which should be useful once the project is before the BAPE.

The appointment process has also been changed. The BAPE has more mechanisms at its disposal. There are now targeted consultations, although mediation is still possible. There are several public participation mechanisms that are possible.

Indeed, in Quebec, the decision remains political. Apparently, what justified the use of that model in the beginning was the idea that the Quebec nation is so small that a rigorous, credible report that had the public's trust could have enough influence and create sufficient political pressure that the proper decision would be made.

Canada's case is different and it is important that decisions be surrounded by a much stronger framework. We must not only consider certain factors or reports; the decisions really have to be based on that. We must also have the opportunity of appealing those decisions. I think that that is the great weakness of the Quebec system, which we would not like to see repeated here.

Mr. William Amos: Thank you for those comments.

I am going to include that point in my question for Mr. Doelle.

[*English*]

I would simply comment that I think what we have right now is a proposal for a series of five criteria for cabinet decision-making, so we have at least the makings of bound decision-making, or framed decision-making. The challenge is, how does that get tightened up appropriately so that the clearly political discretion is appropriately anchored?

Mr. Doelle, I wonder if you could comment on how those specific criteria that have been identified could be even more tightly constraining. When cabinet is faced with a challenging question—they have a report in their hands—they need clear guidance, and they also need to provide guidance to the courts when the judiciary are engaged in those matters that become litigious.

Dr. Meinhard Doelle: Thanks.

I assume you're referring to proposed section 63. Yes.

I actually think that, other than changing the language from "consideration" to "based on", proposed section 63 is fine. What is needed in addition to this, as with other discretionary decisions, is regulations to provide the detail. I don't think it would be appropriate to provide more of the detail in the statute. This is going to be a learning process. We're moving from a focus on biophysical to sustainability to broader consideration of effects. We're not going to get this perfect the first time around. I think it's critical to provide the further guidance in the regulations so that we can adjust with experience.

The other piece that's critical, though, for the final decision is that it's not just a matter of providing the direction. We need to track the relationship between the agency or panel report and the decision by the minister or cabinet. The way to do that is to make it clear that the assessment report itself is framed around the proposed section 63 factors and the conclusion about public interest. Then I think what we should add is what we had in CEAA in 1992, which was the requirement for the decision-maker to justify when they choose not to follow the recommendations, which they should be free to.

So it's clear recommendations, clear analysis in the report on proposed section 63, and public interest, and then a requirement to justify not following.

● (1215)

Mr. William Amos: Thank you for that. Would you have any recommendations in relation to how the federal court system will or will not be able to succeed in dealing with disputes that arise pursuant to cabinet decisions?

The Chair: Please be very quick.

Dr. Meinhard Doelle: My preference overall is to focus on the appeals tribunal. I don't have a magic answer to you on the cabinet issue, but I would focus on the appeals tribunal as a way of ensuring proper application of the guidance that is provided in the legislation.

The Chair: Thank you.

Mr. Fast.

Hon. Ed Fast (Abbotsford, CPC): Thank you very much.

Welcome to all of our guests.

I'm going to direct most of my questions to Mr. Carlton, but before I do, I wanted to ask Ms. Péloffy one question. Did I understand you to say that you want all projects to undergo an assessment review?

Ms. Karine Péloffy: I mean all projects once we have certain criteria to define them, not every single action going on in Canada. That's physically impossible. Yes, I think every single project that has the potential to have an impact on an area of federal jurisdiction should be assessed. I think Stewart Elgie said we shouldn't define federal jurisdiction in this act. I think I would agree. This act will need to be implemented—

Hon. Ed Fast: Okay. It's helpful.

Ms. Karine Péloffy: —according to the Constitution, and the jurisdiction arises when you make conditions for approval, not when you assess.

Hon. Ed Fast: That is a good preface to my question to Mr. Carlton.

Back in 2012, our previous Conservative government made a number of changes to the Navigable Waters Protection Act, and we made a distinction between minor and major projects to make sure that the minor projects weren't caught up in the incredible red tape that a full impact assessment would require.

You've now had a chance to review this Bill C-69. If the amendments that you have suggested here at the table today are not made, do you believe that Bill C-69 will make it more difficult for local projects to be approved?

Mr. Brock Carlton: As I said in my comments, the fact that we have this middle ground that captures undefined structure between minor and major works, if the act doesn't change, means there will be more municipal projects under review than if we did not review the definition of the minor works order.

Hon. Ed Fast: That means that costs to municipalities will increase because there are additional review and assessment burdens they would have to meet.

Mr. Brock Carlton: Potentially.

Hon. Ed Fast: Okay.

I also wanted to check one other statement you made. When you were talking about consultation and that municipalities be singled out in the legislation as being an order of government that needs to be consulted in a very significant way, I believe you also said that applicants who are having projects reviewed should also be compelled to comply with municipal bylaws.

Mr. Brock Carlton: Within the limits of the Constitution, yes.

Hon. Ed Fast: All right, I'm glad you qualified that, because it's very, very important.

What we see playing out in British Columbia today is that a number of municipalities are using their bylaw-making powers to thwart the duly approved Kinder Morgan pipeline project. Of course, the courts will determine whether in fact they've exceeded their jurisdiction, and I'm confident that they did.

It would be very hurtful to our ability to develop much-needed infrastructure and also resource projects across Canada if we were caught up in this game of federal approvals being thwarted by municipal governments using their bylaw-making power to do that.

● (1220)

Mr. Brock Carlton: I think we're fairly clear that the municipalities have a bylaw-making capacity and that that bylaw capacity needs to be respected within the constraints of the Constitution as it exists.

To your first point, we believe that municipalities need to be identified separate from a public consultation process generally, so that municipalities are considered orders of government that are involved in a unique way in the consultation mechanisms.

Hon. Ed Fast: Let me ask you a more direct question on that then.

Is Bill C-69 going to speed up the review process, or is it going to slow it down?

Mr. Brock Carlton: We're recommending some changes so that the timeliness of the review process is appropriate. As we say, in some instances we think the timelines need to be defined and adhered to so that we don't end up with endless delays.

When we look at the National Energy Board work and the pipelines, we think there's a project-by-project need for review of timelines, because of the complexity and the size of these projects.

Hon. Ed Fast: You've had a chance to review the discretionary powers given to the minister and cabinet to extend and suspend timelines within the impact assessment act.

Are you concerned about the uncertainty that will create?

Mr. Brock Carlton: We don't really have a position on that.

Hon. Ed Fast: You don't have a position. Okay.

Perhaps I could ask a question to Mr. Freberg or Ms. Risbud.

Thank you for your testimony.

You've generally been supportive of the legislation. You've suggested some amendments that would be required. You've had a chance to review the discretionary powers given to the minister and cabinet.

Are you satisfied that they are circumscribed enough to provide the kind of predictability that will continue to attract investment to Canada?

Mr. Mark Freberg (Director, Permitting and Closure, Teck Resources Limited): Yes, we support the idea that final decision-making should occur at the political level. There needs to be some criteria to set that out. I think we're generally supportive of the approach that's been taken in the act.

Hon. Ed Fast: Okay. Those are my questions.

The Chair: Okay, that's it. Thank you very much. That was good timing.

Mr. Fisher.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you, Madam Chair.

Thank you very much for being here, folks.

Brock, it's great to see you again. As you know, I was on the municipal council in Halifax for seven years, so I dealt with you quite a bit at FCM. Welcome. I look forward to seeing 2,000 of your closest friends in Halifax in just five weeks.

Mr. Brock Carlton: Three thousand of my closest friends.

Mr. Darren Fisher: It's 3,000. Well, that's because we have a new convention centre now.

Brock, because we have multiple levels of government, that poses unique challenges for impact assessment. Every order of government is only able to regulate the matters within its own jurisdiction. We know that co-operation is imperative. We have to have co-operation.

Notwithstanding your comments and the recommendations in your testimony about explicitly listing municipalities—and I do think there are changes to this legislation from 2012 that take municipalities and some of your recommendations into play—maybe you can expand a bit on what you notice in Bill C-69 that ensures co-operation and input from all levels of government, especially from the early planning phase.

Mr. Matt Gemmel (Acting Manager, Policy and Research, Federation of Canadian Municipalities): I'd be happy to take that question.

In our written submission, we acknowledged—and I can reiterate today—that the addition of the early planning phase provides a mechanism to include municipalities. Our concern, as Brock stated, is that it's not a requirement, so we're asking for that to be strengthened and codified in the statute.

We are supportive, as we indicate in our submission, that with the early planning phase, there will be more broad engagement. Also, by looking at a broader list of factors to consider, health and social impacts—concerns that municipalities have related to their responsibilities for public safety, public health—have an opportunity to be considered in more depth. We support those changes that do that, but, as we've said, we're asking for that to be taken a step further.

● (1225)

Mr. Darren Fisher: Notwithstanding Ms. Duncan's experiences with municipalities in one part of the country, the municipalities I've dealt with in my part of the country take the environment very seriously, so I think that they're going to be great partners in this.

Mr. DeMille, I represent Dartmouth—Cole Harbour. We have lots of waterways and lots of lakes. Dartmouth is called the “City of Lakes”. On impediments to navigation and enjoyment of all waterways, the complaints mechanism, is it simple enough? Is it rigorous enough? Are Canadians going to be able to know how they are able to lodge complaints when navigation is impeded?

Mr. Matt DeMille: One of the points that we are trying to make is that sometimes we get caught up in the legislation and the regulations, but the education and outreach is probably just as important, particularly in our experience with landowners and groups of landowners. Engage them and let them know that there is navigation legislation and what it means, what it means for them, and, if they are doing something on their lands that is going to impede navigation, what they need to do about it.

The second part of that would be what you're talking about with individuals or groups, with the public being able to come forward. In our experience, often the reason that complaints probably aren't heard as much as issues are happening is that people don't know that there is recourse.

Mr. Darren Fisher: They don't know that there is recourse. For those who do know that there's recourse, is there comfort in how our process would be for them to field that complaint?

If not, how could we strengthen that?

Mr. Matt DeMille: It's a good question. I don't think that I have a good answer right now for exactly how that would work and what it would be like. I think that, when we see the details of that and see how it works operationally, that's when you can really start to look at what needs to be done.

Mr. Darren Fisher: There has been such a change. You know, there was a time when every town had one newspaper, and everybody got their news from one place. I think it makes it more difficult on governments now to get that word out and ensure that Canadians have the ability, the simple process to allow them to voice their concerns.

How much time do I have left, Madam Chair?

The Chair: Just about a minute.

Mr. Darren Fisher: I will pass my minute on to Mr. Amos for a short time.

Mr. William Amos: Mr. Doelle, could you please opine further on how you would like to see a specialized tribunal structured?

Dr. Meinhard Doelle: The basic idea would be that you identify what decisions along the way can be appealed to that tribunal. The tribunal would be independent, and it would hear appeals from anyone who has an interest in the process, and it would be an expedited process. It would develop rules of procedure. I don't think it's complicated to set it up. The key issue is to ensure its independence and to identify what decisions can be appealed to that body.

The Chair: Okay. You're pretty much done. You have another round coming up.

Mr. Sopuck.

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

Mr. Carlton, I appreciate your comments on the Navigable Waters Protection Act. I have 36 municipalities in my constituency.

I have just a quick, little anecdote here. Spring pressure tore out a culvert. This ravine had water in it for perhaps a month a year. Well, the bureaucracy told the municipality that they had to put a bridge there because it was considered a navigable water, which is clearly ridiculous. What made it even more ridiculous was that the estimated cost of the bridge was $750,000, and the total budget of the municipality was $1 million. So we changed the stupid law that did stupid things, like I have just described. I will stand by the changes we made to the Navigable Waters Protection Act any day. It's all about the definition of what a navigable water is.

Also, on municipalities advocating for economic development and resource development, three of us here think that's a good thing, so keep up the good work in that regard.

I would like to direct my next questions to Teck Resources. Pierre Gratton, the head of the mining association, was before us a while ago, and he made the point that, in spite of the fact that commodity prices are increasing around the world, investment in mining and natural resource development in Canada is going down. It's fleeing this country.

You alluded to it, Ms. Risbud, but I think your point was far too mild. The Canadian Association of Petroleum Producers talked about how Canada is losing investments, and they see very little in Bill C-69 that will improve that. Chris Bloomer from the Canadian Energy Pipeline Association made the point that Canada has a toxic regulatory environment. He used the word “toxic” in his testimony, and he said that, if the job is to kill oil and gas production and pipelines, this bill will do a very good job. I noticed on your website.... I know you're not in the pipeline business, but you're in the steelmaking and coal business, so when pipelines are not built, your company and your employees are directly affected.

Can you comment on why investment in Canada is declining? It's in the billions of dollars, 56%, at a time when commodity prices around the world are increasing.

● (1230)

Ms. Sheila Risbud: I think there are many factors that affect competitiveness in Canada. Getting a robust regulatory process in place that offers greater certainty is one element. It is not the only element. I'm not here to talk about those other elements today. I'm here to talk about impact assessment, and we've made some recommendations on how we think that this process can be done right and clearly, in order to restore investor confidence in Canada and make Canada a global mining destination.

Mr. Robert Sopuck: Again, I'm surprised because the representatives of the various natural resource industry associations directly focused on the effect of this legislation on investment. I'm surprised at your reluctance to talk about that because that to me is the key issue. At least the three of us here believe in economic development, jobs, and livelihoods, and having lived in a resource town, when the forest company went away, I saw the human wreckage that's left behind. It's the same in mining communities when these communities close down. As well, the mining industry overall is the largest employer of indigenous people in Canada, and Mr. Gratton made that point very forcefully.

Australia seems to be eating our lunch in terms of the mining world. What does Australia do that's better than Canada in terms of attracting investments, because their investment in mining is skyrocketing, as I understand it?

Mr. Mark Freberg: Unfortunately, we can't comment specifically on Australia, I don't think, either of us. Our company is not active in Australia. I'm aware of some of the things they do. The process does appear to be faster, but I'm not really in a position to talk to you about the specifics of the practices of Australia versus what's proposed in this bill.

Mr. Robert Sopuck: Again, I have a legal opinion in front of me here and the legal opinion says, "Despite the Government of Canada's suggestion that the new legislation will improve the efficiency and timing of federal regulatory reviews, there is nothing in the new legislation that will necessarily achieve these results and many aspects of the legislation will likely have the opposite effect."

That's the opinion from Osler, a natural resource law firm.

Anyway, thank you very much.

The Chair: You're done?

Mr. Robert Sopuck: Yes.

The Chair: Mr. Rogers.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Thank you, Madam Chair, and thanks to the panellists for appearing today.

I have a question for Brock. With my municipal background, of course, I want to talk to you a little bit about municipalities. FCM is the umbrella organization for all municipal governments across the country, big and small, some pretty tiny, some large.

How does the Federation of Canadian Municipalities, overall, view this new proposed legislation, Bill C-69? In your opinion, does it improve or hinder the future work that municipalities will have to undertake under this proposed legislation?

Mr. Brock Carlton: We think it's a step in the right direction. There's work to be done, improvements to be made that we've identified in the comments today and in the submissions that we've made. I think I said there were nine submissions over the life of this consultation process.

Mr. Churence Rogers: In terms of land use planning, future land use planning, construction, or things around roads, bridges, and that kind of thing, does this bill go far enough to address the concerns of the municipal sector?

● (1235)

Mr. Brock Carlton: As I said in my comments, the question about the definition of "minor works" and "major works" in this, right now, kind of mushy middle, with the act applying to non-scheduled waters in a way that's not clearly defined is a challenge for the municipalities. As I said, we're looking for a clearer definition of the minor works order particularly, as a way of ensuring that there's an appropriate balance of environmental protection, navigable water protection, and the opportunity for small projects to go ahead in an appropriate way.

Mr. Churence Rogers: Madam Chair, Mr. Fast actually asked a couple of the questions I had for the municipal sector.

I have how much time?

The Chair: You have four minutes.

Mr. Churence Rogers: Ms. May, I know, is looking for some time so I'm going to graciously pass to her.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you. That's so kind of you. Thanks, Mr. Rogers.

One of the things that came up in this discussion about municipalities is an observation, and perhaps I'd ask Professor Doelle, or Karine, if you have any thoughts about this. We tend to focus on environmental assessment as though it's a bad thing that slows down good projects, but in my experience, the failure to do EA often leads to a tremendous waste of money and bad projects.

Since you're from Nova Scotia, Professor Doelle, do you recall that back in the early nineties the first proposed cleanup of the Sydney tar ponds was exempted from EA, and they spent $80 million on a set of piping to a location for a future incinerator that didn't work? I just wondered if you wanted to comment on the planning tool, because I see EA primarily as a planning tool, not a fast-track to yes or no. Bad projects waste money when they're not assessed, and I wonder if you have any comments on how significant the process is as a planning tool.

Dr. Meinhard Doelle: I think that's critical. As a general comment, I would say that the greatest risk I see to projects from any kind of assessment or regulatory process is the uncertainty that is associated with the loss of social licence, and environmental assessments are an opportunity to gain that social licence.

As I mentioned earlier, aquaculture is an example where we did a strategic assessment in Nova Scotia. We did the same with tidal energy. There was strong opposition to both ideas when we started. Through an effective engagement process with all interested parties, we came to common ground. We identified what the legitimate concerns were, and we found a way to get them addressed.

Ultimately, the end product is that good projects can go ahead, and there's more certainty as a result of that than you would have if you had a shorter, firm process, but then all kinds of uncertainty at the end of the process because of litigation and political opposition to the project. There are hundreds of examples of that.

Ms. Elizabeth May: I'll stay with you for just a minute, Professor Doelle.

Your brief says that "criteria are warranted"—and thank you for listing the many areas of the bill where there's too broad a discretion—and you suggested "triggering". This question of federal jurisdiction has come up before. I'll be quite up front about it. I'm a fan of federal land, federal money, and a law list so that you know what you're doing. I wonder if you have any comments on what kinds of triggers you think are appropriate.

Dr. Meinhard Doelle: I think there are many different ways to do that. Certainly, I think the old process worked, and I think we got to a point where it was fairly refined, but I think a project list can also work. The key issue is not whether you take a definition and a law list approach or whether you take a project list approach. The key question is, how do you decide what's on and what isn't?

I think we need better criteria, broad criteria in the statute, and then regulations that help ensure that good decisions are made about what should be on the list and whether you assess something that is on the list.

Ms. Elizabeth May: Can I squidge in one quick one for Karine?

The Chair: You have 30 seconds.

Ms. Elizabeth May: Your brief says that you don't see any role—they have no place—to have the nuclear regulators, the NEB, or the offshore regulators on panels. I wonder if you can explain why.

Ms. Karine Péloffy: As I said, it's that their jobs will be to regulate their projects. If they want to have a job, there need to be projects going forward, so that's pretty much an institutional bias in favour of approving projects. From the bad experience in Quebec, we think generalists are better placed to integrate the socio-economic and environmental considerations, rather than very narrow expertise.

If I can just piggyback, the role of municipalities is key. The Quebec law recognizes in its sustainable development principles the principle of subsidiarity, and it would be great if the federal law did the same.

● (1240)

The Chair: Thank you.

Ms. Duncan, we're going to give you six minutes, and we're going to add one more round to each side for six minutes. Then, I think, we are out of time.

Ms. Linda Duncan: I think I just have one question—although I could ask lots of them—for Professor Doelle.

I'd like you to speak a little more about the appeal tribunal. One thing I find really odd is that the government insisted on putting these three acts together in one bill, presumably because they would relate to each other. For part 2 for the CER, they have ADR and they have appeals but we don't have it in the first part of the bill. Is one option just to bring forward those same provisions, where ADR could work very well in the assessment process as well in some way?

I wonder if you could talk a bit, too, about the difference between appeals to the Federal Court on matters of law or fact in law, and to this appeals tribunal. Who would sit on that tribunal? Do we have a problem because it's not in the bill? Are they going to say that we need a royal recommendation?

Dr. Meinhard Doelle: I'll let others comment on the last point.

I think there are many different ways to do this, but the challenge with the Federal Court of Appeal is, number one, judicial deference. Some of the administrative law cases since Dunsmuir have not been very helpful in providing an appropriate role for the court of appeal. Also, it's a drawn-out, expensive process. It won't be timely. Unless you create a specialized subgroup of the court of appeal, they also won't necessarily have the expertise.

I think a separate body that has specialized expertise, is independent, and can quickly review decisions based on clearly established criteria in statute and regulations is a very efficient, effective, and fair way of improving the quality of decision-making. To me, that's the answer. Now, having said that, one of the things that some of us who saw these various acts come along were advocating for at the same time is the consideration of a specialized environmental court, similar to what Australia has.

There was a question earlier about what Australia is doing well. Australia and New Zealand, at various levels of government, have specialized courts—

Ms. Linda Duncan: And Bangladesh.

Dr. Meinhard Doelle: —and they can be much more effective, much more efficient, at making decisions.

Having said that, at this point I think a good step forward would be just a small-scale specialized tribunal that hears appeals on key decisions in the process.

Ms. Linda Duncan: Madame Pauzé, you can have the rest of my time.

[*Translation*]

Ms. Monique Pauzé (Repentigny, GPQ): Thank you very much, Ms. Duncan.

Thank you very much, Madam Chair.

I thank all of the witnesses for their very interesting testimony.

I would, of course, also like to thank Ms. Péloffy for having begun her presentation by reminding us that the need to act to support biodiversity has never been as urgent as it is now.

Mr. Doelle, you spoke about public interest and social licence. One of the representatives of the Federation of Canadian Municipalities also said that too often, what we want to protect is not taken into account.

I would like to ask Ms. Péloffy if her amendment to clause 63 of the bill fills in the gaps that have been so well defined.

Ms. Karine Péloffy: I would like to say that the amendment we propose aims to clarify the fact that the rights of the province and indigenous jurisdictions must be respected or at least taken into consideration when the federal government makes a decision. The point, more specifically, is to avoid situations where promoters who are governed by federal regulation refuse to respect provincial laws. There are several at this time in Quebec.

This would solve the problem related to compliance with municipal rights, to the extent that the province where they are located gives them the rights. Municipal law derives from the provinces. In Quebec, we recognize the principle of subsidiarity and the role of municipalities, but that principle could be much more present in the environmental area.

Ms. Monique Pauzé: You also spoke about Louis-Gilles Francoeur, an exceptional environmental journalist who also was a commissioner of the Bureau d'audiences publiques sur l'environnement. Among other things, you said that he suggested that we translate "sustainability" by "*durabilité*". There must be reasons for that but you did not have time to explain. I'd like to hear you do so.

● (1245)

Ms. Karine Péloffy: In fact, he suggested we use the word "*viabilité*" rather than "*durabilité*". I don't think I could do justice to his eloquence since he is after all a journalist and an author. In short, the French word "*durabilité*" is ugly, it doesn't sound right and it gives the impression that something will endure and develop in an inherent way, whereas the notion of viability suggests instead a concept of inherent limits, the limits of the ecosystems within which we must stay.

I have four paragraphs in hand that I could read to you. It is a term which, in my opinion, would advance the debate a great deal. Moreover, it would be a better translation of what was really meant by "sustainability", from the days of the Brundtland report, which goes back a long way.

Ms. Monique Pauzé: Thank you.

[*English*]

Ms. Linda Duncan: I'd like to ask one quick question.

The Chair: Quick. You have 30 seconds.

Ms. Linda Duncan: I know this is an ongoing debate and there's a Bloc bill to do with this, but surely we can't go beyond the constitutional rule that the federal government has paramountcy over the provincial. Maybe, in your proposed section 63...and this is why I'm saying that the factors throughout should be the same. I don't understand why they should be reduced down by the time you get to the public interest determination. They should take into consideration any matters raised, including by-products of the municipality.

The Chair: We're almost out of time, so be real quick.

Ms. Karine Péloffy: I'll be real quick.

One other thing having that amendment on respect for provincial law would do is stop the arguments about the frustration of purpose of federal law. There's a court of appeal. There's a court being heard in Quebec where basically the previous government, who shall not be named, created a legal vacuum. The courts are using this legal vacuum as a reason to say that this space is occupied by the federal government, and that displaces provincial law. This is extremely problematic for us, and not the state of the constitutional law. That's why we're at the court of appeal on it. That idea of frustration of purpose should be out. We should just look for objective conflicts of law.

The Chair: Thank you for that. I'm sorry to rush you. We're just in a time crunch now.

Mr. Fast.

Hon. Ed Fast: Thank you, Madam Chair.

My question is directed to you, Mr. Doelle. You mentioned that specialized expertise should be present in an appeal mechanism. You also said that Canada should be developing an environmental "core". I believe that's the term you used.

Dr. Meinhard Doelle: I said "court".

Hon. Ed Fast: You said "court".

I want to refer you to the testimony of Ms. Péloffy. She said she would prefer generalists making these decisions, at least in the first instance.

Do you agree with that assessment?

Dr. Meinhard Doelle: Yes.

I think my co-panellist was speaking about the panel decisions—

Hon. Ed Fast: That's right.

Dr. Meinhard Doelle: —whereas my comment was about the more specialized function of the tribunal to review the decisions that are being made. I think you need specialized legal expertise and EA expertise to determine whether the determination that is made is appropriate.

I wouldn't want the appeals tribunal to second-guess the decisions that are being made. That's not their job. I want the panel to make the determination about what the impacts are, and so on.

I would advocate for an appeals tribunal that has the expertise to determine whether the criteria and direction that are being given in the act and the regulations are being properly applied by the decision-makers. Beyond that, decision-makers should be free to exercise the discretion they've been given. That requires the broader, general expertise that my co-panellist, I think, was talking about.

Hon. Ed Fast: Okay.

Do you believe the expertise that's required in the appeal process is missing in Canada right now?

Dr. Meinhard Doelle: I don't think we're missing the expertise. We're just missing the institution to apply it.

Hon. Ed Fast: Okay.

Let me talk to you a little about the intersection of the science and the political reality, which is where the decision-makers are making political decisions. Even though they should be basing it on science, a political consideration always comes into play.

At the end of the day, are you still comfortable with having politicians make the final decision on any particular project?

Dr. Meinhard Doelle: I am.

I have no difficulty with that. I think what you want...and there are different ways to do this. We can also have an independent body that makes decisions, similar to what the offshore boards and the NEB, and so on, do. But I'm completely comfortable with the idea of having a political decision made, as long as we have the proper connection between the assessment process, the conclusions and recommendations, and the determination made, so that we're transparent about the outcome of the assessment and how that relates to the political decision that is being made.

● (1250)

Hon. Ed Fast: Obviously, this bill continues to keep the final decision—which is a political one at the cabinet level—a ministerial decision.

Do you believe there's an opportunity, perhaps, to move at least a preliminary political decision further forward in the process so that project applicants wouldn't have to expend a lot of money before being told they're sorry but politically they can't support this project?

Dr. Meinhard Doelle: I think the opportunity to say no is there. Would it be helpful to develop some criteria around how to apply that? I would go back to my original comments. I think whenever there is discretion, it's useful to provide direction about how that discretion is to be exercised. But I think we have to be more careful about the idea of saying yes without going through the process.

Hon. Ed Fast: Thank you.

Dr. Meinhard Doelle: I think it's fair to say the political support to approve this project isn't there, but I think we need the information to determine whether it's a good project. To get that information, we need to go through the process.

The Chair: Mr. Amos.

Mr. William Amos: Thank you, Madam Chair.

Mr. Carlton, your colleague Ray Orb has worked for many years on rural municipal issues in Saskatchewan and nationally. I have a great deal of respect for the leadership he's brought.

I know that small municipalities have complained in the past about the sheer burden of permit seeking, and that drove some of the reform made by the previous administration.

However, I'd like to get your sense of the appropriate approach to defining these middle-ground clashes of works between minor and major works in the context of navigable waters, because the context is a bit different from an impact assessment. In the context of navigation, we're dealing solely with federal regulatory power. There's no overlap here. If a project is subject to a different degree of scrutiny, there's not going to be some backup.

I'm interested to hear if you have a set of criteria that you think would be best used.

Mr. Matt Gemmel: I'd be happy to take that.

The short answer is no, we haven't developed a set of criteria, but in making the recommendation to review the minor works order, I think that's exactly what we intend to do. It's not for Brock and me to say. It's the engineers and the lawyers who are building and approving these projects who really can provide better advice on what would be appropriate to include under the minor works order.

I would just emphasize, and to tie into your earlier comments, why we think that's important is that, previous to 2009 and 2012, there were many water bodies that were on the schedule. That was reduced, and now there's a new process to add waters to the schedule. That's there and we support that. Now you have the application in the act for all navigable waters. It's a great expansion of the act. Works and undertakings on those waters don't have to receive the same authorization—we support that—but now there's a new process of notification, public consultation, and a dispute resolution mechanism that the minister is responsible for. That's a brand new process and it's going to take time for all of us, I think, consistent with the comments that Mr. Fisher made, for the public to understand what that process is, for the municipalities and their proponents to understand what that process is.

I think our three recommendations around the Navigation Protection Act are really to say let's pause here and recognize this broader application of the act, and have the experts, the engineers, municipalities, etc., be able to say there are some other types of works and activities that really would be more appropriately placed under minor work orders in this context for non-scheduled water bodies. Then ensure that the process, as Mr. Fisher was saying, for notifying the public is as clear as possible to follow and doesn't create new administrative burdens or complexities, especially for smaller communities. Finally, the timeline that's in place for that public consultation period and for the dispute resolution process should be adhered to and reviewed in the future if it's not appropriate.

● (1255)

Mr. William Amos: I understand. I appreciate that response.

I do hope that the FCM will be able to bring advice to the government on how best also to engage in a cumulative effects study, and also on managing flows. These are all issues.... I appreciate that sometimes it's the delays around permitting that frustrate municipalities, but I think municipalities also have a strong interest in ensuring that they're not affected by reduction in flows from projects. It kind of goes both ways. Municipalities have an interest in this being done well and water flows being protected.

I'd like to direct my last question to Mr. Doelle to expand on the issue of a specialized tribunal.

You've gone in some direction here on what kind of criteria, what kind of decisions they could be involved in. I wonder if you have advice on what kind of simple enabling provision might best be framed for legislation of this sort. Perhaps it could be developed later on in a regulation. What kinds of core aspects do you think would need to be brought into legislation so that the concept could be more fully consulted upon?

If you want to submit that in writing after, I'd be very interested to hear your or any other witness's thoughts on that.

Dr. Meinhard Doelle: The short answer is that I'd be happy to provide some thoughts on that in writing, if you'd like.

I don't think you need a whole lot in the act. I recognize that it's late in the game here to provide detail, but you do want to establish it in the act. I think you want to be clear in the legislation what decisions are subject to the oversight from this tribunal. If you could then provide clarity around who can appeal, that would be wonderful. I think a lot of the rest of it you could probably set out in regulations.

I'm happy to give that some further thought and make a submission on that.

Mr. William Amos: I'll give my last minute to Ms. May.

Ms. Elizabeth May: Thank you very much, Mr. Amos.

In your list of discretionary pieces that you found through the act, I think there are examples. I have a subjective question. Have you ever seen an act with this much discretion without guidance for a minister?

Dr. Meinhard Doelle: In my experience in environmental law, there's long been a tendency to be very empowering and discretionary. When I look, for example, at Nova Scotia's Environment Act, it's largely enabling legislation. I think part of the challenge is, with the early environmental laws, they had to be enabling. My basic point is that we have 25 years of experience, so it's time to direct that discretion better.

The Chair: Thank you.

Thank you very much to all of our panellists. We know you have busy lives, and we appreciate the time you've taken to come and share your testimony. As you can see, we were very focused on what you had to say and there were good questions that delved down into some of it.

I want to remind the committee before we end the meeting that we have the commissioner coming in on Tuesday. She'll be presenting for an hour. The second hour will be the department.

I want to make sure that members have on the panels who they want, so if members have some suggestions, please let the clerk and me know who they would be.

Ms. Linda Duncan: Do you mean based on her report?

The Chair: Yes. Tuesday's meeting is focused on her report, and then on Thursday we have the minister. She'll be here for an hour, and then we will have the department for an hour afterwards, for continued questioning. Again, if you want somebody in particular, you need to let the clerk and me know.

The deadline for amendments, as has been said several times, is April 30. As you know, we as committee members can also bring amendments on the floor as we go through clause-by-clause.

I'm just about to end the meeting. Is there anything else? All right. Thank you.

The meeting is adjourned.