HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Natural Resources

RNNR • NUMBER 125 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, January 31, 2019

Chair

Mr. James Maloney

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● (1535)

[*English*]

The Chair (Mr. James Maloney (Etobicoke—Lakeshore, Lib.)): Good afternoon, everybody. Welcome back. Thank you for joining us today.

This is the first day of a new study, which will be very interesting, on international best practices for engaging with indigenous communities regarding major energy projects.

We have four groups of witnesses today. I assume I don't need to explain the committee procedure. Is that correct? All right, I can omit that part of my speech.

Perhaps we can jump right in.

For committee members, we're going to hear from all four witness groups, one after the other, then we're going straight into questions. We're not going to break it out into first hour and second hour like we usually do. We will be done no later than 5:15 p.m., unless anybody strenuously objects to that and wants to go longer.

I suggest that we hear from our witnesses in the order in which they are listed on the agenda.

We will start with the Department of Indian Affairs and Northern Development.

The floor is yours.

Mr. Christopher Duschenes (Acting Assistant Deputy Minister, Department of Indigenous Services Canada, Department of Indian Affairs and Northern Development): Thank you very much.

The Chair: Sorry. Each group has up to 10 minutes, with the emphasis on “up to”.

[*Translation*]

Mr. Christopher Duschenes: Thank you very much, Mr. Chair.

My name is Christopher Duschenes. I am the acting Assistant Deputy Minister, Lands and Economic Development, at the departments of Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada.

I am pleased to be here this afternoon. Thank you for welcoming me to the unceded territory of the Algonquin People and for the opportunity to speak.

I would like to offer some perspectives from Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada on overall best practices for engaging with indigenous communities and how other countries turn to Canada as a leader in indigenous consultation.

My colleagues here at the table with me will then speak to you about how they carry out this engagement with respect to major energy projects.

[*English*]

Canada is taking a whole-of-government approach to co-development with indigenous partners to pursue meaningful two-way dialogue. We believe that collaboration is key to achieving enhanced outcomes for the benefit of indigenous communities and the country as a whole.

The Crown's relationship with indigenous communities does not begin when a proponent submits a project proposal. A respectful and meaningful dialogue should be established with the indigenous communities most affected by a potential project as early as possible. Early engagement is key to better outcomes overall for everyone.

There are both legal and moral obligations when it comes to working in partnership in co-development. This includes a mix of what must be done and what makes sense to be done to achieve a desired outcome in a respectful way that is based on joint principles of engagement. When the Crown is undertaking an activity that may adversely affect asserted or established aboriginal or treaty right, such as an energy project, the legal duty to consult and, where appropriate, accommodate indigenous groups comes into play. The duty stems from the honour of the Crown and is derived from section 35 of Canada's Constitution Act, 1982, which recognizes and affirms aboriginal and treaty rights.

Consultation requires good faith efforts and a commitment to meaningful process by both government and the indigenous groups whose rights may be adversely impacted. It must always include consideration of accommodation measures. The role of Crown-Indigenous Relations and Northern Affairs as well as the role of Indigenous Services Canada is complex in this context, and we work directly with indigenous groups while providing guidance as well as tools and advice to support agencies and other federal departments in fulfilling their obligations.

Government officials have to lead by example. The government has indicated that it will fulfill its commitments to implementing the UN Declaration on the Rights of Indigenous Peoples. I will point you particularly to article 28 in the context of economic rights and natural resources. Our engagement is guided by principles respecting the Government of Canada's relationship with indigenous people. I'm sure you've heard of those principles. There are 10 of those principles, and I would like to highlight only four of them at the moment.

The Government of Canada recognizes, in principle number four, that indigenous self-government is part of Canada's evolving system of co-operative federalism and distinct orders of government.

Principle number five is that treaties, agreements and other constructive arrangements between indigenous people and the Crown have been or are intended to be acts of reconciliation based on mutual recognition and respect.

Principle number six, meaningful engagement with indigenous people, aims to secure their free, prior and informed consent when Canada proposes to take actions that impact them and their rights on their lands, territories and resources.

Finally, of the 10 principles, one I would like to highlight is number eight, and it is very relevant to this study, I believe. Reconciliation and self-government require a renewed fiscal relationship developed in collaboration with indigenous nations that promotes a mutually supportive climate for economic partnership and resource development.

In these principles, the Government of Canada acknowledges its commitments to a renewed nation-to-nation, government-to-government and Inuit-Crown relationship that builds on and goes beyond the legal duty to consult. Therefore, while meeting the legal obligations to consult is a must, the Crown-indigenous relationship must move beyond that. Building relationships and trust is absolutely key.

● (1540)

We have found that in complex horizontal consultations there are strong benefits to building teams of officials from the various departments and agencies involved to ensure that information and issues are brought back to those involved and to build an integrated federal response to issues raised during the consultations.

The economic pathways partnership, EPP, brings departments together to make it easier for indigenous groups to access federal economic development programs and services. It is meant to complement the actions being taken by project proponents to support indigenous participation in economic opportunities associated with projects such as the Trans Mountain expansion and Line 3.

With this initiative, the Government of Canada is seeking to develop and deliver a whole-of-government approach to existing federal economic development programs to more effectively respond to the needs of indigenous communities, businesses and organizations. This initiative provides a single point of contact within government, making it easier for indigenous communities, organizations and businesses to be involved in consultation. Our partners have indicated strong support for the EPP approach so far.

We've also found that early engagement and collaboration with provinces, proponents and territories make a big difference. Proponents are key to realizing opportunities in the energy sector. Companies such as Suncor and TransCanada have been pioneers both in hiring indigenous employees and in creating wealth in indigenous communities.

Enhancing capacity also makes a big difference to the overall outcome. Negotiations can be costly and lengthy. It is therefore important to support indigenous groups with the costs associated with negotiations related to economic opportunities, whether those opportunities are identified through official consultations or not.

CIRNAC's and ISC's community opportunity readiness program, CORP, provides project-based funding for first nations and Inuit communities for a range of activities that support economic opportunities. The program can help finance the cash equity the indigenous partner needs to implement a green energy project, for example. Being able to buy shares in certain projects or for businesses to enable first nations to be involved in the management, training, work creation and access to revenue in their communities is supported by CORP.

As an example, the regional CORP budget has provided funding to the Tarquti Energy Corporation, which is a joint venture between the two main economic development organizations in Nunavik, in Arctic Quebec: la Fédération des coopératives du Nouveau-Québec, FCNQ, and Makivik Corporation, the land claim manager. This project aims to move 14 Inuit communities in Nunavik off diesel generators to renewable energy. Various federal departments are collaborating in this initiative alongside the Government of Quebec and Hydro-Québec.

The participant funding program is also worth mentioning. We supported other federal departments in providing participant funding to indigenous groups to enable them to participate in the government's review of environmental and regulatory processes.

[*Translation*]

To recap, building relationships and trust are key components of meaningful and successful engagement. Some of the ways one can do this are by engaging as early as possible in the decision-making process, by enhancing the capacity of indigenous groups to participate in consultations and negotiations, and by sharing benefits with the community.

[*English*]

I thank you again for the opportunity to speak today. I will now turn to my colleagues from Natural Resources Canada to give their perspective and some specific examples related to projects.

The Chair: That's perfect. Thank you.

Whoever is going to speak on behalf of the Department of Natural Resources, please go ahead.

● (1545)

Ms. Naina Sloan (Senior Executive Director, Indigenous Partnerships Office - West, Department of Natural Resources): Thank you very much, Mr. Chair.

My name is Naina Sloan. I'm the Senior Executive Director of the Indigenous Partnerships Office - West at Natural Resources Canada.

I would like to start by acknowledging the traditional unceded territory of the Algonquin people and by thanking you for this opportunity to address members of the committee as you begin your study on international best practices for engaging indigenous communities on major energy projects. It's timely and important work, and it's certainly top of mind for us every day at Natural Resources Canada, or NRCan, as we deliver on the government's commitment to advance reconciliation and renew Canada's relationship with indigenous peoples.

[*Translation*]

I hope to illustrates that with some specific examples, but I would first like to introduce my colleague Jeff Labonté, who is the Assistant Deputy Minister of the Major Projects Management Office at Natural Resources Canada.

[*English*]

Jeff is joining us today because of his expertise on major resource projects and how these projects directly affect indigenous communities.

Natural Resources Canada is responsible for forestry, mining, energy and land-related sciences and geospatial information. We have labs and regional offices spread across Canada staffed with scientists and a variety of program officials.

Work in our department involves collaboration with provincial and territorial partners, universities, industry and indigenous communities.

At NRCan it is paramount that this work includes recognizing indigenous peoples' unique connections to the land and resources and their unique perspectives, knowledge and interests in major natural resource projects. While major resource projects can be controversial, they can also be a place where best practices emerge and reconciliation is advanced.

Consider forestry, where we have, for example, a history of collaborating with indigenous peoples. This sector is an important generator of jobs, particularly in rural and remote parts of the country. We are innovating together in the forest sector to build a cleaner future. For example, with federal support a Tsay Keh Dene Nation-owned company is working to assess the feasibility of using biomass to generate heat and power on their land. Once completed, this project would be among the first of its kind to heat and power an indigenous community in British Columbia.

If we think about energy, for example, through the clean energy for rural and remote communities program, CERRC, we are collaborating with indigenous communities as they advance renewable energy and capacity-building projects to reduce their reliance on diesel. For example, CERRC is supporting an energy literacy skills and training program for youth from 22 remote first nations in Ontario aimed at connecting them to jobs related to the Watay transmission project.

Of course, there is mining, where indigenous peoples account for 12% of the labour force, making this the second-highest proportional employer of indigenous peoples among private sector employers in Canada.

Then there is the science and traditional knowledge that informs what we do. In all of this our natural resources and indigenous communities are closely connected.

NRCan continues to make progress in working with indigenous partners. We're guided in this by, of course, our Constitution, the adoption of the UN Declaration on the Rights of Indigenous Peoples, the calls to action from the Truth and Reconciliation Commission of Canada and evolving jurisprudence.

Natural Resources Canada's mandate priorities reinforce this as well, to ensure Canada's resource sector remains a source of jobs, prosperity and opportunity, and meets the core responsibility to help get our resources to market.

I will now focus on three ways in which we are engaging with indigenous peoples: first, by building strong relationships; second, finding better ways to advance our shared interests; and third, sharing information and knowledge as a way of increasing our capacity to work together.

On building relationships, early and ongoing engagement is an important foundation for our work with indigenous peoples. It allows us to find opportunities to collaborate, identify issues of interest or concern, and enable greater indigenous participation. For example, our department is leading the way on including indigenous leadership in federal, provincial and territorial fora such as the Energy and Mines Ministers' Conference and the Canadian Council of Forest Ministers.

Indigenous leadership is also included in international delegations, such as Canada's recent trade missions to Mexico and India.

We are ensuring indigenous voices are heard domestically in initiatives such as Generation Energy, which was the single-largest dialogue on energy in Canadian history.

We are also targeting investments through programs such as the indigenous forestry initiative, which supports indigenous-led economic development in the forestry sector.

We have piloted community-driven engagement efforts in British Columbia and Alberta to address indigenous priorities related to west coast energy infrastructure. This initiative provided the capacity for engagement between federal officials and indigenous communities on energy infrastructure projects. Our goal was to identify issues of concern to communities and take concrete actions to address indigenous interests related to jobs and economic growth, environmental action, fish habitat restoration, and engagement. Building relationships has been key to all of this work.

● (1550)

The second area we're focused on is finding better ways to advance shared interests. This means moving beyond early engagement to co-development. We have found that joint leadership and co-design offer a more certain path to identifying shared interests and enabling diverse parties to work together. Here are a couple of concrete examples: We are working with indigenous communities to create Impact Canada's off-diesel initiative, building healthier, greener and more energy-resilient communities. We also co-developed the indigenous advisory and monitoring committees, IAMCs, to oversee the Trans Mountain expansion and Line 3 projects.

As part of the IAMCs, we co-developed indigenous monitoring pilot projects, which enabled indigenous monitors to work alongside inspectors from federal regulators during site visits and inspections. The pilots resulted in frameworks that detail how federal regulators can incorporate indigenous perspectives and observations into their compliance verification activities.

This process of sharing perspectives and interests, planning together, testing new approaches, debriefing and then refining frameworks together has resulted in indigenous monitors and NEB inspectors, for example, being able to work together in ways that otherwise would not have been possible. In the words of our indigenous partners, these pilots are putting indigenous boots on the ground and protecting the lands and waters.

The third area I'll speak to is sharing information and knowledge. Here, for example, the geomapping for energy and minerals program bridges western science and indigenous traditional knowledge. It does this by including local indigenous peoples in field studies and in developing innovative approaches that support economic growth and job creation. By sharing perspectives, interests, knowledge and approaches, we've found new ways of working together.

Before I close, you may be interested to know that many of the actions and activities that I've just shared with you are of great interest to other jurisdictions.

For example, through the Canada-Mexico Partnership, the Mexican government requested support from experts within our department to inform their development of new legislation around mining and indigenous consultation.

Representatives of the Chilean government visited Ottawa in September 2018 to discuss indigenous consultations, in the context of major project reviews and engagement with indigenous peoples, and are now looking to establish a model based on Natural Resources Canada's approach.

[*Translation*]

Natural Resources Canada is changing how we work with indigenous peoples in all resource sectors by creating lasting relationships that respect and recognize their rights.

[*English*]

We are supporting early indigenous engagement, co-developing new ways of working together and strengthening our capacity to learn and act on our shared interests.

Finally, Natural Resources Canada is committed to continuing to deepen this engagement with indigenous communities on major resource projects.

I thank you for your attention and look forward to your questions.

The Chair: Thank you very much.

We'll now go to the NEB. The floor is yours.

Ms. Tracy Sletto (Executive Vice-President, Transparency and Strategic Engagement, National Energy Board): Good afternoon, Mr. Chair, and committee members.

[*Translation*]

I would like to begin by acknowledging that we are meeting on the unceded territory of the Algonquin Anishnaabeg People.

I would also like to thank the Standing Committee on Natural Resources for inviting us to participate in your study of international best practices for engaging with indigenous communities with respect to major energy projects.

My name is Tracy Sletto. I am the National Energy Board's Executive Vice-President for Transparency and Strategic Engagement. With me today is Dr. Robert Steedman, Chief Environment Officer.

[*English*]

The NEB welcomes the opportunity to contribute to this study. Indigenous engagement continues to be an important part of our Canadian public discourse about energy projects. It has long been important to the NEB, as Canada's life-cycle regulator of energy projects, and is one of our core areas of focus. The NEB's approach to indigenous engagement is guided by the feedback and input from indigenous communities and people with whom we work, by domestic best practices and by Canadian law. We continually welcome any and all opportunity to learn more about international best practices in this area.

The NEB works to build relationships with indigenous peoples based on mutual respect and recognition of indigenous people's rights. Our approach is intended to be co-operative and respectful, ensuring indigenous rights are respected. The NEB's indigenous engagement activities have been evolving over the years. In the past we have focused on supporting indigenous participation during the regulatory application and public hearing phase for projects. We've heard from many indigenous people that they have concerns about these processes and we've been actively working to improve them.

More recently, our commitment to an enhanced indigenous engagement continues throughout the operational life cycle of the energy projects we regulate. We know that engagement with indigenous groups throughout the full life cycle of a project leads to better regulatory outcomes for all Canadians, including enhanced safety and environmental protection outcomes.

I would like to highlight the NEB's indigenous engagement activities and approach, talk about some of the more innovative initiatives under way and then turn to the future of indigenous engagement at the NEB.

The NEB requires companies to engage early in their project planning with indigenous groups that are potentially impacted by a project and respond to those concerns in their project design. We know that early and informal resolution of issues is preferable to more formal adjudication processes, and we are actively working to help facilitate and support early issue identification and resolution.

Once a company applies to us for approval to build a project, we reach out to indigenous groups that may be impacted and offer to meet to talk about the role of the NEB and share information about our hearing processes. More recently, we have started to explore ways to work with indigenous people and stakeholders to help design the hearing process. For example, this month the NEB convened a workshop of indigenous peoples, NEB staff and the proponent of a major energy project to identify hearing process design options that best meet the needs of affected indigenous communities. From this early engagement phase right through to a decision or a recommendation report, the NEB seeks to ensure that issues and concerns to indigenous communities are heard and reflected in the decision-making process.

The NEB strives to make its regulatory processes as accessible as possible to indigenous peoples. We have dedicated staff who work specifically with indigenous communities to ensure that they are informed and aware of these processes and that we can incorporate indigenous knowledge in our decision-making. In addition, indigenous peoples have an oral tradition of sharing information and knowledge from generation to generation and we understand that this information cannot always be shared adequately in writing as part of the hearing process. The NEB actively offers indigenous hearing participants the opportunity to provide oral traditional evidence, or OTE.

The NEB attempts to accommodate indigenous participants, including with respect to timing and location for OTE. For example, OTE has been heard at sacred sites, in gathering centres, as part of traditional feasts and in special locations within indigenous communities. We have also included cultural protocols of indigenous intervenors such as pipe or smudge ceremonies and traditional drumming, and feeding the fire ceremonies in our northern hearings and meetings.

The NEB has a long history of providing comprehensive reasons for its decisions and recommendations. Indigenous communities have told us that they want to see their specific issues and concerns reflected in our reports, with clear references as to how those concerns were addressed or mitigated. We've responded by changing how we write our reports, targeting a broader public audience and including information specific to the issues raised by each affected indigenous community. Summary tables of the general and specific concerns and issues raised by indigenous peoples are now included.

● (1555)

The NEB is encouraged by the success of the indigenous advisory and monitoring committees for the Trans Mountain and Line 3 pipelines. In the months that the IAMCs have been in place, trained independent indigenous monitors have accompanied NEB inspection officers on the majority of our 35 inspections for those projects. We have included indigenous monitors in our evaluation and oversight of companies' emergency management exercises, as well as in work to co-develop policies, procedures, processes and training for joint monitoring activities.

Both NEB staff and indigenous monitors have agreed that this has been a very valuable learning experience. Working collaboratively with indigenous monitors and incorporating indigenous perspectives significantly assist the NEB in our efforts to prevent harm and support the country's commitment to reconciliation with indigenous peoples. The NEB will continue to actively support the IAMCs and integrate indigenous perspectives in our work, including emergency management.

The NEB and IAMCs share a common goal of environmental protection, safety, information transparency and taking meaningful steps to address the concerns of local communities. Co-creating opportunities to advance these goals is giving rise to real benefits and driving a shift in how the NEB integrates indigenous knowledge into our regulatory programs.

The NEB is building our engagement capacity to work effectively with indigenous communities and advance reconciliation, informed and guided by the Truth and Reconciliation Commission's calls to action. The NEB is working to provide all staff with indigenous cultural competency training and specifically targeting more in-depth indigenous awareness training for staff who work directly with indigenous peoples. We are committed to increasing indigenous employment and improving retention by focusing on increasing the number of indigenous employees working in key areas.

The NEB will also create policies, guidance, processes and governance structures that support board-wide engagement with indigenous peoples. We will continue to rely on the advice and support of indigenous people, including NEB indigenous staff, to improve our hiring and retention strategies. We will better incorporate the advice and support of indigenous elders and seek to increase indigenous representation in our leadership and governance structures.

Within our energy information mandate, the NEB is incorporating information about indigenous communities as part of the NEB's interactive pipeline map, which is available to the public on our website. Last fall, the map was updated to include information about indigenous reserves and treaties, which will enable people to more clearly see where pipelines intersect with indigenous communities and lands.

A key element of our success depends on our ability to integrate indigenous engagement best practices into how we work every day. To that end, we have established engagement as one of our four core responsibilities in our departmental results framework. We have set performance outcomes and expectations for ourselves as a regulator and are committed to continually improving that performance. Much of that engagement performance will be measured by the feedback from indigenous people, and we report our progress and our issues openly and transparently.

We are making changes to our management system to allow us to more effectively work with indigenous peoples. This includes ensuring that we have ways to incorporate and reflect indigenous perspectives in our work and by having ways to share and reflect the feedback we receive in improvement to our processes, policies and regulatory framework.

To conclude, the NEB is committed to creating opportunities for engagement between the NEB and indigenous peoples and stakeholders that enable people to listen to each other, ask questions, learn, share perspectives, collaborate and inform improvement to our regulatory work. We know that indigenous participation strengthens the NEB's life-cycle oversight by providing additional perspectives on the impact of construction and the operation of pipelines and related infrastructure on indigenous communities, the environment, as well as historical and cultural resources. We are continually seeking ways to connect, receive feedback and exchange information with indigenous peoples and are committed to trying new things, to work closely with indigenous people, to innovate, to adapt and adopt best practices. Ideally, we will be part of a made in Canada effort to design and demonstrate these best practices.

Our work in indigenous engagement is an ongoing, long-term effort and we know we are not there yet. We are continually learning and we will keep working hard to advance reconciliation with indigenous peoples within the NEB mandate by investing in meaningful and enduring relationships with indigenous peoples from coast to coast to coast.

Thank you, Mr. Chair, for hearing from us today.

● (1600)

The Chair: Thank you very much.

Mr. Hubbard, you're last but not least.

Mr. Terence Hubbard (Vice-President, Operations, Canadian Environmental Assessment Agency): Good afternoon.

[*Translation*]

My name is Terence Hubbard and I am the Vice-President of Operations at the Canadian Environmental Assessment Agency.

I appreciate the opportunity to speak with you today about the agency's experience in consulting with indigenous groups.

In my presentation, I will highlight our enhanced approach to consultation under Bill C-69, and I will describe recent innovative approaches we are undertaking with indigenous communities.

[*English*]

As the committee is aware, the federal environmental assessment process has been undergoing legislative review since 2016 when the Minister of Environment and Climate Change established an expert panel to review the federal environmental assessment process. Since January 2016, and until such time that a new legislative framework is in place, the federal government has been guided by an interim approach that includes principles and plans for major projects to inform decision-making. The interim principles include a commitment that decisions will be based on science, traditional knowledge of indigenous peoples and other relevant evidence, and that indigenous peoples will be meaningfully consulted and, where appropriate, accommodated where potential impacts on rights may occur.

ln February 2018, the government proposed legislation in Bill C-69 that would repeal the current environmental assessment legislation and introduce a new impact assessment process for major projects. The process for developing this bill was based on extensive consultations, including with indigenous peoples, industry, provinces and territories, for more than 14 months. At present, external discussions are ongoing regarding the development of regulations contemplated under the proposed impact assessment act and policies that will support the agency's new roles and responsibilities.

Our assessment process will also help us achieve the objectives underpinning the principles respecting the Government of Canada's relationship with indigenous peoples by exploring approaches and mechanisms aimed at ensuring that indigenous peoples and their governments have a role in public decision-making as part of Canada's constitutional framework, and to ensure that indigenous rights, interests and aspirations are recognized in our decision-making.

ln order to realize these broad legal requirements and government commitments, the Government of Canada integrates consultations into the assessment process to the greatest extent possible in order to facilitate opportunities for exchange of indigenous knowledge and technical information. The courts in Canada have reinforced this integrated approach as an appropriate mechanism for carrying out the duty to consult. Over time, however, the courts have also indicated areas for improvement. The Government of Canada is constantly working to ensure that court decisions and the views of indigenous groups regarding the assessment process and proposed projects are taken into account as part of our decision-making.

lt's expected that this integration model will continue to be the model under the proposed impact assessment act, with modifications to the process to better include indigenous groups and reflect their interests. Under the proposed act, there would be early and regular consultation with indigenous peoples, and indigenous traditional knowledge would be mandatory to consider, along with other sources of science and evidence to inform decision-making.

The proposed act also strives to work towards securing consent by developing a more collaborative and inclusive process based on mutual respect and dialogue. Specific examples of how we have reflected this in the proposed impact assessment act include the requirement to consider potential impacts on the rights of indigenous peoples on matters such as whether to designate a project for assessment, as well as the determination of whether adverse impacts of a designated project are in the public interest. The proposed legislation would also create new space for indigenous jurisdictions to exercise powers under the act related to the conduct of impact assessments.

As practitioners in consultation, the agency has learned that a cornerstone of our best practice in consulting with indigenous groups to date is being collaborative, in addition to respecting indigenous-led processes and knowledge. One recent example is the proposed Blackwater gold project in B.C., where the agency is consulting with 10 indigenous groups including the Lhoosk'uz Dené Nation, the Ulkatcho First Nation and Carrier Sekani First Nation.

The agency is working collaboratively with these nations towards consensus on conclusions with respect to the project's impacts on indigenous rights. This approach is supported in part by a memorandum of understanding that the agency signed in 2016 with the Lhoosk'uz Dené Nation, Ulkatcho First Nation and the Province of B.C.

● (1605)

The MOU includes a commitment that parties will collaboratively draft sections of the environmental assessment relating to effects on these nations and will work towards consensus on measures to address the potential effects of the project on the rights of the signatory indigenous groups. Integrating consultation into the environmental assessment process also provides for the consideration of impacts on rights, which can directly influence decision-making with respect to whether a project should be approved.

For example, in December 2017, an environmental assessment of the proposed Ajax mine in B.C. found that the project would likely have significant adverse environmental effects and cumulative effects on physical and cultural heritage and the current use of lands and resources for traditional purposes by the Stk'emlupsemc te Secwepemc Nation. Throughout the environmental assessment, the agency engaged in deep consultation with the SSN through face-to-face meetings and exchanges of information. The agency took into consideration indigenous knowledge and their own assessment of the project's potential impacts on their rights, which were reflected in the environmental assessment report. In June 2018, the Governor in Council found that these effects were not justified in the circumstances and therefore this specific project, as proposed, could not proceed.

I have one final example: The agency recently co-developed a methodology with the Mikisew Cree First Nation to assess the potential impacts on aboriginal and treaty rights of a proposed oil sands mine in Alberta. The collaborative approach in the development of this methodology is based on the combination of expertise within the agency in the domain of environmental assessment methodology and the expertise of the Mikisew in culture and rights studies. The application of this methodology not only provides for fulsome consideration of rights and culture in a manner that reflects the Mikisew's perspective, but its early application in the process has led to a more informed discussion regarding potential accommodation measures.

The methodology is currently being contemplated in the context of guidance related to the proposed act. The agency and the Mikisew Cree will be co-presenting this methodology on an international stage this coming April at the International Association for Impact Assessment in Brisbane, Australia. The co-development of this methodology demonstrates how effective partnerships with indigenous peoples can lead to a better-informed process. It also demonstrates how to set the foundation for positive changes in our relationships with indigenous peoples.

As we go forward, there will no doubt be further opportunities to develop even more collaborative and inclusive approaches with indigenous groups.

Thank you for your time today. We look forward to your questions.

● (1610)

The Chair: Thank you very much to all of our witnesses.

Mr. Hehr, you are going to start us off.

Hon. Kent Hehr (Calgary Centre, Lib.): Thank you, Mr. Chair, and thank you to all of our guests here this afternoon.

This is going to be a very informative study, a very in-depth study with competing principles and viewpoints as to how to build a better system, one that allows for indigenous knowledge to be incorporated into our major energy projects. The study will also include varying viewpoints on how we balance rights and the environment and how all those issues are interplayed at various stages along the way.

Nevertheless, the question I have to start with is for Ms. Sletto.

You indicated that the NEB is changing their ways on early intervention and allowing that process to happen up front. Can you tell me how this differs from the current lay of the land and what you guys will be looking at? What will be incorporated into this measure?

Ms. Tracy Sletto: Certainly. Thank you for that question.

I will start by acknowledging that our efforts to improve our early engagement with both indigenous peoples and stakeholders in our adjudication processes have been under way for some time. We've really been intensifying those efforts in recent months and years. We're focused very much on issues resolution as an outcome. We are specifically looking at proactive measures to ensure that participants in all of our processes have the information they need to participate effectively. We also want to ensure they are able to work earlier in an informal issues resolution context rather than through the more formal mechanisms that come with a formal adjudication process.

I will turn to my colleague, Dr. Steedman. He is definitely able to speak to some specifics about what we do in early engagement. There are quite a few innovations we would love to highlight.

Dr. Robert Steedman (Chief Environment Officer, National Energy Board): Thank you very much.

I would note that we've learned, in about the last 10 years since the National Energy Board started having oral traditional evidence sessions with elders and knowledge keepers, often early in our hearings, and accommodating a variety of cultural protocols and mechanisms, to be more respectful. Tracy mentioned some of those in her opening statement. A really key thing for us—and this is looking to the future—is that it's extremely important to develop those relationships in advance. With a federally regulated energy infrastructure thousands of kilometres across the country, and this infrastructure lasting for decades—50 to 60 years in some cases—this is the time frame in which relationships must be developed and maintained. We see that a lot of the early efforts have been focused on projects. That is how we have been doing things. We're learning quickly, but in fact I think the indigenous interest is more of a territorial interest, because many indigenous territories may have five or six lines, federally regulated pipelines, just as one example, so they're interested in those lines and in the safe operation and in a meaningful engagement with the Crown and the federal regulator on the same scale. It goes on for decades. We're at the front end of that and we're investing in it. Those two things together will get us in a better place.

Hon. Kent Hehr: Thank you for that answer.

My question is for Mr. Duschenes.

You went into an excellent synopsis of the duty to consult, what it means and what it stems from, the treaties initially signed. It's enshrined in our Canadian Charter of Rights and Freedoms, through section 35, and has made its way through the courts in many forms and fashions. I wonder if your organization, your department, has changed its approach or what it's learned from the Tsleil-Waututh Nation et al. v. Canada decision. Has that augmented your knowledge and changed your approach? What does that decision mean with regard to the way we go forward on projects, in your view?

Mr. Christopher Duschenes: I can't speak directly to the Tsleil-Waututh decision but, what is very clear.... I have been with the department now for almost 22 years, and worked for the Government of the Northwest Territories before that as well. What has been very interesting in the evolution of duty to consult and accommodate is that now, although I mentioned it in my remarks, it is much more about partnership. There is indeed, yes, a legal duty to consult and accommodate, but we have found over the years, as a result of court decisions through which the bar keeps being raised, but also as a result of good partnership and trying to get to yes, or trying to get to a mutually satisfactory answer, that really working early on in partnership and being guided by the legal duty to consult and accommodate is important, but really going beyond that to develop partnerships early on that are based on trying to attain benefits for all is really what's guiding us.

The last thing I'll say is that certainly as different court cases are settled, we are continuously as a department—and this is more on the Crown-indigenous relations side, and not the indigenous services side—challenged through our consultation accommodation unit to be updating our guidance and providing a real-time approach and guidance to other departments and agencies about what the best way to proceed is. We have certainly found that sticking to the letter of the law with a fairly broad interpretation has not necessarily gotten us to the outcomes we were seeking.

● (1615)

Hon. Kent Hehr: That brings me to Ms. Sloan.

You brought up the concept of shared interests. I believe Mr. Duschenes sort of came with that too. Are you getting close to being able to evaluate these best practices to come up with economic interests and models that work with indigenous partnerships on energy projects, sharing best practices and the like? Have you been able to work out a system that looks at how to develop those partnerships right at the outset to see how we can mutually have benefit for both an energy project or the like with indigenous partners?

Ms. Naina Sloan: Thank you very much for that question.

I think, absolutely, that we have been doing our best to work differently in the space and to evolve our approaches. In particular, I would highlight that some of the work we are doing with the indigenous advisory and monitoring committees, as well as through the economic pathways partnership program, which Mr. Duschenes also mentioned, are two examples.

With respect to the focus on shared interests, again what we find is that doing that as early as possible in processes through early engagement prior to, for example, regulatory processes even beginning or getting under way is the best way to build the relationships that allow us to explore those shared interests and to determine what those interests are, how to respond to them and how to build those partnerships from an economic perspective.

The Chair: Thank you. I'm sorry, but I'm going to have to stop you there.

Hon. Kent Hehr: Okay, sorry.

The Chair: No, it's okay.

Mr. Genuis.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you, Mr. Chair.

It was a surprise for me to hear one of the witnesses say that Bill C-69 was the product of consultation with indigenous people. I think it's fairly well known that the National Coalition of Chiefs, the Indian Resource Council, the Eagle Spirit Chiefs Council and a majority of Treaty 7 first nations all opposed Bill C-69. In fact, the more than 30 first nations that compose the Eagle Spirit Chiefs Council say they're going to take the government to court over Bill C-69 because it would make it "impossible to complete a project" and because it would remove the standing test that could lead to foreign interests overriding the interests of aboriginal title holders.

I'll share a few other quotes with you.

Roy Fox, chief of the Blood Tribe First Nation and former CEO of the Indian Resource Council, says Bill C-69 will have a "devastating impact on our ability to support our community members".

Steve Buffalo, the president and CEO of the Indian Resource Council, says:

> Indigenous communities are on the verge of a major economic breakthrough, one that finally allows Indigenous people to share in Canada's economic prosperity. Bill C-69 will stop this progress in its tracks.

I have some comments, which maybe I will share later on, from indigenous leaders who are deeply critical of some of these other government decisions shutting down progress in terms of energy projects.

The general question I want to ask is this. Of course all of us here agree about the importance of a duty to consult and to engage when a project is going forward. Is there a duty to consult indigenous communities when those communities have put time, resources and money into a project going forward and then a government policy stops that progress from being put forward? Is there a duty to consult if indigenous communities are trying to move forward the development of a project and the government puts in place policies to stop that progress? Is there a duty to consult in that case?

The question is for whoever is interested in responding.

● (1620)

Mr. Terence Hubbard: I think, as Chris noted in his comments earlier on, the Crown's duty to consult is triggered any time it's taking a decision that could impact on an aboriginal community's rights and interests.

Mr. Garnett Genuis: Okay. So any time the government makes a decision to introduce policy that stops projects from going forward, in your view, Mr. Hubbard, that would trigger a duty to consult as well.

Mr. Terence Hubbard: Again, it would link back specifically to potential impacts on rights and interests of that indigenous community.

Mr. Garnett Genuis: Okay. It seems pretty obvious, then, that policies like the offshore drilling moratorium in the Arctic, like Bill C-69, like Bill C-48, like the tanker exclusion zone, would have a significant impact on indigenous communities and on their ability to provide for their own communities through economic development, which they may well have planned, and in many cases did plan, in advance of the introduction of those policies.

Let me drill down on a few of those examples.

What consultation happened by the government before the imposition of the tanker exclusion zone? I'm talking about before Bill C-48 was actually proposed, when the Prime Minister first came into office and introduced the tanker exclusion zone.

Mr. Jeff Labonté (Assistant Deputy Minister, Major Projects Management Office, Department of Natural Resources): Maybe I can help with that one.

I think that's the responsibility of the Department of Transport. I don't know if anybody here is an expert in transport, but we certainly don't have anything to offer on that particular question.

Mr. Garnett Genuis: If I understand correctly, none of your departments, including the department of indigenous affairs, were involved in any consultations with respect to the imposition of the tanker exclusion zone. Is that correct?

Mr. Christopher Duschenes: Not that I'm aware of.

Again, since we weren't the lead department on that particular legislation, Indigenous Services or Crown–Indigenous Relations, would not then be responsible for consultations.

Mr. Garnett Genuis: I would presume that you are involved or consulted though, in some sense, on any consultations the government is doing with indigenous people, because the relationship between government and indigenous people is your primary responsibility. In a broad sense, I assume you would be aware of consultations that took place in that context.

Mr. Christopher Duschenes: Absolutely. Our consultation accommodation unit, as part of the treaties and aboriginal government sector in Crown–Indigenous Relations, plays a critical role in providing guidance and advice on an ongoing basis on a wide range of consultations undertaken.

Mr. Garnett Genuis: You are involved when there are consultations that have gone on. However, you weren't involved if consultations happened on the tanker exclusion zone, and my suspicion is that nothing happened, despite the duty to consult, as we've discussed. It sounds like that's the case, given that your department is not aware of any having taken place.

Can I ask if any of your departments are aware of or were involved in any consultations around the imposition of a moratorium on offshore drilling in the Arctic?

For those listening to the audio, no one is responding, so I'm assuming that's a no.

Is anybody aware of any consultations that took place before the Prime Minister imposed the offshore drilling moratorium in the Arctic?

I just identified two major government policies in which there would appear to very much be a duty to consult. What we're hearing is that no consultation with indigenous people happened in either of those cases.

We're here to talk about best practices for indigenous consultation. How should we explain the fact that Canada failed, or appears to have failed, to do any consultation before imposing these significant policies with critical impacts on indigenous communities? Does anybody have any thoughts on how that error could have happened?

● (1625)

Mr. Terence Hubbard: As Mr. Labonté noted earlier, none of the officials on this panel had responsibility for either of those two policy developments. You would need to specifically speak to those responsible to get a picture and understanding of the consultations that may have taken place as part of those—

Mr. Garnett Genuis: Thank you, but we do have—

The Chair: I'm going to have to stop you there, Mr. Genuis.

Mr. Garnett Genuis: Okay. I think it's pretty clear. Thank you.

Mr. Richard Cannings (South Okanagan—West Kootenay, NDP): Thank you all for being here.

I want to cover off two topics here.

We've heard comments about the evolution of our engagement and consultation processes, as we learn more about what consultation is. We've had a series of court cases over the years that have been very instructive: Delgamuukw, Gitga'at First Nation, Haida Nation, and Tsleil-Waututh Nation recently.

One of the principles of consultation is accommodation. It's consultation and accommodation. I think it was the Haida Nation that said the common thread on the Crown's part must be the intention of substantially addressing aboriginal concerns. This is what caused the Federal Court of Appeal to quash the Trans Mountain pipeline approvals. I'm not as familiar with the northern gateway approvals, but that happened.

I'm wondering how this learning process goes on in your departments if we don't learn and how this committee and the House of Commons can be more reassured that you'll get it right next time. We continually have these court cases that say the government did it incorrectly. Sometimes it's kind of obvious. A lot of it is due to the fact that both this government and the previous government have tried to hurry things along.

Perhaps it is mostly NRCan and NEB that could comment on that.

Mr. Jeff Labonté: Could you possibly ask a question?

Mr. Richard Cannings: It seems to me that government doesn't learn, that government hasn't been learning about what proper consultation and engagement is. We continually get these situations where we have projects of great national concern and everybody seems to know that consultation must include accommodation, yet it doesn't happen. It's kind of a theoretical question, but I'm just.... I know it's human nature, maybe, but I was....

Mr. Nick Whalen (St. John's East, Lib.): You've made a bunch of statements, but haven't asked a question.

Mr. Richard Cannings: The question is, when a new court case comes before you, a new decision, how does that affect your policy about how you'll do things the next time, and why hasn't it worked until now?

Mr. Jeff Labonté: I think the tone of what you're suggesting is there's an evolution. Jurisprudence in anything grows over time and each experience builds on the next. If we look at the jurisprudence and the experience we've had, our policy framework and the advancement of how the government works with, engages with and consults with indigenous communities comes from our Constitution. The jurisprudence in that is roughly 40 years' worth of experience.

The recent decision that you reference builds on the one before it, which builds on the one before that, and each of them tries to reach the point at which it advances the government's ability and the ability of indigenous communities to share interest and move ahead. In the recent decision, the court was pretty clear that the government had more work to do, that it failed to execute in one part of the consultation process, but it then also provided some guidance on what components of that process were sufficient and what happened to move forward. There are other court cases where the government's decision and its consultation were upheld, so it's an evolving landscape.

One of the challenges to answer the question in the way that would have meaning is that each case has a lot of circumstances specific to that community, that particular indigenous group that are very context-, geographic- and time-based, and it's very difficult to say one size fits all.

One of the findings in the court decision was that we owed a duty to each community that was unique and distinct. In some of the projects that have dozens or hundreds of communities, that increases the necessary level of engagement and consultation because we owe dozens and dozens of communities a unique conversation focused on the issues of that community in the context of a bigger consultation. I'm trying to make the point that some projects involve half a dozen communities and others involve 40 to 50.

● (1630)

The Chair: You're at four and a half minutes.

Mr. Richard Cannings: I'll ask it quickly; this is a very tiny question. It's about Bill C-69.

This is more for the NEB and how that would change how you work with indigenous consultation. Specifically, the expert panel was mentioned and how that informed things, and yet, the expert panel mentions 50 times that UNDRIP should be mentioned specifically in Bill C-69 and it was not. Perhaps comment on that and whether....

Mr. Jeff Labonté: If it's okay, I'll invite my colleague from CEAA, the agency that has the main element. We can add to that.

Mr. Richard Cannings: Sure.

Mr. Terence Hubbard: Thank you.

The proposed framework, Bill C-69, integrates the government's commitments to reconciliation. As part of the specifics of what will change, the proposed legislation would require earlier and more regular engagement and partnership with indigenous communities and a deeper level of collaboration and respect for indigenous rights and jurisdiction throughout the process.

For example, the new framework specifically requires consideration of impacts on rights and indigenous culture. It requires indigenous engagement and partnership early and throughout the process, mandatory consideration of indigenous knowledge and provides new provisions that would allow more collaborative arrangements with indigenous groups to exercise powers and duties under the framework.

It also specifically advances the government's commitment to aim to secure the free, prior and informed consent throughout the impact assessment process, based on principles of mutual respect and dialogue.

The Chair: Thank you. I'm going to have to stop you there.

Mr. Whalen.

Mr. Nick Whalen: Thank you very much, Mr. Chair.

There are some really interesting topics and I'm glad I'm getting the floor halfway through rather than at the beginning.

Mr. Genuis brought forward an interesting argument regarding a couple of areas of government policy where the Government of Canada provided a prohibition on doing something. He laid out an argument that indigenous consultation may in fact require that the government consult before it lays out a prohibition or states a position not to do something.

I'll ask each of you in order and maybe run this across the table. In your departmental policy, do you take the position that the duty to consult indigenous groups also applies where the government is going to take a position to not act?

It would seem to me that if an indigenous group wanted to act, a respectful dialogue would require that they also obtain the consent of the Government of Canada in order to act in a way that would be against Government of Canada policy. It has to be a two-way street, but perhaps not.

I'd love the perspective of each of you on whether the duty to consult requires that the Government of Canada relinquish its own veto against project development.

Mr. Hubbard.

Mr. Terence Hubbard: My understanding of the framework and how we apply it always links back to looking at the specific rights of individual communities and the potential impacts of a decision we're making in regard to those communities. It's always a rights-based approach we take in looking at potential adverse impacts on those communities.

● (1635)

Mr. Nick Whalen: Mr. Duschenes.

Mr. Christopher Duschenes: I won't speak to this from the perspective of specific projects, but certainly our approach on developing new policy, changing existing policy, developing new legislation or changing existing legislation always has a critical component of working in partnership. Whether it is changing to move forward to do something we didn't do or stopping doing something that we currently do, whether by policy or program design, yes, there is always an involvement process.

I can give you some micro examples where we have specific economic development policy or programs in place. If the terms and conditions or the scope of those programs are going to change—and currently we are revamping the procurement strategy for aboriginal businesses—yes, there is very much an involvement process, whether it moves us forward or is removing things from the existing policy.

Mr. Nick Whalen: Therefore, with respect to moratoria, where the government is stating the policy that it will not engage in a particular activity, it's your opinion that this also requires the consent of indigenous people.

Mr. Christopher Duschenes: Again, I can speak to what we do and the guidance we provide through the consultation and accommodation unit and our policy development process. If we are not the leads of a particular file, whether it's offshore—

Mr. Nick Whalen: I'll ask—

Mr. Christopher Duschenes: We provide guidance.

Mr. Nick Whalen: Does everyone else agree? It seems I'm seeing a lot of nods, so I don't need to waste time going down the table.

Mr. Labonté.

Mr. Jeff Labonté: As my colleague Terry Hubbard said, the duty is triggered when there's a contemplating conduct that potentially impacts a right. The degree to which a choice did not do something or a policy objective directly impacts the right is the conversation point.

You'd probably want the Department of Justice to come and really speak to you about that issue in terms of how that situates itself, but from the perspective of projects, if there's a project that links to something, clearly we play that out.

When it comes to other aspects, I can't really comment except to say that we work in the world of projects, and when there's the potential, that's what moves us forward and the framework is pretty clear on what we have to do.

Mr. Nick Whalen: That's great. I'm at the end of my questions on that topic.

With respect to Mr. Canning's questions about whether the court has provided enough guidance and whether each of your departments has a clear indication of what it needs to do to move forward on TMX, did the court decision provide each of your departments with enough information so that you feel you can move forward, do consultations in the appropriate way and reach a conclusion on whether the project can or can't proceed, whether accommodation can or can't be made and whether your decision will be upheld or continue to be appealed?

Mr. Hubbard, is your department implicated?

Mr. Terence Hubbard: We're not implicated in that specific project.

Mr. Nick Whalen: Okay.

Mr. Jeff Labonté: This one is ours—

Mr. Nick Whalen: Perfect.

Mr. Jeff Labonté: —and my colleagues in the NEB might be able to add to it.

The first thing about the court decision that I think is really important to the member's question, Mr. Chair, is that within it there were multiple issues being adjudicated at the same time. I think there were 20-some different issues being adjudicated. In some cases, the court found on behalf of the applicants. In other cases, it upheld actions and particular issues. It's important to see that distinction in it.

Where it kind of commented on the duty to consult and consultation, it was pretty clear that the Crown had not in the third phase of the process. There are four phases to consultation in the lingo that we have in terms of the way we manage it from a policy framework. The third phase of exercising and discussing the conditions that the regulator put in place and looking to see whether there are appropriate accommodations was where we needed to follow through with a two-way dialogue. We needed to demonstrate better that what was said to the Crown and how the Crown worked with indigenous groups was heard, that it was considered, that it actually had a reflective change in the conduct that we were about to do, or that it was not deemed to have met the standard of reasonability that needed to be followed through on.

There's a particular point there that was super clear, that we now have a better set of parameters around—that's super obvious around —what we'll say is two-way dialogue. It's often called that.

Mr. Nick Whalen: Ms. Sletto, do you feel that the NEB also has the same...?

Mr. Jeff Labonté: In this particular case, I think it's important to point out that phase three belongs to the department and not the regulator in this case.

Mr. Nick Whalen: Okay.

Well, then, maybe I fell into the same trap there.

Mr. Jeff Labonté: The board's process kind of ends at phase two. The Crown, as departments, picks up establishing whether the Crown's duty has been met because we, as departmental officials, work with ministers and then would make the recommendations to the government as to whether the duty has been met. We build on the record, and we build on the work that the regulator has and has experienced through its process in which indigenous peoples participate. Then we follow through. That's how that process works.

● (1640)

Mr. Nick Whalen: Okay.

Mr. Jeff Labonté: There were several other significant parts of the decision. I'm sure that at some point in this discussion they may come out. We can elaborate further if time permits, Mr. Chair, when it's appropriate.

The Chair: Thanks, Mr. Whalen.

Ms. Wagantall, you have five minutes.

Mrs. Cathay Wagantall (Yorkton—Melville, CPC): Thank you, Chair.

First of all, I'll reiterate some facts in regard to Canada's regulatory standards. Studies were done by WorleyParsons in 2014 and 2016, so under the previous government and going into the new government that's sitting right now. It confirms that Canada maintains the highest level of environmental stringency in compliance and the highest level of regulatory transparency and life-cycle analysis in the world, and, notably, thorough consultation and collaboration with indigenous people. The exhaustive benchmarking of major oil and gas jurisdictions explicitly noted the incorporation of traditional knowledge as one of Canada's world-leading strengths in indigenous consultation on energy.

I'd like to quote from the report. It said that Canada was among the countries “consistently leading in a comparison of existing environmental policies, laws and regulatory systems.” That was in 2014.

In 2016, the report states:

> The results of the current review re-emphasized that Canada's EA Processes are among the best in the world. Canada have [sic] state of the art guidelines for consultation, TK, and accumulative effects assessment. Canadian practitioners are among the leaders in the areas of indigenous involvement, and social and health impact assessment.

Now, I can read that, but I can also affirm it, being from Saskatchewan and having good relationships with first nations businesses and individuals who have been working within the mining field in Saskatchewan for a long time through Cameco up north, and BHP Billiton, with the new mine in Jansen, where first nations have considerable responsibilities. As well there is Mosaic, which is located in my hometown area. There have been amazing relationships built over time. As well, there have been no issues at all.

My first experience as a member of Parliament dealing with someone coming to my office to talk to me about their area was with a gentleman who was part of the Engineers Canada. It was right at the beginning of 2016. I was there to learn. I had to listen. I had a lot to learn. One of the first things he said was, “We do an amazing job of what we do.” I know that all of these very conscientious organizations like Cameco, BHP and Mosaic have hired individuals whose entire focus is to ensure, before they even begin a project, that they are in line as much as possible with what they know will be the expectations as they go forward to announce that project they are hoping to build.

I have to say that when I hear this and then when I hear quite honestly the rhetoric around how inefficiently and inappropriately our NEB has functioned, I find that quite disconcerting.

I would like a comment from you in regard to how effectively the NEB has worked on behalf of Canadians and the acknowledgement and recognition around the world for how we do things in this country.

Ms. Tracy Sletto: That's mine. Thank you very much for the observation and the comment.

I would agree there are a number of best practices that we see in the sector in Canada that have been recognized internationally in terms of the approaches specifically around indigenous engagement and engagement with communities on major projects.

Certainly we would find in the sector where we work and within our regulatory scope that there are a number of best practices that industry is definitely adopting in the context of their advance work. Certainly we hold companies accountable for advance work before a project would even be brought to our attention, again, with an aim around early issue identification and resolution. Also during the process and specifically from our regulatory perspective, we're continuing that dialogue not just with a project at an adjudication phase in a formal process, but also now we're focusing very much on continuing that relationship over the life cycle of a project. We see that as a best practice we need to do more of and we continue to invest in that.

I will also speak briefly about something that is critical in the context of what best practices look like and will continue to look like for Canada. We absolutely as a regulator take direction from the courts very seriously. When we have very specific instruction around how to improve, we take that very seriously.

Another really important source for us, and I think this is critical in Canada, is our indigenous communities themselves, the people with whom we work, whom we seek the advice of and the support of, to inform ourselves about how to do better and how to continually improve those processes. We hear very clearly that early engagement, life-cycle engagement and ongoing relationships are critical.

To your point around staff, it's to ensure that the organization itself as a regulator and other departments and certainly industry have the capacity to be able to engage in those relationships meaningfully, to have indigenous staff to ensure that the cultural competency is invested in, and that our capacity to operate is enhanced.

This is a long way of saying I appreciate the point that you're making around best practices. It's something that we're very interested in continuing to grow and demonstrate.

● (1645)

The Chair: Thank you. I have to stop you there.

Mr. Whalen.

Mr. Nick Whalen: Thank you very much, Mr. Chair.

Just as an observation, I think it might be nice to get some officials from Justice and Transport to come and talk to us about how we can learn from the west coast tanker ban and the Arctic moratorium to see how we can do better. If better is required, then at least we'll learn it now as a part of this study. I just put out that idea.

The Chair: We have a flexible witness list. That can be accommodated.

Mr. Garnett Genuis: Better is always possible.

The Chair: You're catching on.

Mr. Nick Whalen: I know that when the approval or endorsement of UNDRIP came before the House, some parties voted in favour of it and one didn't.

I'm wondering whether or not it's appropriate to directly reference the names of treaties in government legislation, when really the role of the legislation is to implement the government policy and it's up to someone else in the future to decide. Canada's a dualist country when it comes to treaty implementation. It's not like the Americans.

I'm wondering what your view is on the legislative framework. Do you feel that the legislation complies with UNDRIP? Were the government to withdraw from UNDRIP for whatever reason, would that have any negative impact on the way the application of the law would work? Would we still be compliant with UNDRIP, notwithstanding the fact that we may have withdrawn?

Mr. Terence Hubbard: From my perspective, the proposed legislative framework embeds many of the principles of UNDRIP within the framework. Many of those principles are already in place.

We talked about best practices earlier, and they have been adopted in the evolution and fulfilment of our constitutional obligations around the duty to consult. I think those principles are well embedded into our consultation activities in our proposed framework.

The Chair: Mr. Duschenes, do you want to add to that?

Mr. Christopher Duschenes: I can perhaps just comment on that very quickly.

You may be aware that through Budget Implementation Act, 2018, No. 2, the First Nations Land Management Act, which was amended through that piece of legislation, actually does make reference directly to UNDRIP, the first piece of legislation.

What is critical from that is that we very much take our cues from our partners—as we've been saying all along—listening to communities and organizations that we work with. In this case, the Lands Advisory Board and others involved in the First Nations Land Management Act have been very clear for many years that if there was an opportunity to include reference in amendments to the First Nations Land Management Act, that's what they would be supporting. That's what we follow.

Mr. Nick Whalen: That's interesting.

Following up on that, would or could it be appropriate to make some references to UNDRIP within Bill C-69, or are your departments making those suggestions?

Mr. Jeff Labonté: I think the most important point is the bill has already passed the House.

Mr. Nick Whalen: It's before the Senate now.

Mr. Jeff Labonté: It's before the Senate, so I think senators will potentially look at that particular issue in it.

Is it in the preamble, Terry? Is there reference to UNDRIP in the preamble of the bill that situates it as an overarching context?

I can't remember, but I think it might have been a House amendment, in fact.

● (1650)

Mr. Terence Hubbard: You're right. I believe it's there as well.

Mr. Nick Whalen: Mr. Hehr, did you want to ask something?

Hon. Kent Hehr: My question is for Mr. Hubbard.

The process brought in by the Conservatives in 2012 led to how the courts threw out northern gateway, as well as said that we need to do better on the Trans Mountain duty to consult. Both of the phases followed the process laid out by the former government.

Has Bill C-69, in your view, taken into account what was set up in that process? Do we reflect on how the new process is better and will lead to a better duty to consult going forward?

Mr. Terence Hubbard: In developing the proposed legislative framework, we took into consideration jurisprudence, court decisions, lessons learned, best practices, as well as everything that we heard from indigenous communities as part of the extensive engagement and consultations. The proposed framework really does integrate and build in those best practices that have been developed and adopted over time.

Mr. Nick Whalen: Earlier, Mr. Duschenes, I think you said the courts keep raising the bar. I'm wondering if you want to provide some examples of how or whether the courts are refining the scope of consultation and whether or not what's really happening here is the bureaucracy is finally wrapping its head around what needs to be done and the courts are sort of iteratively leading us to a place where we might arrive at a proper consultation framework.

The Chair: I'm going to have to interrupt you. Can you give really quick examples?

Mr. Christopher Duschenes: No, in fact, I can't give quick examples.

I think this gets back to Jeff's point that it would be a good idea to have the Department of Justice, who would be very well placed to run you through a historic way that various court cases have indeed changed the parameters and the expectations related to consultation and accommodation.

The Chair: Thank you.

Mr. Genuis.

Mr. Garnett Genuis: Thank you.

I want to support Mr. Whalen's suggestion. I'm not a regular member of this committee. I might try to come back and hear that testimony from Justice and Transport, because it sounds, from what we've heard, that there is a duty to consult that is invoked when the government imposes policies that block development, yet there were steps taken to block that development without any consultation. That's something I think would certainly concern a lot of Canadians and deserves further consideration.

I have a couple of other points where I want to pick up a bit of a different direction.

Mr. Duschenes, you spoke about some of the work your department is doing around procurement and working with aboriginal businesses. I've been told that our numbers are quite low in terms of procurement from aboriginal business; in fact, they are significantly lower than many private sector proponents that work with indigenous communities.

Could you speak to the present reality of procurement involving aboriginal business, of the goals the government has and what the strategy is to achieve those goals?

Mr. Christopher Duschenes: I can touch on that fairly superficially.

There has been a commitment from the government to completely rethink the procurement strategy for aboriginal businesses which was developed in 1996, essentially where the framework for PSAB and targets how it's monitored, etc., have not evolved significantly. I would say, yes, you're right that perhaps we could achieve higher levels in terms of the number of contracts that go to indigenous businesses, both the volume and the dollar value.

I had the privilege of working very closely last week with the Australians, who are the world leaders in indigenous procurement, and listening to them about how they have gone about enshrining indigenous procurement in the way their federal procurement process works.

There are certainly a lot of lessons to be learned from there in the next.... I don't know what the time frame exactly is, but a new approach to PSAB will be put forward based on the work we have been doing with organizations like the CCAB, the Canadian Council for Aboriginal Business, with the National Aboriginal Capital Corporations Association and with the National Indigenous Economic Development Board. There is an ongoing process now of engagement online and in person to see how those improvements can be made.

It is being done because we certainly recognize and take your point that reaching higher is possible. The indigenous business scene has exploded in the last decade, so a policy framework from 1996 has to be updated as well.

● (1655)

Mr. Garnett Genuis: I appreciate the points about the policy framework. Do you have those numbers in front of you in terms of where we are now and what proportion of government procurement is indigenous business? If you don't, that's fine, but maybe that would be an interesting piece.

Mr. Christopher Duschenes: Those certainly can be provided, because those are monitored.

Mr. Garnett Genuis: Yes.

Mr. Christopher Duschenes: We work with PSPC closely.

Mr. Garnett Genuis: I think the committee would be interested in those numbers as well as in any projected goals you have, because reviewing the framework is important, but also looking at specific numbers is ultimately a way to test the effectiveness of that framework.

In a different vein, there was some discussion about the mechanisms of consultation and the value of having large teams of public servants.

Let me preface this by saying that before being elected, I worked in the public opinion research business. We did some consultation work in association with real estate development projects. It always surprised me that the emphasis was on qualitative instead of quantitative assessment.

It seems to me that, if you're trying to see what indigenous people in a particular community think, there would be various tools you could use to poll the community and to, in an ongoing way, test their sentiments. Of course, relationships are important but primarily consultation is an exercise in finding out what people think and incorporating their opinions into the decisions you make.

It seems to me there would be methods of doing that, especially with evolving technology around polling, that might be more effective and more cost effective than relying solely on the meetings approach.

I would be curious about anybody's thoughts on that.

Mr. Jeff Labonté: It's a good question. Maybe the difference to work through is whether it's opinion or whether it's something that provides us a qualitative/quantitative sense of whether it's actually a potential rights impact, whether we're talking about a project. There are active parts of the consultation phase that can involve community workshops, town halls, things that engage with broader members of the community, but for the most part those things are designed with the indigenous groups that are engaged with and consulted. We do use similar things in terms of trying to reach, but it's community dependent.

The Chair: Thank you.

Mr. Tan.

Mr. Geng Tan (Don Valley North, Lib.): Thank you, Mr. Chair.

I want to give my first minute to my colleague Mr. Whalen to finish his question.

Mr. Nick Whalen: Thank you, Mr. Tan.

With respect, I'm somewhat concerned, on the question of oral traditional evidence, that it's something that's being done but it's not really being internalized and used. I'm wondering if someone could provide me some example of how the oral traditional evidence is curated; how conflicts and contradictions are resolved between conflicting pieces of oral traditional evidence; how, over time and across different groups, if different groups come with conflicting advice on their position for this traditional knowledge, those conflicts and those different positions are resolved

I know it's a large question, so maybe you can direct us to some policy documents that guide officials within your organizations on how to engage in those three activities: curation, conflict resolution and testing against other evidence.

I guess I will start with you, Mr. Labonté.

Mr. Jeff Labonté: I think, on this particular front, my colleagues at the NEB who do the regulatory and hear the evidence are best-served to answer your question. Terry might be able to join in from the environmental assessment point of view.

Dr. Robert Steedman: Thank you. It's an excellent question.

I'll note initially that this sort of evidence will generally be heard by an independent panel of the board, in the context of a specific project. That's a very key element of how the National Energy Board would handle that.

I'll note also that in our context we're talking about linear infrastructure that may cover thousands of kilometres and hundreds of territories, traditional territories and first nations. I think you're quite right that the story a panel may hear from elders and knowledge keepers will reflect that diversity and complexity.

The other thing that I think may be helpful here is that the National Energy Board, as the life-cycle regulator, has the power to compel or ensure that a project is designed in a way that protects the interests that the panel is hearing about and understanding. In one sense that's often first nations and indigenous interest in the land and water, things like traditional medicines and plants. A lot of those are handled through fairly well-understood routing and mitigation kinds of concerns. Proponents, particularly because the proponents are out there early doing this kind of thing—they're on the ground, often walking the route with elders and getting that knowledge first-hand —some of that doesn't even come to the regulator because it's proprietary at the level of a nation. A lot of those things, where it can be done, are sorted out through routing and avoidance. It's inevitable that—

● (1700)

Mr. Nick Whalen: I'm sorry. I feel bad for my friend Mr. Tan. If you have documents you can table before the committee so we can see how those decisions are made, it would be great.

Mr. Hubbard, do you have similar documents you can table?

Mr. Terence Hubbard: We have experience in collecting. We're in the process of developing additional policy guidance, in collaboration with indigenous communities, on collection of indigenous traditional knowledge and protection of that information. I'm not sure if we have anything specific in terms of a document we can table at this point.

Mr. Geng Tan: Thank you.

This question is for Ms. Sletto with the NEB.

I believe it is important to make a distinction between community engagement and indigenous community engagement. The indigenous community engagement needs a higher degree of empathy or special consideration because of how the indigenous communities were treated in the past, or because some of those communities are self-governed. Are there any lessons learned or suggestions that you can offer to us in that regard?

Ms. Tracy Sletto: I want to make sure I understand. You're asking in terms of our approach, in terms of the difference in our approach when working with indigenous communities versus that with other stakeholders.

Mr. Geng Tan: Yes, the differences between dealing with indigenous communities and other communities.

Ms. Tracy Sletto: Thank you for that question.

There are two elements I might highlight. One is with respect to any specific adjudication process, which is just a portion of our work. As a regulator, we undertake a number of regulatory activities throughout the life cycle of a project but specifically in an adjudication context, in a hearing, working with participants, we want to ensure that the issues that all participants have are raised and addressed and adjudicated in the context of a formal review—specifically indigenous communities and the constitutional rights associated with working with indigenous communities, including consultation. Our considerations around consultation are critical and do drive an approach that ensures we are quite deliberate in the context of working with communities and respecting rights, ensuring that we have that reconciliation lens in mind and that we are guided by the policy framework of the Government of Canada in that regard.

I'll also mention that our approach to engaging with both indigenous communities and non-indigenous communities throughout our entire life cycle oversight is guided by those same principles, so very much driven in the case of indigenous communities with a reconciliation lens in mind, very much driven by a commitment to engaging in meaningful relationships. That would be true with other stakeholders, but it has a context specifically in terms of indigenous engagement, and I say that for us it's very much guiding our approach on our entire core responsibility. You'll see that in our performance reporting and certainly our strategic planning.

The Chair: Thank you.

Unfortunately, I'm going to have to stop you there.

Mr. Cannings, you're last up.

Mr. Richard Cannings: Thanks again.

One of the central themes of this study is international best practices for indigenous engagement. We've heard from Ms. Wagantall about how highly regarded Canada is in that around the world. I think Mr. Duschenes or Mr. Hubbard—I forget—mentioned about government procurement practices in Australia. I'm just wondering if any of you could mention things that you have learned from other countries, whether it's Australia, New Zealand, Scandinavian countries or Greenland, that you've brought back and said we should be doing this in Canada.

Mr. Jeff Labonté: I can speak to one part.

Natural Resources Canada has a bilateral relationship with Mexico, and on an annual basis we exchange with each other. The regulators similarly exchange with their Mexican counterparts, and then we do so with the indigenous affairs group. We've brought Canadian indigenous peoples to Mexico and have had shared experiences with their indigenous colleagues in Mexico. We've brought best practice Canadian companies. In fact, I think we brought a mining company from Saskatchewan and one of the Canadian pipeline companies to talk about their practices in Canada. Similarly, the Mexican teams were up in Canada doing the same thing.

Most of the exchanges have been just sharing each other's experiences. That helps, in some cases, affirm that we have similar issues and common objectives. In other cases it highlights that things are quite different in Mexico from how they are in Canada. For example, one of the things that struck me when we met with Mexico, which would have been about a year ago, was that in many instances the proponents working in Mexico with indigenous groups have safety issues related to communities, and the fact that many of the projects happen in remote areas where the degree to which the rule of law and things that we would take for granted in Canada are an issue which the proponents and indigenous communities actually work together on trying to resolve.

It's not dissimilar to, I think, the way we find that projects are often in remote parts of the country, and we have to take into account that perhaps all the normal things we see in urban life or in other parts of the country may not be present. We learned a little bit from each other in that particular experience.

Perhaps I'll pause there.

● (1705)

Mr. Christopher Duschenes: I'll be quick.

It's hard for Canadians to boast that we are better at some things than others. There are two things.

In spending 10 days in Australia very recently specifically on indigenous issues and working very closely with the Australian government, it was very clear that besides procurement, in issues related to consultation engagement, land rights, comprehensive claims specifically and self-government agreements—pretty much the gamut besides procurement—Canada was far ahead. We spent more time sharing our information with them than vice versa.

As well, it may be of interest to this committee that we're working on a project with the OECD and five other countries. So far, the focus has been on Canada, Australia and Sweden looking at indigenous communities' ability to benefit from regional economic development opportunities. It's a comparative analysis. It's the first intercountry study that the OECD has done specifically on indigenous issues; they have done bilateral work on indigenous issues. The report should come out probably not in time for you, but within the next 12 to 14 months.

It has been fascinating working with the other countries and looking at the drafts, which show, again, that on many of the issues related to economic development and the bigger land rights issues, we are significantly ahead.

The Chair: Thanks, Mr. Cannings.

Thank you to all our witnesses. That was proof that this is going to be a very interesting study that we've embarked on. You got us off on the right foot and sent us down some paths that we maybe hadn't thought of. Thank you for that too.

On that note, we'll see everybody on Tuesday.

The meeting is adjourned.