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Mr. James Maloney

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• (1540)

[English]

The Chair (Mr. James Maloney (Etobicoke—Lakeshore, Lib.)): Thank you all for joining us today. It's been a while since we've been together. I can tell just by everybody's demeanour just how much they miss being here. We're glad to be back together. I'd like to thank our two witnesses in the first hour.

From Woodland Cree First Nation, we have Chief Isaac Laboucan-Avirom.

From Amnesty International, we have Craig Benjamin.

Thank you both for joining us today. The format is that each of you will be given up to 10 minutes to deliver your opening remarks, and then we'll open the table to questions from around the table.

I will open the floor to either one of you, whoever wants to go first.

Chief Isaac Laboucan-Avirom (Chief, Woodland Cree First Nation): *Tansi. Kinana'skomitina'wa'w.*

It's a pleasure and an honour to be here. My name is Chief Isaac Ausinis Laboucan-Avirom. I'm from the Woodland Cree First Nation. I was grand chief of the Treaty No. 8 territory not too long ago, grand chief of my tribal council, but today I'm here just as chief of my first nation. I'd like to say that I know that this is a good effort to do, but this is not in consultation with other first nations. I don't want to be accountable....

As for Woodland Cree, we are surrounded by natural resource activity, from oil and gas development to forestry to green energy projects like Site C. There are always negative and positive impacts when doing resource development, but we're in a day and age in which there has to be more accountability to first nations communities and to the environment. We have to make sure we're making good decisions so that we can have sustainability and so that generations of our children can grow in a country that is not fully polluted and that still has healthy jobs for people to get to.

You have to forgive me; I'm supposed to be on spring break, and my executive assistant is on spring break, so I'll be jumping back and forth in some of my notes here.

Companies should be encouraged to develop some understanding of the legal and constitutional rights of first nations. In Canada, first nations were not defeated in war. We have treaties. These treaty rights are constitutionally protected. Many international companies

do not understand this, and they come from different perspectives. From my understanding of this, sometimes it gets very difficult when we are dealing with this mindset. We have to re-educate them and tell them who we are and why we have our rights. A best practice would include an educational component for international companies to understand the landscape in Canada so that first nations don't have to consistently recreate this work.

You know, one of the biggest struggles for first nations is that we are always looking for better and better human capacity. As I look around this room, I know that some of the best mindsets in Canada are here. As a first nations chief, sometimes I'm obligated to work with some of the best on the other side of the table, where I'm going against people such.... They used to be Shell, CNRL...where they have some of the best minds money can buy.

In order to have meaningful consultation, first nations need to have the capacity to understand the technical aspects of the projects, communicate information to community members, and gather information from community members and knowledge-keepers. This takes much more funding than is currently offered by Canada. The nation spends a lot of time and energy building the case for capacity funding and negotiating capacity funding, etc. The time and energy would be better spent actually engaging in the consultation and the search for accommodation measures. Best practices should include a requirement to provide adequate funding, which could be expressed as a percentage of the amount the company expects to spend on environmental, geotechnical and other types of studies.

I have the example of Site C. I'll be jumping back and forth between oil and gas and other resource departments. I had lawyers come to my nation one time, saying that they wanted to build Site C. My nation does not have monies to spend on lawyers. We'd rather build houses and put money into education and the elders. One of the questions I asked the Site C legal team was around what environmental impacts would be caused. They said, oh, there won't be much. Well, they'd be extinguishing two species of fish in the reservoir, the Arctic grayling and the goldeye. It doesn't take a university individual to understand that this has a direct impact on other ecological systems. Those are feeder fish for bigger fish, etc. Woodland Cree at that time did not have a million dollars to spend in the courts, so it's something.... And then also through the consultation process, that the borders between Alberta and B.C.... said that the consultation process was basically a no-go zone.

● (1545)

Indigenous knowledge and input from the community should be incorporated into all aspects of the environment and social investigations into the projects. A best practice would include encouraging companies to look at the inclusion of indigenous communities through project development, design and implementation. Ultimately, the goal of any best practice would be to actually arrive at a meaningful mitigation or accommodation of impacts. When I think of meaningful consultation, that means I know exactly what the other side of the table, the proponent producer, is talking about.

When I look at these bills such as Bill C-69, I see this is just an example of where, at one of my chiefs meetings in Alberta, we condoned it, and then just last week we rescinded it. That's a good example of how it was so complex and misunderstood, and then now we're sitting here today where it's already gone so far in the process. I don't believe there was proper and meaningful consultation on Bill C-48 and Bill C-69, and we're at a place where we shouldn't be at.

In most cases today, the parties have become much better at exchanging information, but there is still a resistance to making meaningful changes to the projects to lessen impacts on traditional land uses and resistance to involving indigenous communities in long-term economic development benefits.

Woodland is one nation that has been working hard to make strong and meaningful partnerships with business to develop business capacities, local employment, etc., but these have to be long-term opportunities not just brush-clearing and construction.

Woodland Cree needs to get into the business of developing and eventually owning resources such as the Eagle Spirit pipeline. I am on the chiefs' committee of that group. I can only talk so much to companies. Yes, they will nod their head and they will say yes, we tried, but if we were actually owners and operators of those companies, then our corporate values would follow that company.

For example, if I'm an owner of a company, I want to say I want to be the best in the world. I want to make that pipeline as indestructible as we can. I know there's technology and the abilities to do that. We're at this meeting today to be the best in the world, and I know we can do that.

It also goes into trading aspects of it. If we had ownership of these pipelines, then we could tell our customers that they need a better environmental standard on the products they develop from our resources.

Best practices would include encouraging companies to dig into business development with indigenous communities to share with them what types of businesses should also be pursued in order to support the project. Companies should also be willing to learn about capacities that different first nations have to offer. If both parties come to the table with a willingness to share information and work together to build first nations' capacity, then we will achieve meaningful accommodation.

Sometimes the feds are typically avoiding absolutely any language in the question that alludes to free, prior and informed consent. There are also quite a few articles written specifically about

this within UNDRIP. We know this, especially if we're looking internationally.

There is no perfect international example of projects. However, projects in Bolivia entrenched the rights of nature—they actually used “mother earth” in Spanish—using indigenous law. New Zealand protected the rivers using Maori law. The Sami have a parliament and can pass laws in their territory. If a corporation has personhood, so then should the same things that make first nations....

Project approval currently only represents one culture's law and relations with the land. In order for a project to be truly collaborative and successful from a first nations' viewpoint, it should also respect our culture and our laws too.

● (1550)

That can seem almost impossible when our laws in Canada aren't respected or admitted into courts of regulatory.... If we want projects to go through, then consent is the only way.

The Chair: I'm going to have to ask you to wrap up in about 30 seconds.

Chief Isaac Laboucan-Avirom: Basically I'm here to find a solution and to be part of the solution. There are a lot of misconceptions in the media all the time. As a first nations individual, I think our land, our water, the air and the animals are important to all of us. They are sustainability for future generations to come.

It frustrates me, as a first nations individual, when I have to almost beg for monies when we're living in one of the most resource-rich countries in the world. Why should our people be living in third-class or second-class communities when we are surrounded by natural resources that go into paving our roads, putting in rec centres, and so on?

I have children and I want my children to have the same abilities your children have. I know that a treaty is a nation-to-nation relationship. We need to encourage that to keep going on, and to understand and be more respectful to each other.

The Chair: Thank you.

Mr. Benjamin.

Mr. Craig Benjamin (Campaigner, Indigenous Rights, Amnesty International Canada): Thank you.

I'd like to begin by acknowledging the Algonquin people on whose territory we have the privilege of meeting today.

I would like to thank the members of the committee for this opportunity to come to speak to you. I would also like to express my appreciation for the opportunity to share the table with Chief Laboucan-Avirom.

The subject of this study is one of great interest to Amnesty International, and to me personally. There are a lot of things I could talk about, but what I'd like to do is focus on one specific example of international guidelines for engagement with indigenous peoples, which is the International Finance Corporation's performance standards on indigenous peoples.

Members of the committee will know that the International Finance Corporation, IFC, is the institution within the World Bank group that focuses exclusively on support to the private sector in development activities.

After the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples in 2007, the IFC undertook a review of its social and environmental performance standards. In 2012 it adopted a dramatically revised requirement for projects potentially affecting indigenous peoples.

These performance standards take a precautionary approach, setting out measures needed to reduce the risk of significant harm to indigenous peoples, regardless of the recognition or lack of recognition of indigenous people's rights in national law. The performance standards do not directly address indigenous people's right to self-determination, nor do the standards address indigenous people's continued right to exercise jurisdiction over their traditional lands. These are matters at the very heart of the UN declaration, but the performance standards leave them to national governments to resolve.

Strikingly, however, even in the absence of explicit requirements to respect and uphold traditional land title and to engage with indigenous peoples as an order of government exercising jurisdiction within their territories, the standards that were adopted by the IFC are still, in many ways, considerably more stringent than Canada's current domestic laws and regulations around resource extraction.

In particular, I would like to draw the committee's attention to the IFC's provisions on free, prior and informed consent, FPIC. The IFC states that FPIC is both a process and an outcome. In other words, it doesn't just call on the private sector to seek consent; it makes consent a formal requirement for its support.

The performance standard specifically requires FPIC in four broad areas: where there is potential for significant impacts on indigenous peoples's identities or the cultural, ceremonial or spiritual aspects of their lives; where there are impacts on lands and natural resources subject to traditional ownership or under customary use; where a project might lead to displacement from lands and resources; or where a project proposes to exploit indigenous people's cultural heritage.

The IFC explicitly states that the process by which indigenous peoples grant or withhold their consent must be a process that is acceptable to them. The performance standard further states that the process must be culturally appropriate and it must engage with the existing customary institutions and decision-making processes of the affected peoples.

This process must begin at the earliest stages of project design and continue through the development and implementation of the project. The performance standard requires that the process and any agreements that are reached be documented. Furthermore, the performance standard requires that a mutually acceptable grievance process be established to address any disputes that could arise over the agreements.

I've mentioned that one of the IFC's tests for whether FPIC is required is the potential for significant impacts. In determining whether impacts are significant, the performance standard calls for

consideration of the strength of available legal protections for indigenous rights, indigenous people's past and current relationship to the state and to other groups in society, their current economic situation, and the importance of land and resources to their lives, economy and society.

Significantly, this determination of whether or not the potential harm is significant, and therefore requiring consent, is to be undertaken in direct collaboration with the affected peoples themselves, as opposed to arbitrarily or unilaterally determined by the state or by the IFC.

I also wanted to note, in the context of the current debates around the federal government's proposed new impact assessment regime, that the IFC's performance standard on indigenous peoples and other performance standards adopted by this institution explicitly require the involvement of women in the determination of impacts as well as specific consideration of how the impacts can be different for men than for women.

• (1555)

Canada is one of the founding members of the IFC. Like other member countries, Canada appoints a representative to the board of governors. Additionally, Canada holds one of 24 seats on the board of executive directors, and Canada's Minister of Finance reports regularly to Parliament on the operations of the IFC and other World Bank institutions.

In responding to this committee's 2017 report on the future of Canada's mining sector and your recommendation that Canada promote and improve responsible mining practices in Canada and abroad, Natural Resources Canada responded that it does in fact encourage companies to "adopt best practices domestically and internationally by implementing principles and guidelines into their day-to-day operations" from sources such as the IFC's performance standards.

All of this underlines the main point I want to make, namely, that an institution that Canada helps to govern, and which Canada refers to as a source of best practices, actually sets out a significantly higher standard for engagement with indigenous peoples than the federal government generally requires of itself or of corporations operating in Canada.

Numerous critiques have been made about the insufficiency of the IFC's own enforcement of its standards. This doesn't change the fact that the standards that it adopted and instituted more than five years ago are in many ways more stringent than those in effect in Canada, and that there is a gap in the requirements of corporate engagement with indigenous peoples between what is required of corporations acting in Canada versus those acting abroad. In this case, it is Canada, Canada's laws and Canada's regulations and practices that are falling short of this international standard.

I would be happy to talk about this with you further. Thank you.

The Chair: Thank you very much.

Mr. Hehr, you're up first.

Hon. Kent Hehr (Calgary Centre, Lib.): Thank you very much, Mr. Chair, and thank you, Chief and Mr. Benjamin, for coming here to share your stories and information with our committee.

I would first like to say to the chief that I'm from Treaty No. 7, where we share the land with our indigenous brothers and sisters. I know that Métis region number 3 is also very present here. Are you from Treaty No. 6?

Chief Isaac Laboucan-Avirom: Treaty No. 8. My wife is from Treaty No. 6.

Hon. Kent Hehr: Well, I was never much good at numbers, Mr. Chair, but I'm trying.

You bring up the fact—and I thought very eloquently—about how we have to move to a nation-to-nation relationship and how you just want to see your kids have the same opportunities on your land that we do in other parts of the country. I think that's a fair assessment.

You were bringing up the fact that you're negotiating with Shell, with Cenovus and with other levels of government. Do you feel that you have the capacity or the ability to do that? Or do we need to invest more in that capacity so that you have the tools to shape your own destiny?

• (1600)

Chief Isaac Laboucan-Avirom: I'd like to say absolutely. We could definitely do a better job in that area, meaning that if I had the tools and the funding to do that, I think we absolutely could provide a better outcome.

Hon. Kent Hehr: Should that be negotiated in a mutual benefit agreement? How do you see that framework evolving?

Chief Isaac Laboucan-Avirom: I think mutual benefit agreements are good, but again, if I had the proper capacity behind me, I'd be able to say that more eloquently.

Voices: Oh, oh!

Hon. Kent Hehr: I get that it's a chicken-and-egg sort of proposition, and I appreciate that.

Recently in your area, the Alberta government announced a new park out there, the Kitaskino Nuwenēné Wildland Provincial Park. It's created out of the oil sands leases from proponents that have been up there. Has that process worked for you? Has that ability to go back onto the land been something that you felt committed to, connected to and consulted on?

Chief Isaac Laboucan-Avirom: I'd have to say no, because that isn't a direct area that I've worked in. That might have been in the more eastern area, into the Fort McMurray area, I'm assuming. I just don't have much information in that specific area.

Hon. Kent Hehr: I have a question for you, Mr. Benjamin. In your brief time, you went through some very detailed points on free, prior and informed consent and how it relates to indigenous peoples in the development of oil and gas projects, I guess, but resource projects more generally.

One of the things we've been discussing is early engagement: getting in early and discussing what the issues are, what the cultural reference points are that we need to be sensitive to, and what the ecological things are that we need to work with. Is that something

that works in international best practices? Is that something that has to be driven home time and time again?

Mr. Craig Benjamin: As Chief Laboucan-Avirom said, we lack perfect international practices. The practice is more often a negative one than a positive one. But I think you're absolutely right. The earlier the engagement, the better, on all kinds of levels. For one thing, the earlier the engagement can occur, the more likely it's possible to negotiate the kinds of arrangements that were talked about, negotiations where there is genuine mutual benefit, where there is the possibility to walk that line that ensures access to the benefits of development without sacrificing the cultural values, the practices and the traditions. The further down the line the process comes, obviously, the harder it is to adjust to fundamental needs and concerns.

The problem we see all too often is that, in fact, the decisions are set in stone before engagement with indigenous peoples begins. There's the intention already to go ahead with a particular project on a particular piece of land, and what we hear quite often from first nations we work with in Canada—and we hear this from indigenous peoples around the world—is that it's often not necessarily the case that they would be opposed to oil and gas development or a mine somewhere else in their territory, but that choice isn't being given to them. That choice of saying what they can live with, where, and what they would like, where—that very fundamental question of what the priorities are for different areas of land—gets taken away by the fact that they are only approached after those initial decisions are already made.

Hon. Kent Hehr: You're a proponent, though, of early engagement.

Mr. Craig Benjamin: Very much so.

Hon. Kent Hehr: Let me ask you this. How do you balance FPIC with an abundance of first nations throughout this great country of ours and being able to get consensus on moving projects forward? How do you find that balance? I'll just throw that open to both of you.

• (1605)

Chief Isaac Laboucan-Avirom: Okay. The question is with free.... Can you say that again?

Hon. Kent Hehr: It's about free, prior and informed consent. When we've identified a big project that's going through, when the discussions happen, when you've wrestled and grappled with the area, how do you come to a consensus that this project is going to go through or this one isn't? How do you share the balance on those things?

Chief Isaac Laboucan-Avirom: In Canada, in Alberta, even in the western provinces, it's a big demographic situation. When you talk specifically, let's say you use that on the oil and gas sector. In my area, it's a lot of in situ steam under the ground and it's not as big a footprint as in the Fort McMurray area. In my area with the free, informed consent, it will be a very different outlook or implications from those in the Fort McMurray area.

I think the broadness of it is the resource that is used in both of those aspects and in many aspects, water. Whether it's topical water or underground water, it should have way more value than oil.

The Chair: I have to stop you there, unfortunately.

Ms. Stubbs.

Mrs. Shannon Stubbs (Lakeland, CPC): Thank you, Chair.

Thanks to both of our witnesses for being here.

I'm from the Treaty 6 area. I'm very proud to represent a total of nine indigenous and Métis communities. Almost all of them are actively involved in resource development, responsible oil and gas development, and supporting pipelines.

Chief Isaac, I know you've worked with a number of the chiefs from my area, such as leaders of the Frog Lake Energy Resources Corporation and others, who talk about the importance of resource development to indigenous communities and to future generations of indigenous communities, and also about the importance of ownership and direct involvement in resource development.

I do find it curious that we, at this committee, are doing a study on the best practices of indigenous communities when a bill that very much impacts that issue is in the Senate right now. Chief Isaac, I wonder if you have any comments about the scenario in which we find ourselves, which is that Bill C-69 is in its final stages of becoming law—unless it is stopped by the Senate—and this committee did not have an opportunity to review that piece of legislation.

You remarked originally on the association of chiefs that initially supported the legislation, but now yesterday or last week, I think, have come out opposing it. We can get into a little bit more of the details if you like, but I wonder if you do consider it to be a best practice that legislation like this could be on its way to completion right now without any of the committees having done a study on indigenous engagement. Do you have any comments on the degree to which you or other indigenous communities were consulted in the development of the legislation?

Chief Isaac Laboucan-Avirom: Like I said, my interpretation or definition of consultation—the ruling of consultation—is meaningful consultation, where I know exactly what the other side of the table is talking about. You could spin it around, shake it upside down and turn it all around, but I know exactly what they're about.

I'd say absolutely not, just on that example of how the chiefs at one meeting supported it, not fully understanding the consequences of it and now rescinding after having looked at it in more depth, understanding and saying that this has detrimental effects not only to them, to their provinces, to their territories, but also to the country.

Then, it's in the Senate right now. How did it get that far? How many people have been saying “stop”, “no”, and “don't”? I guess that's a good example of free, informed consent. If we had that mechanism and if it was actually working a hundred percent, it would not have gotten this far. That's my opinion.

Does that help? Is that a good example?

•(1610)

Mrs. Shannon Stubbs: Yes, it does. In fact, there has been a broad base of legal consensus that Bill C-69 won't expand either the duty of the Crown to indigenous people or change the rights of

indigenous communities and people in the consultation related to major resource projects in federal jurisdiction.

We, of course, agree and have heard the concerns about capacity and resourcing for capacity loud and clear, and we share those concerns. Overall Bill C-69 doesn't meet that need. In fact, the national chiefs council, the Indian Resource Council, the Eagle Spirit Chiefs Council and the majority of Treaty 7 first nations all oppose Bill C-69.

Chief Roy Fox said, “I don't have any confidence in Bill C-69. I am fearful, and I am confident, that it will keep my people in poverty.”

I just wonder if you agree with that statement.

Chief Isaac Laboucan-Avirom: I'll support all my chiefs' statements.

Yes, it's worrisome. To me, it feels like the consultation process has just been a checkmark chore, where the actual consultation has not been either adequate or designed for the intent of it.

Mrs. Shannon Stubbs: In the international context, not only would Bill C-69 obviously put Canada at a disadvantage, but another bill—Bill C-48, which is the shipping ban on oil off B.C.'s north coast—is another example, in the context of discussing best practices for this study, where I understand there was a limited or complete lack of consultation on the bill with indigenous communities.

I know that you yourself have said, “This tanker ban is not just going to hurt us at the moment, which it's doing, but it's going to hurt future generations.”

I wonder if there is anything that you wanted to share about the process in that consultation on Bill C-48. Also, do you consider it to be a best practice of a government imposing anti-energy legislation on indigenous communities and all Canadians without consulting?

Chief Isaac Laboucan-Avirom: Absolutely, it's not a best practice.

How I got involved in that situation is that the first nations from the coast, even from Haida Gwaii, got together. They were saying that they could see tankers going by their territories on a daily basis. This is from them; I'm just kind of restating what they stated. They said there was no actual consultation even with the Great Bear Rainforest. I know there might have been good intentions but those are ideological mindsets. The fishing is going away and they could literally see from their own houses all the benefits going into the States and into the Alaskan ports. Basically, they said, this is where we are in this day and age. The fishing industry is hurting. They just want to make a living. They want to create jobs. They want some income and prosperity to come from these opportunities, and Bill C-48 kind of limits that. That is not to say that we do not care. We absolutely care 110% about any waters—ocean waters, lake waters and river waters. We want to see those things survive and to protect them through our mechanisms.

I'm going to segue back into Alberta—

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

Unfortunately, we're out of time.

Mr. Cannings.

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

I'm going to start with you, Mr. Benjamin. You mentioned the IFC and its guidelines. As far as I understand it, you said they are more stringent than our legislation here in Canada. How is that reflected in reality? Are those guidelines acted upon internationally, and what would need to change if you were advising the Government of Canada and wanted to reflect those guidelines in our legislation?

• (1615)

Mr. Craig Benjamin: There is definitely a significant gap in the enforcement of these guidelines. This is one of the problems we see around the world. We often have good laws but weak institutions for upholding those laws. The problem is multiplied when you have indigenous peoples who are the subject of so much racism and discrimination who are at such a great disadvantage in accessing legal mechanisms as this problem plays out over and over again.

There are interesting examples within the IFC system. IFC has published reports on how they've examined and made decisions about funding to particular projects. Chief Laboucan-Avirom talked about the issue of the provincial border being the cut-off point for consultation. Prior to the current guidelines, under their earlier, weaker guidelines, there's actually a case where the IFC looked at the fact that who was being consulted about the downstream impacts of the mining project was arbitrarily limited. They actually stepped in and withheld funding for that very fundamental reason. We do see some examples of enforcement around some basic principles.

My basic advice to the Government of Canada specifically about these performance standards is that there's a fundamental contradiction in being part of advocating for and holding Canadian corporations abroad to this standard through an institution that we helped govern and not having comparable standards in Canada. I think the goal of harmonization and consistency across borders is a good one, but we should seek to harmonize upward rather than downward. This standard is not an ideal standard, but we certainly shouldn't be falling below it domestically. A key piece is simply that recognition of consent, not only as a process but as an actual legislative requirement, to say that as a piece of approval there should be documented evidence that consent has in fact been obtained when there is a risk of serious harm. I think this is something perfectly possible to proceed with in Canada. We have a history in Canada of exactly such negotiations with first nations. You can look on Natural Resources Canada's website and it has a list of the vast numbers of impact benefit agreements that have been reached. We have the evidence that agreements can be reached. The difference that's being proposed is to make such an agreement a requirement so it strengthens the hand of indigenous peoples when they are at the table knowing that the other party can't simply walk away.

Mr. Richard Cannings: Chief, would you like to comment on that?

Chief Isaac Laboucan-Avirom: I just want to interpret what Mr. Benjamin said, that Canada operates on a "do as I say, not as I do" process. That's just what I interpreted there. That does have to change.

I like how he brought up the provincial barriers. When the treaty was signed, we were signed before the provincial boundaries were made. Now there's either—don't take this the wrong way, but—a colonialism tactic or our way of safeguarding our own traditional lands.

Mr. Richard Cannings: I will just follow up, Chief, with another question. We're talking about downstream effects on dams, whatever, on the Peace River. We have linear issues, especially in the oil and gas industry where we have oil and gas being produced in northern B.C. and Alberta and shipped to the coast. We have different first nations along those routes that might be impacted differently. We have nations like yours that may benefit from those resource developments whereas you might have a first nation on the coast that is concerned about the impacts of marine transport, for instance. I've talked to first nations people in northeastern B.C. who have concerns about fracking and the use of water in gas, whereas the first nations on the coast are very much in favour of those projects that ship it out. It seems it can go both ways.

I'm wondering how you would see resolving those issues, when you have different first nations with differing concerns and opinions about whether resource projects should go through. How can we resolve that?

• (1620)

Chief Isaac Laboucan-Avirom: That's a very big question. I can't answer that one in 10 minutes, but I know exactly what you mean: I live in the Peace River area. In the Grande Prairie area, which is three hours from where I live, they do a lot of fracking for the gas.

I'd like to say we've got to somehow invest and learn more in innovation. I've worked in the oil and gas sector and I know there have been different innovative things designed every year.

At the end, where the ports are and where the nations are on the coast, I understand why they see it as a good benefit.

One of the ways I look at it is that in some situations—excuse me for my language—we're damned if we do and we're damned if we don't. What is the greater good between the two evils, so to speak? That takes us back to thinking about international best practices. Internationally we are dealing with climate change. Politicians and industry might not like to use those words, "climate change", but if we were to stop all of the automobiles, all of the carbon footprints right now, we would not necessarily slow down climate change. We have to be innovative.

I know if that gas gets to China and India, it will actually lower global emissions. I think that education needs to be out there. I would like to say that you don't need to use as much water in the fracking. As I said earlier, water is way more valuable than oil. I think if we have that mindset, our scientists and our technical people might be able to find a way.

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

Mr. Tan.

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

Chief Isaac, you mentioned in your presentation that there are some interactions or collaborations between the government and your first nation. In your opinion, in what areas do we collaborate well and in what areas do we still have to work hard to overcome some challenges?

Chief Isaac Laboucán-Avirom: I do know that there's been a willingness to work together more. If there's a measuring stick for the last 20 years, we are doing better today than we have in the last 20 years.

When I think about forestry, there has been more scientific evidence and areas where we are trying to do a lot better, not just clear-cut, for example, but create some sort of sanctuary for animals, safeguard the creeks, etc.

When we do forest harvesting in our territory, because we do the cutting, we are able to more easily tell the companies not to cut the birch tree if they are going after the spruce tree, even if they need firewood, etc.

For the oil and gas sector, my territory had one of the largest oil spills in Alberta in 2011. What I have been saying ever since then is that we have to improve standards. As a treaty standard, I need to be able to drink that water, eat that moose and harvest those herbs. The way the standards are right now, if you spill four million litres of oil and you only clean up two million litres, then the energy board says that, yes, it's cleaned up. That has to be improved. If you spill four million litres of oil, then you clean up four million litres.

Mr. Geng Tan: As a chief in your first nations community, do you interact directly with the government, entities or other companies that are seeking to develop the natural resource projects in your region, and are your community members also getting involved or engaged, or do you think you could speak on their behalf?

Chief Isaac Laboucán-Avirom: Absolutely, a little bit of both.

As an elected chief I'm an elected official, so they give me the ability to speak on their behalf. It is in the best interests of my community and I am obligated to be the best that I can be for them. I do invite my elders when I can, and we're even starting to invite youth. In big projects, for example, I will have an elders' meeting and then I will also hold a community meeting.

• (1625)

Mr. Geng Tan: I have a technical question. You mentioned in your presentation that your community is surrounded by very rich natural resources. I assume that means natural resource projects around your community. When a company starts a project, it always sends in a whole bunch of technical experts to be there on the site. They could be engineers or environmental professionals. They are technical experts, but not necessarily...they are called community engagement experts. Quite often, they are the first people that a local community sees, so they represent the face of the company, or you could say this is how the local community gets its first impression of those companies.

Do you think this is a best practice, and if not, how can we correct this?

Chief Isaac Laboucán-Avirom: I think there definitely has to be more time for engagement and more time to build that relationship through the consultation process. All companies are different. Some companies meet minimum requirements, and I think we have to upgrade those minimum requirements to an international best standards requirement.

Yes. Basically, we have the paper coming in and sometimes we have those individuals come in. I let them deal with our lands management staff, and as the project works its way up, then I will start meeting with their corporate leadership.

Mr. Geng Tan: I guess you have a team to deal with the company

Chief Isaac Laboucán-Avirom: No. My team is not that big and my team is not growing, meaning that I try to get my community members.... I have to educate my community members because they're going to be the ones who are sustainable. Before, I'd have to use money and hire a high-priced consultant and put a lot of money basically out the door. What I want to do is retain that information and those practices within the community.

Mr. Geng Tan: Mr. Benjamin, the government wants a system that respects indigenous rights, recognizes the national interest and also reflects the commercial realities faced by companies. In your opinion, how can Canada create a fair, reasonable and collectively beneficial approach?

Mr. Craig Benjamin: I think there is a lot of guidance to be drawn from international standards, such as the UN Declaration on the Rights of Indigenous Peoples, and the interpretations that exist out there through bodies like the UN Permanent Forum on Indigenous Issues and the expert mechanism on the rights of indigenous peoples.

To go back to first principles, I think there are a few key things to be mindful of. One is the fact that we have all inherited a situation where indigenous peoples' inherent rights to self-government over their lands and territories were historically denied. Our laws and practices are built on that foundation. We have to come to terms with that. To ignore that in the process of engagement inevitably perpetuates not only an injustice, but also conflict.

Unfortunately, our current practice is to put the onus on indigenous peoples to launch long and expensive court cases, and to put all these issues in the most adversarial, expensive and time-consuming process possible, where people have to prove their rights exist.

The Chair: Thank you very much, both of you, for being here. That's all the time we have for this part of the panel.

We will suspend for two minutes while we get the next people in.

• (1625)

_____ (Pause) _____

• (1635)

The Chair: All right. Welcome back, everybody.

Professor Hemming, thank you for joining us. I understand you're in Australia, and it's tomorrow, so you can tell us what the future holds.

Ms. Leach, thank you for joining us. I understand you can tell us who holds the record for the most goals scored in one playoff season in the NHL.

For those of you who don't know, his name is Reggie Leach, and it was 1976.

Ms. Dawn Madahbee Leach (Vice-Chair, National Indigenous Economic Development Board): That's my husband.

The Chair: I remember it.

Thanks very much to both of you for joining us, and to you, Professor, thank you for getting up so early in the morning.

The process is that each of you will have up to 10 minutes to deliver your opening remarks, and then we'll open the floor to questions. I may interrupt you if we get close to the time threshold. I will be doing the same to people asking you questions as well.

With no further ado, Ms. Leach, since you are here, why don't we start with you.

Ms. Dawn Madahbee Leach: Good afternoon, and thank you for the invitation to speak with you today.

I'd like to take a moment to acknowledge that we are gathered on the traditional territory of the Algonquin Anishinabe peoples.

I speak to you today as the vice-chair of the National Indigenous Economic Development Board. Our board is made up of first nations, Inuit and Métis business and community leaders from across Canada, whose mandate is to advise the whole of the federal government on indigenous economic development.

The board believes that reconciliation should begin with economic empowerment. In fact, we published a report entitled "Reconciliation: Growing Canada's Economy by \$27.7 Billion". This report found that closing the gaps in economic outcomes between indigenous people and the non-indigenous population would result in an estimated increase of about \$27.7 billion annually in Canada's GDP. You can find that report on our website. We would be able to achieve that if our people were employed at the same level as mainstream Canadians. An important element of this economic empowerment includes being meaningfully involved with the active engagement of indigenous communities concerning natural resource developments on our traditional territories.

On behalf of the board, I would like to offer information that may assist you in your study on international best practices for engaging with indigenous communities. The work of your committee is timely as the international Organisation for Economic Co-operation and Development, OECD, is currently undertaking its own global study of how indigenous communities can be linked to economic development opportunities in their traditional territories and regions.

The OECD launched its first-ever indigenous-specific study in late 2017. The study looks at leading practices worldwide on engaging with indigenous peoples and linking them to regional economic development. The report will be published later this year. This initiative is being undertaken in partnership with several countries that are members of, or seeking membership with, this international organization. On behalf of our national board, I have been the champion of this initiative with OECD as a means to gather critical

data that can help shape and inform Canadian policy in establishing the meaningful engagement of indigenous people in Canada.

I was asked to be one of the Canadian peer reviewers of the Australian case study mission, so I'm really pleased to be on this panel with my counterpart there. My involvement in the study mission started in Canberra, the Australian capital, and then took me to Western Australia and the Northern Territory regions of the country.

One of the leading practices I found there was the success of the aboriginal procurement policy, which has produced significant results in terms of contracting indigenous businesses through more than \$1 billion in contracts to more than 1,200 indigenous businesses there.

Another example of the success due to the procurement strategy is in Australian mining companies. For example, Fortescue Metals Group Ltd procures services through Supply Nation, Australia's leading database of verified indigenous businesses. They recently reached the \$2-billion level in procurement services from indigenous businesses. Canada needs a better indigenous procurement policy and an indigenous-led entity to provide a verified database of indigenous suppliers.

Another good example in Australia that I was able to see first-hand is the work of the Gnyangara people of the East Arnhem Region in the Northern Territory. This is the only indigenous community in Australia, and possibly in the whole world, that has 100% ownership of their own mine. Their arrangement with Rio Tinto, which is the purchaser of the bauxite produced by the community-owned Gumatj Corporation Ltd, is a model for many mineral resource initiatives going forward.

The community is a great example of sustainable development. As they reclaim the land where they remove the bauxite, they have planted a nursery and built forestry operations. They produce a hardwood tree that they use in the sawmill they've started, and they also manufacture furniture with that wood.

● (1640)

However, indigenous people are not sufficiently and meaningfully engaged in regional development. Engaging indigenous people would mean they could potentially benefit from regional development or they would designate large regions of lands and resources as protected from exploitation. I suspect there is a fear that this would result in fewer revenues for the financial coffers of government and industry.

Indigenous people recognize the need for important minerals that support important global needs. We recognize that it's in all elements of cellphones and cars and the technology that we use. As such, many are interested in business partnerships to not only reap a fair share of economic benefits but to help ensure that resource development is done sustainably through investing in the latest technology and innovative processes with proper oversight in place.

One of the main initial findings of the OECD across the case studies is that governments should ensure participation of indigenous people in decisions about projects that affect their traditional territories through three main actions.

First is supporting and encouraging project proponents to engage in dialogue and meetings with indigenous people prior to submitting projects for approval and agreeing up front on the terms and procedures for engagement.

Second is increasing the scope of environmental impact assessments to include traditional knowledge and socio-cultural issues and to assess the cumulative and wider impacts of projects on indigenous people's cultural values and traditional activities.

Third is developing a national framework for consultation with indigenous groups about project development that seeks alignment with UN international standards of free, prior and informed consent. This must include reduced or no costs to indigenous parties, broad and early consultation with indigenous lands rights holders and clear and informed processes and opportunities to present and partner on fair alternatives.

I had the opportunity to share my own experience at an OECD meeting in Darwin, Australia, last November. I believe that a lot of what I shared with that audience in regard to the involvement of indigenous people in mining projects is applicable to the discussions here today regarding the involvement of indigenous people in energy projects.

As I am from northeast Ontario, a hub of mining activity, I believe it is important to help all parties make informed decisions, including indigenous communities, mining companies and government.

I served on my first nation council, and when we were approached by mining and resource development companies, we would receive reams and binders of technical data and we had nowhere to turn for help. That's why, in 2015, the Waubetek Business Development Corporation developed a new mining strategy to help stakeholders navigate the intricacies involved with resource development.

This aboriginal mining strategy for northeast Ontario outlines priorities in four strategic areas: first, building indigenous knowledge and capacity with respect to the mining industry; second, building mining industry relationships; third, engaging a skilled indigenous workforce; and, fourth, promoting indigenous business and partnerships.

A key component of this strategy includes the setting up of a centre of excellence on indigenous minerals development, which is a clearing house of technical information for first nations, indigenous businesses, mining companies and government. The centre would provide tools, templates, leading practices, case studies and referrals for legal, financial and environmental expertise.

Companies might go there to find contact information on which communities to engage with for a particular area that they're looking at, while a first nation might go to find out what is involved in mining exploration or the whole value chain or to get referrals for proper legal expertise. The centre will be a first of its kind, not only in Ontario or Canada but in the world.

Overall, I'd like to underline the importance of having indigenous communities included in these natural resource development projects so that our people's knowledge and voice is recognized as vital to this country's development, that all parties involved understand that natural resource projects need to be done in a sustainable way, and

for industry to accept that sometimes there will be areas where no development can occur because the area is significant to the indigenous people.

• (1645)

Those are the main messages I want to share with you today. I thank you for your time.

I just want to add one other thing. I'm anxious for Bill C-69 to pass in the Senate.

Thank you very much.

Meegwetch.

The Chair: Thank you very much.

Professor Hemming, just before I give the floor to you, I understand you may have some speaking notes. Do you intend to distribute them or refer to them in a presentation? If you do, I need to get consent of the table to proceed because they are in English only. If they are just for your own reference, then that's a different story.

Dr. Steve Hemming (Associate Professor, College of Humanities, Arts and Social Sciences, Flinders University, As an Individual): I sent them through, and they are to share with people. There is some background material, just to give people an understanding, and some speaking notes.

The Chair: The professor will be referring to some academic articles, I understand, that have been sent to translation. We just received them. Does anyone object to...?

Some hon. members: No.

The Chair: No? All right, thanks.

Go ahead, Professor.

Dr. Steve Hemming: I'd like to thank the House of Commons Standing Committee on Natural Resources for the invitation to present on the topic of indigenous engagement, and recognize the presentation that was just given for its focus on Australia. I'd also like to acknowledge the courage and resilience of sovereign first nations in the settler nations of Canada and Australia. In particular, I'd like to acknowledge the Algonquin Anishinabe people, the Kaurna nation on whose lands and waters I'm speaking today in Adelaide, and the Ngarrindjeri nation, the indigenous nation I will be talking about today.

I am a non-indigenous academic, but I've worked with the Ngarrindjeri nation for about 40 years on various programs and projects.

The Ngarrindjeri nation is in south Australia. It's at the bottom end of the longest river in Australia, in the Murray-Darling Basin region. Ngarrindjeri are water people on the coast, on the river and in the estuarine space. Ngarrindjeri draw on the United Nations Declaration on the Rights of Indigenous Peoples and a set of promises that were made in 1836 by King William IV in the Letters Patent that proclaim the establishment of the colony of South Australia when negotiating with the Australian state.

In South Australia, there's no treaty. There has been some discussion about the possibilities of treaties in recent times, but that's been taken off the table. In general in Australia, no treaties are being negotiated at this time. Indigenous peoples rely on a weaker form of aboriginal title recognition called native title, which establishes a legal process and protection under aboriginal heritage. In some parts of Australia, there are land rights acts that also provide people with some protection, and veto rights in relation to mining.

Today I'm going to be talking about an example of an indigenous-led initiative in the Murray-Darling Basin region, which is the river basin that provides a huge number of resources to Australia in water and irrigation and food resources. It's in the midst of a drought at the moment, which has been ongoing, and a problem of overuse and over-allocation, so there's a crisis in that space, and a focus on trying to resolve issues about how to manage that water resource. The focus is going to be on water resource management, and natural resource management in general, and some of the innovations that led to the Ngarrindjeri nation winning the 2015 river prize for best practice in river management in Australia, the first time an indigenous-led program won that particular award.

"Ngarrindjeri" means belonging to the lands and waters. Ngarrindjeri understand the connection to country; Ngarrindjeri speak as the lands and waters, and not separate from lands and waters. One of the major things that Ngarrindjeri have been involved in over the last 20 or 30 years is trying to educate the border community on their relationship to country, have that wide impact on engagement with government and with industry around the development of resources in Ngarrindjeri country. When there's interest in developing water or mining exploration interests, one of the first steps is to try to educate those people who are interested in the way the Ngarrindjeri identify as country and how that impacts on people.

The Ngarrindjeri in 1995 tried to protect the mouth of the River Murray area, the estuarine area called the meeting of the waters site, in the face of development in that space. That led to a major controversy in Australia called the Hindmarsh Island case, which also resulted in a royal commission into the beliefs and interests of Ngarrindjeri people. Ninety-five Ngarrindjeri people were accused of being liars and fabricators of their own traditions in relation to the lands and waters, and were seen as almost a pariah nation in Australia, so it was very much a low point for Ngarrindjeri people. That particular case affected land rights and native title rights of aboriginal people across Australia.

In 2015, working with government, Ngarrindjeri won the Australian river prize for best practice in management, so there was quite a steep learning curve in indigenous engagement during that period.

• (1650)

Ngarrindjeri leaders decided to work on a campaign of education and negotiation, rather than using legislation and law to establish their speaking position.

In 2000 and 2001, Ngarrindjeri negotiated a new form of agreement with the local council in their region called the Kungun Ngarrindjeri Yunnan agreement. That means, "Listen to what Ngarrindjeri people are talking about." It's a contract law agreement

that recognizes the Ngarrindjeri people as the traditional owners of the lands and waters, and it was groundbreaking in that it was the first time that Ngarrindjeri were recognized as traditional owners of their lands and waters.

In 2009, Ngarrindjeri moved to a whole-of-government agreement with the state of South Australia, a contract law agreement that recognized Ngarrindjeri as the traditional owners. It's like a treaty, in a sense, but it's an agreement that establishes a new relationship and a new set of terms of how to work together. It doesn't dictate what emerges from that agreement, but it sets out a new way of working together.

That agreement allowed Ngarrindjeri to come together with industry groups, government departments and others and start to work on a new regional way of doing business in relation to Ngarrindjeri lands and waters.

In 2009, it was in the middle of the real part of what was called the "millennium drought". There were lots of proposals to conduct engineering projects and do major works in Ngarrindjeri country, so there was a need to establish a complex way of engagement.

The Kungun Ngarrindjeri Yunnan agreement enabled Ngarrindjeri to meet regularly with the government ministers and the premier in a context of leaders to leaders. In Australia, it was revolutionary for indigenous leaders to meet directly with government and be recognized as leaders of their particular nation.

That led to the establishment of a task force that met every month and brought together government departments and industry groups to present projects and programs to be considered at an early stage by the Ngarrindjeri nation. Resources were provided for the establishment of a program to assess proposals, and then there was a strategic plan developed with the state of South Australia to move forward on managing issues in Ngarrindjeri country.

In a way, that was both a negotiation mechanism and an educational mechanism. Over 17 meetings every month were conducted for several years with government agencies from right across the spectrum. That allowed people to talk together and to start to understand each other and where they were coming from. It was co-chaired by Ngarrindjeri leaders and government, and it provided a great opportunity to start to understand the differences and the similarities between the government, industry and Ngarrindjeri. Ngarrindjeri leaders have seen that as a major success.

Out of that particular agreement there was also a cultural knowledge agreement negotiated with the state of South Australia. Ngarrindjeri negotiated an agreement whereby the state recognized that Ngarrindjeri own their cultural knowledge in any planning and negotiation contexts so that there is security for elders and others to share knowledge in projects where that knowledge is needed to make decisions about whether developments would occur, or whether particular issues would be considered. That provided some certainty for people in their sharing of knowledge. Remember, there is no treaty process in this context. Ngarrindjeri started from a position of wanting a new relationship with the state, a new appraisal of the major issues surrounding that relationship, a fresh consideration of the ways of addressing those issues, and a recognition of the need for Ngarrindjeri and the state of South Australia to sit down and talk differently to each other.

The government supported Ngarrindjeri in that over time. It was a major shift in relations that led to a policy of establishing regional authorities across South Australia and starting some discussions around treaties.

In recent times, we have been working on a process across the Murray-Darling Basin where indigenous interests are being taken into account in planning how water is allocated across the region. What Ngarrindjeri have developed, in that context, is a particular kind of risk assessment and risk management strategy where indigenous interests are factored into the state's risk management processes at the very earliest opportunity.

•(1655)

What we discovered, I guess, was that a lot of the planning that occurs around natural resources, in natural resource management and in other sectors, is governed by international standards around risk management. If those standards don't take into account indigenous nations' aspirations, values and knowledge and the consequences of acts on their country and people, then there's a part of the chain of planning that's missed out right from the beginning.

At the moment, we're trying to work on a way of adapting Ngarrindjeri risk management strategies to develop a new set of strategies in the state, where the state actually conducts risk management from the beginning that takes into account the effects that any particular decision might have on Ngarrindjeri lands and waters and on Ngarrindjeri people. That's considered as a holistic process.

In a way it's an assessment of the impacts of colonization.

The Chair: I think I'm going to have to stop you there, Professor. We're a little bit over time.

Mr. Graham.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Professor, if you wanted to wrap up for a couple of seconds, I would be happy to let you do that.

Dr. Steve Hemming: I was just finishing on that note about risk assessment. I think one of the things that is really important to take into account is that in the forward planning for incorporating indigenous nations' aspirations and values into a co-operative plan for a state like Canada or for Australia, there has to be an engagement with indigenous values in risk management at all levels.

Otherwise, people are left out of the early stages of planning, and there's always a process of catch-up.

That becomes an assessment of colonization. So, in any given example—education or natural resource management—if an indigenous nation has a process of risk management or risk assessment of that action, then there's a way forward for identifying what needs to take place in a strategic way.

•(1700)

Mr. David de Burgh Graham: Thank you.

You talked about what the Hindmarsh Island case. What was actually involved and what happened in that case?

Dr. Steve Hemming: The Ngarrindjeri people, particularly senior women and men, tried to stop the development of a bridge and other developments at the bottom end of the River Murray in South Australia in 1994 using heritage legislation. They made the case that it was a sacred area particularly in relation to women's knowledge.

In southern Australia, there is basically an understanding that aboriginal people have lost their traditions and their law, and in particular, too, that indigenous women didn't really hold strong law and play a major role. It was quite a challenge for the Ngarrindjeri, then, to actually make their case that, no, in fact, knowledge and traditions had been passed down, that they were very significant and that women held knowledge separate from men.

That became a major series of court cases. It ended up in a royal commission called by the state of South Australia, which found that the women and men who were advocating these traditions were making them up, effectively. That was something that the Ngarrindjeri leadership didn't accept and continued to challenge up until 2001 in a federal court case on the same issue. It was found that the women and men who were passing on and talking about those traditions were truthful and that there was evidence that could sustain those positions.

The area was eventually registered under aboriginal heritage, and the "meeting of the waters" is now seen as a significant area on the River Murray. I don't know the stories and I'm not privy to that female knowledge, but effectively it's a reproductive area that needs to be looked after. If that area is healthy, then the whole of the River Murray-Darling Basin is healthy, as are all of the people. It's a litmus test for health of the river, and as people know across the world, those areas are important.

I guess that was a case where indigenous traditions were tested with the worst possible outcomes, but people didn't give up on that issue. The state of South Australia and the local council have come to agreement and work together with the Ngarrindjeri now, and there's a respectful relationship.

Mr. David de Burgh Graham: Thank you.

We know a lot about the impacts of climate change now. We've seen what you refer to as the millennium drought in Australia. We've been hearing about massive heat waves across Australia in the last few months. Does that have impacts on the relationships with the indigenous peoples, for better or for worse?

Dr. Steve Hemming: I guess what indigenous peoples are trying to do is actually be heavily involved in the planning and the research to try to provide solutions. Indigenous peoples know their countries really well, know when climate change is having an impact and have been arguing for those issues.

The Ngarrindjeri formally recognized the Kyoto protocol back in 2006 and understand the importance of their country to other parts of the world, so that issue about connection, relationship and climate change is very important to indigenous peoples.

There is a lot of work going on between indigenous nations in Australia and scientists and governments to try to address those issues. However, at the moment there's an impasse in the Murray-Darling Basin region and the river is a very sick space, with a lot of fish kills and flows that are really impeded. There's a need to negotiate a better outcome at a federal level.

Mr. David de Burgh Graham: Thank you.

I'm going to go to Ms. Leach for a few minutes. You talked about the Australian aboriginal procurement policy, which I thought was really interesting. Does it survive international obligations, and is it a "buy indigenous first" policy? Does it cause any problems with international relations, or does that country have very little problem pursuing this option?

Ms. Dawn Madahbee Leach: With the Australian procurement policy, they have higher levels of set-asides. I think the fact that they have a source for accessing business information through that entity called Supply Nation really helps with the procurement policy there.

I have had a look. I brought copies of it to my counterparts here in Canada looking at procurement. I think the process for registration is a bit easier, but there are some limitations in Canada's procurement policy in many ways in that the set-asides are only for areas that have a significant indigenous population; but there are indigenous people right across Canada located in urban centres as well who could benefit from accessing the set-asides that may be available for them. As for that \$27.7-billion report that I mentioned earlier, if we could build more business opportunities, that would help to make that report a reality.

• (1705)

Mr. David de Burgh Graham: I'm thinking of business opportunities. You had mentioned the verified indigenous business database in Australia. How long has this been going? Are there a lot of businesses that are not registered? Is that very comprehensive? Is there a way of knowing?

Ms. Dawn Madahbee Leach: I'm not too sure exactly when Supply Nation started. I don't think their procurement policy is as old as Canada's indigenous procurement policy. I think it's much newer. I believe that organization has been around for I would guess around eight or 10 years, something like that.

Mr. David de Burgh Graham: Professor Hemming.

Dr. Steve Hemming: That's about right. We work with Supply Nation. One of the things that indigenous nations also negotiate is to have clauses in procurement policies in their region that actually specify that the first businesses that should have an opportunity should be the businesses associated with that particular nation in relation to those lands and waters. Supply Nation doesn't necessarily

specify that aboriginal companies need to come from those particular spaces as far as I'm aware, particularly in South Australia.

There has been negotiation around those issues, but the shifts in procurement policy have been a major innovation at a federal level and at the states levels so that [*Technical difficulty—Editor*]. They have been very active in negotiating procurement and also trying to change the system to suit local and regional opportunities.

Having the capacity to actually take up those opportunities is always the difficulty. In South Australia there's a policy that says that projects up to, I think, \$200,000 are first provided to indigenous businesses in that particular region—that would be privilege. So there are particular caps on amounts as well.

The Chair: Thank you.

Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you, Chair, and thank you to our witnesses for appearing today. I appreciate that.

I will start with Ms. Leach. In 2016, the National Indigenous Economic Development Board said—this was your statement—that economic reconciliation is not only fair but the right thing to do, and there's a strong business case for it as well, which I tend to agree with.

It also states that Canada's economy would grow by \$27.7 billion "if barriers preventing Indigenous Canadians from participating in the Canadian economy were removed."

Can you give us a picture of what this would look like? In particular, when you mentioned your support for Bill C-69, was that in the mining perspective only, or oil and gas as well?

Ms. Dawn Madahbee Leach: First of all, with regard to the barriers, it's pretty clear that indigenous people in Canada are the most marginalized. Some of the barriers are around things like access to capital. With the lower incomes, we struggle with getting together equity to start a business. The education levels are also barriers. We have growing education rates and more and more post-secondary education where people are graduating from post-secondary education, but it's still not at the level that it should be and it doesn't match the Canadian standard.

As a matter of fact, in June our board will be launching our second national aboriginal economic progress report. You could find the first benchmark report and our second progress report on our website.

Those will show you that we have a lot of disadvantages when it comes to getting into business and seeking the employment that we need. I always try to remind people to put it in perspective. For example, if we're looking at employment levels in Atlantic Canada, all we need is about 4,900 jobs for indigenous people in all of Atlantic Canada to be at the same employment levels of all other people in Atlantic Canada. That might sound like a lot, but if you break it down by institution, education, services or universities, colleges, health services, businesses, small businesses, large corporations, government agencies, if all of these agencies took a few numbers, they could easily achieve that.

In Ontario, with the largest population, all we need is about 19,000 jobs for aboriginal people in Ontario to be at the same employment levels. That would mean more people working, fewer people on social services. That means more people paying into the services that are provided and all the economic leakage that goes to surrounding regions. This is something that's really possible, and it could happen right away if there was a concerted effort. That's what we talk about, economic empowerment. If people knew that and people took ownership of creating some of those jobs, I think that would help. We're not just relying on government, but like I said, institutional jobs and industry and all that to step up.

I spoke about the United Nations Declaration on the Rights of Indigenous Peoples. I am so excited about the possibility of Canada being the first one to incorporate that declaration into the law of this land. It's so critical for us to be leaders in the world to be able to do that. There are so many basic elements to that declaration that could really make a difference in the lives of indigenous people. I think it's so important that we can do things like that.

Through that OECD study I spoke about earlier, I've been learning so much from other indigenous people from around the world. There are so many great things going on. We can look at how the Maori people are involved in New Zealand leadership and government and how the Sami people in Sweden have their own Sami parliament. Everything works well. People are afraid of some of these changes, but there's so much that we could share with each other from other countries, which is why I feel privileged today to be sharing this panel with a friend from Australia. I think there's so much that we can share with each other and learn from each other.

To me, having this bill passed in the Senate would make Canada a real leader in indigenous issues around the world.

• (1710)

Mr. Jamie Schmale: When you're talking about creating those opportunities for indigenous communities, especially in Northern Ontario, a lot of the barriers seem to be.... If you're going to set up a mine—for example, the Ring of Fire—there's obtaining access and getting the ability to start that mine, and we know it is a process. But there's also the fact that once the mine is up and running, then the jobs and opportunities come along to it.

Would you say that also we need a process? We talked about the consultation and ensuring that it gets done in a manner that's respectful and what have you, but one of the barriers I would say to this development would also be government itself.

• (1715)

Ms. Dawn Madahbee Leach: I think that there are a lot of barriers. One of the barriers is having indigenous people develop the capacity to be able to make informed decisions in that development, because, as you know, there have been different initiatives and efforts.

Some were top-down, but now I'm really proud of this new committee approach that has also looked at social issues in the Ring of Fire. At first, they were just focused on the economic issues and the formal consultation on the mining itself, not looking at the overall social issues that were being experienced by the people there.

Now this committee is working on addressing those social issues, including housing, access to clean water and other basic needs of the community. It's hard for them to start negotiating a mining project when they don't have clean drinking water in their community.

The Chair: I'm going to have to stop you there because we're already over time.

Mr. Cannings.

Mr. Richard Cannings: Thank you both for being here today. It's been very interesting.

I'm going to start with Dr. Hemming in Australia. Some of the other witnesses we've heard today have mentioned concepts such as giving nature and rivers rights that normally people would have. We have the Pachamama, or mother nature, concept in Bolivia; the Whanganui River in New Zealand; and I think there are some examples in the rivers of Victoria.

I'm just wondering if you would comment on that and as to whether that's a useful concept, whether it is practical and whether it's something that maybe Canada should consider, maybe not in exactly those terms, but in terms of guaranteeing the rights to a clean environment.

Dr. Steve Hemming: I've had a bit of a look at that issue, obviously, working on a river system. I think there's a lot of value in providing some rights to parts of the lands and waters that are so important. The key issue, I think, from working with Ngarrindjeri people from indigenous perspectives in Australia—now and then in Victoria there are similar kinds of rights being assigned to a river in that space—is to ensure that the relationship of the indigenous peoples isn't affected by that particular assignment of identity.

For Ngarrindjeri people, the river, the lands and waters are a living body that they are part of, so the idea of providing rights that might separate indigenous people from that living body is something that needs to be guarded against, but that depends on the way of living, the philosophies of the indigenous nations in a particular context and how they identify with their lands and waters. From the Ngarrindjeri perspective, there have been some discussions around those issues with the opposition federal government in Australia, with Ngarrindjeri leadership.

There's certainly an interest in providing some support to providing rights to rivers, but not as separate to the indigenous nations themselves. For Ngarrindjeri, there's an agreement called the "speaking as country", where the state of South Australia recognizes that Ngarrindjeri people speak as the lands and waters and that it's a particular set of responsibilities and a relationship that is separate from the non-indigenous relationship to country. It needs to be respected, recognized, understood and not interfered with through particular laws.

I think it's a complicated issue, but there are certainly benefits in that space. I know in New Zealand there's a recognition of indigenous peoples' relationships that's very complex in their assignment of rights to rivers.

• (1720)

Mr. Richard Cannings: Just to follow up, it's interesting that we're talking about water. One of the previous witnesses just reminded us that, although we value oil and gas, water is perhaps more valuable than that. You mentioned the Murray-Darling system and the troubles it's having.

I'm just wondering how the aboriginal people in South Australia or Victoria or wherever assert their rights over parts of a river when you have a linear system like that. You are growing cotton, but the headwaters and all that water is being used up, and you have nothing left by the time it gets to the sea. How are those rights dealt with in Australia?

Dr. Steve Hemming: At the moment, there are two peak indigenous collections of nations in the Murray-Darling Basin: the northern basin group and the Murray Lower Darling indigenous nations. They're the nations along the river, and they're advocating for improved policies, in relation to indigenous rights to the rivers, at the federal level. They're supported by the Murray Basin Authority. There are a couple of nations along the whole of the system that have won native title rights fairly recently. The Ngarrindjeri have native title rights that were confirmed only just recently.

Native title is only a very partial and weak right, in a lot of ways, in Australia. There's also a nation in New South Wales that's won rights on the river. It's very early days in relation to that negotiation, but there's certainly an opportunity for Ngarrindjeri, as a nation on the river with rights to water, and also cultural heritage rights to water, to start to negotiate, in relation to flows that come down the river.

What happens upriver affects downriver, most certainly, but that hasn't been taken into account in policy yet in Australia. It's early days in that conversation, from an indigenous perspective. The Ngarrindjeri "speaking as country" agreement that I named is an agreement in which the Ngarrindjeri have agreed to work with the state of South Australia to secure water. In a sense, it's a collaboration between the indigenous nations' understandings of the river, and South Australians' need for water coming down the river, to negotiate with upstream states.

Mr. Richard Cannings: Thank you.

Dawn, you have one minute. I was going to ask you a question, but go right ahead.

Ms. Dawn Madahbee Leach: I was just going to mention how the Baniyala people in the East Arnhem region won title to land and sea. They're using the title to sea, and working on a plan for commercial fisheries and aquaculture. I think that's how they're implementing it, and also making sure that it's done in a sustainable way.

Mr. Richard Cannings: I'm glad you mentioned the United Nations Declaration on the Rights of Indigenous Peoples, and Romeo Saganash's bill that's in the Senate right now. I'm just wondering how you see the Government of Canada and its legislation in this Parliament. Has there been any improvement in implementing those concepts in that legislation?

Ms. Dawn Madahbee Leach: Not yet, but I'm hoping that's the plan. I don't know if there's still a committee working on looking at what legislation would need to change to respect the United Nations Declaration on the Rights of Indigenous Peoples. I hope that work is ongoing. Of course, I think this bill needs to pass first, and then everything else will flow from there.

Mr. Richard Cannings: Thank you.

The Chair: Mr. Whalen.

Mr. Nick Whalen (St. John's East, Lib.): Thank you, Mr. Chair.

Dr. Hemming, can you help us contextualize the legal status of the Ngarrindjeri people in Australia, just so we can understand, in a Canadian context, what some differences might be? How does someone become a member? Do they have any special legal rights? I know you've talked about some, in terms of connection with land, and as protectors of the land and rivers, property rights and whatnot.

Dr. Steve Hemming: That's a complex question. Ngarrindjeri are a community of people who identify as Ngarrindjeri, and share similar laws, histories, backgrounds, language and particular connections to the country. In a way, Ngarrindjeri is a bit like a federation. It's a collection of what used to be groups that share similar kinds of histories, traditions and values.

In the Australian context, up until the first Kungun Ngarrindjeri Yunnan agreement in 2000-01, Ngarrindjeri were not formally recognized by the state or by the overall nation. Native title had come in 1992 as a possibility, so first nations or communities, or what are sometimes called tribes, could apply for recognition under Australian legislation, but their native title had survived colonization and the impacts of other titles. When someone wins a native title, that's really just a recognition that you've survived colonization, and you still have a society intact, and some of your rights and interest to country on some titles in your country.

For Ngarrindjeri, the effect of native title is really only on some parcels of land where native title hasn't been extinguished, and on the waters, riverbed and some other areas, but that's very early stages in working out what that really means.

There's also heritage legislation, which recognizes that aboriginal people have special interests in pieces of country, or water, relating to their cultural heritage. That also draws in issues, but it's very different from the Canadian situation and the U.S., in terms of rights. In other parts of Australia, there is land rights legislation where people are able to apply for land rights—

•(1725)

Mr. Nick Whalen: Sure.

In terms of governance, are there multiple councils that help reflect the views of the group? How do they do self-governance?

Dr. Steve Hemming: In 2007, the Ngarrindjeri, established a formal peak body called the Ngarrindjeri Regional Authority, which was a reflection of the traditional governance of Ngarrindjeri.

Ngarrindjeri have always had a system of peak governance. Different groups within the community have leaders who speak authoritatively. Those elders and leaders come together to make decisions in relation to cultural issues.

The decision-making that had been occurring since colonization was basically very limited in relation to interaction with government, right up until the 1960s. There was a referendum, which led to more rights for indigenous peoples. So really, it's only very recent.

Mr. Nick Whalen: I am trying to lead a thread to get Ms. Leach back in.

In terms of economic development, do the the Ngarrindjeri own businesses and corporations? Do those corporations pay tax like regular Australian corporations do, or do they have a separate tax regime?

Dr. Steve Hemming: It's the same tax regime.

When they set up the peak body in 2007, there were two priorities: looking after lands, waters and people; and economic development. There has been a real push around economic development.

There are several key Ngarrindjeri businesses and smaller businesses on Ngarrindjeri country. Those businesses have been expanding since the mid-2000s. There's a big stake in the cockle industry, which is a fishing industry in the region. There's a wildflowers business that's taking off, which actually supplies to supermarkets and internationally. There's a focus on the possibilities around water. There are revegetation programs. It's a lively business.

Mr. Nick Whalen: Thank you very much. This is great.

I want to shift a little bit now.

Maybe, Ms. Leach, you could answer this first question.

In the previous panel, we heard from Chief Laboucan-Avirom that capital and ownership of resources, and companies that can develop the resources, are important for the economic development of first nations.

How are you recommending...or maybe, as you've looked around the world and through the OECD, how are indigenous groups accessing the capital they need to participate in the ownership structures for the development of their own resources?

Ms. Dawn Madahbee Leach: I have to tell you that through the OECD studies, it was found that Canada has a pretty good system of aboriginal-owned financial institutions. We have a network of about 58 aboriginal financial institutions across Canada that service the whole country. We also have two indigenous-owned banks in Canada. Other countries are pretty envious of the fact that we do have those entities. That does help, along with the fact that there are, I believe, more than 56,000 indigenous businesses in Canada.

I think having those models of finance available, which are indigenous-owned financial institutions—

•(1730)

Mr. Nick Whalen: Ms. Leach, excuse me for my ignorance on this. Is there any special tax status for those indigenous-owned banks or do they operate the same as chartered banks in Canada?

Ms. Dawn Madahbee Leach: They operate the same as chartered banks.

Mr. Nick Whalen: Wonderful.

I have a final question for both of you: When it comes to the other aspect of resource development, environmental management of the resource, what are some of the best practices you've seen in your research on co-management or joint management of resources?

After Ms. Leach has answered, maybe you, Dr. Hemming, can let us know to what extent the Ngarrindjeri jointly manage any of the fishing resources you've spoken about.

Ms. Leach.

Ms. Dawn Madahbee Leach: In my own region near Sudbury, we have the Wahnapiatae First Nation. It owns its own environmental company, which does all the environmental testing of the waterways and the lakes around the Sudbury region through contracts with the many mining companies in the area. This is a company that's owned by the community. It employs young indigenous people who have studied the environment and biology and have the expertise to do all the testing. I think that's one element. They report back to the community on all their findings. I think that's one example.

Mr. Nick Whalen: Thanks, Ms. Leach.

I'll give Dr. Hemming the last word on joint management of resources in Australia.

Dr. Steve Hemming: There's a program called indigenous protected areas in Australia. It is a pretty successful program. It's a mechanism for identifying an area and bringing multiple groups together to start to manage it as a natural resource management space and a protected space. A number of those have been declared in Australia, and they're very effective.

I think the mining industry has moved and shifted to develop some significant innovations working with indigenous nations across Australia. In the Ngarrindjeri context, they have basically built up a co-management relationship with the state that isn't fully recognized at this point. A hand-back of national parks occurs in some places and then there's co-management, but it's different across Australia, and it's different depending on the histories of indigenous opportunities under land rights, mining and other spaces. I think it's behind in relation to other settled societies such as the U.S., Canada and New Zealand in some contexts.

Indigenous leaders have really led the way. There's been a huge amount of work from indigenous nations to try to change the situation. There are some really interesting innovations that have been developed out of virtually nothing. It's an interesting example in Australia. When you don't have treaty rights, you don't have many rights at all, so what kinds of things can you negotiate? I think it's worth looking at Australia for that reason.

Mr. Nick Whalen: As always, Mr. Chair, we don't have enough time to get to interesting points such as capacity development, but maybe we can in the next meeting.

The Chair: Thank you, Mr. Whalen.

Both of you, thank you very much. I know your contributions will prove to be very significant.

I'm very grateful for your taking the time to be here, Ms. Leach.

Professor, you're just starting your day, so good day. I hope you enjoy it. Thank you for joining us.

What time is it there, just out of curiosity?

Dr. Steve Hemming: It's 8:03 in the morning.

The Chair: Okay, so it's not that bad.

The meeting is adjourned.

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