



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 10

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

3 October 2018

CLERK (Mulrooney): This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

The first item today is the entry of exhibits.

THE COMMISSIONER: Your mic.

MS. O'BRIEN: Your mic.

MR. LEARMONTH: The first item today is the entry of exhibits, and that will be Exhibits P-00297 to P-00300 and P-00304 to P-00310. Could those exhibits be entered into evidence, unless there's any objection?

THE COMMISSIONER: So you got a little ahead of me there. So 00297 to 00300 and then –

MR. LEARMONTH: 00304 to 00310.

THE COMMISSIONER: Right, no objection to those being entered I assume. So as a result, those will be entered as marked.

Okay.

MR. LEARMONTH: Before we call the first witness, Aubrey Gover, I wanted to take a moment to state the parameters of the evidence that we'll be considering today and tomorrow. And I'm gonna refer to the Commissioner's March 14, 2008, interpretation of the terms of reference, which in paragraph 47 deals with the scope of the issues with respect to the Indigenous peoples.

I'm gonna quote for it because it's important that everyone know that there are limits placed on this phase of the questioning. Paragraph 47 of the terms of reference reads:

"Having said this, it is obvious to me that the Lieutenant-Governor in Council intended that the established leadership of the Indigenous people would have a part to play in this Inquiry. If that is so the part that they should play would be in areas of concern or interest to those Indigenous people. I note that paragraph 4(b) (v) (a) refers, as regards to the issue of the cost escalation of the construction of the Project, to any risk assessments, financial or otherwise, conducted in respect to the Muskrat Falls Project. At present, while I do not have full information, I am aware that certain assessments likely were conducted, specifically risk assessments concerning environmental issues prior to, as well as subsequent to, sanction. I have decided here that a contextual and purposive review of the Order in Council permits me to investigate into what consultation occurred between the established leadership of the Indigenous people and Nalcor as well as the Government prior to sanction, what risk assessments and reports were done as regards the concerns of the Indigenous people, whether these assessments were appropriately and reasonably considered by Nalcor and the Government and whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Indigenous people both at the time of and post sanction. In investigating these matters, I will not be determining any claims or treaty rights for any of the Indigenous people as this clearly does not fall within the Commission's mandate."

And I just want to emphasize the last point, that the terms of reference do not provide any authority for the Commission to determine the claims or treaty rights for any of the Indigenous peoples, under section 35 of the *Constitution Act 1982* or otherwise. Therefore, in this regard no evidence can be presented relating to historic use of land or the exercise of section 35 rights.

I just wanted to state that on the public record so viewers will understand that there are limits on the scope of the questions that I will put to the witness and which will be – form the basis of evidence in the future. And, you know, we recognize that this subject of treaty rights and land claims is of vital importance to the Indigenous group but we're unable to make determinations of that at this Inquiry.

THE COMMISSIONER: So, just as a follow-up to that and more of a layman's explanation of what I expect to hear today and tomorrow; what I'm interested in really, is what consultation took place. I'm not interested in determining whether or not it was the consultation that should have taken place under section 35 of the Charter. I'm just wanting to know what consultation took place and with whom.

I also want to focus on the issue of the concerns that were raised, so that I can eventually assess whether or not those concerns were reasonably addressed, particularly those that are legitimate concerns or were reasonably addressed. And I also want to make it clear that, you know, as I made the point yesterday, we're not doing an environmental assessment here.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: I'm not deciding, for instance, whether or not the North Spur will hold or it won't hold. That's not part of my – part of the terms of reference. What – as I said, the purpose of this evidence, is to recognize the fact that the order-in-council refers to the involvement of Aboriginal or Indigenous groups, and I want to give them that opportunity to take part in the hearing on the basis of what I just explained.

So I think if everybody follows those – that thinking, I think we're gonna be all on good terms for the next two days. So that's my expectation.

All right, so Mr. Learmonth?

MR. LEARMONTH: Thank you.

THE COMMISSIONER: The first witness then.

MR. LEARMONTH: Thank you.

The first witness today will be Mr. Aubrey Gover. Could Mr. Gover be sworn?

THE COMMISSIONER: Okay, Mr. Gover if you could stand, Sir?

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the

whole truth, and nothing but the truth, so help you God?

MR. GOVER: I do.

CLERK: Please state your full name for the record.

MR. GOVER: Aubrey Trent Gover.

MR. LEARMONTH: (Inaudible.)

CLERK: Thank you.

MR. LEARMONTH: You're a senior official with the Government of Newfoundland, is that correct, Mr. Gover?

MR. GOVER: That's correct.

Currently I'm deputy minister for Indigenous Affairs for the Government of Newfoundland and Labrador. I've held that position since 2013. From 2010 to 2013 I was assistant deputy minister for Indigenous Affairs with the Government of Newfoundland and Labrador.

From about 2005 to 2010 I was provincial negotiator for the Innu land claim and self-government; and prior to that, from 1998 to 2005 I was legal counsel to the Department of Labrador and Aboriginal Affairs, and I was in particular assigned prior to 2000 to self-government for the Innu, and then from after 2000 I was legal counsel generally for the department on all matters that were not Inuit. We had a counsel for Inuit matters but she left at a certain point in time.

But fair to say, since 1998 to the present time, given my various roles with the Department of Labrador and Aboriginal Affairs, the Indigenous Affairs Secretariat, I'm very familiar with the issues that are going to be discussed here today.

MR. LEARMONTH: Okay.

Of the senior officials of the Government of Newfoundland who have been involved in the consultation process with Indigenous peoples, do you consider yourself to be the person with the most experience in this area?

MR. GOVER: Certainly, I'm the most – yes, in the current (inaudible) – officials with the Government of Newfoundland and Labrador that would have had any involvement with Indigenous consultation, yes, I am the most knowledgeable about that.

MR. LEARMONTH: Okay.

Thank you.

I'd ask Madam Clerk to bring up Exhibit P-00269. Sorry, it – 269, yes.

THE COMMISSIONER: So we're at tab 4 then, Mr. –?

MR. LEARMONTH: I made a mistake. It's 268, it should be.

THE COMMISSIONER: 268, tab 3.

MR. LEARMONTH: 268, and that's tab 3 in Mr. Gover's book.

Yeah. Mr. Gover, you have that document in front of you?

MR. GOVER: I do, Sir.

MR. LEARMONTH: P-00268. Can you tell us what role you played in the preparation of this document?

MR. GOVER: This document was prepared by staff of the Indigenous Affairs Secretariat. Upon its preparation, I reviewed it and I approved it.

MR. LEARMONTH: Okay.

MR. GOVER: Based upon my knowledge of these matters, it is accurate.

MR. LEARMONTH: Thank you.

And when was this document prepared? Over what period of time?

MR. GOVER: I think it was prepared over a couple of months. It was – I can't recollect the exact date –

MR. LEARMONTH: Yeah.

MR. GOVER: – as to when it was prepared; but, you know, it's a document of recent origin.

MR. LEARMONTH: Yeah. Within the last –

MR. GOVER: Prepared for the purposes of this Inquiry.

MR. LEARMONTH: Yes.

MR. GOVER: Yes.

MR. LEARMONTH: Okay.

MR. GOVER: It took us a while to assemble the document because there were quite a number of stages here, and we are a staff of basically eight people who have many, many things to do –

MR. LEARMONTH: Yes.

MR. GOVER: – in addition to assembling these documents.

MR. LEARMONTH: Yeah.

So after these documents were assembled by your staff, I understand that you reviewed it –

MR. GOVER: Yes.

MR. LEARMONTH: – and checked –

MR. GOVER: Yes.

MR. LEARMONTH: – the document for accuracy –

MR. GOVER: Yes.

MR. LEARMONTH: – and then, we'll say, signed off on it.

MR. GOVER: Yes.

MR. LEARMONTH: Okay.

Now, this document is entitled: Indigenous Consultation regarding the Lower Churchill Hydroelectric Generation (LCP), Labrador Island Transmission Link (LITL), and Maritime Link.

I'd like you to take us through this document and – you know, I will ask you for certain clarifications at some points, but can you just take us through this document, Mr. Gover?

MR. GOVER: Yes. So it was clear, as a result of the seminal decision of the Supreme Court of Canada in *Haida and Taku*, that a duty to consult can arise at law whenever a government – be it the federal government or the provincial government – is contemplating an action which could adversely affect asserted or settled Indigenous rights.

By settled we mean settled by a historic treaty or a modern land claim agreement for the most part. Asserted rights are rights that haven't been adjudicated in court and proven to exist, accepted by a government or defined by a treaty or a land claim agreement. They're assertions.

As a result of the decision, contemplation to develop the Lower Churchill, it gave rise to considerations as to the engagement of that duty and the discharge of that duty. So, as often is the case, the duty to consult requires governments to solicit the views of Indigenous people on how the project may impact their settled and asserted rights. And often those considerations are very similar to the considerations that arise in an environmental assessment of a project.

So in the normal environmental assessment of a project, one would consider, what are the effects of the project on caribou, on fish, on migratory birds, on historic resources, on sites of significance? And these are often matters that are of interest to Indigenous people with respect to their traditional practices upon the land. So often these two processes are integrated together. But while integrated – make no mistake – the processes are distinct. Indigenous people have elements of the process which are distinct from the elements of the process which are available under environmental assessment to the general public.

So with respect to the generation project, and with respect to the Labrador-Island Transmission Link project, it was decided that government would engage in consultation with 10 Indigenous governments and organizations.

MR. LEARMONTH: And how were these 10 groups selected?

MR. GOVER: I should have said, like, the first part that would trigger the duty is the government has to have real or constructive knowledge of the settled or asserted rights. So we looked at our records, we looked at our knowledge, and we had knowledge of these 10 organizations having either settled or asserted rights in Labrador.

MR. LEARMONTH: That was the basis of the selection?

MR. GOVER: Yes.

MR. LEARMONTH: And there were how many in Quebec and how many in Labrador?

MR. GOVER: Three in Labrador, being the Nunatsiavut Government, the Nunatukavut Community Counsel, formerly the Labrador Metis Nation, and Innu Nation.

And in Quebec, there were seven starting on the North Shore of Quebec and then extending up to the Schefferville region. So going from east to west along the North Shore they would have been: Pakuashipi, Unamen-Shipu, Nutashkuan, Ekuanitshit, Uashat. And then moving up into the Schefferville region, there would have been Matimekush-Lac John, and the Naskapi of Kawawachikamach. I believe that's the totality. I hope I haven't missed anyone in the listing there.

MR. LEARMONTH: So the seven groups in Quebec and three in Labrador –

MR. GOVER: Yes.

MR. LEARMONTH: – were selected at the time of – or before, in anticipation of the Joint Review Panel hearings. Is that right?

MR. GOVER: Yes.

MR. LEARMONTH: That's what triggered the selection process?

MR. GOVER: The Joint Review Panel hearings?

MR. LEARMONTH: Yes. Yes.

MR. GOVER: No, I think what triggered the selection process was the fact that these projects were going to be undertaken, there had to be an environmental assessment to authorize these projects to proceed and so consideration was given in early days to which groups would be engaged and what would the nature of that engagement would be.

Certainly, when there was going to be a Joint Review Panel process, that was considered into the engagement. But, as outlined in this document, if we look at the steps in a normal environmental assessment process – so I'm talking provincially now, the federal process may be a bit different. But, basically, we have a registration document. So this is a project description. So this is an element that the public has input on. So what we decided was that every element in the environmental assessment process where the public would have input, that would be an appropriate stage for Indigenous consultation to occur.

So registration is the first step. There was consultation with – there was consultation on the registration document. Then you move to the next step, which would be the preparation of the environmental impact statement guidelines. So these would be the instructions by the government to the proponent, in this case Nalcor, as to how to prepare the environmental impact statement. And one aspect of the guidelines was for Nalcor to become familiar with the concerns of Indigenous people in relation to the project. And the 10 – or – well, the Indigenous governments and organizations were consulted on the guidelines and had input into the guidelines.

Then – in Newfoundland and Labrador, we rely on proponents to undertake procedural aspects of consultation, and if one goes back to, as I said, the seminal cases of Supreme Court of Canada on consultation, the court clearly said that procedural aspects of consultation can be delegated to the proponent, in this case Nalcor Energy. So Nalcor, in the preparation of the environmental impact statement and its component studies, engaged the 10 Indigenous organizations to acquire an appreciation of their interest and concerns with respect to the project.

After the EIS was completed, it was turned over to the Joint Review Panel, and as part of that process, there was an ability to comment on the EIS statement itself, and all the organizations would have had that ability. And then the Joint Review Panel hearings took place and – or I should say, the terms of reference for the Joint Review Panel, the organizations were consulted on those, and there was a mandate provided to the Joint Review Panel to consider impacts on Indigenous people from the generation project.

So those hearings commenced, and Indigenous – various Indigenous organizations participated in those hearings, and then the Joint Review Panel issued a report, which included findings with respect to the impacts on Indigenous people. And then that report was provided to the 10 Indigenous governments and organizations, and they submitted comments to the governments, federally and provincially, on the report of the Joint Review Panel, and then on March 12, 2012, both the federal government and the provincial government issued public responses to all the recommendations of the Joint Review Panel and released the generation project from environmental assessment.

MR. LEARMONTH: Okay.

MR. GOVER: I would also note that during this process there was funding provided to the Indigenous organizations to participate in the process. The funding was provided, I would say, in equal measures by the Province of Newfoundland and Labrador and by the Government of Canada. I believe there was a million dollars made available in the Aboriginal participant funding envelope so that the Indigenous organizations would have some funding to participate in the environmental assessment process and, in particular, in the process of consultation with respect to impacts under asserted and settled rights.

So that was the process for the generation project. The project for the Labrador-Island Transmission Link did not involve the use of a Joint Review Panel but did involve consultation with the same 10 organizations –

MR. LEARMONTH: For that – for the Labrador-Island Link?

MR. GOVER: Yup.

MR. LEARMONTH: Yeah. Okay.

MR. GOVER: And basically on the same components without Joint Review Panel hearings, Joint Review Panel report, so that was a – from the point of view of the province, was an environmental impact statement, and I believe, from the point of view of the federal government, was a comprehensive study.

And that were – that was the – those were the two projects that had the primary interest for the 10 governments and organizations that were consulted. Obviously, the Maritime Link being an undersea cable, I'm not saying had no interest for Indigenous people, but that was a consultation undertaken more so by the federal government, and various Indigenous governments and organizations were consulted on the Maritime Link as well.

MR. LEARMONTH: For environmental issues primarily?

MR. GOVER: And as – integrated – as usual, integrated – the duty to consult –

MR. LEARMONTH: Yeah.

MR. GOVER: – was integrated into the environmental assessment process, yeah.

MR. LEARMONTH: But was the Government of Newfoundland involved to any degree in consultations on the – for the Maritime Link, or was that something that was done by the federal government and –?

MR. GOVER: That was – to my understanding and recollection, that was primarily done by the federal government, because on the Island of Newfoundland and Labrador, the rights of the Mi'kmaq had been adjudicated, and it's been found that on the – well, in the Province of Newfoundland and Labrador, the Mi'kmaq arrived in the province post-contact so could not hold Section 35 Aboriginal rights.

MR. LEARMONTH: Just explain what post-contact means.

MR. GOVER: So post-contact would mean that the Mi'kmaq arrived in Newfoundland and Labrador after Europeans did, after, say, John Cabot came over here.

MR. LEARMONTH: Yeah.

MR. GOVER: That would be a post-contact arrival. And this is the case called Drew, which was adjudicated in the Trial Division, went to the Newfoundland and Labrador Court of Appeal and leave to the Supreme Court of Canada, I believe, was refused.

But the ultimate upshot of the case was Mi'kmaq in Newfoundland and Labrador, which is the primary Indigenous population on the Island, don't hold Indigenous rights under Section 35 of the Constitution because they're post-contact arrival. Indigenous rights relate to pre-contact practices, and the various treaties that were pleaded in that case were found to be – while they may have been applicable in the Maritime provinces –

MR. LEARMONTH: Yeah.

MR. GOVER: – they were not applicable in Newfoundland and Labrador.

So there were no folks on the Island to trigger a duty to consult at law. So there were really – there was really nobody for the Government of Newfoundland and Labrador to consult on the Island, but we welcome and encourage Mi'kmaq on the Island to participate in the public processes that are available to all residents of the province in the environmental assessment process.

But because it was a Maritime cable, of course, the federal government was involved, given their jurisdiction, and there were consultations with the Mi'kmaq confederacy in Nova Scotia and others. But the consultation on the Maritime Link – because of what I just explained, the limited provincial interest of Indigenous people in that particular part, that particular project – was more driven by the federal government.

MR. LEARMONTH: Okay, so the environmental – the Joint Review Panel released its report and can you tell me, generally, what

recommendations were made with respect to Indigenous peoples in the Joint Review Panel?

MR. GOVER: The findings of the Joint Review Panel with respect to Indigenous people were these – I guess the findings of the panel that – on the significance of the impact of the project, that would be the generation project, on Indigenous people were consequential from the point of view of the governments, and they were these: so with respect to the Quebec Innu, these were treated as a collectivity in the report of the Joint Review Panel. The effects were found to be adverse but not significant.

MR. LEARMONTH: That was for the Quebec Innu groups?

MR. GOVER: Yes.

MR. LEARMONTH: Okay.

MR. GOVER: Yes, for the Quebec – for the seven Quebec Innu groups; adverse but not significant.

For NunatuKavut the finding was the same; adverse but not significant.

For the Labrador Innu, there were various findings that there would be permanent, lasting adverse effects on the Innu of Labrador, but given the mitigation measures and accommodations that have been put in place by Nalcor and by the government, that the adverse effects from the project on the Innu were satisfactory addressed.

MR. LEARMONTH: That was the finding of the Joint Review Panel?

MR. GOVER: Yes, in essence.

MR. LEARMONTH: Yes.

MR. GOVER: With respect to the Inuit, the panel had a high degree of concern with respect to the issue of methylmercury, and by the Inuit I mean the Labrador Inuit as represented by Nunatsiavut Government. And what they said was should methylmercury rise to such a level in Lake Melville and downstream of the project that consumption advisories were required, the

impact on the traditional Inuit lifestyle would be significant.

MR. LEARMONTH: Having received these findings of the Joint Review Panel, what action did government take to address the concerns that you've just described? I realize that the concerns weren't the same for all Indigenous groups, but if you could just break that down and give us an account of what steps the government took to address the concerns of the respective Indigenous groups.

MR. GOVER: Almost all the recommendations of the Joint Review Panel that were directed towards the provincial government – because the way the panel had set out the recommendation structure were: some recommendations were directed to the federal government, some recommendations were directed to the provincial government, some recommendations were directed to Nalcor.

That's the reason why, when the governments – the federal and provincial governments – released the report on March 12, and released the projects – released the generation project – on March 12, 2012, there was a federal response and a provincial response, with both governments basically responding to the recommendations that were directed towards them, respectively.

So, for the recommendations that were directed towards the provincial government, government basically – for the most part – accepted those recommendations.

There were some recommendations which, I know, would be – which have been raised, and which have been raised and are of concern to Nunatsiavut, and I would say other users of Lake Melville as well, and primarily relate to the issue of methylmercury.

And so there was a recommendation from the Joint Review Panel, Recommendation 4.5, which called on Nalcor to implement its full clearing of the reservoir scenario. That recommendation was not accepted by the Government of Newfoundland and Labrador. Instead, the partial clearing scenario was accepted.

MR. LEARMONTH: Yeah. Can you explain why that recommendation was not accepted by the Government of Newfoundland and Labrador?

MR. GOVER: Well, yes. I will say that these recommendations – when it comes to the acceptance or rejection of various recommendations, of course, this is not a matter solely within the purview of Indigenous Affairs. So – because now we’re talking about, really, in particular in this instance, how the removal of organic material from the reservoir to be created behind Muskrat Falls would impact methylmercury and bioaccumulation of methylmercury down stream.

So, as you can appreciate, this is a matter of science. The science and the creation of methylmercury, the production of methylmercury, the distribution of methylmercury, the consumption of methylmercury by species and then its magnification in the food chain, until its actually consumed by users including Nunatsiavut beneficiaries of Lake Melville, either its seals, fish or other types of consumption.

So, I might have worked in Indigenous Affairs for 20 years and people might think of – have various opinions of what I have to say here today, but one thing I’m not is an expert on methylmercury. This is to say that when it comes to what the recommendations, whether they were accepted or not, in a whole or in part, we rely upon other expertise in the government.

So, for this particular issue, we would have had a water resources division. We would have had environmental scientists, perhaps the Department of Health and Community Services would have been involved.

I’d just like to say that when we do an environmental assessment, we form – the Department of Environment forms what they call an environmental assessment committee, which has representatives from all the departments that have expertise on the issues that will come up during environmental assessment.

Generally, there’s only one assessment committee, it includes not only provincial

representatives but federal representatives as well because of the federal jurisdiction and expertise in fisheries and fish habitat, in particular.

So, having looked at the – and I have to make – when we’re talking about these scenarios, I have to make this point very clear, that when this issue about full versus partial clearing was before the Joint Review Panel, it was not about soil removal. It was about the number and locations of, basically, trees that would be removed from the reservoir.

MR. LEARMONTH: Not soil.

MR. GOVER: Not soil.

Now, the Joint Review Panel did consider that, but that was the subject of a different recommendation. So, what the implementation –

THE COMMISSIONER: Just go back for a second. So the JRP did consider it, and what did you say?

MR. GOVER: Did consider soil, the removal of soil. The removal of soil, as a mitigation measure, is at that time, you know, was at a very early stage. And that was the subject of I think it was Recommendation 6.7. And that recommendation was directed to, I believe, Natural Resources Canada to undertake a pilot study on the effectiveness of soil removal as a mitigation measure for methylmercury in co-operation with Nalcor and perhaps other public utilities in Canada, and to have that study completed before the impoundment of the Gull reservoir.

MR. LEARMONTH: Okay, now just, perhaps it’d be easier to follow if we brought up the Joint Review Panel report dated August 2011.

MR. GOVER: Okay.

MR. LEARMONTH: And then you could refer to the –

MR. GOVER: Okay.

MR. LEARMONTH: – passages.

MR. GOVER: Sure.

MR. LEARMONTH: The exhibit, Madam Clerk, is P-00041. Will you please bring that up?

MR. GOVER: So if you scroll down in this document you can cut to the first recommendation which is 4.5. I couldn't tell you exactly what page that is on at the present moment. Excuse me.

THE COMMISSIONER: Tab 12.

MR. GOVER: Tab 12. Thank you.

MS. O'BRIEN: Can you go to page 55, please, Madam Clerk.

Can you go ahead another – go to page 75, please?

THE COMMISSIONER: I see you don't have the full text there. You're going to have to look at the screen.

MR. GOVER: Nope.

So I think we just skipped by it there, 4.5. So this was the panel's recommendation.

MR. LEARMONTH: It's Recommendation 4.5 that you're referring to –

MR. GOVER: Right.

THE COMMISSIONER: – which is on the screen now.

MR. GOVER: Right.

MR. LEARMONTH: Yeah.

MR. GOVER: So: "The Panel recommends ... if the Project," – being the generation project – "is approved, Nalcor be required to apply its 'full clearing' reservoir preparation option to the Muskrat Falls reservoir."

I just want to make the point – two points – one is full versus partial clearing was not about soil removal. It was about the quantity and location of trees to be taken out for the most part. This recommendation – the provincial response to this was that Nalcor apply its partial clearing scenario.

MR. LEARMONTH: What did that constitute, partial clearing?

MR. GOVER: It's unfortunate that Mr. Gilbert Bennett isn't here today –

MR. LEARMONTH: Well, he will be testifying later.

MR. GOVER: Yes.

MR. LEARMONTH: Yeah.

MR. GOVER: But these scenarios were prepared by Nalcor, not the government. And while I'm familiar with them, I wouldn't be able to necessarily elaborate on in detail. I mean, it is about the quantity of trees that would be taken out at various locations in the reservoir, but I wouldn't be able to give you a – I wouldn't be able to provide an excellent description of how one scenario differed from another.

MR. LEARMONTH: Okay.

MR. GOVER: I will say this: That Nalcor was encouraged to remove as many trees as possible –

MR. LEARMONTH: By whom?

MR. GOVER: By the government.

MR. LEARMONTH: Yeah.

MR. GOVER: And I'm of the understanding – now, people at Nalcor would have to confirm this – that many trees have been removed to the extent that the trees were accessible and safe to remove because the slopes and grades may make it unsafe to remove some trees.

The other thing about this is – I'll come back to why the government went with the partial clearing scenario in a second. The other thing about this recommendation is since this recommendation was considered and the issue was considered, soil removal has become a much more significant potential source of mitigation than the removal of trees. And so even the JRP was of the view that the difference – and this is discussed in some of the litigation that occurred over the consultation and accommodation with respect to this project. The

difference in a mitigation would be – would likely be small.

But when you're talking about methylmercury, I do appreciate any difference can be important when you're Indigenous, when you're Inuit, when you're the user of Lake Melville, when you have to consume or you want to consume as part of your traditional lifestyle, or your recreational lifestyle, fish, seals and other species that are in Lake Melville.

So based upon the scientific advice that was provided about the effects of the full removal versus partial removal, and the fact that, I guess, to some degree your mitigation measures for methylmercury are very limited, there a lot – there are not a lot of mitigation measures you can take. So it's like this, you try – when you're building your house and you're wiring it – to have wiring that's up to code so that your house is safe and doesn't burn down. But no matter what kind of wiring you put in you can never have 100 per cent confidence, so you need smoke detectors. And smoke detectors – or what I would call monitoring – was also part of the measures for the control of the risk from methylmercury.

So, in other words, the full clearing scenario may not have produced a significant reduction in methylmercury. It certainly wouldn't have produced a reduction in methylmercury that would have removed the need to monitor the amount of methylmercury that might eventually be consumed by people.

So in light of the modelling and sampling and monitoring that had to be undertaken when this project was released it was felt that the partial clearance scenario, in conjunction with these other measures, would address the risk posed by the methylmercury.

So, for example, as a condition of the release of the project there is a regulation made by the Government of Newfoundland and Labrador in the release order that prescribes that Nalcor has to develop a methylmercury surface monitoring program, an environmental effects monitoring program for methylmercury and a Human Health Risk Assessment Plan, plus whatever other mitigation measures Nalcor had committed to in its environmental impact statement.

So when the totality of the mitigation monitoring was considered, the government felt and decided, and based upon its own scientific analysis, that the partial clearing scenario was sufficient.

MR. LEARMONTH: Okay, when was this decision reached?

MR. GOVER: When – it was reached, you know, prior to the government's publication of its response to this recommendation, and the publication of its response and the release of the project occurred on March 12, 2012.

MR. LEARMONTH: Okay.

Now, the – this way of dealing with the methylmercury issue was decided at the time you just indicated. Has the policy of the Government of Newfoundland since that policy was decided upon – have there been any changes to the position of the Government of Newfoundland on methylmercury?

MR. GOVER: Let's just say that, you know, the Nunatsiavut Government had major concerns about this issue during the Joint Review Panel hearings. And after the governments released the report, they continued to have significant concerns about what the impacts of methylmercury could be on the beneficiaries of Nunatsiavut – living in Upper – living in Happy Valley-Goose Bay, the Upper Lake Melville region, and down to Rigolet. So the Nunatsiavut Government actually commissioned its own research. And –

MR. LEARMONTH: Do you know when this research was commissioned?

MR. GOVER: I couldn't tell you exactly, but I do know this. So there was a paper that was prepared by their researchers – some people even from Harvard University – and that paper, I believe, was presented to the government. It may have been at a meeting in September of 2016. I checked my emails yesterday; I think I actually received the paper by email on October 26, 2016. And that was the time when we were approaching the provincial election.

So, we were approaching the provincial election. So then, the governments changed and we had

this paper. To the best of my recollection, with the new administration, the Human Health Risk Assessment Plan was one of the plans that required the minister of Environment to approve Nalcor's plan.

So, Minister Trimper, at the time, who was also the Member for Lake Melville, prior to making any decision on the plan held a methylmercury workshop – yeah, I believe in Happy Valley-Goose Bay – to get some further insights into methylmercury. And subsequent to that workshop, the – that workshop, I believe, was held March 22, 2016.

MR. LEARMONTH: That was after the Harvard report had been received?

MR. GOVER: By us at government, yes.

MR. LEARMONTH: Yes.

MR. GOVER: Yeah.

And then, I believe, in June, the minister approved the Human Health Risk Assessment Plan, with the condition that should there be adverse impacts arising from methylmercury, if appropriate, compensation would be paid. There was a condition added to that plan that required compensation to be paid, based upon effects from methylmercury.

The Nunatsiavut Government still had concerns and appealed the minister's decision. Now, this is an odd situation. Under the *Environmental Protection Act*, the minister's decision can be appealed, but it is appealed to the same minister who made the decision.

In between the initial approval of the plan and the appeal decision, I believe, there was a second workshop held on methylmercury in August. And then, following that workshop, which was facilitated by a facilitator, and after having more insight into methylmercury – and the Indigenous organizations were invited to participate in these workshops – the plan was subsequently, I believe, re-approved in response to the appeal in September.

Nunatsiavut's was – went on and, you know, did further research, and we encouraged as part of our – we were in this – we were in the post-

environmental assessment stage and we were consulting all 10 organizations, all 10 Indigenous organizations, on all the permits and plans and authorizations that would be required for the project.

So we encouraged Nunatsiavut, if they had results, to either inform us of the results through the consultation process on the various plans and permits, or as they did, come to us directly with the information. And not only us but to Nalcor as well, and with a view that whatever information there was we would, you know, take – we would fully and fairly consider.

MR. LEARMONTH: Okay.

Just let me ask you a question at this point. You referred to Nalcor, and Nalcor was – had some responsibility for dealing with this methylmercury issue, as did the government.

Can you explain what the relationship was between the Government of Newfoundland and Labrador and Nalcor as to who was responsible for moving this issue forward, hopefully resolving it? Was that a joint responsibility? Was it more weighted on Nalcor's shoulders or vice versa?

MR. GOVER: As I indicated earlier, the law allows the delegation of certain aspects of consultation to be placed upon proponents and in Newfoundland and Labrador we do do that. But, it is clear from the law that while governments can delegate procedural aspects of the duty to consult to proponents, the ultimate responsibility for the discharge of the duty rests solely on the Crowns.

MR. LEARMONTH: Yes.

MR. GOVER: So even though Nalcor is a Crown agency and bears a closer relationship to the government than say an ordinary, private proponent, at the end of the day the government –

MR. LEARMONTH: Yeah.

MR. GOVER: – remains as the regulator responsible to ensure the mitigation is satisfactory.

MR. LEARMONTH: Okay.

And now you can just carry on. I interrupted you. Please proceed with your discussion about – you’re talking about the dissatisfaction of the Nunatsiavut –

MR. GOVER: Right.

MR. LEARMONTH: – Government with the proposals that government was coming up for.

MR. GOVER: So after – when the human health assessment plan was approved initially, there was a press conference at which government outlined its reasoning with respect to methylmercury, and the fact the plan was approved then led to quite a furor of public controversy in Labrador.

I remember being up there with the premier, I believe we were attending Expo Labrador, and there was a massive public demonstration, which the premier attended and which the three Indigenous leaders spoke at. And so the issue of methylmercury was still front and centre at that point in time. I believe, that was in – the plan was approved initially in June, and I believe we were up there at the end of June. Then there was the second workshop, then there was the September re-approval of the plan.

But the issue of methylmercury, from the point of view of Nunatsiavut, was always present and continued to be present until the – in order to protect the infrastructure at the site, the water levels had to be raised somewhat, and this prompted a meeting with the three Indigenous leaders and the premier and ministers and officials, which led to the agreement to establish an independent expert advisory committee to look at the issue of mitigation of methylmercury downstream at Muskrat and provide recommendations to the government – and by that I mean the provincial government – on this, on the mitigation of methylmercury.

MR. LEARMONTH: Yeah. And this matter of resolving the issue, or attempting to resolve the matter, was the result of an occupation of the Muskrat Falls site. Is that correct?

MR. GOVER: They’re –

MR. LEARMONTH: (Inaudible.)

MR. GOVER: – there have been demonstrations at –

MR. LEARMONTH: Yeah.

MR. GOVER: – the site and occupation at the site, yes.

MR. LEARMONTH: And people were arrested, I think?

MR. GOVER: There have been, like – that was more within the mandate of Nalcor. It was their project, it was their work and they were the ones that sought the injunctions.

MR. LEARMONTH: Yes.

But, anyway, this was –

MR. GOVER: But, yes, there – look, there was constant controversy. And as you can see earlier in my note, which I didn’t mention, this – these matters have even been litigated by the Nunatsiavut Government twice – by NunatuKavut.

MR. LEARMONTH: Yeah.

MR. GOVER: So, anyway, this panel was established, which goes back to my point is that when it comes to methylmercury, there’s quite a scientific debate about how to mitigate it and what can be done to mitigate it.

So now the committee was funded by the province and it has concluded its work –

MS. KLEER: Excuse me.

MR. GOVER: – and submitted its recommendations to the government, and the government is now in a process of considering those recommendations.

MS. KLEER: May I just – I just have a question of clarification.

We had understood –

THE COMMISSIONER: Excuse me just for a second. Excuse me.

MS. KLEER: I'm Nancy Kleer, for Innu Nation.

THE COMMISSIONER: Excuse me just for a second.

MS. KLEER: Yeah.

THE COMMISSIONER: Could you stand, please?

MS. KLEER: Yes, Sir.

THE COMMISSIONER: Identify yourself.

MS. KLEER: Sorry, Nancy Kleer for Innu Nation. I just wanted a question of clarification.

We had understood that the matter of the IEAC and the whole methylmercury – the whole IEAC question was gonna be dealt with in phase 2 of the hearings, not this phase.

So I'm just asking for clarification on that 'cause this is obviously about the IEAC.

THE COMMISSIONER: And you are correct, because we're looking at it in the sense that if there were demonstrations, which have been now referred to, how would that have impacted the issue of the cost on the project? So we are dealing –

MR. LEARMONTH: Okay.

THE COMMISSIONER: – with it there.

So, I think, this is more just a factual – I guess, Mr. Gover, you're providing a factual detail as to the extent of the consultation or, so to speak, or what transpired. This is a factual matter. I think it falls within here.

I'm not going into whether or not, you know, the IEAC is right or the wrong or whatever the scenario is, I'm not dealing with that. I'm just trying to figure out exactly what was done with each of the Indigenous groups regarding consultation. Obviously, events occur, consultation occurs, so I guess this is probably part of that.

MS. KLEER: All right.

And then just to question; Will we have an opportunity in phase 2 to ask questions about the process or is it in phase 1 that we're supposed to ask these questions?

THE COMMISSIONER: The – what process are you talking about?

MS. KLEER: The IEAC process; the post-sanction process.

THE COMMISSIONER: You know, I think what I'm gonna do is defer that right at the moment to allow you to discuss this with Commission counsel.

MS. KLEER: Okay.

THE COMMISSIONER: Because I think we have a plan here with regards to how we wanna deal with this, and I had assumed this was all discussed, and I think it was, but that will give you another opportunity –

MS. KLEER: Okay.

THE COMMISSIONER: – to have further discussion related to that, and we'll deal with that subsequently.

MS. KLEER: Thank you.

MR. LEARMONTH: Well, what I propose to do is we're almost – I'm almost at the end of the questioning on the methylmercury, so we can – I'll end that and move into another area and then further discussions can take place.

THE COMMISSIONER: Right.

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: So we'll just leave that for the time being, Ms. Kleer, and then we'll come back to you –

MS. KLEER: Okay. Thank you.

THE COMMISSIONER: – and perhaps a discussion at the break with Commission counsel might help you with regards to this.

MS. KLEER: Appreciate that. Thank you.

MR. LEARMONTH: Mr. Gover, so is that acceptable?

MR. GOVER: Yes.

MR. LEARMONTH: Thank you.

Mr. Gover, so just to bring this to an end, we know that there was a panel struck to consider ways of dealing with the methylmercury issue and that was back in 2016?

MR. GOVER: I do believe.

MR. LEARMONTH: Yeah.

MR. GOVER: I gotta say, from the time I was issued a subpoena to the day –

MR. LEARMONTH: Yeah.

MR. GOVER: – was not a very long time to prepare.

MR. LEARMONTH: Yeah.

MR. GOVER: So some of the dates, I might be a bit hazy on, I'm sorry about that.

MR. LEARMONTH: That's fine.

MR. GOVER: But, yes.

MR. LEARMONTH: Maybe you can just tell us what the – there were recommendations filed by the committee.

MR. GOVER: Yes.

MR. LEARMONTH: And what is the status of the issue right now?

MR. GOVER: The status of the issue is –

MR. LEARMONTH: (Inaudible) has been resolved or is it unresolved or whatever?

MR. GOVER: No, the status of the issue is that government has received the recommendations of the committee, and I just point out that I'm only making this as a statement as a matter of fact. I'm not getting into the process or who recommended what or who decided what.

MR. LEARMONTH: No, I'm not asking you to. Yeah.

MR. GOVER: So we have the recommendations and we are now processing those recommendations. After the government has given full and fair consideration in keeping with its honor on this matter, I'm sure the government will make its decision known to the public of Newfoundland and Labrador including the three organizations that were a part of that committee.

MR. LEARMONTH: All right. Okay, we'll leave that subject on that note.

So you've dealt with the concerns that have been expressed by the Nunatsiavut Government on behalf of the Labrador Inuit. Now, can you deal with the concerns that were given to government by the other Indigenous groups?

MR. GOVER: What I would say is that, really to my knowledge, the commitments made by Nalcor in the environmental impact statements, which by way of the release order they are obliged to honour.

MR. LEARMONTH: Yeah.

MR. GOVER: And the various plans that have been approved from mitigation and monitoring that were also required by the release order and approved by the appropriate ministers in the provincial government, be that, you know, endangered species, caribou protection. There are numerous types of plans that have to be executed by Nalcor and approved by the relevant ministers that, really, the only issue that remains controversial, to my knowledge, with the Indigenous group or the ones that – the issue that I have to deal with or it's brought to my attention, is this issue of methylmercury. I will say –

THE COMMISSIONER: So can I just go back to the question now.

MR. GOVER: Yeah.

THE COMMISSIONER: Because what I – one of the things I want to concern myself with is actually the concerns of each group. So whether or not you feel they've been adequately

addressed or alternatively they're no longer issues, is really not the issue.

I want to know, for instance, with regards to the Labrador Innu, what were the issues that were raised with regard – or what were the concerns that were raised by them and, likewise, for the other Indigenous groups at the time? So that I can – so at least I know what they are.

MR. GOVER: So all I – that is, you know, a very lengthy answer to provide because at every stage that I've described, in particular in relation to the impact statement, what happened was comments would come in from the Indigenous organizations, they would be reviewed and assessed and then written replies would go out.

THE COMMISSIONER: So generally speaking, what were the concerns of –

MR. GOVER: Of each –

THE COMMISSIONER: – each group?

MR. LEARMONTH: Well, just break it down. There's four groups, you've dealt with Nunatsiavut, and now what about the other three groups? If you can just take them one at a time, state what the concern –

MR. GOVER: I would have to go back, you – this is what I said, is that my role in the process as a deputy minister of Indigenous Affairs is to ensure that's – a consultation process put in place to ensure the concerns of the Indigenous people are solicited.

But these concerns are many and varied. So, for example, if an Indigenous organization expresses concerns about the Red Wine caribou herd, this would be referred to the Wildlife Division to apply their expertise on it, the answer would come back and then tables would be done up to go out to the Indigenous groups saying: You raised this concern, here's the reply. You raised that concern, here's the reply. There are numerous tables with replies in them.

All I can say is that the only issues that persist are basically the issue around methylmercury, but I can generate the answer but you've got to – I guess, as I indicated earlier, Indigenous Affairs

does not have the environmental assessment mandate.

There's an environmental assessment committee that's chaired by the Department of Environment that assesses all these comments from a scientific point of view. So in the documents that I was asked to review, I was not asked to review those documents. In fact, I did have some knowledge of them in early days when this process was new – this was a fairly new process for the government consultation – but as the process matured I didn't review the replies that went out because there were – because staff that I had looking at the replies did not raise issues to bring to my attention. And I also, if I felt any concern about it, had it reviewed by our solicitor in the Department of Justice, who, if there was any issue about the robustness of the reply, would've brought it to my attention.

But the concerns that were raised in this process, in total, could've been hundreds: everything from methylmercury to the affect on this medicinal plant, in this particular area.

MR. LEARMONTH: All right. So you've identified the methylmercury issue –

MR. GOVER: Yes.

MR. LEARMONTH: – as being an issue of the Labrador Inuit. That's fine.

Now let's just go through the other three groups and I'd like to ask you one by one what you understand their concerns were and what government did to address those concerns.

MR. GOVER: In – my understanding is – and this is, now, just understanding 'cause I'd have to get all the documents and review them. But my understanding is that Innu Nation had many – notwithstanding the fact that Innu Nation had, you know, the New Dawn Agreement – that Innu Nation had lots of concerns about various matters and these matters were addressed, and the replies were sent out to the Innu saying this is how the Government of Newfoundland and Labrador intends to deal with those replies.

And what they were, there were many, on many different kinds of issues, from archaeological

resources, I guess, to caribou. But I have – nothing has ever come back to me to say from the Innu, we disagree with the way you did that, or the way you did this or the way you did that. Like, I'm not aware of any outstanding issues. So the replies were either satisfactory or the dissatisfaction has not been brought to my attention, either by my staff, by the Department of Environment or by the Innu themselves.

MR. LEARMONTH: Okay, so you're not aware of any outstanding concerns of the Innu Nation?

MR. GOVER: No, I mean, Innu Nation is gonna testify here later on today. If there are outstanding concerns, I'd be happy to hear from them.

MR. LEARMONTH: Yeah. Well, you'll be cross-examined I'm sure so –

MR. GOVER: Sure.

MR. LEARMONTH: – we can leave that. Okay, so that's one.

Okay, what about the other two groups? Can you tell me whether you're understanding as to their concerns is the same as you've –

MR. GOVER: Hmm.

MR. LEARMONTH: – just stated about the Innu Nation, that being that you're not aware of any concerns that either of those two groups has?

MR. GOVER: Well, Innu Nation, I'm not aware of any outstanding concerns. The major sticking point between the government and NunatuKavut was the fact that there was no agreement between NunatuKavut and Nalcor similar to the Impact and Benefit Agreement that had been entered into by Nalcor and Innu Nation.

MR. LEARMONTH: Were you involved in addressing that issue, at any time?

MR. GOVER: Not particularly. I mean, I was aware of the issue, I knew Nalcor's view of the issue. And Nalcor's view of the issue was accommodation is a spectrum. Accommodation

of impacts on asserted rights is a spectrum. And I agree with that. It's a spectrum between here's a concern; what do we do about the concern? Nothing – to the concerns are so monumental and so significant we will not release the project from environmental assessment, to a range of measures in between.

The thought about impact and benefit agreements are – these would be matters for accommodation where there was a strong claim of asserted rights and where there were significant residual unmitigated impacts on the Indigenous organization. Nalcor's view was that NunatuKavut, through the consultation and the environmental assessment process, had failed to demonstrate impacts upon them that would warrant an IBA. However, if they did, they would – that Nalcor would be prepared to enter into discussions with NunatuKavut.

MR. LEARMONTH: Did government share the position that you just –?

THE COMMISSIONER: I really don't want to get into whether or not there should be an IB – an impact benefits agreement or not, 'cause I don't really have that within my wheelhouse here. So –

MR. LEARMONTH: Okay.

THE COMMISSIONER: – all I really want to know – and I'm just trying to stick to an understanding of what consultation took place and whether or not the concerns that were raised by the various groups were actually addressed in a reasonable fashion and whether legitimate concerns were actually – there were mitigation for those legitimate concerns. That's all I'm sticking to. I'm not deciding here, and nor do I want to hear anything about whether there should be an IBA or should not, because then we're gonna get close to the issue of whether or not there's a constitutional right and all that sort of thing. I'm not into that. I don't have time for that, and it's not part of my mandate.

So I would – you know, fine. I understand there is no IBA now with NunatuKavut. I still don't know – and I guess I'll have to get it from the various Indigenous groups when they testify – what their concerns were, because I would like to know a little bit more about those. I don't

need to know the finery of every one of them, but I'd like to know the general thrust of them. And obviously this witness can't tell us, so we'll find out from somebody else.

MR. LEARMONTH: Okay.

Well, what about the Ekuanitshit? Are you aware of any –

MR. GOVER: I will say this –

MR. LEARMONTH: – concerns (inaudible) expressed by the Ekuanitshit?

MR. GOVER: I will say this in fairness to the NunatuKavut, as can be seen of the litigation, they did raise the issue of methylmercury as well.

Ekuanitshit, to the best of my recollection, were primarily interested in the impacts of the project on caribou. So there is a herd, which is closer to the Ekuanitshit but more distant from the project which is sedentary, which has a more discreet and limited range. That would be the Lac Joe herd. That is an endangered species, and so even without the project, there are measures taken to ensure that that species does not go extinct.

MR. LEARMONTH: But that was a concern that was –

MR. GOVER: Yes.

MR. LEARMONTH: – expressed (inaudible) –

MR. GOVER: Yes.

And this was raised in their litigation in federal court –

MR. LEARMONTH: Yeah.

MR. GOVER: – about the concern about the Lac Joe herd. And of course, you know, all caribou herds in Labrador – be that sedentary or the migratory George River herd – are endangered.

And as I indicated, there is a – protection for the caribou and endangered species are a part of the mitigation and monitoring plans that were developed by Nalcor and subsequently approved

by the Government of Newfoundland and Labrador to address these concerns.

MR. LEARMONTH: So are you saying that this concern that was put forward by the Ekuanitshit people has been considered by government and –?

MR. GOVER: Every written comment that came into the Government of Newfoundland and Labrador during the environmental assessment process – at whatever stage it was, we directed and we encouraged, and we had a member on the environmental assessment committee, that these considerations have to be fully and fairly considered in keeping with the honour of the Crown and any reasonable measure which can mitigate those concerns should be taken.

MR. LEARMONTH: Yeah. Okay. Were they taken, from your point of view?

MR. GOVER: I have no reason to believe that reasonable measures were not taken to address the concerns.

MR. LEARMONTH: Of the Ekuanitshit group?

MR. GOVER: Of every group.

MR. LEARMONTH: Okay.

MR. GOVER: As I've indicated, we have an ongoing mechanism to address this issue of methylmercury.

MR. LEARMONTH: Okay.

MR. GOVER: But the comments that came in were voluminous.

MR. LEARMONTH: Okay.

I'd like you to turn to document Exhibit P-00290, which is in tab 13 of your book.

MR. GOVER: Tab what?

MR. LEARMONTH: Thirteen.

MR. GOVER: Thirteen, okay. Yep.

MR. LEARMONTH: Now, this is a document entitled “Lower Churchill Engagement Strategy” and “Aboriginal Groups.”

MR. GOVER: Yep.

MR. LEARMONTH: Are you familiar with this document?

MR. GOVER: I’ve read it.

MR. LEARMONTH: When did you read it?

MR. GOVER: Sometime between the middle of June and now.

MR. LEARMONTH: Okay. You never saw it before the middle of this June – June ’18 – 2018?

MR. GOVER: This document – all the documents that are exhibits – this document, I – this particular document – there are government documents that are exhibits that arise from the period 2006, 2007, and as I indicated, during that period of time, my role was to negotiate the Innu land claim and self-government agreements. Other officials in the department authored these documents.

So I did not necessarily have input into them or see them prior to my preparation for the hearing, and this particular document, authored apparently by Brian Harvey who is the current director of Indigenous Affairs, I cannot recall seeing prior to June.

MR. LEARMONTH: Okay.

MR. GOVER: I am familiar with the reasoning behind them. I am familiar with the individuals who would have authored the documents. I am familiar with the thinking that was prevalent at the time, but – when did I actually see this document? Sometime between June and today.

MR. LEARMONTH: That’s June 2018?

MR. GOVER: Yup.

MR. LEARMONTH: Okay.

Next please turn to tab 14, Exhibit 00292.

MR. GOVER: Yup.

MR. LEARMONTH: Are you familiar with that – you want to bring it up and – you’re familiar with –?

MR. GOVER: Yup.

So this document, same comment.

MR. LEARMONTH: Same comment.

MR. GOVER: It’s dated 2007, so I’d have the same comment.

MR. LEARMONTH: All right.

And at that time you were involved exclusively in negotiations with the Innu Nation, is that correct?

MR. GOVER: That is correct, but I will definitely say that I cannot – I have no recollection of seeing those two documents prior to this year.

MR. LEARMONTH: All right.

The next exhibit is 00293, and that’s at tab 15.

MR. GOVER: Okay, again this document and its email is dated 2007. It’s –

MR. LEARMONTH: April 23, 2007.

MR. GOVER: Yeah, 2007.

David Hughes, my mentor in Indigenous Affairs. My predecessor as assistant deputy minister, now deceased. Know the individual, know his thinking. Bas Cleary, former director of environmental assessment for the Government of Newfoundland and Labrador, now retired, know his thinking. Robert Coombs, formerly deputy minister of Labrador and Aboriginal Affairs, know the individual, worked for the individual, but this document, again, I did not see until this year.

MR. LEARMONTH: Okay.

Well, of any of the documents in the binder, had you been familiar with them or seen them before this year? Can you just take the time to go

through them? After the last document, can you just take the time to flip through them and see whether you have any familiarity with the beyond what you said in relation to the earlier exhibits?

MR. GOVER: Okay, so all – what you’re asking me about is when I saw the documents that are in this binder and, basically, are tab 1 through tab 23. Is that correct?

MR. LEARMONTH: Yes.

MR. GOVER: Okay.

First document: “Innu ... Submission on Consultation and Mitigation Measures –”

MR. LEARMONTH: What exhibit is that you’re referring to?

MR. GOVER: P-00266

MR. LEARMONTH: Okay.

MR. GOVER: I wonder if we could just bring this up on the screen, is that possible? Could we just start at one?

Okay, this document, I assume was prepared for the Inquiry, so I read that document this year in preparation for the Inquiry, this document is of recent vintage. Dated August 7, 2018.

MR. LEARMONTH: Okay, next at 00267 Exhibit.

MR. GOVER: The next one – again, this is a document obviously prepared for this Inquiry. It’s an exhibit and I’ve read it but this is, again, a document of recent vintage.

MR. LEARMONTH: All right.

Okay, well let’s not belabour this point anymore. Let’s just go to the last documents that we’ve talked about – let’s go to tab 18.

MR. GOVER: Tab 18.

MR. LEARMONTH: That’s – 00306

MR. GOVER: So I wonder could you just bring that one up here on the screen please.

UNIDENTIFIED FEMALE SPEAKER: Tab 18 is 00305.

MR. GOVER: Okay

MR. LEARMONTH: Mine is tab 19, 00306.

THE COMMISSIONER: So actually we are looking at 00306; would that be tab 20?

MR. LEARMONTH: In mine, it’s tab 19.

MR. GOVER: Tab 19?

MR. LEARMONTH: But the tabs might be incorrect.

THE COMMISSIONER: Might be on my document, so 00306 is at tab 19.

MR. LEARMONTH: Yes.

THE COMMISSIONER: Look at tab 19.

MR. GOVER: Tab 19.

This would have been during the period of time that I was assistant deputy minister-

MR. LEARMONTH: April 27, 2010.

MR. GOVER: And I did obviously see this document because it says here prepared by me.

MR. LEARMONTH: Right. So that’s not like the other documents that we –

MR. GOVER: No. definitely not, but this – again, like I said, post 2010? No problem; 2009, 2008, 2007, 2006 – there would have been documents generated I would not have seen or had input into.

MR. LEARMONTH: So you can’t speak to them?

MR. GOVER: Not from personal knowledge, no.

MR. LEARMONTH: Before 2010?

MR. GOVER: Only from having read them and knowing the people that had prepared them and based upon my knowledge of Indigenous law

and policy I can speak to them, but not from actually being the author of them, or have participated in their preparation.

MR. LEARMONTH: Okay.

At this point can we take the morning break please?

THE COMMISSIONER: Yes, okay. It's almost 11 o'clock. So we'll take our morning break for 10 minutes.

CLERK: All rise.

MR. LEARMONTH: I should acknowledge before we do that, I forgot to mention that Mr. Gover has counsel who is sitting at the counsel table, Ms. Gerlinde van Driel. I failed to acknowledge her presence earlier. I'd like to do it now.

THE COMMISSIONER: Welcome.

All right, so we'll just adjourn now for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

THE COMMISSIONER: All right.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

Mr. Gover, during the break we took it occurred to me that perhaps I'm not – I didn't frame the question to you properly or adequately. Because I understand that you thought that I was talking about your answers had to be based on your own personal knowledge, as opposed to your knowledge of what the other people in the department were conveying in response to the concerns of the Indigenous people. Is that correct that there was a misunderstanding?

MR. GOVER: Well, as I said, as I began, like there was a certain period of time when I was not –

MR. LEARMONTH: Yeah.

MR. GOVER: – at the level of responsibility that I currently am. I was familiar with, you know, generally the issues that went on in the department –

MR. LEARMONTH: Yeah.

MR. GOVER: – from 2005 to 2010. But when specifically asked when I read the document, I mean some of these documents that I had to review in preparation for the hearing here today, I had never seen them before I began the preparation for the hearing. That's all I'm saying.

I'm willing to testify to the documents, as long as it's understood that, you know, my understanding is based upon the reading of the document, my knowledge of Indigenous law, and policy over the last years, and of the individuals involved who would have written these documents in the period between 2005 and 2010. But yes, I am prepared to speak to them on that basis.

MR. LEARMONTH: Okay.

So just to back up a little bit, I want you to look at document P-00268, which is tab 3. And you referred to that earlier in your evidence as being a report that you approved?

MR. GOVER: Yes.

MR. LEARMONTH: Okay.

And so you adopt that report; there's nothing that you want to clarify or withdraw from the report?

MR. GOVER: No.

MR. LEARMONTH: Okay.

Now, I'm going to go back and ask you some of the same questions I asked you before, but I want you to know that you don't have to have had actual personal knowledge. You're a senior representative of the department. You can speak on behalf of the department of information that you obtained in that senior role.

So I'm gonna go back and ask you about the concerns that were expressed by each of the individual Indigenous groups, and what, if any, action that the government took to address those concerns.

And I think we've dealt with the Labrador Inuit – the Nunatsiavut Government. That's out of the way, so the other three Indigenous groups. Let's start off with the Innu Nation.

MR. GOVER: Innu Nation, for – I have been involved, as I indicated earlier, with Innu Nation, going back to 1998. There was various iterations of this project going back to the Tobin administration, but suffice it to say that it's always been clear – made clear to me by the Innu, at the negotiating table and otherwise, that there would be three elements that would have to be satisfied before they would give their concurrence to the project proceeding.

And those three elements were the elements that eventually found its way into Tshash Petapen in 2008, or what we call the New Dawn Agreement.

And those elements were these: Firstly, there had to be a satisfactory understanding as to the land claim that we were negotiating with the federal government with Innu Nation.

MR. LEARMONTH: Okay, well, we're not gonna deal with that –

MR. GOVER: Okay.

MR. LEARMONTH: – at this stage. Yeah.

MR. GOVER: Secondly, there had to be redress provided for the impacts that Innu Nation felt as a result of the development of the Upper Churchill Project.

MR. LEARMONTH: Okay.

And that concern was covered in the (inaudible) –

MR. GOVER: That eventually became – the first concern eventually became the Land Claims Agreement-in-Principle; the second concern eventually became the Upper Churchill Redress Agreement, I believe executed by Nalcor and the

Government of Newfoundland and Labrador and the Innu Nation and others.

By that I mean – I'm not sure if the bands –

MR. LEARMONTH: Okay.

MR. GOVER: – executed the agreement or not.

The third element was an impact and benefit agreement in relation to the project.

MR. LEARMONTH: Okay.

MR. GOVER: So Nalcor negotiated an Impact and Benefits Agreement with Innu Nation and that agreement was entered in between, basically, those two parties.

So, Innu Nation had the documents. They put them to a ratification vote in the community. I believe Nalcor, in part, paid for the ratification vote in the sense of providing the funding. The documents were explained to the community, and the vote was recorded and the agreements were approved, and then that signalled Innu Nation's concurrence in the project.

So, apart from minor concerns – apart from concerns that may have been expressed during the environmental assessment process which were discussed, these were the major concerns. All these concerns were resolved to the satisfaction of the Innu Nation.

MR. LEARMONTH: Okay.

And that's the government's position?

MR. GOVER: Yes. And you're certainly more than welcome to ask the Innu what they feel about that when they have the opportunity to testify here later on today.

MR. LEARMONTH: Well, I'm sure that you may – if there are questions, you'll receive them from their counsel (inaudible).

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: Yeah.

Okay, so that's the first. Now what about the NCC?

MR. GOVER: NunatuKavut, as I indicated earlier, had a land claim submitted to the federal government which overlapped with the land claim of Innu Nation –

MR. LEARMONTH: Okay.

MR. GOVER: – and covered the project area.

MR. LEARMONTH: Okay.

MR. GOVER: That claim, unlike the claim by Innu Nation, was not accepted.

MR. LEARMONTH: Okay. We're not going to (inaudible) –

MR. GOVER: Their major concern was –

MR. LEARMONTH: No, Mr. Gover, we're not going to deal with the land claim issue.

MR. GOVER: Okay.

MR. LEARMONTH: Yeah.

MR. GOVER: No, their major – well, their major concern throughout this process is that they felt that, based upon the impacts on them arising from the projects, that they should have an agreement with Nalcor of a similar nature to the Impact and Benefits Agreement that Nalcor had with the Innu Nation.

MR. LEARMONTH: Yeah.

Okay, so did government address that concern?

MR. GOVER: There is no – there was no such agreement until very recently when Nalcor entered into a community development agreement with NunatuKavut. Now, in fairness, I will say that development agreement is more in relation to future hydroelectric projects than it is in relation to the projects that we are – that are under consideration here today.

MR. LEARMONTH: Muskrat Falls Project. Okay, so that's –

MR. GOVER: Yeah.

MR. LEARMONTH: – two things you said – you mentioned the land claims and then this – were there any other concerns of environmental or otherwise that were known to the Government of Newfoundland for this Indigenous group?

MR. GOVER: NunatuKavut obviously feels that, given their claim area and given in particular the transmission line that runs from Muskrat Falls to the Strait of Belle Isle and then under the Strait of Belle Isle to the Island of Newfoundland, that transmission line cuts down into the area claimed by the members of NunatuKavut and, of course, the NunatuKavut communities are strung along Southern Labrador's coast, basically from the border with Quebec in the south on the Strait of Belle Isle all the way up to Cartwright. NunatuKavut has substantial membership in the Happy Valley-Goose Bay area as well. And so NunatuKavut would also claim that their claim area also covers not only –

MR. LEARMONTH: Yeah.

MR. GOVER: – the area of the transmission line, but –

MR. LEARMONTH: Yeah.

MR. GOVER: – that area. So their concern is that the generation project and the transmission project, by the very construction and its very nature, would have significant impacts on their traditional activities.

MR. LEARMONTH: All right. Can you be more specific than that? Were there any environmental concerns that you became aware of?

MR. GOVER: As I indicated, they shared a concern with Nunatsiavut about methylmercury. The JRP in particular raised issues about trapping. And Nalcor was developed – was directed to develop a trappers' compensation program. But if one looked at, like I said, the findings of the Joint Review Panel when NunatuKavut made its submission was, impacts on NunatuKavut would be adverse but not significant. And if one read the environmental impact statement in relation to the Labrador-Island Transmission Link, again, impacts on NunatuKavut were found to be marginal.

MR. LEARMONTH: Yeah.

So is it your – government's position that the concerns expressed to – by NunatuKavut for the – for environmental or other issues were addressed?

MR. GOVER: It'd be the view that the – that, yes, the mitigation that was required by Nalcor and that was to be conducted by the province and the federal government was sufficient to address the concerns expressed by NunatuKavut –

MR. LEARMONTH: Okay, all right, thank you.

MR. GOVER: – given the project areas.

MR. LEARMONTH: Yes. The fourth group is the Quebec Innu Ekuanitshit. Can you state your knowledge of the concerns expressed by this Indigenous group?

MR. GOVER: Based upon my –

MR. LEARMONTH: And the steps that were taken by government –

MR. GOVER: Okay.

MR. LEARMONTH: – to address the concerns?

MR. GOVER: Based upon my knowledge that, as I indicated earlier, the Ekuanitshit were concerned about, in particular, the impacts of the projects on caribou. And, as I indicated earlier, the steps that were taken to address those concerns were the various mitigation measures required of Nalcor, put in place by the federal government, and the various plans that needed to be developed by Nalcor and approved by provincial ministers in relation to caribou that would've looked at endangered species and the caribou generally; environmental effects monitoring plans.

As I indicated earlier, even before these projects began, the herd that was of particular interest to them, the Lac Joe herd was already an endangered species.

MR. LEARMONTH: Okay.

So are there any outstanding concerns that have been expressed to government by Ekuanitshit that were not addressed in the view of government?

MR. GOVER: No.

MR. LEARMONTH: No. Okay.

Those are my questions of this witness.

THE COMMISSIONER: All right, Nalcor Energy?

MR. SIMMONS: Good morning, Mr. Gover. I'm Dan Simmons; I'm counsel for Nalcor Energy here. I have a few things to ask you arising out of the evidence that you've given so far this morning.

And my first question concerns some evidence you gave at the outset where you described the general nature of responsibilities of governments for consultation and accommodation of Aboriginal groups when their rights are potentially affected by projects such as this.

And I believe you said that one of the factors that determines the extent of consultation and accommodation required is the strength of an established or asserted claim to Aboriginal rights.

MR. GOVER: Yes, Sir. Yes, Sir.

Haida, Taku clearly laid out the factors that determined the degree of consultation that's required. They were two. First factor: Strength of claim. The stronger the claim, the more consultation is required. Second factor: Severity of impacts on the settled or asserted rights of the Indigenous organization; more severe impacts, more consultation.

I've seen this drawn up in the federal process as a matrix with severity of impacts on one axis, strength of claim on the other axis and gradations of consultation.

MR. SIMMONS: And I think you've also told us that the responsibility for ensuring that adequate consultation and accommodations carried out, it sits with the government of – the federal government and the government of the

province, although there is an ability to delegate procedural aspects of how the consultation and accommodation are done to a proponent of the project, which in this case would be Nalcor Energy.

And my question concerns this first step that you talked about, or first criteria you talked about coming from Haida which is the assessment of the strength of the established or asserted Aboriginal right. Is that something that the responsibility for that rests with the governments, or is that something that can be delegated down to the proponent to carry out that part of the analysis?

MR. GOVER: I really would not think that that aspect of the matrix, for want of a better word, could be delegated to proponents.

MR. SIMMONS: Hmm.

MR. GOVER: In the first instance, in – traditionally, the strength of claim was a determination of the federal government. Indigenous organizations that felt they had a valid land claim would submit their land claim documentation to the federal government who would then make a decision on the land claim. If the land claim was accepted by the federal government for the purposes of negotiation under the federal government's comprehensive claim policy, they would then invite the province to participate in the negotiations. So a measure of the strength of claim that, you know, is the acceptance of the claim by the federal government.

The other way to measure the strength of claim is for, say, this is what the federal government does anyway but we could do it ourselves in the sense that we could engage the assessment of a strength of claim, it depends on large measure on historical, and anthropological, and archaeological information.

And the oral traditions of the people that are asserting the claim are all factored into the claim. So in order to properly assess the claim we would have to engage experts in history, anthropology, archaeology, the traditions of the Indigenous people to come to an understanding as these are the rights they're asserting over this territory. And because these rights have to arise

pre-contact prior to Europeans being here, we need people to assess what does archaeology tell us about where these people lived and used the land prior to the arrival of Europeans.

So there is an ability to do it. It's time consuming and it's expensive.

MR. SIMMONS: From your involvement in the consultation process for the Muskrat Falls Project, and from what you've seen from your review of the other documents that you've been provided by Commission here, did, in this case, the assessment of the strength of claims – whether they were established or asserted – did the Province retain the responsibility for making decisions about the assessment of that strength or was that delegated down in this case?

MR. GOVER: The – in my view of the world, the Province retained control of the strength of claim aspect. We did not ask Nalcor, to the best of my knowledge, to assess the strength of the claim of any Indigenous group.

MR. SIMMONS: And is it – that assessment of the strength of claim, is that important to determining who is going to be consulted and to what extent they're going to be consulted?

MR. GOVER: Theoretically?

MR. SIMMONS: Mm-hmm.

MR. GOVER: Yes. But as I indicated, the federal government – early days, following Haida Taku – put a great emphasis on this. But in our view, and by that I mean people working in this area in the province, we found that their strength of claim analysis not to be robust.

For example, proximity to the project was taken as a proxy for strength of claim. That may or may not be accurate. In order to gain an accurate assessment of the strength of claim, one needs to go through the process that I've just described. One needs experts to look at the submissions and provide advice as to what assertions in the claim document are credible, not credible, partially correct, incorrect, somewhat correct. And from that totality of the analysis, one can get a perspective on how strong the claim is.

My understanding is this is the process the federal government goes through when it's deciding whether to accept or not accept a claim from an Indigenous organization. That has – the time involved in that, to do it correctly, has some challenges associated with it when you're talking about projects and economic development in the province.

So as you can – sorry. As you can see in this case, basically, all 10 Indigenous organizations, regardless of their strength of claim, got essentially the same consultation process in terms of steps and in terms of opportunity for input and in terms of the response the government would give in relation to the input.

So one thought about that is, those that deserved the highest level of consultation received it. Those that would be deserving of a lower level of consultation received more than they would have deserved at law, but so be it. We are interested, as a government in Newfoundland and Labrador, as I said earlier, of fully – of soliciting all the concerns from every Indigenous organization we engage, fully and fairly considering those concerns and trying to work with ourselves, with the federal government, with the proponent to take reasonable steps to address those concerns.

But the strength of claim analysis, I would say rest with the government, not with the proponent. But in this particular case, the process that was accorded to the groups was essentially the same.

MR. SIMMONS: Thank you.

In your direct evidence you spoke of an environmental assessment committee within government, which I believe you said rested within the Department of Environment – it might have been Environment and Lands.

MR. GOVER: Yes.

MR. SIMMONS: Can you tell me a little bit more about how that committee is structured and what role it plays in relation to the Muskrat Falls Project?

MR. GOVER: So my understanding of that, not being the deputy minister of environment but

having been involved in the processes, when one is conducting an environmental assessment of Muskrat Falls or any other project, there's a great many issues that arise that require particular expertise.

So, for example, we've mentioned some of them here today, impacts on caribou or other wildlife. This requires the expertise of a wildlife biologist. So there's a committee struck with representatives from all the various departments who protect – who possess the type of expertise on the issues that may come up in environmental assessment.

MR. SIMMONS: I'll stop you there for a moment.

MR. GOVER: Yes.

MR. SIMMONS: So this is not a standing committee that exists to look at multiple projects.

MR. GOVER: No.

MR. SIMMONS: This was a committee created across government departments –

MR. GOVER: Yes.

MR. SIMMONS: – to bring in expertise just to look at this project for the purpose of the environmental assessment –

MR. GOVER: My –

MR. SIMMONS: – which included the Aboriginal issues. Is that correct?

MR. GOVER: Yes. My understanding is the project committees, the environmental assessment committees are struck –

MR. SIMMONS: Mm-hmm.

MR. GOVER: – on a project-by-project basis. I would say probably they often involve many of the same people because of the nature of the tenure with government organizations. But my understanding is they're struck on a project-by-project basis, and that makes sense because certain projects may engage different aspects of environmental considerations. But, yes, my

understanding is the committee was struck for this particular project.

MR. SIMMONS: Okay.

Were you a member of that committee at any time?

MR. GOVER: Personally not, but Indigenous Affairs is.

MR. SIMMONS: Was represented on the committee, yeah.

MR. GOVER: Yes.

MR. SIMMONS: What other departments were represented on the committee?

MR. GOVER: That I wouldn't be able to answer with any degree of precision. The committee is struck and chaired by the department of environment.

MR. SIMMONS: Okay.

Do you know what the role and responsibility of the committee is and how it plays into, for example, government's participation in the Joint Review Panel work for the environmental assessment and what participation it might then have in the response – in developing government's response to the recommendations from the Joint Review Panel report?

MR. GOVER: So my understanding would be that it's actually the members of the committee that formulate the advice that flows up through the government to make the required government decisions on an environmental assessment.

So, at all stages here, that committee would have provided advice. So the first decision is, after a project registration is submitted, does the project need to undergo further environmental assessment? And, if yes, of what nature?

So the committee would have looked at the project registration that Nalcor sent in, looked at the Indigenous comments, looked at the public comments and made a recommendation based upon the impacts they saw and believed to be the case from their expertise as to whether or not

there needed to be an environmental preview report or whether or not the project could be released at that stage, whether or not there needed to be an environmental preview report, whether or not there needed to be an environmental impact statement and so – then, if they made the decision that it would require an environmental impact statement, which this project would, then the next input they would have would be the development in the environmental impact statement guidelines.

MR. SIMMONS: So you've described some of these steps –

MR. GOVER: Yes.

MR. SIMMONS: – to us was earlier. So would I be correct then in assuming that this committee would play a role in discharging governments – in doing government's analysis at each step along the way –

MR. GOVER: Every step, yes.

MR. SIMMONS: – to inform government decisions.

MR. GOVER: Yes, totally.

MR. SIMMONS: Right.

MR. GOVER: Correct.

MR. SIMMONS: Do you know if Nalcor is represented on that committee or whether it functions independently of Nalcor as a proponent of the project?

MR. GOVER: I wouldn't be able to tell you that, Sir.

MR. SIMMONS: So, for example, when you spoke about the Joint Review Panel recommendation concerning clearing of the reservoir –

MR. GOVER: Yep.

MR. SIMMONS: – government's response to that –

MR. GOVER: Yes.

MR. SIMMONS: – which was to accept Nalcor’s proposal for partial clearing.

MR. GOVER: Yes.

MR. SIMMONS: Would this cross-departmental committee have been involved in doing the analysis that informed government’s decision on that?

MR. GOVER: To the best of my knowledge, definitely.

MR. SIMMONS: Okay.

Now, you gave us a chronology of some of the events concerning concerns raised about the methylmercury issue.

MR. GOVER: Yeah.

MR. SIMMONS: And I don’t have questions for you about the substance of that, but just since you described some of the events which have occurred since the release of the project from environmental assessment, I just first wanted to ask you if you are aware of whether there have been continuing monitoring and scientific research done by Nalcor, sponsored by Nalcor, since the release from environmental assessment?

MR. GOVER: I understand – I don’t have any direct knowledge of that, but I understand that that’s likely the case because of the directions provided by the government and the commitments that Nalcor undertake – undertook as conditions of the release. I know that monitoring does occur.

MR. SIMMONS: Mm-hmm.

MR. GOVER: I know that monitoring is publicly available.

MR. SIMMONS: Mm-hmm.

MR. GOVER: And I believe one – and I believe that that there is monitoring done and reporting publicly on the monitoring including the levels of methylmercury that are detected.

MR. SIMMONS: Okay.

And you spoke of the report that been prepared by a member of the Harvard faculty, and are you aware – concerning whether or not there has been any recent scientific papers or research released by Nalcor within the last month in relation to the methylmercury issue? If you’re not, that’s fine.

MR. GOVER: Not particularly. I mean, I’ve been – I’ve attended briefings on, you know, matters in relation to the Independent Expert Advisory Committee, and I understood that, you know, Nalcor in particular was developing a modelling scenario.

MR. SIMMONS: Mm-hmm.

MR. GOVER: And I was of the understanding that that modelling, Nalcor’s modelling, hadn’t been completed at the point when the – we – when the recommendations were made to government by the Independent Expert Advisory Committee but has subsequently been completed.

MR. SIMMONS: Okay, good. Thank you.

There was a – you spoke to the report that had been prepared and submitted – I think it’s P-00268; we don’t need to go to it – by your department in response to the request for commission for information factually about what happened with consultation accommodation here. Have you had an opportunity to look at the report submitted by Nalcor Energy?

MR. GOVER: The 3,000-page document?

MR. SIMMONS: Yeah, well, I don’t expect you to have read all 3,000 pages.

MR. GOVER: Yes, on Sunday, I had a look through it.

MR. SIMMONS: Okay, and if we could go to Exhibit P-00071, please, and maybe try page 19. I’m not going to ask you anything detailed about it, but I just want to go to one part of the report.

Beginning on page 19, and going on for some 160 or 70 pages, there are a number of tables like this, and I’m gonna suggest that there’s tables for each of the 10 Indigenous groups that you identified for both the generation project

and the transmission project, which have categories here that list and identify concerns that were raised in the environmental review process and from other sources.

Did you note that when you looked at the report?

MR. GOVER: Not – did you say 110 pages?

MR. SIMMONS: Of – from here, yes, from –

MR. GOVER: From –

MR. SIMMONS: – this point on.

MR. GOVER: – here?

MR. SIMMONS: Yes, the table, yeah.

MR. GOVER: Not particularly.

MR. SIMMONS: Hmm.

MR. GOVER: I mean, I was looking at it on a Sunday –

MR. SIMMONS: Yes.

MR. GOVER: – amongst other documents. I got a flavour for what was in the document.

MR. SIMMONS: Mm-hmm.

MR. GOVER: This does not surprise me. As I indicated earlier –

MR. SIMMONS: Mmm.

MR. GOVER: – the concerns that government addressed –

MR. SIMMONS: Mm-hmm.

MR. GOVER: – were similar to these.

MR. SIMMONS: Yeah.

And this was where my question was going, 'cause this table in the last column details where we look to find the Nalcor action or response or supporting documentation.

My question is within government, for government's assessment of what the concerns

were of the different Indigenous groups, and for tracking the mitigation and responses, has government maintained any similar sort of documentation or tracking of that information to your knowledge?

MR. GOVER: That would be a matter within the Department of Environment. All I know is that documents similar to this –

MR. SIMMONS: Mm-hmm.

MR. GOVER: – were generated by the Government of Newfoundland and Labrador for comments that came into the Government of Newfoundland and Labrador at the stages of the consultation process that were undertaken by the Government of Newfoundland and Labrador. Obviously, in the preparation of the EIS, Nalcor was asked to solicit concerns and obviously, from these documents, did that.

MR. SIMMONS: Okay.

MR. GOVER: And just – I just explain – I'd like to explain this about the delegation to proponents.

MR. SIMMONS: Yes, please do.

MR. GOVER: We expect all proponents to develop a positive relationship with Indigenous people, to hear their concerns and to do what they can or within the parameters of their project to address those concerns, so that while the Crown remains ultimately responsible for the consultation, the Crown, if the proponent can satisfactorily address the concerns, will only have to address the unresolved issues.

MR. SIMMONS: And in order to do that, of course, the Crown, the province, will have to keep itself informed about what the actions are that the proponent is taking and carry out some continuing assessment of the effectiveness so that the Crown, the province, knows what's left on its plate for it to deal with. Is that correct?

MR. GOVER: That's absolutely correct. And one would assume that – and we would expect that Indigenous organizations –

MR. SIMMONS: Mm-hmm.

MR. GOVER: – would say we had discussions with the proponent on this issue; the issue wasn't resolved to our satisfaction. These are the issues we are particularly interested in.

MR. SIMMONS: Mmm.

MR. GOVER: But the delegation to proponents works well because Indigenous people, because of the nature of the law, know they have an assured relationship with the Crown. What Indigenous folks seek, whether it's a proprietary proponent or whether it's a Crown agent like Nalcor, is a relationship with the proponent.

And that works out very well because the proponent has knowledge that the government does not have as to what are the economics of the projects; what's the construction schedule; what are the markets; what do we need to do where, when and why so that they can adjust those elements to address Indigenous concerns. And to the extent that the proponent can adjust those elements to address Indigenous concerns is an issue that the government doesn't have to address.

For example, with respect to the Innu, I believe there was an issue about the funnelling of the water underneath the knoll.

MR. SIMMONS: Mm-hmm.

MR. GOVER: And I believe that Nalcor managed to accommodate the Innu's desire for that spiritual site in a manner that they were satisfied. Excellent. If all proponents could address all issues, our consultation job would be a lot easier.

MR. SIMMONS: Good. Okay, thank you very much.

I don't have any further questions, Mr. Commissioner.

THE COMMISSIONER: All right, thank you. Concerned Citizens Coalition?

MR. BUDDEN: Mr. Justice, we are satisfied that the questions we have will be asked by other counsel.

THE COMMISSIONER: Okay. Sorry, you're indicating that you are not having any questions right now?

MR. BUDDEN: That's correct.

THE COMMISSIONER: Thank you. Edmund Martin?

MR. SMITH: No questions.

THE COMMISSIONER: No questions, thank you.

MR. SMITH: No questions from us.

THE COMMISSIONER: Okay. Kathy Dunderdale?

MS. E. BEST: No questions, thank you.

THE COMMISSIONER: Former Provincial Government Officials '03 to '15?

MR. T. WILLIAMS: No questions, Mr. Commissioner.

THE COMMISSIONER: Thank you.

Julia Mullaley, Charles Bown?

MR. FITZGERALD: No questions.

THE COMMISSIONER: Robert Thompson?

MR. COFFEY: No questions.

THE COMMISSIONER: Consumer Advocate?

MR. HOGAN: Good morning, Mr. Gover. My name is John Hogan. I'm counsel for the Consumer Advocate.

I'm gonna just continue on a little bit about the consultation that Mr. Simmons was asking you about.

You mentioned that, under the law, there's – you can delegate this authority to 'consultate.' Can you be a little bit more specific on that specific issue? What law? What are you relying on? Where do you get the authority to delegate?

MR. GOVER: The Supreme Court, Canada, in its seminal cases of Haida, Taku and subsequent pronouncements by the Supreme Court of Canada on the duty to consult Indigenous organizations has said, while the Crown remains ultimately responsible to satisfy any duty to consult Indigenous organizations based upon adverse impacts under Section 35 rights – contemplated government action. Procedural aspects of that duty can be delegated to proponents.

So it is common practice in Newfoundland and Labrador – perhaps not uniformly across the country – to delegate to proponents various procedural aspects of the consultation.

So, as I indicated earlier, because of the nature of the law, Indigenous organizations know they have an assured relationship with both the federal Crown and the provincial Crown. But Indigenous organizations, of course, have what they believe to be traditional territory, traditional practices and Indigenous rights. And when they see a proponent come into their traditional territory, wanting to set up an operation that has adverse impacts – or that could have adverse impacts – on their traditional activities, they want to have a relationship with the proponent.

Not so uncommon. In the non-Indigenous field, we would call this a social license, when you have to deal with municipalities or labour organizations or other stakeholders. But in the Indigenous field, this is wrapped up in the consultation.

So Indigenous organizations wanna have this conversation with the proponent. And the conversation they wanna have with the proponent is: Please hear us. These are the impacts you're gonna have on our harvesting activities. These are the impacts you're gonna have on our cultural activities. We would like you – we would like to work with you to address those impacts and concerns.

So what we delegate to proponents, as I indicated to the counsel for Nalcor, is we would like – and this is the EIS guidelines generally say is: We would like proponents to work with the Indigenous organizations, to solicit their concerns, to understand their concerns, to explain their projects to the Indigenous folks so

they have a full understanding of the project. And then, after a dialogue, after engagement, take reasonable efforts to address the concerns of Indigenous people.

Our consultation policy of 2013 is on our website. The roles and responsibilities that are expected of the Government of Newfoundland and Labrador, from the government, from components and from Indigenous organizations are set out in that consultation policy.

MR. HOGAN: You also said that a Crown agency would have a closer relationship with government in this context –

MR. GOVER: Yes.

MR. HOGAN: – than a non-Crown agency.

Can you expand on that a little bit and what the difference would be and how much more maybe leeway or consultation delegation will be given to a Crown agency as opposed to a private corporation?

MR. GOVER: I say that the relationship is closer only in the sense of the legalities of the relationship. Throughout this process, government was vigilant to maintain its responsibilities as a regulator, separate and distinct from what Nalcor was being – what Nalcor was doing or was authorized to do –

MR. HOGAN: I'm not questioning –

MR. GOVER: – as a Crown agent.

MR. HOGAN: I'm not suggesting that, yeah.

MR. GOVER: No, I'm just explaining the difference.

So, that is the separation that occurs with a private proponent. Because you use the word latitude or leeway, I wanted to disabuse the –

MR. HOGAN: Sure.

MR. GOVER: – notion that somehow we relax the rules for Nalcor as a regulator.

MR. HOGAN: Yeah, I didn't mean it. That was probably the wrong phrase to use, but – okay.

MR. GOVER: But for Nalcor, in our expectations – our expectations would be the same as Tata Steel New Millennium, Alderon corporation, Iron Ore Company of Canada – work with the Indigenous folks, address their concerns.

MR. HOGAN: Is there a decision-making process at the start regarding what specifically is going to be delegated to a proponent? And in this specific case, what specifically is being delegated to Nalcor? And what is the Crown going to maintain as part of that process?

MR. GOVER: The primary direction or delegation – if you want the components – are the instructions the government issues to proponents that are contained in the environmental impact statement guidelines.

So, these are the things and the interactions we want to have the proponent work on with the Indigenous organizations and include in the ultimate environmental impact statement. As counsel for Nalcor drew my attention to, Nalcor was directed in the EIS to have this engagement and they have the chart with the concerns, the responses of the concerns.

So these are the things that we would require of Nalcor or any other proponent, but the instructions to engage in this work is basically contained in the EIS guidelines.

MR. HOGAN: Okay.

MR. GOVER: Government tries – apart from the statements that are in the consultation policy – to provide guidance to proponents as to what it is we expect.

MR. HOGAN: And is there an individual, to your knowledge, someone at Nalcor who would be responsible to carry out the duties that were delegated to Nalcor? Do you have a name?

MR. GOVER: This would have been within the discretion of Nalcor, how they set up the, you know, Indigenous consultation.

As I mentioned earlier, we had staff that were former staff of Indigenous Affairs, seconded to Nalcor. As I mentioned earlier, Mary Hatherly was counsel for Inuit Land Claim, Ruby Carter

was chief negotiator for the Inuit Land Claim, Cheryl Brown-McLean is currently at Nalcor coordinating IBA and Todd Burlingame was – did not work with us but worked on other projects in the North; was sort of, as I understand it, sort of the lead, sort of Aboriginal coordinator for Nalcor. But the internal structuring of Nalcor to address these questions was a matter for Nalcor. I have really no knowledge of it.

MR. HOGAN: Okay. And, you mentioned, I think – how many people are in your department?

MR. GOVER: About eight.

MR. HOGAN: And would they all participate with Nalcor in doing the – coordinating the delegation?

MR. GOVER: No, because once the instructions went out to Nalcor in the EIS, this is what we'd like you to do. Then, you know, we would wait for Nalcor to do it.

I mean, I certainly, in my capacity as assistant deputy minister and as deputy minister, and in, you know, the creation of the Tshash Petapen or the New Dawn Agreement, had interaction with Nalcor staff, in particular, Mr. Martin, Mr. Bennett, Mary Hatherly, as I mentioned earlier. You know, we certainly had interactions and conversations.

MR. HOGAN: Who in your department would have – is there a sign-off authority once Nalcor comes back, or anyone comes back, but in this specific case, Nalcor comes back and says: This is what we've done with what we've been given to – what you've delegated to us. And someone in your department would sign-off and say: Yes, we're satisfied with that. Because you said it was, ultimately, your responsibility.

MR. GOVER: And, yes, and I just – all environmental impact statements have to be approved by the government. Now, in this case, from the generation project there was an additional step, there was the Joint Review Panel. And, I think, the determination of whether or not the environmental impact statement was satisfactory was vested with the review panel.

MR. HOGAN: Okay.

MR. GOVER: But certainly, at the end of the day, all the things that we expected Nalcor to do, we wanted an assurance that they were done.

MR. HOGAN: Okay, maybe we'll turn to document – Madam Clerk, P-00041, this is the Joint Review Panel report – page 316.

You spoke about this – you probably won't need to see it, you probably know it inside out. You talked about recommendation 4.5 this morning –

MR. GOVER: Yeah.

MR. HOGAN: So I don't want to put words in your mouth, but I think you said it was not accepted by government.

MR. GOVER: The Provincial Government response is a public document.

MR. HOGAN: Yeah.

MR. GOVER: It's still on the Department of Environment's website and there's the recommendation and the government's response to the recommendation –

MR. HOGAN: I just want to get the right chain here now, because you've said that ultimately, the Joint Review Panel –

MR. GOVER: Yes.

MR. HOGAN: – would do the analysis of the duties that you've asked Nalcor to do and you've done yourself. But then it came back and the government said, well we're not accepting 4.5.

MR. GOVER: So the Joint Review Panel –

MR. HOGAN: Yeah.

MR. GOVER: – had to find the environmental impact statement assembled by Nalcor to be satisfactory to go to public hearings. And during that process, I believe there were various information requests made by the Joint Review Panel to Nalcor, which Nalcor then responded to.

At the end of this – that process – the JRP found the Environmental Impact Statement as compiled by Nalcor and as supplemented by Nalcor's responses to the information request, to be satisfactory to proceed to public hearings. Public hearings were held and one aspect of the public hearings was the – within the mandate of the terms of reference for the Joint Review Panel – to solicit concerns and interests that the Indigenous people had with respect to the project.

And the mandate of the Joint Review Panel is: having considered everything before them, including the submissions that were made at the public hearings, that they would provide recommendations to both governments, which they did.

MR. HOGAN: Yes, they did.

MR. GOVER: But it was advice.

MR. HOGAN: Okay.

MR. GOVER: The governments had to make the ultimate decision.

MR. HOGAN: Okay.

With regards to all these recommendations, they don't all affect your department, obviously.

MR. GOVER: No.

MR. HOGAN: So would the government then say here, your – this department is in charge of 4.5, you're in charge of 4.12 – is that how it was divvied out to make the ultimate decision on this?

MR. GOVER: As I – on the ultimate decision on the recommendations – all the recommendations?

MR. HOGAN: Well I guess first there's an analysis on the recommendations?

MR. GOVER: Yes.

MR. HOGAN: So who – was that delegated to certain departments?

MR. GOVER: To the best of my understanding is – as I indicated earlier – the people that would've worked up the analysis on the recommendations that were directed to government, would've been the folks on the environmental assessment committee.

MR. HOGAN: Okay.

MR. GOVER: The Department of Environment prepares a Cabinet paper for the consideration of Cabinet, which says: here's the process, here's what the JRP is recommending, here's the analysis, what is your decision? And then Cabinet will make a decision, and that was what is up on the website.

MR. HOGAN: So any recommendation that it is or is not accepted is ultimately a decision of Cabinet?

MR. GOVER: Exactly.

MR. HOGAN: Okay, that's fine.

I'm almost done with section 4.5 because when you were talking you said you wished Gilbert Bennett was here, so –

MR. GOVER: Only to explain –

MR. HOGAN: The environment –

MR. GOVER: – there's a difference between the full-clearing scenario of Nalcor –

MR. HOGAN: Mm-hmm.

MR. GOVER: – and the partial-clearing scenario. I can't really describe the differences in the two scenarios to you, but government fully understood those differences when it made its decision.

MR. HOGAN: Do you – did you have any input into whether 4.5 should be recommended or not – or accepted or not?

MR. GOVER: Not particularly, no. I would say none because the analysis that would go into this would have been within the expertise of other departments.

MR. HOGAN: Do you know if Gilbert Bennett had any input into whether that recommendation should be accepted or not? Do you know?

MR. GOVER: I have no knowledge of that, no.

MR. HOGAN: Okay.

I just want to talk – I'm not going to be much longer, Mr. Gover – I just want to talk about the panel, the Joint Review Panel; the composition of the members. Did your department have any participation in suggestions as who should be appointed by the provincial government to the panel?

MR. GOVER: Unfortunately, as I indicated earlier, this was a – this was done during a time when I was Innu land claim negotiator. So – and in my review of the documentation, I could find no information on how the folks that were appointed to be on the Joint Review Panel were selected.

MR. HOGAN: You say unfortunately, what do you mean?

MR. GOVER: Unfortunate in the sense that I was off doing work on the Innu land claim so as a result, I had no involvement in this; and I only mean unfortunate in the sense that I cannot give you the answer –

MR. HOGAN: That's –

MR. GOVER: – to your question today.

MR. HOGAN: – that's what I was wondering, if that's what you meant.

MR. GOVER: It was sort of like the flexibility or the latitude.

MR. HOGAN: So you don't know if anyone in your department at the time had any input into the panel members?

MR. GOVER: I wouldn't be able to tell you that, Sir.

MR. HOGAN: You don't know if Nalcor had any involvement in who those panel members were going to be?

MR. GOVER: I had no knowledge of how these folks got selected.

MR. HOGAN: When the Joint Review report was released – August 30, 2011, I think was the date – what was the reaction in your department?

MR. GOVER: To the Joint Review Panel report?

MR. HOGAN: Satisfactory, everyone was happy, sad, angry? Like, what was the feeling about what was in there?

MR. GOVER: There was no feeling, only here's another – here's a task to be done, and our role in this task is to ensure that government is cognizant of its duties towards Aboriginal people. That when it's engaged in the duty to consult, its honour is engaged, we must – our actions must be honourable, in keeping with the objective of reconciling the sovereignty of the Crown with the pre-existence of Indigenous folks living in organized society prior to the arrival of Europeans.

So those actions that need to be taken to support the honour of the Crown in advancing reconciliation. So our role would be to remind people that is what we have to do. And in simple terms, in simple terms –

MR. HOGAN: Yeah.

MR. GOVER: – if there's a concern expressed by an Indigenous organization and there's a reasonable action to be taken, it should be taken. Sometimes we have more expertise on this than others – like for methylmercury, is a science matter. Our role in that would be limited. On other matters we might have more influence and involvement.

MR. HOGAN: And seeing how Nalcor was involved in the process, was there – immediately after the report was released, did you have any conversations with anyone at Nalcor about the report and the contents of it, and next steps that had to be taken?

MR. GOVER: Not that I can recall, no.

MR. HOGAN: Nothing jumps out at you?

MR. GOVER: No.

MR. HOGAN: Okay.

The last topic, I just want to talk a little bit about the New Dawn Agreement and your participation in that.

MR. GOVER: Okay.

MR. HOGAN: So what was your involvement – let's just do high-level stuff.

MR. GOVER: Okay. Very high-level?

MR. HOGAN: Yeah.

MR. GOVER: So as I indicated earlier, the three elements that needed to be done to satisfy Innu Nation had to be done, and I was chief negotiator, provincial negotiator for the Innu land claim. So one of the elements that had to be done was a satisfactory understanding of the Innu land claim.

So Nalcor, Ed Martin, Gil Bennett, Don Burrage – who was deputy minister of Justice – and myself assembled with the leaders of Innu Nation, the Grand Chief, the Deputy Grand Chiefs, the Band Chiefs, Elders, others, and we worked to hammer out the agreement which eventually became the New Dawn Agreement, or the Tshash Petapen Agreement. My role in those negotiations was primarily to address the land claim issue, although I was present at various meetings when the Upper Churchill Redress Agreement was discussed and when the IBA was discussed. In fact, I may have even reviewed the certainty clause in the IBA.

But I wish to make it clear: The construction of the IBA was a matter that I had no involvement in, really, apart from being at certain meetings and reviewing the certainty clause in the agreement. This was a commercial arrangement between Nalcor and Innu Nation.

MR. HOGAN: Well, that's what I want to ask you about.

MR. GOVER: Yeah.

MR. HOGAN: This is the first time I've heard it phrased like that. So the New Dawn

Agreement is a commercial arrangement between Nalcor –

MR. GOVER: No.

MR. HOGAN: Okay, sorry.

MR. GOVER: The New Dawn Agreement is a land claim –

MR. HOGAN: Yeah. Yeah.

MR. GOVER: – agreement between the federal government, the provincial government and Innu Nation. The IBA –

MR. HOGAN: Is the commercial.

MR. GOVER: – is a contract between Nalcor and Innu Nation.

MR. HOGAN: I think Nalcor would have signed the New Dawn Agreement though. I think I saw that.

MR. GOVER: Oh yes, that's –

MR. HOGAN: Why would they sign the agreement? It's an agreement between – a land claim agreement between the Crown and the Nation?

MR. GOVER: So I have to explain this.

MR. HOGAN: That's what you're here for, yeah.

MR. GOVER: The New Dawn Agreement was only a framework to arrive at three other agreements.

MR. HOGAN: Okay.

MR. GOVER: So the New Dawn Agreement basically set out land selections for the Innu land claim, it set out certain principles for the Impact and Benefit Agreement and it set out certain other matters in relation to the Upper Churchill Redress Agreement. From that document, negotiators continued to negotiate and lawyers continued to refine the legal text, which ultimately resulted in three distinct agreements which were signed separately –

MR. HOGAN: Okay.

MR. GOVER: – the Land Claims AIP, the Impact and Benefit Agreement and the Upper Churchill Redress Agreement. But the actual legal texts for those three agreements were not actually Tshash Petapen.

MR. HOGAN: Okay. So the IBA, the contractual – sorry, what was the words you used? The commercial –

MR. GOVER: The commercial arrangement there.

MR. HOGAN: Funds would flow through that arrangement, right?

MR. GOVER: As I said, I was not entirely privy to that, but that is my understanding, that there were various payments agreed to be made from Nalcor to Innu Nation, yes.

MR. HOGAN: Right. Those are all the questions I have.

THE COMMISSIONER: Thank you.

Innu Nation.

MS. O'BRIEN: Sorry, Commissioner, just for your reference –

THE COMMISSIONER: Yeah.

MS. O'BRIEN: The Government of Newfoundland and Labrador's response to the JRP report has been filed as an exhibit. It is Exhibit P-00051.

As well, the federal government's response to the JRP report has been filed as Exhibit P-00050.

THE COMMISSIONER: Okay.

All right, Ms. Kleer?

MS. KLEER: Good afternoon. Good afternoon.

Good afternoon, Mr. Gover.

Just for the sake of the Commissioner's knowledge, I was legal counsel – have been

legal counsel with Mr. Gover. We know each other for many, many, many years.

THE COMMISSIONER: Okay.

MS. KLEER: So I want to take you to a few clarifications from questions that arose this morning. I'll start with those. Just briefly, with respect to the IEAC, the Independent Expert –

MR. GOVER: Yes.

MS. KLEER: – Advisory Committee, so Innu Nation has been an active participant on that committee.

MR. GOVER: Correct.

MS. KLEER: Correct.

And so they, too, have a concern, like Nunatsiavut Government and NCC, with respect to mercury.

MR. GOVER: There's no doubt that, you know, all users of the Lake Melville system would have a concern. Given that Innu Nation has community in Sheshatshiu, yes, it has a concern. I didn't mean to minimize that. I mean, I didn't get into the composition of the IEAC.

MS. KLEER: Mmm.

MR. GOVER: But, yes, I certainly recognize and acknowledge they're all users of Lake Melville, in particular Indigenous users have a concern about this issue.

MS. KLEER: All right. Thank you.

So – and I also want to follow up from some questions that happened earlier this week when counsel to NCC, you know, took the former premier to some of the documents that related to the consultation questions that we're dealing with today.

And he took the former premier to a number of documents that were before the Fowler decision. You're familiar with the Fowler decision?

MR. GOVER: I am.

MS. KLEER: All right, and that was the trial-level decision with respect to the TLH, right?

MR. GOVER: Yes, that case subsequently went on to the Newfoundland and Labrador Court of Appeal.

MS. KLEER: All right.

Can you tell me whether or not the Government of Newfoundland, after the Fowler decision, went to seek legal advice from DOJ as to how it should consult the NCC in the course of the Lower Churchill EA process?

MR. RALPH: Mr. Commissioner, we're fine with yes or no, but any further than that would be a problem.

MS. KLEER: I'm not seeking –

MR. RALPH: (Inaudible.)

MS. KLEER: – to get into the actual, I'm just asking whether or not legal advice was sought.

MR. GOVER: Whether the government went to –

MS. KLEER: Yeah.

MR. GOVER: – DOJ and asked for legal advice –

MS. KLEER: Yeah, yeah.

MR. GOVER: – as to how to consult NunatuKavut?

MS. KLEER: Yeah.

MR. GOVER: Not to my knowledge, particularly. Not specifically.

MS. KLEER: All right. With respect, I just want –

MR. GOVER: Not immediately afterwards.

MS. KLEER: But did they at some point –

MR. GOVER: Look –

MS. KLEER: – seek legal advice?

MR. GOVER: – obviously, like, considerations with respect to what consultation obligations had to be undertaken with respect to NunatuKavut, the Quebec Innu, Innu Nation, and Nunatsiavut leading up to 2008 were in play. Now that was subsequent to 2005; wasn't immediately after the Fowler decision. I say this because of the documents I've read. Obviously, consideration was given to who should be consulted and at what level.

MS. KLEER: All right.

So I'd like to take you for – to Exhibit 00305 for a moment. So this is the exhibit which is – includes a letter from Minister Pottle to Minister Chuck Strahl.

MR. GOVER: Mm-hmm.

THE COMMISSIONER: Tab 18.

MR. LEARMONTH: That's tab 18.

MS. KLEER: Tab 18. I don't have his binder, Paul just –

MR. GOVER: Okay, it's here on the screen.

MS. KLEER: Okay.

MR. GOVER: The letter is anyway.

MS. KLEER: So the question I have, if you go page 5 of that document, this is apparently a briefing note of some court – of some sort. Under the heading Lower Churchill there's a bullet point, the third bullet point. And this was a 2008 document.

This is one in which it says that the federal government and the province are seeking to conclude an MOU with the LMN, now NCC, regarding consultation on the Lower Churchill Project. Was – can you just clarify whether or not that MOU ever was concluded to your knowledge, to the province's knowledge?

MR. GOVER: My understanding of this was that the NunatuKavut sent a letter to former Premier Williams outlining this nine-step consultation process. This process was never put in place. It was not the process that was used for consultation on the projects.

MS. KLEER: Okay.

So you don't know about whether or not this MOU ever got concluded either.

MR. GOVER: There was no – to my knowledge there was no MOU because there was no need to conclude an MOU. The consultation process that was going to be applied to NunatuKavut went out by letter from the then-deputy minister of Environment to NunatuKavut and to others, I think, dated May 1, 2008. That was that.

MS. KLEER: All right, thank you.

I would you to take – I'd like take you to Exhibit 00307.

MR. LEARMONTH: Tab 20.

MR. GOVER: Okay.

MS. KLEER: And what we have attached to this exhibit is an unsigned letter from Deputy Minister Parrott –

MR. GOVER: Yeah.

MS. KLEER: – to the president of NCC, Chris Montague at the time.

MR. GOVER: Yes.

MS. KLEER: And did the – do you know whether or not this letter ever went out and was signed? Or do you not know that?

MR. GOVER: I saw this letter in the exhibits and in the time I had to prepare for this I did not have an opportunity to verify whether the letter was signed and sent out or not. No, I do not know.

MS. KLEER: All right. That's fine.

I just want to, then, confirm with you that all of the things that are referred to in the letter, did actually occur. I can take you through them piece by piece if you wish.

MR. GOVER: Sure.

MS. KLEER: Okay.

So first, with respect to the LATP, or Labrador Aboriginal Training Partnership, it states there that efforts are being made to prepare your membership to find employment on this project. Would you agree with that?

MR. GOVER: Definitely, the Labrador Aboriginal Training Partnership, as you're well aware, was a partnership between Nunatsiavut, Innu Nation and NunatuKavut with a view in its initial phase to train members of those organizations to take up employment on the projects. And NunatuKavut members were included in the program and NunatuKavut members were employed in the projects.

MS. KLEER: And as were Innu Nation and NG members as well.

MR. GOVER: Exactly.

MS. KLEER: Correct.

Okay, so it also refers to consultation capacity funding made available to LMN to participate in the EA process. Was that consultation capacity funding provided by the province?

MR. GOVER: The only capacity funding that was provided by the Province of Newfoundland would've been, to the best of my knowledge, the top-up of the original generation – federal generation, Aboriginal participant funding envelope. I believe that envelope was half a million dollars. I believe the province put another half a million dollars into the envelope on the condition that – on the conditions that the federal \$500,000 be used first and if there was anything left over out of the provincial \$500,000 we would get it back.

But to my knowledge, that was funding that was made available – the decisions as to who got that funding were determined by a committee that had people who were not government members on it – disbursed, you know – so that's the only money, that I'm aware, that the province put into Indigenous consultation.

Like you said, the province did contribute to the Labrador Aboriginal Training Partnership and then subsequently we did fund the Independent Expert Advisory Committee. But dedicated funding to NunatuKavut to do – to participate in

consultations, that did not occur to my knowledge.

MS. KLEER: Okay, thank you.

Did – the letter also references a meeting that took place with NCC legal counsel in Halifax. And that meeting did occur in January 2018 – 2008, pardon me.

MR. GOVER: I believe it did. I was not present at the meeting.

MS. KLEER: All right.

And they were paid – the Government of Newfoundland paid for NCC to travel to that meeting. That's what the letter says – I'm just confirming.

MR. GOVER: I have no knowledge of that –

MS. KLEER: Okay.

MR. GOVER: – that may be the case. I was not present at the meeting. This was a period of time, as I indicated earlier, where you and I were going through endless hours of doing the Innu land claim.

MS. KLEER: All right.

I note, though, that in 2010, at the beginning of this Exhibit there's a memo from – or an email from yourself to Bas Cleary, and it says: "I am ok with this reply."

So are you confirming that this occurred or did not occur? I'm just trying to get clarity on that.

MR. GOVER: Obviously, based upon what I knew, the reply was okay.

MS. KLEER: All right.

So the letter also refers to two requests made by NCC to extend the public review period for the EIS and for the province to outline the consultation processes discussed at the meeting in January 2008. And were both of those requests honoured by the province?

MR. GOVER: To the best of my knowledge information, I believe.

As far as extensions were concerned, we tried to grant every request for an extension that was made to us by an Indigenous group – you know, within reason.

Obviously, you know, it's – we appreciate that Indigenous organizations have multiple demands on them for consultation. They're, I guess, suffering from consultation burden. There's limited capacity, so hard and fast deadlines are not necessarily in keeping with the honour of the Crown.

MS. KLEER: So you've said it before, I just wanna clarify – so it is the government's belief that the process afforded to NCC exceeded the government of – the province's legal obligations under the constitutional (inaudible) –

MR. GOVER: I said no such thing and I haven't –

THE COMMISSIONER: Excuse me, just for a second.

MS. KLEER: All right.

THE COMMISSIONER: So that's not a question I want addressed by – I don't even want the question asked, let alone –

MS. KLEER: Okay.

THE COMMISSIONER: – answered.

MS. KLEER: All right. I withdraw the question.

NCC commented on the draft EIS, did they not?

MR. GOVER: I –

MS. KLEER: They had the opportunity to comment on the draft EIS.

MR. GOVER: I assume so, yes.

MS. KLEER: Yes.

MR. GOVER: You're asking me details about the consultation process. The EIS is so long ago, I couldn't say. But I would assume they had the opportunity to do so, yes.

MS. KLEER: All right.

Do you know if they had an opportunity to nominate a member for the Joint Review Panel?

MR. GOVER: My understanding is, yes, they did.

MS. KLEER: All right. Thank you.

So I want to take you to just one of the points that you made in your – or in the government's report, in P-00268, and take you to paragraph 47. Yeah.

MR. GOVER: Yeah.

MS. KLEER: Sorry. And I foolishly left my copy of it back there. I'll ask the question. I think I know what the question is.

THE COMMISSIONER: Tab 4.

MS. KLEER: Tab 4.

So in paragraph 47, you weren't trying to suggest that the JRP report concluded that the land and resource uses, amongst the different Indigenous government organizations, showed the same level of impact? That wasn't your point in that paragraph.

MR. GOVER: The point of this paragraph was merely to indicate what the JRP had concluded, which I've indicated here today, and which if there's any doubt about is expressly set out in the report.

So the findings with respect to NunatuKavut, was adverse but not significant. The finding with respect to Quebec Innu was adverse but not significant. The finding with respect to the Nunatsiavut beneficiaries was contingent and the finding with respect to the Labrador Innu – Innu Nation – showed that there would be severe lasting impacts in certain respects, but when one considered all aspects of the mitigation measures applied in relation to Innu Nation that was satisfactory.

MS. KLEER: All right.

And I just want to – just so we have clarity on this on the record – can I take you for a moment

to the JRP report, which is Exhibit 00041 – P-00041. Take you to page 202. And that refers to the recommendation with respect to the Inuit Metis or the – what are now called the NCC.

MR. GOVER: Yeah.

MS. KLEER: So just to be clear, the information – what the recommendation says is one that the province understood at the time and that was what you were thinking about when you referred in your JRP – sorry, in your report to the JRP report. So you were making distinctions between the Indigenous groups when you made your comment in paragraph 47.

MR. GOVER: Well, the panel made distinctions between the groups –

MS. KLEER: Right.

MR. GOVER: – based on their findings. We were reflecting the findings of the panel who we gave a mandate to, to say: Examine this issue for us, please. Report on it. Which they did, and they did so in great depth and detail. And so these were the findings they came to. So this would be one factor in government decision making with respect to Indigenous aspects of the project.

MS. KLEER: Right.

So one of the factors then that the province considered was the fact that the Joint Review Panel had concluded that there were – in light of what the information they had at the time, before the JRP, that there were uncertainties regarding the extent and locations of current land and resource used by the Inuit Metis in the project area.

MR. GOVER: I recognized the qualifications that were there, yes.

MS. KLEER: Yes. Okay.

And the same thing was true of the Quebec Innu groups, the same qualifications.

MR. GOVER: Yes. Yes.

MS. KLEER: All right.

I won't dwell, then, on it any further. The record is the record.

And you, of course, agree that the degree of certainty that the project could affect the rights of a given Indigenous group would affect how the government scopes its consultation.

MR. GOVER: Say that again, sorry.

MS. KLEER: That the degree of certainty that a project would affect the rights of a given group, an Indigenous group, would affect how the government scopes its consultation with that group.

MR. GOVER: I don't know if I could entirely agree with that statement.

MS. KLEER: Okay.

MR. GOVER: So, basically, as I indicated earlier, coming to an assessment of the strength of claim can be a challenging process, and a time consuming and expensive one. The severity of impacts is often revealed through the consultation process.

So one can draw little conclusion about the consultation process that was used to determine how the government felt about the strength of claim because, essentially, all 10 organizations had the same process, because we wanted to hear from them all. We wanted to give them all an equal opportunity to provide their views to us, and we wanted to be able to see what we could do to fully and fairly consider those views, and in conjunction with the federal government, and the proponent, address those concerns.

So the fact that all organizations essentially receive the same consultation process does not correlate to what we felt about the strength of claim in any way, shape, or form. Some organizations got exactly that process to which they would have been legally entitled and some organizations would have gotten more. But I'm not passing any opinion on that, just saying what it is.

MS. KLEER: Okay. Thank you.

So you've already acknowledged, or course, that strength of claim is part of the consideration in deciding on the scope of consultation, correct?

MR. GOVER: No. I just got –

MS. KLEER: No, no, no. No, but –

THE COMMISSIONER: May I just ask, Ms. Kleer, where we're going with this? Because, again, I remind you –

MS. KLEER: I don't want to – I don't want to have any assessment by the Commissioner or by Mr. Learmonth –

THE COMMISSIONER: I'm not going to be assessing the strength of –

MS. KLEER: Yeah, I understand.

THE COMMISSIONER: – any claims. What I'm assessing is what consultation occurred and whether or not, as a result of that consultation, reasonable steps were taken to deal with legitimate issues.

So have no fear, I'm not assessing the strength of anybody's claims here; the Innu or NCC, the Nunatsiavut or anybody else. That's not for me to decide.

MS. KLEER: All right, understood.

Would the – does the province, when it's deciding – did the province, when it was deciding how to consult the Indigenous government organizations, take into account considerations other than the strength of claim?

MR. GOVER: To the best of my recollection, like I said, Ms. Kleer, these were decisions made when you and I were working on the land claim hard and you were instructing me in various matters in Indigenous law and the use of commas and other important matters that we were dealing with at the time. And I appreciate –

MS. KLEER: You know the importance of the comma.

MR. GOVER: And I appreciate your schooling in it.

MS. KLEER: Mm-hmm.

MR. GOVER: But, basically, the analysis of strength of claim was too time consuming, too expensive. Really, we felt it didn't need to be done; didn't accord with the objectives we were seeking to achieve. What we wanted to do was make sure that everyone got an adequate level of consultation, and that was more easily achieved by giving everyone the same level of consultation.

MS. KLEER: Okay.

Would you – in your position as deputy minister and in your prior positions, would you agree with me that it would be inappropriate – well, let me set up the basis for this question. The Commission has already heard from – and I apologize if I don't have the pronunciation correct – Dr. Flyvbjerg about the fact that prior agreements would be a good idea for cost control. So this is – that's the basis of why I'm asking you this question.

So would you agree with me that it would be inappropriate, from a public policy perspective, that IBAs, like the one that Innu Nation agreed to with Nalcor Energy, should be reached with every Aboriginal party that exerts a land claim as a means of cost control?

THE COMMISSIONER: Don't really care about the answer to that question.

MS. KLEER: Okay.

THE COMMISSIONER: So I don't really want him to answer it.

MS. KLEER: All right. Okay.

You would agree with me that there have been protests with respect to this project post-construction by the Labrador Land Protectors, correct? And the –

MR. GOVER: Definitely.

MS. KLEER: And the Labrador Land Protectors are a group that consists of people who are Indigenous and non-Indigenous both, correct?

MR. GOVER: I do believe that's a correct statement, yes.

MS. KLEER: All right.

And you would agree then that consultation by the province, or by Nalcor, of Aboriginal groups, Indigenous groups, simply cannot prevent protest groups such as Land Protectors group from interfering with the construction schedule because they engage in protests?

MR. GOVER: Definitely. I mean, the fact that you may be a member, say, of Innu Nation, and the fact Innu Nation has signed an IBA or whatever agreements there are with the Government of Newfoundland and Labrador or Nalcor – you're still a citizen. You still have your constitutional rights to free speech and assembly. Not – while the vote passed in the communities with an overwhelming majority, it wasn't unanimous.

So I realize there is only so much Innu leadership can do vis-à-vis the membership. So it's possible that members of Innu Nation may still have protested the projects for various reasons and may still have, you know, been part of the Land Protectors group.

You know, I still – I believe, even to this day, Elder Dr. Elizabeth Penashue doesn't agree with the projects.

MS. KLEER: I would agree with you. That's correct.

MR. GOVER: Okay.

MS. KLEER: Okay.

It's clearly on the record that the Innu Nation and the province and Canada signed an AIP, and that was in 2011, and that was part of the package of the Tshash Petapen – what we call the Tshash Petapen Agreements but really there are three separate documents. Correct?

MR. GOVER: Correct.

MS. KLEER: All right.

And in that AIP, there's an entire chapter devoted to the Lower Churchill Project area.

MR. GOVER: Definitely.

MS. KLEER: All right.

And you would agree that the AIP – in that chapter, the AIP acknowledged that the Innu would have harvesting rights, with limits, of course, because the project is –

THE COMMISSIONER: So where are we going with this one?

Again, I –

MS. KLEER: All right, I –

THE COMMISSIONER: My biggest concern here is that there's either a misunderstanding or an – maybe I'm not communicating it the right way.

Like, I understand there's an issue between some of these Indigenous groups.

MS. KLEER: Yup.

THE COMMISSIONER: And God bless 'em, I hope it gets solved at some point in time. But guess what? It's not gonna be solved here.

So all I'm interested in now are questions that relate to the issue of consultation and the measures taken to deal with legitimate concerns that are raised by the Indigenous groups. So that question has nothing to do with where I'm going.

MS. KLEER: All right. Then – with – I appreciate the clarifications of this, and I do not have any further questions, thank you.

THE COMMISSIONER: Thank you.

All right. We're gonna adjourn then until – a little late this morning but a little early yesterday afternoon, so – 2 o'clock this afternoon, we'll come back.

Thank you.

CLERK: All rise.

Recess

CLERK: All rise. This Commission of Inquiry is now in session.

THE COMMISSIONER: Good afternoon.

Nunatsiavut Government.

MR. GILLETTE: Good afternoon, Mr. Gover.

MR. GOVER: Sir.

MR. GILLETTE: Mr. Gover is familiar with myself, but for the benefit of the record, I think it's the first time I've stood to ask questions. My name is Mark Gillette and I am counsel for Nunatsiavut Government at this proceeding. Just – Mr. Gover, I'm not going to take very much of your time at all. Just a couple of clarification questions for myself based on the evidence which you provided this morning.

With respect to your department in government, Indigenous Affairs, Aboriginal Affairs, Labrador Aboriginal Affairs whatever it's been called severally or completely over the past number of years. Is it fair to say that that department is the department of government that is a direct liaison with Indigenous groups with regards to consultation?

MR. GOVER: Yes, Sir, that's correct. Although as you're aware, we encourage a whole-government approach; so we encourage contact with the departments that are actually issuing permits and regulating.

MR. GILLETTE: Sure, I appreciate that; and I think, what more or less I want to go into is – as stated earlier, there are ten Indigenous groups that were involved in consultation with regards to this particular project. Is it fair to say that – and I know there's already been discussion about how Nalcor did certain aspects with regards to consultation.

But with regards to the province itself, or the Government of Newfoundland and Labrador itself, if Indigenous groups were making contact with your department, seeking clarification or consultation on various aspect of a project – let's say it's brought up caribou habitat, things like that –

MR. GOVER: Mm-hmm.

MR. GILLETTE: – it's fair to say that then your department would then refer it to officials in the various other departments to deal with those questions?

MR. GOVER: That would be exactly correct.

MR. GILLETTE: Okay. And so would your department then be advised as to what responses are going back?

MR. GOVER: My understanding is, during the consultation process any submission by any Indigenous organization that came in as part of the consultation process would be referred out as you indicated, but when the reply came back it would come back to us. And we would have a look at it for the sufficiency of the reply in relation to the issue. But as you can appreciate, if it was a matter in relation to wildlife, we would have no opportunity really to second-guess the opinions of the wildlife biologist.

MR. GILLETTE: Okay. And it goes to, I guess, I think some questions that my friend for Consumer Advocate was asking, and I believe you indicated that if questions were being posed, or consultation aspects were being proposed to Nalcor – I would continue that into government proper – I believe you said that your department would – assured it would be addressed, or assured it would be answered. What – can you elaborate on what you mean by that or how you would assure that a particular issue was addressed in a proper manner?

MR. GOVER: Well consultation – comments on consultation that came directly into the government as part of the government's consultation process – as I indicated, there was a table drawn up: comment, response, comment, response. So that was the means of assurance. Someone in my department would review that to make sure every comment had a response, and that the response was satisfactory in light of the comment.

As regards to, you know, the requirements on Nalcor, this would be more within the bailiwick of the regulating departments, in particular say environment, to ensure compliance with the release order and the various plans that would be prescribed by the release order.

MR. GILLETTE: Okay, so within – with your specific role as deputy minister of the department in charge of – I'll say, in charge of consultation – would be you be personally aware as to what responses were going back to the individual groups?

MR. GOVER: Well early days, because it was a new process, I was far more involved in looking at the responses. As the process was refined, as long as my staff indicated to me that they were satisfied with it and counsel for Indigenous Affairs was satisfied with it, knowing the staff and knowing the counsel, I wouldn't personally need to review it.

MR. GILLETTE: So earlier in your evidence you indicated that, as you said before, 10 Aboriginal groups – 10 Indigenous groups – I sometimes get the terms still interchanged a bit. Ten Indigenous groups consulted with regards to the project and, for lack of a better term, a plethora of issues arising from those various groups. Caribou habitat, water use, you know, methylmercury, all these different things.

MR. GOVER: Yeah.

MR. GILLETTE: And I believe – correct me if I'm wrong, but I believe your evidence was that all of those issues have been addressed, is that correct to say?

MR. GOVER: As I said, every – in accordance with the consultation plan, that was circulated May 1, 2008, which basically had the same process for all Indigenous groups – as I indicated, the format was: here, send in the comment and the comment – there would be a written reply to the comment. So – and then after the written reply went out, I believe there was an ability to request a conference call or a meeting with the government, on the reply if the Indigenous groups had questions or concerns about the reply.

MR. GILLETTE: Okay, so – sorry.

So if we were to make a list, let's say – and perhaps there are lists that do exist – within government of every question that has been posed by an Indigenous group with regards to the project and whether government feels it has responded to those things – I'm not going to say

checking boxes, but maybe I will say checking boxes – to whether or not those issues have been addressed in the opinion of government.

MR. GOVER: Yes.

MR. GILLETTE: Would it be fair to say in your opinion, then, that most, if not all of them, have been checked?

MR. GOVER: I have no reason to believe that any comment that came in wasn't responded to. As you say, when I say satisfactorily responded to, I mean satisfactorily responded to in the sense of consultation, which is that the government has to balance, according to Haida-Taku, the Aboriginal interest with society's interest. So Aboriginal interests on the project, society's interest in the project.

There's no obligation on the government and the Indigenous organization to agree. So when I say satisfactorily addressed, to your question, from the government's point of view, yes. That doesn't mean that the Indigenous organizations were fully satisfied with the response.

MR. GILLETTE: No, I'm not suggesting that either, it's just –

MR. GOVER: I just want to be clear. I agree with you.

MR. GILLETTE: Yeah, that's fine.

MR. GOVER: I agree with you.

MR. GILLETTE: So one of the issues that would have arose or – in my figurative list that I'm proposing here – one of those issues would be methylmercury contamination. Do you agree? Okay.

And I believe you said earlier in your testimony this morning that pretty much all the issues have been addressed with the exception that methylmercury is still an ongoing concern. Is that correct?

MR. GOVER: In the scheme of issues that are outstanding that really continue to be put to the government by Indigenous organizations, yes, methylmercury is the number one issue.

MR. GILLETTE: Okay.

And – so not going down the road of the IEAC or what it's supposed to do or things like we've heard for another day –

MR. GOVER: Yes.

MR. GILLETTE: – you are aware that the IEAC made certain recommendations to the government earlier this year, April, I believe?

MR. GOVER: I am.

MR. GILLETTE: Okay.

And I take it from your evidence this morning – so this question is related to your evidence this morning – that government has still not formally responded to those recommendations?

MR. GOVER: That is correct.

MR. GILLETTE: And so if that is the – and if the IEAC is a mechanism by which consultation on the methylmercury issue – let me rephrase – I'll put it to you that the IEAC is a mechanism by which the methylmercury issue or consultation on the methylmercury issue is being accomplished.

MR. GOVER: I wouldn't really disagree with that statement.

MR. GILLETTE: So if – in my figurative lists, or in my proposed list of issues that could be checked off as completed with regards to Indigenous consultation, I would put to you that the methylmercury box is not checked off.

MR. GOVER: I would say that at the various stages in this process government was satisfied at the time they made a decision that the decision they made and the mitigations and plans that were in place satisfactorily – in the nature of consultation, the duties on the government in consultation – addressed the issue.

Obviously, government is very responsive to the concerns of Indigenous people. And as I mentioned in my testimony this morning, even after the government had released the project, Nunatsiavut went out and, of its own initiative

and with its own funds, did research and advised the government of those – that research. And of course, once that research came into us, we looked at what had been done with a view to seeing if further matters could be done.

So I see the IEAC process as a continuation of trying to address this methylmercury issue with Nunatsiavut, Innu Nation and NunatuKavut.

MR. GILLETTE: Notwithstanding the fact that government has still not formally responded to the IEAC recommendations some five months later.

MR. GOVER: All I can say at this point in time is we have the recommendations, the – I know for a fact the recommendations are being assessed and analyzed, but government hasn't issued a formal position on the recommendations, no.

MR. GILLETTE: I can appreciate that.

And this would be my last question. I'm not going too far down the road of what the IEAC is or what it's supposed to do. Are you familiar as to whether or not any of the – with respect to the timeline of the project – and I'm not expecting you to be intimately familiar with the timeline of the project – are you familiar with the fact that some of the recommendations or at least one of them is time-sensitive with relation to how the project proceeds, particularly what I'm speaking to is the removing or the capping of soil.

THE COMMISSIONER: So again, I think we're delving into an area that I'm not gonna go into, so I'm not gonna ask that that question be answered.

MR. GILLETTE: That's fine. Those are my only questions, Mr. Commissioner.

THE COMMISSIONER: Okay, thank you.

MR. GILLETTE: Thank you very much.

MR. GOVER: Thank you, Sir.

THE COMMISSIONER: NunatuKavut Community Council.

MR. COOKE: Mr. Gover, good afternoon. I don't think we officially met even though we shared an elevator. My name is Jason Cooke. I'm the counsel for NunatuKavut Community Council.

Several of the points my friend, Mr. Gillette, touched on, particularly involving methylmercury, so I'm not going to go to that, and Ms. Kleer covered many questions actually involving my client NunatuKavut, so I don't have a lot questions for you, but what I wanted to confirm, from your evidence, is when you talked about the consultation, what I took your evidence was that there was the same level of consultation with all of the Indigenous groups, is that correct?

MR. GOVER: That would be essentially correct. Because of the nature of the way this developed, there was engagement with Innu Nation earlier, and as a result, to the best of my knowledge, there were two differences in the Innu Nation consultation process as opposed to the other nine, but these differences were probably, especially one of them, inconsequential.

MR. COOKE: Okay.

Could you tell the Commissioner what those differences were?

MR. GOVER: The differences, to the best of my knowledge – I don't have the document in front of me, but one was that Innu Nation had the right to have one of its nominees as a member of the Joint Review Panel, whereas I think all other nine only had the right to nominate people.

Also, there was, I think, some documents, or at least one period of consultation, where Innu Nation, on the document where that consultation set, had 14 days longer than the other groups.

MR. COOKE: And I took from your evidence earlier that the consultation framework which the government set up was at least in part to try to avoid a strength-of-claim analysis, because I think you indicated that that would be lengthy and expensive. Do I – did I understand your evidence correctly on that?

MR. GOVER: In part, yes, the strength-of-claim analysis is expensive and extensive, and even if you have it, it's still difficult to implement, to set out this group does this – this group gets six steps, and this group gets four steps, and this group gets, like, two and a half, maybe not that one.

The simplest thing to do is say, you know what, our honour is involved here with Indigenous people and their assertions of rights over their traditional lands or their settled rights over traditional lands, so let's treat everybody the same. That way those with the severest impacts and the strongest claims get the consultation they deserve, and those with the weakest impacts and the weakest claims get more than they deserve, but no one is prejudiced by the process.

Those who are entitled to a Cadillac got it. Those who were entitled to a Lada got a Cadillac. But everyone got a car to drive.

MR. COOKE: At least from the government's perspective by giving everyone a proverbial Cadillac.

MR. GOVER: In the process.

MR. COOKE: In the process.

MR. GOVER: Yes.

MR. COOKE: That that in your view and in the government's view satisfied the – you talked a lot about the two cases of Taku River –

MR. GOVER: Hmm.

MR. COOKE: – and Haida, satisfied that the duty to consult is set out in those cases.

MR. GOVER: It's not my opinion.

MR. COOKE: (Inaudible.)

MR. GOVER: The process has been challenged by – in the courts five times and found to be sufficient.

MR. COOKE: I'm not actually asking you to challenge. I'm just saying your – in your opinion

MR. GOVER: Yes.

MR. COOKE: – that’s what it was meant to do.

MR. GOVER: Yes.

MR. COOKE: Yes.

I want to ask you a few questions about funding.

MR. GOVER: Yes.

MR. COOKE: And if I can take you to the document that you prepared or was prepared on your behalf –

MR. GOVER: Yeah.

MR. COOKE: – which is P-00268. And I believe the discussion on funding starts at paragraph – I think it’s 32. So if I can –

UNIDENTIFIED MALE VOICE: Tab 3.

MR. GOVER: Yeah. Okay.

MR. COOKE: So I took from your earlier evidence that there are really two, kind of, funding sources for the JRP process. And you mentioned \$500,000, which came from the federal government, and then – you might have used the word top-up, but \$500,000 from the Government of Newfoundland and Labrador. Is that correct?

MR. GOVER: Correct, Sir.

MR. COOKE: Okay.

And in terms of the allocation of the funding – we can see it there at paragraph 32 – let me ask you, back up – were you involved in setting up the amount, in choosing the amount of the, I guess, the \$1 million ultimate funding for the Indigenous groups?

MR. GOVER: Not directly. My understanding of this issue is that the federal government has an – funds participation under their environmental assessment process. This was a harmonized process.

MR. COOKE: Mm-hmm.

MR. GOVER: And so the federal government had allocated \$500,000 towards the Indigenous envelope. When submissions came in from Indigenous organizations on the amount of monies that they needed to participate in the process, it vastly exceeded \$500,000.

As a result of that, and because we wanted an effective consultation process, the province made a decision that we would top up the federal \$500,000 by putting another \$500,000 in. What happened was the money was transferred to the federal government, to CEAA. CEAA had a panel, not of CEAA officials but I believe of private citizens who made these funding recommendations to CEAA, and CEAA put it in place.

MR. COOKE: And when you say funding decisions, just so – I just want to be clear. The allocation –

MR. GOVER: Yes.

MR. COOKE: – of the \$1 million pot.

MR. GOVER: Yes.

MR. COOKE: Okay.

THE COMMISSIONER: Excuse me, can I just ask what CEAA is?

MR. GOVER: Canadian Environmental Assessment Agency.

THE COMMISSIONER: Thank you.

MR. COOKE: So and I see –

MR. GOVER: But I just would like to say one more thing.

MR. COOKE: Yeah. Sure.

MR. GOVER: On the funding for consultation, yes, that was one source of funding; but, of course, Nalcor tried to enter into funding agreements with Indigenous organizations to acquire land use and occupancy study, traditional Indigenous knowledge. So there was another source of funding that was flowing from the proponent so the proponent could assemble the environmental impact statement.

MR. COOKE: Yeah. I'd expect we'll have witnesses from Nalcor –

MR. GOVER: Sure.

MR. COOKE: – who can speak to that process.

MR. GOVER: Mm-hmm.

MR. COOKE: I just note that on the list for Nunatsiavut it was \$133,000.

MR. GOVER: Yes.

MR. COOKE: Yes, and it gives the other breakdown.

MR. GOVER: Yes.

MR. COOKE: And I guess what I'd suggest to you Mr. Gover is, given the magnitude of this project and given the cost of the project, relative to that and relative to what's needed for consultation, \$133,000 is not a lot of money to do that.

MR. GOVER: These – as I said, the federal government began with the belief that on this project a half million dollars was enough. We doubled it. There were funds available from Nalcor.

I guess the purpose of capacity funding is not to have every Indigenous organization replicate the environmental assessment process of the federal and provincial governments. The committee did look at various factors in making this allocation but the committee made the allocation, not us.

The sufficiency of the funding, you know, this was a CEAA program, a Canadian Environmental Assessment program. We topped it up, and we didn't make the funding decisions and we didn't make the award.

MR. COOKE: Yeah. My question really wasn't on the allocation issue. Mine was just on – really, on an absolute number.

MR. GOVER: I would have to see the proposal for funding –

MR. COOKE: Sure.

MR. GOVER: – and assess it in light of all the others and see where we arrived at. This was done and this was the figures that were arrived at.

MR. COOKE: And I think just one more question. It's really just about the consultation, and you mentioned – and I think it's maybe – if I could just take you to paragraph two of your document, because I –

MR. GOVER: Two?

MR. COOKE: Yes. Because I think it sets it out – just on the government's position on duty to consult.

MR. GOVER: Okay, yeah. Two – here, yeah.

MR. COOKE: Yeah. And I think it says it quite well and does specifically refer to Taku River and Haida, those decisions. And there was some evidence yesterday that there was a – that the policy of the Government of Newfoundland and Labrador at one point was that the duty to consult applied only where there were accepted land claims.

MR. GOVER: That is correct.

MR. COOKE: And so my question for you is, when did that change?

MR. GOVER: My understanding is that was the policy that pre-dated Haida, Taku and it went back to 1992.

And when did that change? That began to change around Haida, Taku, but certainly after. As you're aware, the Trans-Labrador Highway case in which Labrador Metis Nation, now NunatuKavut, was successful against the Government of Newfoundland and Labrador. And it's been refined ever since that time.

MR. COOKE: Thank you.

Those are my questions.

THE COMMISSIONER: Thank you.

All right. The Conseil des Innu de Ekuanitshit.

MR. SCHULZE: Thank you, Mr. Commissioner.

Afternoon, Mr. Gover. We haven't met; though, I think we've exchanged letters.

MR. GOVER: I do believe so, Sir.

MR. SCHULZE: I'm gonna first take you through some exhibits and then I'll go back and just ask some points about your specific testimony, if –

MR. GOVER: Okay.

MR. SCHULZE: – that's okay.

MR. GOVER: Sure.

MR. SCHULZE: And you'll have to bear with me, I don't have them all on paper so I'll have to just get my screen ready.

And if the Clerk could pull up P-00308 to begin with. And I'm gonna apologize; I don't know what tab that would be Mr. Gover.

MR. LEARMONTH: 308?

MR. SCHULZE: Yes.

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: 21.

MR. LEARMONTH: That's at tab 21.

MR. SCHULZE: And if you could –

MR. LEARMONTH: Tab 21.

MR. SCHULZE: Thank you, Mr. Learmonth.

If you could just go to the second last page. Well, first of all, I guess I should ask you, have you seen this document before?

MR. GOVER: I honestly have to confess, I have not.

MR. SCHULZE: Okay. Well –

MR. GOVER: This is a very old document. I notice just by the title of the department, it says

Native Policy. We haven't been called that in very, very long time.

MR. SCHULZE: No.

MR. GOVER: This goes back to the foundation of having a provincial entity responsible for Indigenous law policy, or Indigenous policy.

I have never seen this paper. In fact, I don't know even know when the paper is – oh, here it is, 1987.

MR. SCHULZE: That's it.

MR. GOVER: Yea.

So, like I said, my – on consultation – my understanding was the operational policy was in 1992 and that was basically saying that we would consult with organizations that had – on developments in the territory – with organizations that had land claims accepted by the provincial government.

MR. SCHULZE: Okay.

Well, the part of this document I want to take you –

MR. GOVER: Yes.

MR. SCHULZE: – to is right near the end.

MR. GOVER: Okay.

MR. SCHULZE: It's the last paragraph of the second last page.

MR. GOVER: Last paragraph of the second last page.

MR. SCHULZE: So that would be – the internal pagination would be 11 and the top, it would 14 on the Commission's pagination.

MR. GOVER: Is this the – okay, I think I have the page. Is it overlapping claims or –?

MR. SCHULZE: Exactly.

MR. GOVER: Okay.

MR. SCHULZE: And so, I'll just read it. It says: "Crossboundary claims by native groups that are not residents of Labrador may be addressed only after the settlement of all claims to that specific area by the resident Labrador natives." unquote.

MR. GOVER: Yes.

MR. SCHULZE: So, it's my understanding that remains the Government of Newfoundland – its policy. Am I correct?

MR. GOVER: No.

MR. SCHULZE: No? Okay.

MR. GOVER: That is not correct.

That was a policy.

MR. SCHULZE: Okay.

MR. GOVER: And was communicated that – with respect to out-of-province claims – we would proceed to settle the in-province claims –

MR. SCHULZE: Yes.

MR. GOVER: – intra-province claims – before we settle inter-province claims.

MR. SCHULZE: Okay.

MR. GOVER: And that was the policy for a long time, and that policy only began to change post-Haida, Taku in 2004.

MR. SCHULZE: Okay.

So, other than the fact that you're now prepared to consult Aboriginal communities with their permanent residences outside of the boundaries of Labrador, how else has – what else has changed?

MR. GOVER: As far as consultation is –?

MR. SCHULZE: No.

I'm putting it to you –

MR. GOVER: I don't know – in what sense? What other thing do you want to know about?

MR. SCHULZE: Is there anything other than that you're doing? Have you invited any – have you invited the Quebec Innu to set up a table on their comprehensive claim? Have you ever written to them about it?

MR. GOVER: No, because comprehensive claims are the responsibility of the federal government. They invite us to the table after they've accepted the claim.

MR. SCHULZE: And, you'd agree with me, wouldn't you, because it's in the material, that the federal government accepted the claim by the Innu of Quebec in 1979.

MR. GOVER: We have written various Quebec Innu groups on this matter and communicated our current view, which is this –

MR. SCHULZE: Yes.

MR. GOVER: – we have looked at the CAM documentation –

MR. SCHULZE: Mm-hmm.

MR. GOVER: – which was the claim that was accepted by the federal government – and found, in our opinion, that it doesn't produce evidence of pre-contact use and occupation sufficient to ground Aboriginal rights.

MR. SCHULZE: Okay, and so what have you (inaudible) –

MR. GOVER: The evidence in the document is more contemporary land use and occupation.

MR. SCHULZE: So what have you proposed to them to do about that?

MR. GOVER: Nothing.

MR. SCHULZE: So okay –

THE COMMISSIONER: Could we just – I note that somebody's standing up, so go ahead Mr. Ralph.

MR. RALPH: Commissioner, I think we're in the prohibited territory, now aren't we?

THE COMMISSIONER: If we aren't, we're getting there.

So, again Mr. Schulze, I understand the position of your client and you may well have issues with the Government of Newfoundland, but I'm really mostly concerned now with what consultation was done with the – with your clients and the other Indigenous groups, and how their concerns were addressed. I really don't wanna get into – well I don't have any ability to get into whether the government should be creating this as setting up a land claim discussion or whatever the scenario is, that's far beyond what I need to do.

And you know, I just remind all counsel here, particularly Indigenous counsel, of the fact that everybody has gotten together and had a meeting to discuss this because my issue here is, is that I'm not gonna do anything that's gonna impact negatively or positively the claims of any of the Indigenous groups. That's for another forum at another time.

So all I really wanna do is assess what consultation took place, if any, and what was the response to the concerns that were raised, and were they – the legitimate issues, were they adequately addressed. So, if you could keep your questions to that, like I've asked the others to do, I'd greatly appreciate that.

MR. SCHULZE: I wanna assure the Commissioner I'm not trying to elicit neither some admission on claims nor some conclusion by this Commission.

THE COMMISSIONER: Right.

MR. SCHULZE: But I want to try and understand for myself and hopefully for you and for the Commission how – Newfoundland government policy on comprehensive claims shaped the way consultation actually took place.

THE COMMISSIONER: Right.

MR. SCHULZE: That's the –

THE COMMISSIONER: So what I've been told so far, is that each of the groups was treated similarly. So if you have questions related to how they were all treated, and how your client

was treated, go for it. But I'm not interested in whether – anything about the land claims and how it impacted the issue of consultation.

I just wanna know as a fact what consultation occurred here, and how did it impact basic – how did that consultation impact the decisions that were made with regards to concerns that were raised. That's it.

MR. SCHULZE: Okay.

THE COMMISSIONER: Okay?

MR. SCHULZE: And I think with my next question, I hope, Mr. Commissioner, you'll see why – what I – the topic I just introduced, why it's of concern to me.

So I'd like, maybe, if we could pull up Exhibit P-00292.

And I think I need to go to page 5.

MR. LEARMONTH: Tab (inaudible).

MR. SCHULZE: Oh, thank you.

MR. LEARMONTH: Tab 14.

MR. GOVER: Page 5?

MR. SCHULZE: Hang on, I may be – I may have the – oh, I apologize. 00293 – page 5. My mistake.

THE COMMISSIONER: That's tab 15.

MR. LEARMONTH: Tab 15.

MR. GOVER: Tab 15? Page 5. One – okay. Two, three, four, five.

Okay.

MR. SCHULZE: Okay.

So now we're in – if you go to the preceding page, you'll see the heading is: "4. Quebec Innu Accommodation." Thank you –

MR. GOVER: Yes.

MR. SCHULZE: – Madam Clerk.

MR. GOVER: Yes.

MR. SCHULZE: You go to the next page, and we're after Haida and Taku River, 'cause we see here: as a result of recent Supreme Court decisions. Okay?

MR. GOVER: Yes.

MR. SCHULZE: And now I see, once again, it's – I see the same policy we just read from 1987. It's still there 20 years later: "... priority is to negotiate accepted claims with Labrador-based groups ... any claims by Québec groups may be considered only after these complex negotiations are complete."

But I really want to draw your attention to the next bullet point.

MR. GOVER: Mm-hmm.

MR. SCHULZE: Quote: "It will be necessary to devise an approach that ensures any legal obligations are met," –

MR. GOVER: Mm-hmm.

MR. SCHULZE: – "minimizes any risks to the project," –

MR. GOVER: Mm-hmm.

MR. SCHULZE: – "guards against excessive and undue expectations for consultation and compensation and which provides no recognition of the Quebec Innu land claim."

Do you want to explain that paragraph?

MR. GOVER: Yes, in the sense that this note was written in 2007. The consultation process that we're talking about was established in 2008.

And regardless of what this note says, the consultation process for all 10 groups was identical, save for the two differences (inaudible) –

MR. SCHULZE: Okay, I'm gonna interrupt you –

MR. GOVER: Okay.

MR. SCHULZE: – because I didn't ask you to explain 2008; I asked you to explain this paragraph.

MR. GOVER: Which provides no recognition of the Innu land claim?

Easy – consultation is not a recognition of rights.

MR. SCHULZE: Okay, but that's a legal proposition, and that's self-evident, so why did they – why was it important to remind everyone in government about this?

MR. GOVER: Because the people that read these notes are not lawyers and don't necessarily know the law, so you have to state legal propositions in the notes.

MR. SCHULZE: Okay.

What did you mean by minimize any risk to the project? I assume that means make sure the project can go ahead?

MR. GOVER: As I indicated earlier, I am not the author of this note. I think what this paragraph means is, we should engage in consultations with the Quebec Innu that – of a nature that's appropriate for the Quebec Innu.

And, when the consultation was finally established in 2008, the Quebec Innu – all the Quebec Innu, including the Naskapi – had the same process as NunatuKavut and Nunatsiavut Government –

MR. SCHULZE: Okay, with respect, Mr. Gover –

MR. GOVER: Yeah.

MR. SCHULZE: – I've heard you on that, and more than once, I don't actually agree with your submission but it's not a – it doesn't answer my question about the 2007 document.

MR. GOVER: This document here?

It will be necessary to devise an approach to ensure that legal obligations are met. Government wants to act in accordance with the law – yes. Minimizes any risk to the project – well, yes. We can't establish like a \$6 billion

project and have unnecessary risks associated with it. Guards against excessive and undue expectations for consultation and compensation – yes. Let’s try to design a process which is an appropriate level of consultation and which solicits the views and concerns that Indigenous folks want to put forward to us and then we’ll see what’s needed in terms of mitigation, up to and including compensation, should that be necessary, which provides no recognition of the Quebec Innu land claim – correct. Consultation is not an admission of rights.

MR. SCHULZE: Sorry, you’re saying two different things.

One is you’re saying there’s a legal proposition that consultation is not on recognition of rights. And the other is a big reminder to everyone in government not to do anything that could be construed to be a recognition of the claim.

MR. GOVER: And that would be true. Until we’re ready to accept the claim for the purposes of negotiation, we’re not going to recognize it. That’d be true of anybody’s claim.

MR. SCHULZE: Okay.

Can we now look at document P-00292? And I ask Mr. Learmonth to tell us what tab that is.

MS. O’BRIEN: Tab 14.

MR. SCHULZE: Thank you.

And I apologize, I’ve lost track. Have we looked – have you been shown this document before – today already?

MR. GOVER: I’ve been shown the document, yes. And I’ve read the document.

MR. SCHULZE: Okay. Now, I’m struck by this recommendation number 3 on the first page.

MR. GOVER: Number 3 on the first page?

MR. SCHULZE: Yeah.

MR. RALPH: Commissioner, can we establish who wrote this to give some assistance to the witness?

MR. SCHULZE: I’m afraid I didn’t find it – I’m afraid I didn’t see an authors name on it.

MR. GOVER: No, and all I can say about this note is that this is a note that was written in 2007. And like I said, at this time I was an Innu land claim negotiator for the Innu of Labrador. And so I’m not the author of the note.

So “The Department of Environment and Conservation and Labrador Aboriginal Affairs be authorized to negotiate the level of consultation afforded to the Quebec Innu in accordance with the strength of their asserted claim.”

MR. SCHULZE: Right, so there –

MR. GOVER: Yes.

MR. SCHULZE: So there is an assessment of the strength of the Quebec Innu claim?

MR. GOVER: No. As I said, the evolution of the thinking on the process for consultation was evolving and it wasn’t fixed in place until 2008.

What you will see in – if you had – if there was a complete set of government documents, apart from this document, is that there was a great deal of debate about scaling the consultation in accordance with Haida, Taku. And then, as I indicated later on in my testimony this morning, scaling was abandoned in favour of a uniform consultation process.

So, these are early thoughts of the Government of Newfoundland and Labrador, which may have been their thoughts in 2007, but when the consultation was put in place in 2008 for the generation project, everyone got the same process, save for the two differences for Innu Nation.

There was no attempt at scaling. There was no real attempt – as I said to Ms. Kleer earlier today, you cannot draw a conclusion from the – you cannot draw a linear line from: everyone got the same consultation process, everyone must have had the same strength of claim.

MR. SCHULZE: Okay. I want to be very clear with you, Mr. Gover, that I do not for one moment accept your proposition that everybody

got the same. I understand that's your position. I won't – my client doesn't accept it, and it won't be our submissions to this Commission. So –

MR. GOVER: All I can say is that –

MR. SCHULZE: I'm not quite finished.

MR. GOVER: – is the consultation process was communicated to everyone. If all the letters are collected up, you'll see whether they're the same or not.

MR. SCHULZE: Okay. With respect, Mr. Gover, everybody getting the same letter is not everybody getting the same process. So let's –

THE COMMISSIONER: Well, so with respect –

MR. SCHULZE: – let's move to –

THE COMMISSIONER: So, excuse me.

MR. SCHULZE: – Exhibit P-00295, please.

THE COMMISSIONER: Excuse me just for a second now. Let's everybody take a deep breath here, right?

So I understand your very serious concern. Your clients are going to come and testify, and I will listen to what they have to say. But I'm concentrating here not on what happened in 2004 or 2005 or whatever, I'm trying to concentrate on this Muskrat Falls Project and what consultation occurred with regards to that.

So I get this. I see all these documents. I had the opportunity to read them. You don't need to go over them with me. Let's just stick to the issue of consultation.

Do you have questions for Mr. Gover that relates to the issue of consultation and then action taken by the government to address your issue – the concerns –

MR. SCHULZE: I – I'm sorry.

THE COMMISSIONER: Let's get there.

MR. SCHULZE: I appreciate that, Mr. Commissioner. I just needed to – because I keep

hearing the same thing from the witness, I just need to explain that he operates from a premise I'm not prepared to accept.

THE COMMISSIONER: Fine.

MR. SCHULZE: And I'm going through these documents because my submission is: a document in 2007 doesn't – it didn't miraculously cease to have any impact the following year or six months later.

THE COMMISSIONER: Whether – but again, Sir, whether it did or whether it didn't makes no difference to me. I want to just know, factually, what consultation took place with your client.

MR. SCHULZE: Okay.

THE COMMISSIONER: And then I'm going to look at that and decide what concerns were raised by your client and how were they addressed by the government.

MR. SCHULZE: Okay.

THE COMMISSIONER: So, if we can stick to that, I'm mindful of our schedule here this afternoon as well so I need you to move along.

MR. SCHULZE: Okay, I'll try – I'll take your point, Mr. Commissioner.

I want you to look at exhibit P-00295, Mr. Gover, please, and you can go to page 3.

THE COMMISSIONER: That would be tab –?

UNIDENTIFIED MALE SPEAKER: Sixteen.

THE COMMISSIONER: Tab 16

UNIDENTIFIED MALE SPEAKER: Sixteen, page 3.

THE COMMISSIONER: Page, again, Sir?

MR. SCHULZE: Well, I'm at page 3 for Quebec Innu, but, you know, it's pages 2 and 3. It's not a long document. I want to put it to you.

MR. GOVER: I see the section here on page 3, Quebec Innu.

MR. SCHULZE: Okay.

I wanna put it to you, we learned something fairly simple from this agreement, which is that there's a consultation agreement between the province and Innu Nation at a certain level of funding – sorry never mind the funding. There's a consultation agreement with Innu Nation. There's a consultation agreement with Labrador Metis Nation and there is not one with Quebec Innu. Isn't that what this document tells us?

MR. GOVER: This was a document written in 2007. The actual process, there was an agreement negotiated with Innu Nation. The agreement was never signed. Parties acted as if the agreement was in effect. It outlined the two differences that I've indicated.

There were no agreements with any other Indigenous organization that were consulted, and save for the two differences noted for Innu Nation, the process was the same.

MR. SCHULZE: Okay.

I was going to get to this later, but isn't it a fact that Nalcor had been actively engaged with Innu Nations since at least 2000 and that your government's first approach to my client was in 2008?

MR. GOVER: There has been, you know, a significant involvement of Nalcor with Innu Nation. The first approach to your government in 2008, like I said, this occurred during the time where I could not testify to what overtures would or would not have been made to Quebec Innu, during that period of time.

MR. SCHULZE: Okay. Well, I'll put it to you that there is absolutely no documents showing that your government made any approach to my client before 2008, and you're telling me you don't know of anything that would contradict that. Am I correct?

MR. GOVER: Like I said, up 'til 2005 I probably would have been aware of it, from 2005 to 2010 I was working on the Innu land claim. Things transpired in the government and in this particular department that I was unaware of, so all I can say is that if – I can't say anything about, you know, contact prior to 2008.

MR. SCHULZE: Okay.

MR. GOVER: I really can't say.

MR. SCHULZE: And you'd agree with me, we knew Innu Nation received millions of dollars in funding from Nalcor as part of that relationship as of 2000 and –

MR. RALPH: Excuse me.

MR. SCHULZE: – Ekuanitshit did not.

MR. RALPH: We're still not getting there, Mr. Commissioner.

MR. SCHULZE: No, it –

MR. RALPH: We're still not getting to about –

THE COMMISSIONER: I think –

MR. RALPH: – discussions regarding –

THE COMMISSIONER: Well, in –

MR. RALPH: – exactly what consultation was done –

THE COMMISSIONER: Right.

MR. RALPH: – I suggest.

THE COMMISSIONER: Right.

But I think the consultation – and it's not lost on me that, in order to consult, you have to have money. So I think this question relates more – I'm trying to give you as much latitude as I can, because I'm assuming you're understanding what I'm saying and you're doing what I'm telling you to do. If you don't, I'm going to tell you to sit down pretty soon.

But anyway, let's just – so go ahead with your question, and the witness has just answered. He can't answer the question about other contacts, so just go ahead.

MR. SCHULZE: That was exactly the reason for my question. Consultation, if it's to be of any quality, requires some capacity.

In any case, if you stay with – in Exhibit P-00295 on that – this is not just a statement about something that didn't happen. We – in the last bullet point under Quebec Innu, we see what happened: "The Draft Guidelines were provided to the Quebec Innu groups in December 2007, and a period of public review was correspondingly extended to late-February 2008." I believe there's also a reference to a meeting in Quebec City around the same time.

Can you tell me –

MR. RALPH: I'm sorry to interrupt. I beg your pardon.

Can we put this in context? I'm not sure who wrote this document or where it was going in terms of briefing note. I think it's important in order for Mr. Gover to actually address it appropriately.

THE COMMISSIONER: I think if he looks at the last line on the page it says it's prepared by "Brian Harvey, CS/Jamie Chippett, CS" and then 14 April 2008.

MR. RALPH: That's fine. Thank you.

THE COMMISSIONER: Okay?

MR. SCHULZE: And I think you told us this morning that Brian Harvey was then doing what exactly?

MR. GOVER: Well, Brian – the CS to me would indicate that these were Cabinet Secretariat officers, so Brian Harvey, at one time, was serving as Cabinet Secretariat officer. He is currently the director of Indigenous policy and Indigenous Affairs Secretariat. And perhaps, prior to going to Cabinet Secretariat, he did do a stint with Indigenous Affairs as a senior analyst.

Jamie Chippett is currently the deputy minister of Municipal Affairs and Environment, and he also began his career in Indigenous Affairs.

MR. SCHULZE: Okay.

So my question was: I put it to you that other than communicating draft guidelines for the environmental assessment, and a meeting along the same lines in early 2008, I put it to you that –

other than the environmental assessment itself, that was the entire extent of the province's engagement with Ekuanitshit or any other Quebec Innu group about this project up 'til the JRP report.

Do you know of anything else?

MR. GOVER: My understanding was, on May 1, 2008, all Indigenous organizations were communicated as to what the consultation process would be for this project. The consultation project – the consultation was not only a provincial consultation but a federal consultation, because it was a harmonized process including the JRP. The steps that were communicated, to the best of my knowledge, were the same steps for everybody.

MR. SCHULZE: Okay so what you're telling me is – and I'm just going – just pretty much repeating my question. My understanding is when you're asked to say how did the province engage with the Innu of Quebec about this project, what you can say is we sent them some letters, we told them what the environmental assessment process would be and then we did the environmental assessment process with –

MR. GOVER: I do not –

MR. SCHULZE: – the funding program you mentioned.

MR. GOVER: I do not believe that was the case. Nalcor was directed to –

MR. SCHULZE: I'm not asking about Nalcor right now, just the province.

MR. GOVER: But the – but consultation was delegated to Nalcor to – certain aspects of the consultation were delegated to Nalcor to carry out on behalf of the Government of Newfoundland and Labrador. And my understanding is Nalcor approached Indigenous organizations and said we'd like to acquire some knowledge from you, and if Indigenous organizations said we need some funding to provide land use and occupancy information or information about our rights or to provide Indigenous traditional knowledge, negotiations would occur.

MR. SCHULZE: And did you have any role in that?

MR. GOVER: No. That was the delegation to Nalcor.

MR. SCHULZE: And did the province ever turn its mind to the adequacy of what Nalcor did?

MR. GOVER: Nalcor, I – Nalcor, I guess, periodically advised us. I mean, we weren't – it wasn't a solid wall in the sense of, like – that Nalcor went off and did Indigenous consultation and kept it secret from the government. But the people that worked on this, you know, from the government's point of view, we had confidence that they were making reasonable overtures to all Indigenous organizations with respect to these issues.

MR. SCHULZE: Okay.

So let's loop back though. You're confirming that in fact pre – I forget what the magic word we're using is – pre-sanction or pre-authorization of this project?

THE COMMISSIONER: Pre-sanction.

MR. SCHULZE: Pre-sanction. Provincial consultation of the Innu of Quebec including my client the Innu of Ekuanitshit consisted of letters that said this is what the environmental assessment process would be, the delegation of the procedural aspects to the proponent and then the environmental assessment process that – under the statute, the provincial – federal and provincial statutes. That's the provincial consultation of the Quebec Innu, am I correct?

MR. GOVER: I don't know. I would have to get the letter, but as I indicated earlier, this document says draft guidelines were provided to Quebec groups in 2007, so I presume that these would have been – like I said, I'm not the author of this document, but I presume these would have been the environmental impact statement guidelines.

MR. SCHULZE: Right.

MR. GOVER: So this was sent to the Quebec Innu groups to say what – do you have any

comments on this, do you want to see anything included on this? Because these are the instructions to the proponent, Nalcor Energy, to prepare the environmental impact statement.

MR. SCHULZE: Yeah.

MR. GOVER: So that would have been a consultation. And then Nalcor would have been, after the guidelines were issued to them, engaged in compiling the EIS, and that's when they would have approached Indigenous organizations, as I indicated. I also – I mean, I would have to check that. Wasn't their consultation on the terms of reference for the Joint Review Panel?

MR. SCHULZE: Yes, but it – all you're doing really is answering my question with an implicit yes. The consultation amounts to the environmental assessment process. Nothing else. Am I correct?

MR. GOVER: No. The Indigenous consultation was integrated in the environmental assessment process. Indigenous organizations had a process that was distinct from the larger public process. If Indigenous organizations wished to participate in the larger public process, they were free to do so. But they had their own, independent, separate process.

MR. SCHULZE: What was distinct about the process?

MR. GOVER: In the sense that they're – that when the public provides comments to the Government of Newfoundland and Labrador, we do not write them back. The comments go in, and the decision comes out.

With respect to the concerns of Indigenous organizations, when they wrote comments in, there was a written reply. And if the Indigenous organization was not satisfied with the reply, they could request a meeting or a conference call, I believe, within a week to have further discussions on the matter.

MR. SCHULZE: That's it?

MR. GOVER: And I mean, we topped up the Indigenous funding envelope so that people would have capacity funding to participate in the

environmental assessment process. I don't believe we topped up the non-Indigenous funding envelope at all.

MR. SCHULZE: Okay.

Let's just go for a minute to Exhibit P-00271. That's the 3,000 page document.

MR. LEARMONTH: Tab 6.

MR. GOVER: So just before we get into that, Sir, I want to say that that's a Nalcor document prepared by Nalcor, and I had a quick look at it on Sunday. As you indicate, it's 3,000 pages long. It's not my document, and I don't know whether I can speak to it with any authority whatsoever.

MR. SCHULZE: Okay. Well, I'm still going to take you just to one.

MR. GOVER: Okay.

MR. SCHULZE: It's page 118. It's page 119 of the PDF, Madam Clerk, but it's – sorry, it's page – I just lost it now, of course. It's page, I think, 118 of the PDF, but for some reason paginated.

No, I apologize, it is in fact – it's page 119 of the PDF, but it says 118 at the bottom. Does that help? You got it?

MS. O'BRIEN: It should be there on the –

MR. SCHULZE: Oh, I'm sorry. Thank you.

Could you go to the bottom of that page? So this is a – if you want to look – this is a, sort of record of Nalcor's exchanges with Ekuanitshit. So we've got the heading – and this is under the heading issue and the date, and then the last column is Nalcor action, response, supporting documentation.

So the issue is historical occupation of the project area and use of the Churchill River and Nalcor's action response is: "Existing data show historical but no contemporary use of the Project area" with the exception of the Cache River caribou hunt. So do you have an idea of where Nalcor would have gotten that opinion from, that there's no contemporary use of the project area?

MR. GOVER: As I said this is a Nalcor document. My understanding was they tried to work out arrangements with Indigenous organizations to provide information. If no arrangements were worked out, existing data or existing material was used to form an opinion. So these could have been existing scholarly studies, existing data existing in other environmental assessments, third party sources, I guess, but I don't know. This is not my document.

MR. SCHULZE: Okay.

But when the government – when the Crown carrying out its – meeting its honour when it delegates its procedural role to Nalcor and Nalcor says to an Aboriginal group, well, there's no contemporary use of the project area, you're confident they're right? I'm trying to understand the reasoning here in this delegation.

MR. GOVER: No, if you feel that this statement was wrong – if any Indigenous organization felt that documentation conveyed to them by Nalcor stating what their use and occupation of the land was incorrect, then they could've made us aware of that in the portion of the consultations that related to the government.

MR. SCHULZE: What portions were those because the only ones I remember are the Joint Review Panel hearings?

MR. GOVER: The sufficiency that the EIS was put out for consultation. And, I guess, that if you – that's another thing, so delegation also occurred to the Joint Review Panel. So if there was a problem with the statements that Nalcor had put into the environmental impact statement, then these matters could've been raised before the Joint Review Panel, when argued before them and evidence submitted to them.

MR. SCHULZE: Well, you're quite right, and they were.

MR. GOVER: Okay.

MR. SCHULZE: But, with respect, that wasn't my question.

MR. GOVER: Okay.

MR. SCHULZE: My question was: What was the province doing other than waiting for people to go to the Joint Review Panel?

MR. GOVER: But the Joint Review Panel was part of the process that was set up. We –

MR. SCHULZE: So the answer is nothing.

MR. GOVER: No, the point was that there had to be a – that there was – that it was considered that there needed to be a process that was not a Nalcor process, that was not a government process, that was where people independent of the government and of Nalcor heard from Indigenous organizations, collected their concerns, assessed their concerns and conveyed their recommendations to the Crowns for action.

MR. SCHULZE: Okay.

Mr. Gover, with all due respect –

THE COMMISSIONER: Excuse me, just –

MR. SCHULZE: – I don't ask –

THE COMMISSIONER: Just one second now.

MR. RALPH: Commissioner, this doesn't seem to be fair questioning. As Mr. Gover said, he's never seen this document before. You know, he has no idea really of who in government would've known about that particular paragraph.

Maybe my hon. friend is aware of – my learned friend is aware of the documents which suggest that we – that the Government of Newfoundland and Labrador was aware of these finding by Nalcor and did or didn't address them, but I don't think it's fair. Mr. Gover said he's never seen this document before. He wouldn't know about these findings before, so I don't know if he would know if the government did or didn't react to those findings from Nalcor.

THE COMMISSIONER: All right, but Mr. Ralph, I don't think that was the question. So just – let me just – to answer Mr. Ralph first now, I'll hear from you, Mr. Simmons.

So I don't think that was the question. I think the question was – and you can correct me if I'm wrong – was that you're trying to determine

what the government was doing to ensure that what Nalcor was concluding was correct. Am I getting it?

MR. SCHULZE: Yes. Thank you, Mr. Commissioner.

MR. RALPH: My point is that how would Mr. Gover know the answer to that question? I mean, perhaps he has documents there that show that he knows the answer to that question. I don't think there's any – he hasn't been demonstrated that he would have knowledge of the issue is my point.

THE COMMISSIONER: Right. Okay, let me hear from Mr. Simmons.

MR. SIMMONS: Mr. Commissioner, the only point I wanted to make is if we scroll down a little bit on this document, we'll see there is a source cited for the statement that's been made there. So it's not something that's unsupported, there is a cross-reference there which refers to a document in Appendix O, so – and the witness wouldn't have been aware of that without that being visible on the screen.

THE COMMISSIONER: Okay, go ahead, Mr. Schulze.

MR. SCHULZE: My only – actually, my submission on this objection is I've moved on. I'm not actually on that document anymore. My question to Mr. Gover was: What did the province do, other – when there were issues raised like the insufficiency of the environmental impact statement, what did the province do other than wait for the Joint Review Panel? And I haven't had an – I haven't been told there was anything.

MR. GOVER: We were – that's why we had a Joint Review Panel, because government wanted somebody independent of itself and of Nalcor to hear from Indigenous folks to make an unbiased, objective assessment and convey that to the government. And once we got the report we would act on the report, which is what we did.

MR. SCHULZE: Excellent. Let's go to Exhibit P-00041 then, please, page 24 of the PDF.

Could you tell the witness what tab that is because I'm afraid I don't know?

THE COMMISSIONER: Tab 12, tab 12.

MR. LEARMONTH: Is that (inaudible)?

THE COMMISSIONER: 00241.

MR. LEARMONTH: 00241?

MR. SCHULZE: No, no, 00041.

THE COMMISSIONER: Oh, I'm sorry.

MR. SCHULZE: I'm going – I'm in the Joint Review Panel report.

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: 00041, yes, that's right, tab 12.

MR. GOVER: Yeah.

MR. LEARMONTH: Tab 12.

THE COMMISSIONER: Tab 12, but I think that's going to have to – he's going to have to look at the screen for that for the pages because I think he's only got the first page.

MR. SCHULZE: Okay. Okay, so –

CLERK: Page number?

MR. SCHULZE: I'd like page 24, please. And if you could just scroll down a bit, please, Madam Clerk. And that's perfect, I think.

Have you read this part of the panel report, Mr. Gover?

MR. GOVER: In part, yes.

MR. SCHULZE: Okay.

MR. GOVER: I haven't read the entire panel report word for word.

MR. SCHULZE: Okay. So I'll try and just cite a few highlights.

Quote: "Limited information was received regarding current land and resource use activities for traditional purposes in the Project area by Aboriginal persons living in Quebec due, in part, to unsuccessful attempts by Nalcor and most groups to sign consultation agreements to gather information. Time constraints during the public hearing did not allow the Panel to visit each community and therefore community representatives had to attend community hearing sessions held in Sept-Îles. They informed the Panel that the information provided was incomplete, and that insufficient time and resources were available to provide a more complete picture. The accuracy and completeness of the information provided by Nalcor was also challenged. Beside caribou hunting, any other current land and resource use activities for traditional purposes in the Project area by Aboriginal persons ... appear to be seasonal, sporadic and of short duration, including incidental harvesting along the Trans Labrador Highway."

Quote: "The Panel concluded that, based on information identified through the environmental assessment process, there were uncertainties regarding the extent and locations of current land and resource use by Quebec Aboriginal groups in the Project area. The Panel recognized that additional information could be forthcoming during government consultations."

So what – now can you tell the Commission, having read that conclusion –

MR. GOVER: Mm-hmm.

MR. SCHULZE: – as you said, the unbiased conclusion, what did the Government of Newfoundland do to get more information to resolve the uncertainties?

MR. GOVER: As the panel indicated, the Joint Review Panel report was put out to every Indigenous organization for comment. That was the process as outlined here. That was the opportunity for the Indigenous organizations to say: Here's the additional information we'd like you to be aware of.

MR. SCHULZE: Now, Mr. Gover, I took part in that exact process. It is absolutely news to me that our comments on the review panel report

were meant to be my client's opportunity to fill in that information gap that your government had been informed of by its unbiased review panel.

You're telling me that was it? There was, I believe, 60, 90-day period for comment. That was it? That's how we were gonna fill in the missing information?

MR. GOVER: Other information could be forthcoming to the government during the consultation process. There was consultation on the Joint Review Panel, any Indigenous group could've made whatever comment they wanted to make on the Joint Review Panel report, including saying: The panel noted a lack of information, we'd like to fill in that information, here it is.

MR. SCHULZE: Okay, have you read Ekuanitshit's submissions? Because I believe that was in there. Did you propose any means to do it – your government propose how they would do that?

MR. GOVER: In what sense?

MR. SCHULZE: You have an independent, objective review panel.

MR. GOVER: Yes.

MR. SCHULZE: It says there's missing information.

MR. GOVER: Yes.

MR. SCHULZE: You're telling me the process to fill in the missing information –

MR. GOVER: Yes.

MR. SCHULZE: – was that everybody got 60 or 90 days to comment on this report.

MR. GOVER: That's right.

MR. SCHULZE: Did you write a letter saying we're very concerned about this missing information, we're proposing funding and a process by which to collect it? I'd submit – put it to you, you did – your government did not.

MR. GOVER: I would agree with you on that statement.

MR. SCHULZE: Okay.

MR. GOVER: That was – the process was set in place May 1, 2008, and the funding was allocated during the course of the EA.

MR. SCHULZE: So there was no funding and no process for that other than what these committees might cobble together themselves, based on a letter that simply asked them to make submissions on a 389-page report. Is that what you're –

MR. GOVER: As I –

MR. SCHULZE: – telling the –

MR. GOVER: – indicated earlier –

MR. SCHULZE: Is that what you're telling the Commission?

MR. GOVER: – the funding was allocated – the allocation was specifically referenced by previous counsel –

MR. SCHULZE: Mm-hmm.

MR. GOVER: – of who got what, and how it got there and what it was, or – and so we would have been happy to receive any information that any group wanted to convey to us to fill in gaps that were identified by the Joint Review Panel.

MR. SCHULZE: I'm gonna take your answer as a very long yes to my question, Mr. Gover.

Could we now go to Exhibit 00309, Madam Clerk?

MR. LEARMONTH: Tab 22.

MR. SCHULZE: If you could go to page 3, please. Actually, we'll need to – I don't know if you've seen this.

Do you see at the bottom of this – the page 3 where it says "Approved by: S. Dutton, DLAA." I assume DLAA is Department of Labrador and Aboriginal Affairs?

MR. GOVER: Yes. Dated – and Gary Cake, Cabinet Secretariat, dated July 28, 2006.

MR. SCHULZE: Okay.

MR. GOVER: Yeah.

MR. SCHULZE: Now, the only non-redacted paragraph on this document tells us, quote: “In order to advance the Lower Churchill project on schedule, NL Hydro is currently looking at various alternative approaches to its EA.” That is environmental assessment. “This may include a ‘staged’ assessment, involving an initial registration for the generation facilities, followed by a later, separate registration for the transmission lines in Labrador once determined.” Unquote.

Do you know anything about this?

MR. GOVER: As I said, this document was at the time that I was chief Innu land claim negotiator. I only read it for the first time a little while ago. Do I know about, like, allegations about project splitting? Yes.

MR. SCHULZE: Well, in fact, the project was split, was it not?

MR. GOVER: The project was registered and assessed in as different projects. The legality of that, I believe, was contested and it was found to be legal.

MR. SCHULZE: Okay. But it’s intriguing, is it not, to note that a Cabinet Secretariat is told there is one project that will have two assessments, in this document?

MR. GOVER: This, as I said, I cannot really speak to it. It’s not my document.

All I can say is that these are early days in the process. The way things evolved there were – as I indicated earlier – there were three separate projects which were assessed separately. And I believe, in particular, the issue of the generation project and the Labrador-Island Transmission Link project not being the one project was raised and – as not being lawful, I think. This is not an Indigenous issue, so I wouldn’t have focused on it. This is more like a government issue, or a

project issue or an environmental assessment issue.

But in any event, the projects have proceeded as distinct projects, and there we have it.

MR. SCHULZE: Okay.

Now, I’d like to go to Exhibit 00051, which is the government’s response to the panel report. And I’ll let you pull that up, Madam Clerk.

THE COMMISSIONER: So we don’t have that in your book, so it will come up on the screen.

MR. SCHULZE: And I’d like to go to page 11, Madam Clerk.

I won’t belabour the proceedings with reading all of this, but it’s a recommendation that: “recovery strategies are in place and critical habitat is identified for each listed species ... in the assessment area before a final decision” And I note the response is: “The Government of Newfoundland and Labrador accepts the intent of this recommendation but does not accept the proposed timelines.”

MR. GOVER: Yes, I can’t see on the screen our response.

MR. SCHULZE: Oh, I’m sorry.

MR. GOVER: I can see – okay.

MR. SCHULZE: I’ll let you read that.

MR. GOVER: Okay, just – can we go back up a bit?

So this is the recommendation – okay. Can you scroll down to the government’s response? Okay, yeah, so ...

MR. SCHULZE: Now, I realize you’re not an endangered species expert, but I imagine you’re familiar with some issues related to caribou.

MR. GOVER: I suppose a few.

Anyway, so is there a question about the response?

MR. SCHULZE: Well, I put it to you that not only did the Government of Newfoundland say that the timelines wouldn't allow them to identify the habitat – critical habitat before the decision, but the project is finished and it's still not identified. Isn't that the case?

MR. GOVER: See this is one of the difficulties, when you're into these kinds of issues, of asking me these questions. As I indicated earlier, this would be better answered by people who have expertise in wildlife or expertise in environmental assessment. So what the status is with respect to this recommendation and its response, as of today, I wouldn't be able to testify to from my own knowledge. I'm just not possessed of that knowledge.

There's a great many issues in environmental assessment that has to be considered over a great many species. And as was indicated earlier here today, you know, various departments were assigned various responsibilities with respect to these recommendations.

So unfortunately, I really wish, Sir, that I could be helpful to you. I'm trying to actually be as helpful as I can to you. Because, you know, I do appreciate the, you know, the concerns of the Ekuanitshit and, you know, I want to be as helpful as I can but I just, I cannot provide an answer, really, as to the status of the response to this recommendation today because it's beyond my knowledge.

MR. SCHULZE: Okay, that's fair enough.

Thank you. I appreciate that you made that clear.

Maybe – I'm just going to take you, then, to recommendation 12.7. That's on page 21, Madam Clerk. And maybe you'd want to just read it, the recommendation and response, and tell us whether you're comfortable answering a question on it.

MR. GOVER: “The Panel recommends that, if the Project is approved, Nalcor initiate an employment outreach program” – to – “interested Aboriginal groups in Quebec; such a program could include” – blah, blah, blah. Okay, response: “Recognizing the priorities of the IBA and ... Benefits Strategy, the Government of Newfoundland and Labrador recognizes that

Nalcor will take appropriate measures to meet its human resource requirements for the Project, and further recognizes that employment opportunities are open to Aboriginal people living in Quebec.” Okay.

MR. SCHULZE: Yeah, my understanding is, in fact, not made clear by this response. In fact, based on Newfoundland law and the agreement and strategy, first priority for work on the project went to Innu of Labrador, second to residents of Labrador, third to other residents of the Province of Newfoundland. So, the employment opportunities open to Aboriginal people living in Quebec would put them fourth, would it not?

MR. GOVER: I wouldn't disagree with what you said. I do believe the benefits strategy was slightly different for the generation project and the Labrador-Island Transmission Link project, but, in substance, I would think that that is correct, that preference went to those people who were residents in the province. And certainly for the generation project, my recollection would be, priority for Labrador Innu pursuant to the IBA, then priority for Labradorians, priority for other residents of the province and then other people.

I believe that's correct but these are – this is not secret, the documents containing these priorities are posted on the Nalcor website.

MR. SCHULZE: Okay. Well, this maybe – is a good moment to move to a related – a question a bit related to that through, geography.

For instance, have you been to Pakuashipi, Mr. Gover?

MR. GOVER: No.

MR. SCHULZE: Okay, but you know where it is?

MR. GOVER: Yes.

MR. SCHULZE: Okay, so you'd agree with me it's closer to the transmission lines than anywhere on the Island of Newfoundland and closer to a good deal of the transmission lines than Sheshatshiu is.

MR. GOVER: That could be, I mean, I recognize that the closest Innu community to both the generation project and the transmission line would be at Pakuashipi and – but the exact different distance between, say Sheshatshiu and the transmission line, I don't know.

MR. SCHULZE: Okay, but so – I guess what I'm trying to understand here is that we have this recognition by the Government of Newfoundland there are employment opportunities but then the actual employment opportunity is they can take a place fourth in line even though they are closest to the project. Why isn't that in the response?

MR. GOVER: That they're closest to the project, geographically?

MR. SCHULZE: Why isn't it in the response, saying –

MR. GOVER: Okay –

MR. SCHULZE: – you know, tough luck, the people who live nearest to the project are actually fourth in line?

MR. GOVER: Because let's look at this. This is project being built in the Province of Newfoundland and Labrador, financed by the ratepayers and taxpayers of the Province of Newfoundland and Labrador. It's only natural the Government of Newfoundland and Labrador would expect, argue, fight for tooth and nail, the primary benefits of the project to be delivered to the taxpayers and residents of Newfoundland and Labrador.

I'm sorry if that is not satisfactory to you but that is that. I will be paying for this project and paying for this project and to the extent that people in the province benefit from the project – hooray!

MS. KLEER: I have a question.

Can we clarify if this document is in relation to just the generation projects or is it in relation to the generation projects and the transmission line, because these recommendations are from the Joint Review Panel, am I correct?

MR. GOVER: Like I said, there was a – my understanding is there was a slightly different benefit priority for the transmission line. But no doubt, I mean, no doubt that the both benefit priorities would have accorded benefits – priority of benefits, the preference for benefits – to people living in the province from employment and Newfoundland and Labrador companies for contracting, subject to the IBA that we had with Innu Nation.

Now, there was a gender and equity diversity plan, which Nalcor had to comply with which provided for employment for underrepresented peoples, which included Indigenous peoples.

There was no prohibition on employing anybody from the Province of Quebec or anyone from the Province of Alberta, as long as there was an opening that they can be employed at and they were qualified to do the job.

MR. SCHULZE: And I'll, Mr. Commissioner, I'll take my friends point that this panel report is about just the generation project because the environmental assessment was split.

I really only have one last question then.

THE COMMISSIONER: Okay.

MR. SCHULZE: I just want to make sure I – you had talked about – when you were talking about the process you said: You know, the procedural aspects of consultation were delegated to Nalcor and then if issues weren't resolved the province would be expected to resolve them and, generally, this works out very well.

So, should I assume from that that the province was satisfied with what Nalcor did in its procedural – in its execution of the procedural aspects of consultation with the different Aboriginal communities?

MR. GOVER: The fact the project was released from environmental assessment on March 12, 2012, indicates the province was satisfied with all aspects of the project.

MR. SCHULZE: Okay. Thank you.

Obviously, we'll have other questions for Nalcor and other questions about post-sanction consultation, but for now those are our questions.

THE COMMISSIONER: Thank you.

Okay, I believe the only other group is the former Nalcor board members.

MS. G. BEST: No questions, thank you.

THE COMMISSIONER: Thank you.

All right, thank you, Mr. Gover.

MR. GOVER: Thank you, Sir.

MS. VAN DRIEL: If I could just in this context make a comment that I want for the record to note that my learned friend, Mr. Schulze, draws his own conclusions on the answers that Mr. Gover gave, if the answers were not quite what he expected.

THE COMMISSIONER: All right.

MS. VAN DRIEL: I just want to make that out for the record.

THE COMMISSIONER: Well, first of all, thank you, but as counsel for Mr. Gover, you're not a – Mr. Gover doesn't have standing. So, I'm going to assess the evidence as I have it, and I'll deal with it in the way I think it's appropriate, but thank you for your comment.

Yes, Ma'am?

UNIDENTIFIED MALE SPEAKER: Turn on your microphone.

THE COMMISSIONER: Just turn –

MS. URQUHART: Commissioner, I understood that we would also have an opportunity to ask questions just relating to the environmental assessments and the JRP were (inaudible).

THE COMMISSIONER: Well, actually, no. I think that you're going to have your chance with other witnesses, but this is primarily supposed to be consultation, and I don't believe your clients

have an interest in that, and that's why I was not going to be going to your clients for questions. Okay.

MS. URQUHART: Thank you, Commissioner.

MS. O'BRIEN: Commissioner, maybe now would be a good time for a break.

THE COMMISSIONER: Yup, that's just what I was going to do.

Take a break now for 10 minutes and we'll come back with the next witness.

CLERK: All rise.

Recess

THE COMMISSIONER: I understand counsel did advise you that you would be permitted an opportunity to examine this witness, so you will be given that opportunity.

Ms. van Driel, my apologies to you as well, because I was reminded by my competent Commission counsel of rule 38 wherein you actually do get an opportunity to question Mr. Gover last. So I'll be going to Mr. – Ms. Urquhart first, then to you Mr. Ralph, and then to you, Ms. van Driel, at that stage.

My apologies to both of you. I'm sorry about that.

Ms. Urquhart. This will be the Grand Riverkeeper, Labrador Land Protector.

MS. URQUHART: Thank you, Commissioner, and good afternoon, Mr. Gover. My name is Caitlin Urquhart, and I'm representing the Grand Riverkeeper and the Labrador Land Protectors.

And I'm not sure whether or not you've had an opportunity to review the interpretation of the terms of reference but – or our standing decision – but we have limited standing, so just relating to environmental analysis, risk assessment and mitigation, so my questions will be limited to that sort of scope.

So you had mentioned today an environmental assessment committee –

MR. GOVER: Yes.

MS. URQUHART: – that you indicated formulates the advice that goes up the chain to decision makers in government. That’s what you – just confirming that’s sort of your understanding –

MR. GOVER: That is basically the process. For every project, there’s an environmental assessment committee struck, and because they have knowledge and expertise, they would be the beginning of the advice that would go up to government in the form of a Cabinet paper setting out the issues, the environmental impacts of the project and the benefits of the project so that government could make a decision to release or not release, and if the decision was to release, on what terms and conditions the project would be released.

MS. URQUHART: And so you say that’s the beginning of the process?

MR. GOVER: Yes. I mean, you know, because this committee would – there would probably be a draft Cabinet paper prepared that would then be circulated amongst departments, you know, and then would go to, you know, director-level officials to have a look at and then probably be vetted by deputy ministers like myself, and then it would go to Cabinet Secretariat. There’s multiple consultations within the government on any decision like this that involves Cabinet decision, because in our parliamentary democracy, as you’re quite aware, right, the principle of Cabinet decision making is unanimity. There must be consensus.

So that principle reflects itself down through the organization, so there are many, many consultations to arrive at a consensus, but it begins at the base of the pyramid with these officials, I would think, on the environmental assessment committee and then other inputs are added as the paper is formulated for the review by Cabinet with a view to ensuring that it’s factually and analytically and legally correct and, you know, financial considerations are considered, intergovernmental considerations.

So there – it would follow the normal Cabinet process for any decision that went to Cabinet.

MS. URQUHART: And so did you discuss what the composition of that committee would be? Like, who would that draw on? I’m speaking specifically to this project, the environmental –

MR. GOVER: Yes.

MS. URQUHART: – assessment –

MR. GOVER: So the answer to that question would be no. My understanding of that – I would have no involvement in that. My understanding of that is that the environmental assessment is within the mandate of the Department of Environment, and so the officials in the Department of Environment, looking at the project registration, would determine who should sit on the committee.

My anticipation would be that the committee is basically, for the most part, the same from project to project but that would be a determination I assume would be made by the Department of Environment, certainly not made by myself.

MS. URQUHART: And so would Indigenous Affairs or Aboriginal affairs have a seat at that committee table?

MR. GOVER: Any project that involves any Indigenous consideration, we’re automatically invited to be a member.

MS. URQUHART: And so – I guess invited, but in this particular case –

MR. GOVER: Mm-hmm.

MS. URQUHART: And I haven’t seen the documents surrounding meetings of the – I mean, I refer to them as the EAC – the environmental assessment committee. I have not seen any of those documents, so –

MR. GOVER: Mm-hmm.

MS. URQUHART: – I’m not familiar with it.

MR. GOVER: Mm-hmm.

MS. URQUHART: But are you aware, with this project –

MR. GOVER: Mm-hmm.

MS. URQUHART: – of – that a member of the – of your department would have been involved in that –

MR. GOVER: I am –

MS. URQUHART: – committee?

MR. GOVER: – and – yes, and to the best of my knowledge, information and belief, we were represented on the environmental assessment committee.

When I say invited, what I mean is we were invited on the committee, but once on the committee, we had the same rights of – as – of participation and input into the deliberation of the committee as any other member of the committee.

MS. URQUHART: And as you – so you earlier said that these decisions are based on consensus, so to my mind there's essentially an ability to block a decision, and you sort of mentioned that earlier in the day that there's a spectrum or a continuum of responses from do nothing all the way to not sanction.

So you would have that – sort of, that ability with (inaudible).

MR. GOVER: All I'm trying to point out here is, given that this is a Cabinet decision, there is a desire to try get a decision that all departments of the government can find acceptable. But that is not required. A matter – there could be division of opinion and that could go all the way up to Cabinet.

But there's no doubt that when decisions are going before Cabinet, the decision is not necessarily – this is the one option and the only option you can choose, because then Cabinet would have nothing to do. And in fact, bureaucrats who no one voted for would have taken over the process.

So when the paper goes up, there would be options in the paper, and then, you know, the Cabinet would make its deliberations and its decision.

I can just say what the content of the paper is. I mean, always the environmental effects of the project of any consequence are laid out, the benefits of the project; in this case, we would have had Indigenous considerations and concerns. And you know, then government, as the elected branch of the government, holding the power to decide the public interest, will make its decision.

MS. URQUHART: So I guess, though, more specifically, my question is: does – do – does the department of Aboriginal affairs –

MR. GOVER: Mm-hmm.

MS. URQUHART: – have the ability to not – or to recommend that a project not be released? Or if, say, the Environment – or the other departments, or the other members of that committee –

MR. GOVER: Mmm.

MS. URQUHART: – were satisfied with the environmental considerations, but the department of Aboriginal affairs –

MR. GOVER: Mmm.

MS. URQUHART: – found that it was not sufficient to meet the responsibility or the duty of the government, that they could essentially halt the process or block sanction?

MR. GOVER: Every department and every minister is free to come to their own conclusions about a project. What you're describing is a possibility, I would say, that's theoretical only. Because in order to – like I say, an accommodation for Indigenous concerns is a spectrum, everything from that's such a limited matter that is well established and there's established mechanisms to address it that no action is needed to be taken, to, like, this project entails so many negative considerations that it shouldn't proceed and not be released from environmental assessment to proceed.

But more than likely if you're at that end of the spectrum there are numerous negative environmental impacts over and above any Indigenous concerns. They may be the same concerns Indigenous people have, but now

you're talking about a project whose impacts are very negative and there is no satisfactory mitigation.

So – but every department is free to formulate an opinion as to how they feel about the project. And I mean – and our mandate in the government – our mandate is to ensure that when the government is preparing to make a decision, that the government has before it the considerations of – that are germane and material to Indigenous people.

MS. URQUHART: And so I'm just going to kind of bring it back to about the question and just clear – I think that you said, right, that there's a spectrum of –

MR. GOVER: Mmm.

MS. URQUHART: – options, and one of them is that a project would not proceed.

MR. GOVER: And that's – all I would say is: Yes. That is not unique to, you know, to Indigenous matters. The government, at the end of the process, may say the environmental impacts of this project are so severe that they outweigh any benefits we could acquire from the project and therefore will not proceed.

Sometimes government, as a matter of policy, determines certain things are not to happen. For example, there were – years ago there was a controversy about the bulk transshipment of water out of the province. And I believe the Tobin government banned that as a matter of policy. But the environmental assessment process is a process designed to let the people, who were elected and have responsibility for the public interest and the public good of the province, make a decision: What are the benefits of the project in relation to the environmental and Indigenous considerations of the project?

Obviously, you would prefer projects that are environmentally sustainable and that address the concerns of Indigenous people.

MS. URQUHART: I'm just going to sort of parse that out a little bit just because I'm – unfortunately, you're the first official of the government to sit in this chair, so we haven't

maybe had an opportunity – there perhaps are better people to go through this with, but I'm –

MR. GOVER: Yes.

MS. URQUHART: As you're here, I'm trying to understand the process.

MR. GOVER: Mm-hmm.

MS. URQUHART: And I guess what I'm trying to – because I think you, perhaps – I put it to you and you can agree or disagree –

MR. GOVER: Mmm.

MS. URQUHART: – that environmental considerations – and I think at the beginning of your testimony even you said there's an environmental assessment process, but the duty towards Indigenous people is different, and over and above what is –

MR. GOVER: Yes.

MS. URQUHART: – what the duty to the regular public would be.

MR. GOVER: Yes.

MS. URQUHART: So whether or not something met the standard for – from an environmental perspective –

MR. GOVER: Mm-hmm.

MS. URQUHART: – in terms of the environmental harms weighed against the benefits, there's another layer there of if those impacts – if those environmental impacts – impact on Indigenous rights or Indigenous peoples, then there is actually a greater standard of what's expected of the government. And in my view, I guess, I'll – so that – I'll start with that proposition.

MR. GOVER: Well, all I can say is that, as I said, in the general environmental assessment process there has to be a balancing of benefits and environmental effects. In Haida Taku it says when the government has done the consultation, has become aware of the impacts, is aware of the mitigation measures and the residual impacts with respect to Indigenous people, government

still, in making its decision on accommodation, has to balance the interest of Indigenous people with societal interest.

It's still – there is no veto in the process. Government still, as the elected government of all the people, including Indigenous people, can make a decision as to what's in the best interest of everybody.

MS. URQUHART: And so – then I'm going to go back to this process. So we have the environmental assessment committee and you've – my understanding is that what you're saying is that actually the Indigenous Affairs or Aboriginal affairs would not have the ability to say: I disagree with the submission. If everyone else said: No, benefits outweighed the risks, you don't have the space within that committee –

MR. GOVER: No you –

MS. URQUHART: – to say, no, we disagree.

MR. GOVER: No, I said exactly the opposite.

MS. URQUHART: Okay.

MR. GOVER: Every entity is free to formulate their own opinion.

MS. URQUHART: Okay.

MR. GOVER: So we could formulate a certain opinion –

MS. URQUHART: Mm-hmm.

MR. GOVER: – and if that differed from the other department's opinion and we felt strongly enough about it –

MS. URQUHART: Mm-hmm.

MR. GOVER: – then I guess when it went to Cabinet, the minister of Indigenous Affairs, whoever that may be at any moment in time –

MS. URQUHART: Mm-hmm.

MR. GOVER: – or the minister responsible for Indigenous Affairs would bring that forward to the Cabinet table and the ministers would reflect upon it and they would come to a decision.

MS. URQUHART: So you would essentially form a – have a separate report is the –

MR. GOVER: Pardon?

MS. URQUHART: You would have a separate report or some (inaudible).

MR. GOVER: No, in the Cabinet process if we vehemently disagree with the position, it would be set out in the process that these are the views of Indigenous Affairs.

MS. URQUHART: And so I don't want to dwell too much on it, as I say.

MR. GOVER: What I'm –

MS. URQUHART: I'm just trying to understand the process.

MR. GOVER: I'm just saying that, you know, to conceive a project which would only have adverse consequences on Indigenous folks and nobody else is a theoretical concept, but not a practical one.

MS. URQUHART: That's – yeah, I guess my point was more just that the standard of what's expected, the duty of the government towards people in general versus Indigenous people is different, but that's –

MR. GOVER: It is.

MS. URQUHART: So I'm just going to – you said this is an in-depth analysis that – again, sorry, the environmental assessment committee is an in-depth analysis. They did an in-depth analysis of the JRP report, and so I – my expectation with that would be that that would have been signed off by all of the people with – in that committee, is that how that ...?

MR. GOVER: At the end of the day the Cabinet makes its decision, and it has made its decision and the decision is public. That is it. That's all I can disclose as a public servant. The deliberations of Cabinet are secret.

MS. URQUHART: So the environmental assessment committee is a committee of Cabinet.

MR. GOVER: No, it serves to provide advice through a process to Cabinet to make a decision; namely, the release or non-release of the project.

MS. URQUHART: And I guess what I'm just trying to determine is whether or not that – their analysis would be something that would be disclosed to this Commission, is something that – or is that part of Cabinet? Like, I'm just trying to understand whether it's part of the Cabinet privilege or whether this is something that would be a document that we would be expected to have –

MR. GOVER: You –

MS. URQUHART: (Inaudible.)

MR. GOVER: Even though I've been a lawyer for a long time, you would – that would be something that needs to be addressed by the Department of Justice, not me. My expertise is Indigenous law, not the secrecies of the process that we operate under, right?

I mean all I can say is that, you know, Cabinet deliberations are secret, the papers are secret for a long period of time, and so I don't know what the answer to the question that you're asking me is. All I know is the JRP report came in, Indigenous comments were solicited on it, everything was taken into consideration. And the response of the government of the day, which the government of the day has to stand or fall upon, is public knowledge published on the website.

MS. URQUHART: Okay.

So – and I understand that you weren't actually in your current role at that time, so you wouldn't – at the time that the JRP commission or report came in. Is that what you were saying earlier, that you wouldn't have (inaudible).

MR. GOVER: No, I was either – the report, I think, came in in 2011.

MS. URQUHART: Yes.

MR. GOVER: I think I was assistant deputy minister of Indigenous Affairs then.

MS. URQUHART: So this would've been then whatever analysis or elaboration was done by this environmental assessment committee, would have – presume – I assume come across your desk?

MR. GOVER: You're asking me questions that I am trying in the spirit of trying to provide you with the full answers to the best of my knowledge, information and belief, to facilitate your participation in the Inquiry and the people you represent, but these questions are better posed to the people responsible for the *Environmental Protection Act*. They can describe the process by which these decisions are made in infinitely better detail and with infinitely more information than I can.

I really, truly wish I could be of more assistance to you, but you're now asking me about how do Indigenous considerations play in the environmental assessment process. So better to ask the department that has the responsibility for the *Environmental Protection Act* 'cause I'm fearful that if I gave you an answer based upon my understanding, it could be erroneous.

MS. URQUHART: I don't know if you have experience with other projects or – because I guess my expectation would be that the environmental assessment committee has prepared its analysis. You said a robust, in-depth analysis is what you called it on the part about – and clearly their analysis would be relevant to your department. So, I would expect that they would have to sign off on such an analysis in order to allow it to go to the next stage, because you would need to have an opportunity to review that analysis and to determine whether or not it engages those – that – those duties that your department and that the Crown has vis-à-vis Indigenous people.

MR. GOVER: I can assure you that when a paper goes before Cabinet, such as the one that we're discussing now, the views of Indigenous Affairs are expressed in the paper for the ministers to – as part of the ministerial deliberations. That is without a doubt.

But now you're talking about how does the paper begin down here at the Committee and wind up at the Cabinet? That is better answered by someone else.

If your asking me is Cabinet aware of what Indigenous Affairs thinks about the proposal; always.

MS. URQUHART: I guess what I asking you is did you receive an analysis, do you recall – like I’ve not see it, so I not trying to, like I’m not trying to catch you in something. I’m just – you’ve discussed this in-depth analysis and I’m trying to know from your specific recollection –

MR. GOVER: Yes.

MS. URQUHART: – if you received an in-depth analysis and if you – did you sign off on it? Do you have a recollection, a specific recollection of a document, of a report from the environmental assessment committee?

MR. GOVER: All I can say is this, the Cabinet paper itself, Indigenous Affairs would have seen it.

THE COMMISSIONER: So I –

MR. GOVER: Yeah.

THE COMMISSIONER: – sense there’s a little bit of a to and froing here. So my understanding might – and you can correct me if I’m wrong and this will help Ms. Urquhart as well if I’m right – is that there’s a process by which the environmental assessment committee that you describe, basically, looks at the issues in the JRP. They then make a recommendation that goes into a Cabinet paper that goes to Cabinet.

Does the – does any analysis or are you aware as to whether or not any analysis done by the environmental assessment committee, would that actually go to Cabinet or would it just be a recommendation to Cabinet with regards to the JRP recommendations? Or do you know?

MR. GOVER: Well, I know what’s in the Cabinet papers.

THE COMMISSIONER: Okay.

MR. GOVER: And what’s in the Cabinet papers is the required information for Cabinet to make a decision on a release, non-release for the project.

THE COMMISSIONER: So would it include, basically, a report or some sort of document from the – from this environmental assessment committee? I guess that’s the question Ms. Urquhart is asking.

MR. GOVER: Beginning with the environmental assessment committee, the Cabinet paper will contain a synopsis of the significant environmental effects of the project and the benefits of the project, and so – and we will ensure that the Indigenous considerations are there as well and then Cabinet will make a decision.

So, you know, it stands to reason that when Cabinet is making a decision about the release, non-release off a project, it needs to know: Well, what are the environmental impacts of the project? What are the benefits of the project? How do Indigenous people feel about the project? So that they can properly do its deliberations.

THE COMMISSIONER: Okay. Not sure if that helps or not, Ms. Urquhart.

MS. URQUHART: And perhaps we’ll get more information about that as we go along.

So I’m gonna move on to a different subject, actually kind of moving back a step to the Joint Review Panel. And you had indicated earlier that this was an independent panel; they’re unbiased, objective experts. And in your view, their role is to go and solicit the consultation and information from environmental groups, but, in particular, Indigenous groups around the environmental concerns. So that’s sort of summarizing and you’d agree with –?

MR. GOVER: The JRP had a mandate that was agreed upon in the terms of reference by the two governments and that was their mission, and they went and they did the mission. And they provided us with a report which included their recommended actions.

MS. URQUHART: So would you agree – but you would agree that they were independent experts.

MR. GOVER: They were independent of both Crowns, yes.

MS. URQUHART: And they were experts in environmental analysis?

MR. GOVER: They were chosen for a qualification in relation to providing advice to the governments in relation to these kinds of issues. Were they experts on every aspect of the environment that had to be considered? I doubt it. For example, one of the panelist, a very learned, respected man, a Nunatsiavut beneficiary, James Igloliorte. Was he an expert on everything that had to do with the environmental effects of the project? I doubt it, but they had the impact statement and they had access to other information. But not everyone was a wildlife biologist, not everyone was a chemist, not everyone was a nuclear physicist.

I mean, you know, there were people there that had credentials that were accustomed to formulating these kinds of reports for the government and to provide advice to the governments.

MS. URQUHART: So they were – but they were chosen based on merits or qualification in order to provide these types of reports?

MR. GOVER: As far as I'm concerned, yes.

MS. URQUHART: And, so, they also obviously have the benefit of actually engaging in the consultation, hearing from a myriad of experts, my clients were heavily involved in that so I've been exposed to a ton of documentation, lots of different expertise was brought in in order to make their report and recommendations.

You're nodding, so I'm going to take that as a yes.

MR. GOVER: Yes, they had the mandate to provide advice to the government in the areas that the terms of reference said and do the things that the terms of reference authorized them to do. And so, they did that and they provided the advice.

MS. URQUHART: So, I'm not going to belabour the point. My – what I'm trying to get at here, it's essentially, this panel –

MR. GOVER: Mm-hmm.

MS. URQUHART: – made recommendations.

MR. GOVER: Mm-hmm.

MS. URQUHART: A number of them we've talked about in terms of full clearing of reservoirs, soil removal studies, endangered species lists. A number of issues that, of course, are pertinent to my clients. These were recommendations from this panel with expertise, having the benefit of hearing from all of these experts and, as you've noted in a number of instances in their response, the Government of Newfoundland and Labrador did not accept those recommendations.

I'm just going to use the full clearing because we've talked about this already. They didn't agree with full clearing; they decided to go with the partial clearing. So, that's correct?

You're nodding. So, again, I'm going to –

MR. GOVER: That is correct, yes.

MS. URQUHART: And so, I guess – again, this is an area where I'm just trying to understand the level to which your department would have an ability to sort of – to say that this can't go to be released from sanction because it's not – we haven't met the mitigation criteria that's been specified by this Joint Review Panel, this expert panel.

MR. GOVER: As I indicated to you – or I'm sorry, as I indicated earlier. When it comes to the creation, dissemination, distribution, consumption and bio-magnification of methylmercury, I am not a scientist. We do have some scientists in the government.

MS. URQUHART: So I – yeah.

THE COMMISSIONER: So I guess the issue is, is that – again, just to try and move this along a little bit.

So what you're saying to Mr. Gover is because the JRP, who had this – you know, whether it was expertise or they were picked for specific reasons – because they made these recommendations, then in the circumstances, would it be incumbent on Mr. Gover's department basically to say, okay, because we

have this, we're going to have to say we don't agree with – that this project should proceed. But you understand that it's not his department that decides. Ultimately, it goes to Cabinet, and Cabinet, as he said, weighs or balances the interests of the public and the interests of the environmental concerns, Indigenous concerns or whatever.

So I think you're asking him a question that's really not that great to ask in the sense that I think the government – I think we all know how the government works. I mean people can, people – the JRP is not there to decide it. It's there to make recommendations to government. It's up to government to accept or reject. Am I right on this or –?

MR. GOVER: Absolutely, correct.

Because the one thing when you've served in a public administration like I have – now, I've served politically and I've served as a public administrator, and the one – there is a tremendous difference. Those that are entitled to make decisions were the people that went out, knocked on people's doors, heard their concerns, heard their dreams and heard their aspirations, got elected and formed a government. I am not that person.

MS. URQUHART: Well, with all due respect, the majority of those members are not from Labrador. So that – but we're not going to get into –

THE COMMISSIONER: Okay. Let's not –

MS. URQUHART: – the process of democracy.

THE COMMISSIONER: Let's not start going there as to where people are from or whatever. I'm dealing with an Inquiry that relates to all of the people of the province. I've included Labrador for obvious reasons. I've included people from Newfoundland for obvious reasons.

So let's go to the next point that you wish to ask about; mindful of the time here now.

MS. URQUHART: So I want to ask because – and I'm – one, it's still on the topic of clearing but a different aspect.

So we – obviously, the recommendation or the response of the Government of Newfoundland and Labrador was that Nalcor ought to engage in partial clearing in advance of impoundment or flooding, essentially. And you indicated earlier that Nalcor was encouraged to remove as many trees as possible, and I – but I guess I just wanted to kind of – my understanding is that the duty is certainly more than that they would be encouraged but they're by law required –

MR. GOVER: Mmm.

MS. URQUHART: – and I'm wondering, what is the sort of – what is the tracking mechanism? How are we ensuring and reporting on whether or not these steps are actually being taken?

MR. GOVER: The partial clearing scenario would've been developed and written down – this is my understanding – and submitted by Nalcor.

When I say we – the government, you know, basically encouraged Nalcor to remove as many trees as possible. That didn't mean remove all trees or go to the full clearing scenario. That meant remove the trees that can be removed where it's safe to do so, where the slopes allow for the removal. And there it is, right? I mean, the partial clearing scenario was the scenario accepted by the government. So Nalcor went out and executed the partial clearing scenario.

And as I – and I would just say this: Really now, this debate about how many trees were taken out of the reservoir has largely been superseded by the debate over soil removal. So you're now debating a mitigation measure which the JRP itself said could have a marginal impact and is not the mitigation measure, that's the primary mitigation measure that forms the subject matter of the Independent Experts Advisory Committee recommendation.

In fact, I think now that the focus is not on how many trees were removed, but how much soil is removed.

MS. URQUHART: I'm not trying to get into that debate. I'm actually asking about the monitoring. So I think you mentioned earlier that you have sort of a – some sort of a table that says these are the comments that we received

from Indigenous groups and here are the responses that we've sent, and I'm –

MR. GOVER: So the monitoring would be the responsibility of the regulating department. Maybe – I'm not sure who that would be. Maybe in this case, because it's a forestry matter, it might be the department of forestry; it might be the Department of Environment.

But, you know, they were told – Nalcor was instructed, based upon the government's response to the JRP, to do the partial clearing scenario. So it's within our legal authority to go out and monitor that and check that. And if Nalcor didn't comply, to order them to be in compliance.

MS. URQUHART: And, I guess, to your knowledge, does that protocol or that system of checking in on the – specifically, on the Indigenous concerns – exist?

MR. GOVER: Well, the recommendation would be the – we are not a – we do not issue any permits. Indigenous Affairs issues no permit to anybody.

Our function is to make sure that Indigenous considerations are appropriately put before the government. So the department that has the responsibility for ensuring compliance can go out and check to make sure Nalcor did what they were supposed to do, and if they didn't, the government can order its Crown agent to be in compliance.

MS. URQUHART: So I'm taking it from your statement that you would have some sort of mechanism where you would go and speak to the relevant agency?

MR. GOVER: You're asking me about the enforcement mechanism of the panel recommendations, and this is a matter – like the whole environmental assessment process, that is largely beyond my knowledge. These matters are the responsibility of others. Eight people in the Indigenous Affairs Secretariat cannot enforce the environmental assessment requirements for the Lower Churchill Projects.

MS. URQUHART: I'm simply asking if you track them. And I don't know –

MR. GOVER: And I was just simply giving you the answer. Eight people in Indigenous Affairs could never enforce all the numerous and hundreds and hundreds of requirements that are imposed by the EIS and the mitigation plans on the proponents. That's the reason why – I think there's 6,000 people working in both branches of Confederation Building, every one has responsibilities.

MS. URQUHART: With all due respect Mr. Gover, I'm just asking whether or not there's a mechanism tracking, not enforcement.

MR. GOVER: And that would be something better answered by somebody else.

MS. URQUHART: I have nothing further.

Thank you, Mr. Gover.

THE COMMISSIONER: Thank you, Ms. Urquhart.

Mr. Ralph?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Okay.

Ms. van Driel?

MS. VAN DRIEL: Sorry. No questions either from my side.

THE COMMISSIONER: Thank you very much.

All right. Mr. Gover, you can step down.

MR. GOVER: Thank you, Sir.

THE COMMISSIONER: Now, Ms. O'Brien.

MS. O'BRIEN: Thank you.

The next witness is Prote Poker.

THE COMMISSIONER: Prote Poker.

Step right up here, Sir, if you would, please. Sorry to keep you waiting so long. You can just take a seat there; or, actually, you can just stand for a moment.

Does Mr. Poker wish to be sworn or affirmed?

MS. O'BRIEN: I did not have a chance to confirm that with the witness.

THE COMMISSIONER: Mr. Poker, in order to give your evidence here today, you can either be sworn to tell the truth – if you have a religious belief in the Bible, you can swear on the Bible – if not, you can affirm to tell the truth. Either one is equally acceptable, but you have to tell the truth.

MR. POKER: Okay.

THE COMMISSIONER: On the Bible? Okay.

CLERK: I need to turn on your mic, too. Turn on your microphone.

MR. POKER: It's on.

CLERK: It's on? Oh, sorry.

Do you swear that the evidence that you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. POKER: Yes.

CLERK: Please state your name for the record.

MR. POKER: Prote Poker.

CLERK: Thank you.

THE COMMISSIONER: All right, Sir, you can be seated there. Thank you.

MS. O'BRIEN: Thank you Mr. Poker, I'm going to start with just some background questions for you.

So, I understand that you're a member of the Innu Nation, is that right?

MR. POKER: Yes, Ma'am.

MS. O'BRIEN: Thank you.

And where were you born?

MR. POKER: I was in North West River, Labrador.

MS. O'BRIEN: Okay.

And where do you currently live?

MR. POKER: Natuashish.

MS. O'BRIEN: So prior to living in Natuashish, did you live in Davis Inlet?

MR. POKER: Yes, yeah.

MS. O'BRIEN: And do you recall when you moved from Davis Inlet to Natuashish?

MR. POKER: I believe it was in 2000 –

MS. O'BRIEN: 2002, around?

MR. POKER: 2002, I think.

MS. O'BRIEN: Was that when the community – the entire community was relocated at that time?

MR. POKER: Yes.

MS. O'BRIEN: All right, okay. And so you are a member of the Mushuau Innu First Nation, is that right?

MR. POKER: Yes, that's correct.

MS. O'BRIEN: And I understand you've previously been chief of that nation.

MR. POKER: Yep.

MS. O'BRIEN: And Mr. Poker, would the years 2007-2010 – would that be right for the years that you were chief for the Mushuau Innu First Nation?

MR. POKER: I believe it was in 2000 – probably '06 to the '08.

MS. O'BRIEN: Okay, and were you also Grand Chief of the Innu Nation.

MR. POKER: Yes, I was, yeah.

MS. O'BRIEN: And for how long were you Grand Chief, do you recall?

MR. POKER: A little over two years, I think it was.

MS. O'BRIEN: Okay. And was that maybe starting in 2012?

MR. POKER: Yep, 20 – I think 2011 to 2013.

MS. O'BRIEN: Okay. Thank you.

Madam Clerk, could you please bring up exhibit P-00266.

Mr. Poker, in front of you there's a white binder, and if you go to tab 1 of that white binder, you're going to see a paper and it's also going to be on the computer screen in front of you.

MR. POKER: Okay.

MS. O'BRIEN: Okay.

Mr. Poker, this paper is entitled *Innu Nation's submission on Consultation and Mitigation Measures in relation to the Muskrat Fall Project*.

Have you seen this paper before?

MR. POKER: Yes I have, yeah.

MS. O'BRIEN: Okay.

And I understand that this paper was presented by the – was prepared by the Innu Nation in response to a request from Commission counsel for the Muskrat Falls Inquiry, to prepare the paper.

MR. POKER: Yeah.

MS. O'BRIEN: Okay.

And did you have some input and involvement in the writing of this paper?

MR. POKER: I read it over, yeah. I did have some involvement.

MS. O'BRIEN: Okay.

And the contents of that paper – do you agree with what's in there and do you adopt it as your own submission?

MR. POKER: Yeah. Mm-hmm.

MS. O'BRIEN: Thank you.

So I'm gonna ask you, Mr. Poker, to go through the contents of the paper for the Commissioner. It's there before you to assist you with that. I do – we will – I'll assist you with some questions as we go. But in the beginning we'd like to talk about the early consultation with the Innu Nation, with respect to the Churchill River.

MR. POKER: Okay.

Well, Innu Nation has been involved in negotiations with the province – especially the province – on various issues, including the land claims – Upper Churchill.

And we've been – I think we're in negotiations for a long time now – about 20-some years – 28 years I think it was. And some of the things that came up during the – when the – it's the Upper Churchill issues. We always wanted to deal with those issues, including the land quantum for the people.

And we – at many times we failed to get the things that we want at the table. We were not getting anywhere. And then, when the issues came up for the Muskrat Falls Project – when it was talked about – they were going to start the project. But we were – on the outset we were told the province – premier at the time, Danny Williams – we told him the project would not go ahead without Innu consent.

So there was an opportunity there for the Innu to have the issues dealt with, such as the Upper Churchill – the flooding of the lands on Upper Churchill – Innu homeland and also the land quantum.

So we wanted those to be addressed in order for us to talk about the Muskrat Falls Project.

MS. O'BRIEN: So when the lands for – when the Smallwood Reservoir was created on the Upper Churchill and Lake Michikamau was flooded – when, prior to that happening back in the 1960s, were the Innu people consulted before that took place?

MR. POKER: No.

We weren't consulted and people, our people – from stories from my Elders – we weren't consulted. We didn't know what was happening and then a lot of the lands were flooded and a lot of belongings were lost as a result of the flooding.

MS. O'BRIEN: Okay.

And, just for the purposes of the record I understand that it was in 1977 that the Innu filed their land claim and it was formally accepted for negotiation by Canada in 1987.

Is that –?

MR. POKER: That is correct, yes.

MS. O'BRIEN: Okay.

Thank you.

And that was around the time there was a lot of protests from the Innu people with respect to low-level flying in Labrador, right?

MR. POKER: Yes, yeah.

MS. O'BRIEN: Okay.

So, I understand there might have been – just from the paper that's here – in the 1990s and in the early 2000s there were some negotiations with respect to the Lower Churchill and they stalled for a while, things didn't go anywhere at that point. Is that right?

MR. POKER: Yeah.

That is correct, yeah. There was a negotiation took place and they reached some kind of agreement but that didn't go anywhere because the project was shelved for a while.

MS. O'BRIEN: Okay.

And, when there were negotiations going on between Premiers Tobin from Newfoundland and Labrador and Bouchard from Quebec, and they were attempting to conclude an agreement with respect to the Lower Churchill, is it right that the Innu Nation actually protested at the premiers' meeting, and were maybe part of the reason that initiative didn't go ahead?

MR. POKER: Yeah.

Yeah, when people – Innu heard about that they went and protested at the site to stop it from being signed – agreements from – agreement being signed between the two provinces along with the Hydro-Québec.

MS. O'BRIEN: Okay.

MR. POKER: We were – people were successful in the protest.

MS. O'BRIEN: Okay.

And so as you said, and as we heard from Premier Williams yesterday, in 2003 when he was looking to initiate development on the Lower Churchill he met with the Innu at that time and gave you the assurance that you'd – they'd have the consent of the Innu people before going forward. Is that right?

MR. POKER: Yeah, that was the – what we agreed to. That's the reason why we had that process started. We wanted the province to acknowledge the – what happened at Upper Churchill and also we were at a table so many years and we weren't getting anywhere with the land quantum. So, that's the reason why.

We want all those three issues addressed before – if we agree to Muskrat Falls –

MS. O'BRIEN: Okay.

So, there's –

MR. POKER: – or Lower Churchill.

MS. O'BRIEN: Okay.

So the three issues, just to be clear, this was redress for the Innu people for the flooding of the Upper Churchill?

MR. POKER: Yes, yeah.

MS. O'BRIEN: Okay.

And the other would be you wanted to have some impact benefits agreement with respect to the development of the Lower Churchill?

MR. POKER: Yes.

MS. O'BRIEN: Okay.

And the third would be you wanted the resolution of your land claim?

MR. POKER: Yes, yeah.

MS. O'BRIEN: Okay.

And we've already heard a lot of people speak about Tshash Petapen, which is the New Dawn Agreement. Can you just explain to the Commissioner what that historic agreement – what it meant and was for your people?

MR. POKER: Yeah.

The agreement – Tshash Petapen Agreement was named because there was a new – it's like a new dawn to us, to the Innu people because we've waited so many years to have our issues addressed, such as land quantum and the Upper Churchill redress. And we wanted that – I guess, a new beginning for the people, for our people, because of all the past grievances that we had with the province. We weren't getting anywhere so we – in a way it's a new beginning, it's a new relationship that we started with the province to address the outstanding issues.

MS. O'BRIEN: So that agreement was, really what they call, an agreement in principle or just a framework agreement, but I understand it led to three other agreements.

MR. POKER: Yeah.

MS. O'BRIEN: Is that right?

MR. POKER: That's true, the Upper Churchill Redress and also the AIP, Agreement-in-Principle, but not legally binding, and the IBA Agreement.

MS. O'BRIEN: And just to be clear, so the Upper Churchill Redress Agreement, my notes indicate that that was an agreement between the Innu Nation, the Sheshatshiu Innu First Nation, the Mushuau Innu First Nation, the Government of Newfoundland and Labrador and Nalcor. Is that right?

MR. POKER: Yes, that is correct.

MS. O'BRIEN: And that is actually a legally binding commitment – legally binding contract.

MR. POKER: Yeah, those agreements are legally binding.

MS. O'BRIEN: Okay.

And the other one that's legally binding is the IBA Agreement, as you said, and that is between the two First Nations, Sheshatshiu and Mushuau, the Innu Nation and Nalcor. Is that right?

MR. POKER: The –

MS. O'BRIEN: IBA.

MR. POKER: The IBA, yes, yeah.

MS. O'BRIEN: Okay.

And then the final one, as you said, it's an AIP or an Agreement-in-Principle, so that's not legally binding and that's the land claims and self-government agreement.

MR. POKER: Yes, that's right.

MS. O'BRIEN: Okay, and that's just with the Innu Nation, Government of Newfoundland and Labrador and Nalcor.

MR. POKER: Yeah.

MS. O'BRIEN: Okay. So now before the Innu Nation –

MS. KLEER: Excuse me. Sorry, sorry, sorry. Just to – I didn't quite hear your question. Did you ask with respect to the AIP who it was between?

THE COMMISSIONER: Yes.

MS. O'BRIEN: Yes.

MS. KLEER: And did you say Nalcor? Or did you say Canada? I thought I heard you say –

MS. O'BRIEN: It's supposed to be – thank you for the correction. My note was just wrong. It is Canada.

Thank you, Ms. Kleer.

THE COMMISSIONER: So which one are we talking about now?

MS. O'BRIEN: This is the land claims and self-government AIP, Commissioner. It's between the Innu Nation, Government of Newfoundland and Labrador and Government of Canada.

THE COMMISSIONER: All right.

MS. O'BRIEN: Before signing these agreements, can you tell the Commissioner about what consultation that the Innu Nation and the First Nations did with the Innu people?

MR. POKER: Yeah, after the agreements were in place we had – I think there were two people hired to consult with the Innu people, tell them what's in the agreement, and we had also technical people that came in to answer questions that would be asked by the Innu.

Excuse me.

So there were questions asked and people were given the information that they seek.

MS. O'BRIEN: And I understand there was summaries of the agreement circulated to the Innu. Is that right?

MR. POKER: Yes, there were copies made, summaries, copies made to, I guess, to the people in Natuashish. And I think it also – there also – the main copy of the agreements were at the offices. So people were told if they want to see the agreement they can come to the offices. They were confidential agreements, so they're not allowed to take the agreement, but they come in and look at the documents.

MS. O'BRIEN: And just, Commissioner, if Madam Clerk could bring up exhibit P-00298.

So, Mr. Poker, just on the screen in front of you, this is a summary that was prepared, I understand, of the IBA. So this was the summary – and this is actually a very helpful summary of the entire contract – and this was circulated to – all the Innu people got a copy of this. Is that right?

MR. POKER: Yes, yeah.

MS. O'BRIEN: So – and then they could go see the full document if they wanted to at the offices?

MR. POKER: Yes, that's right.

MS. O'BRIEN: Okay.

And so were – you say there were opportunities for people – for Innu people to ask questions. Did they do that? Were people interested in asking questions about the agreements?

MR. POKER: Yeah, at the meetings a lot of people asked questions and there were answers given. I think they were, I guess, they were informed and then the questions by the – by our technical people, and then also translators as well, and the leadership as well.

MS. O'BRIEN: Okay.

And did the Innu people – was there funding for the Innu to assist, to pay for this consultation work?

MR. POKER: I think there was monies provided, yes, I'm pretty sure there were.

MS. O'BRIEN: Now, I understand, ultimately, it went to a vote. Can you tell the Commissioner about the vote?

MR. POKER: Yeah. The vote took place – when was the vote – in 2011.

MS. O'BRIEN: That's July.

MR. POKER: July 2011, yeah. And do you have – I have the original.

MS. O'BRIEN: I – yes, I can get Madam Clerk to bring that up.

MR. POKER: (Inaudible.)

MS. O'BRIEN: Exhibit 00299, please. There – it's there on the screen, Mr. Poker.

MR. POKER: Yeah, that's the official results in Sheshatshiu, I think, 84 per cent were in favour,

of those who voted, and 95 per cent were in favour in Natuashish, of those who voted.

MS. O'BRIEN: And in Sheshatshiu it says, like, 65 per cent of the eligible voters came out and in Natuashish 77 per cent.

MR. POKER: Yes.

MS. O'BRIEN: So fairly high voter turnout.

MR. POKER: Yeah.

MS. O'BRIEN: So am I correct that the Innu Nation would not have signed these agreements without the Innu people having ratified them. Is that right?

MR. POKER: No, they wouldn't, no.

MS. O'BRIEN: Okay.

And I also understand that in 2011 you participated in the Joint Review Panel, or the JRP, that we've heard quite a bit of evidence on already today. Could you tell the Commissioner about your involvement with that panel?

MR. POKER: Where is that? Can you show me that?

MS. O'BRIEN: Yes, absolutely. If we go to page 4, please, Madam Clerk, of 00266? (Inaudible) I passed it, sorry.

So I understand that the Innu people here were – participated in the Joint Review Panel. This would be the environmental assessment of the project?

MR. POKER: Yes. I think the Innu Nation participated. Also the communities – the community people participated in the review.

MS. O'BRIEN: Okay.

And in addition to the participation you had in the environmental assessment before the JRP, did the Innu Nation have direct communications or consultations with Nalcor as well?

MR. POKER: I'm not aware of that.

MS. O'BRIEN: Okay.

Can you tell the Commissioner, what were the major concerns? I know you've talked about the three covered by the Tshash Petapen Agreement, but what were the other major concerns of the Innu people?

MR. POKER: Yeah, the major concerns were methylmercury and caribou, caribou habitat and also fish. We were concerned and we talked – there were many other concerns that the Innu people had. There was a lot of – and I think they were addressed in the – in that environmental assessment, but those three were the main ones.

MS. O'BRIEN: Okay.

And the steps taken in response to those concerns by the Government of Newfoundland and Labrador, by Nalcor, were the Innu generally satisfied or dissatisfied with how their concerns were addressed?

MR. POKER: The Innu Nation was satisfied but – with the input from experts, scientific experts, that gave advice. And that's how Innu made their – that's how the Innu Nation leadership made their decision to support the project.

MS. O'BRIEN: Okay.

And a couple of other concerns, I know, are addressed in your paper, and just want to maybe get you to speak about them a bit. One of the issues that have come up with the rocky knoll – and I'm not going to give the – Manitu-utshu?

MR. POKER: Manitu-utshu.

MS. O'BRIEN: Thank you. Sorry, can you say it again?

MR. POKER: Manitu-utshu.

MS. O'BRIEN: Okay. Thank you.

So we all know the feature on the land that you're speaking of. Can you explain to the Commissioner how that was important to the Innu and what was the – what work was done with Nalcor in relation to that?

MR. POKER: There was – the Sheshatshiu people – I'm from Natuashish, so Sheshatshiu

people are more familiar with this than I do, but I don't know there the significance of that area for the Innu in Sheshatshiu.

And they presented the – their concerns to Nalcor. I don't know the full details what was presented, but I do know there was a significant – and I can only assume it was addressed because the Innu in Sheshatshiu also were in favour of the project.

MS. O'BRIEN: Okay.

I think if we just go to this document at the top of page 4 – so here is where it's addressed in the paper, Mr. POKER. And it – I'm just going to read from it here, this top paragraph. It does say that: "Through our role in the EA and in discussions with Nalcor ... various mitigation measures to seek to minimize the impact of the project on" – Manitu-utshu –

MR. POKER: Manitu-utshu.

MS. O'BRIEN: – "Manitu-utshu were put in place, although initial proposals by Nalcor ... had been to damage the rock by putting diversion tunnels through it." So this was – is this an example of where the consultation everyone came to a mutually agreeable solution?

MR. POKER: Yeah. I think not all our concerns were met but I think Innu Nation was satisfied what was mitigated in the project.

MS. O'BRIEN: Okay.

Other concerns raised in the paper would be socio-economic impacts on the community, so effects on the people living in the communities. Perhaps you could explain that to the Commissioner, what your concerns were there.

MR. POKER: Yeah. There's, I guess, potential increase in money coming in, I guess, for one because we're not – how is this going to impact our people by the amount of money that's coming in, especially on the work – will work at the site.

There's a lot – as you know, our people have problems with alcohol in Sheshatshiu and also in Natuashish, so a lot of things were talked about, how do we – how do you address that – how do

we help our people. And we tried to I guess mitigate or minimize maybe effects of our people in those areas – in those situations. Like, for example, we have alcohol and then gas sniffing that were in Natuashish. So when there's an increase in drinking in our communities, there tend to be a rise in gas sniffing as well when – I guess there's neglect on our children when there's a lot of drinking in our communities.

MS. O'BRIEN: So this was a concern that your leadership had.

MR. POKER: Yeah.

MS. O'BRIEN: And did they work with Nalcor in ways to help address that by getting more support in the communities?

MR. POKER: Yes.

We have an agreement that we have programs in our community. We use some of the funding that we received to address a lot of those issues where we pay for people who go to treatment programs as well. So that can be minimized. You can help the people that are affected.

MS. O'BRIEN: Thank you.

Another one that is raised in the paper is that, as you said already, that you were concerned about caribou habitat, the fish. And so this would, you know, has to do with the Innu's people relationship with the land and collecting and eating country foods.

So can you just tell was there consultation with the Innu about to get traditional knowledge about Innu hunting patterns, migration patterns, that kind of information? Did that happen between the Innu people and Nalcor, the government?

MR. POKER: There was a lot of questions asked – a lot of – during the process, how it's going to affect the caribou, how it's going to affect the fish in that area. And we looked at, I guess, the pros and cons of the project. We look at the future of our people versus the effects. We look well into the future. How are we going to sustain our communities?

We talked about future benefits and how it's – because we're always relying on governments to fund programs such as, what I said, the treatment programs for our people. So there was a lot of discussion in that area and a lot of people were opposed to it and lot of people were in favour. And I guess after people listen to each other when they talk and they – and at the end they decide whether to support it or not. So that's – we've seen the result, I guess. They were in favour. Most of them were in favour of supporting the project.

MS. O'BRIEN: Okay.

So everything has some good, some bad –

MR. POKER: Yeah.

MS. O'BRIEN: – and you have to find the balance.

MR. POKER: Yes.

MS. O'BRIEN: Okay.

And is it fair to say that not – the – Nalcor and government didn't give the Innu people everything they wanted, there was a little bit of give and take. So, generally, you were satisfied, but it doesn't mean you got everything? Is that a fair summary?

MR. POKER: That is correct, yeah. We didn't get everything we wanted, but we were satisfied enough to, I guess, to agree to the project.

MS. O'BRIEN: Okay.

I'm just going to bring – you talked about the benefits to the Innu people and in terms of becoming more self-supportive and looking forward in the future for the Innu, and I'm perhaps gonna – I'm going to take you to the summary for the IBA agreement and – just so you could speak to the Commissioner about some of the major sections of that agreement. We're not going to go through it all in detail, but if I could have Exhibit 00298 and page 5, please.

So rather than the agreement itself, Mr. Poker, I'm going to rely on the summary that was prepared for the Innu, but this is – there's a chapter in the IBA that addresses education,

training and employment for Innu people and some of the objectives are set out here. Could you explain for the Commissioner why these objectives of education and training are so important?

MR. POKER: Yeah. For many years our education system had been very inadequate for the two communities. And our – we lack a lot of the education that's needed, and even today we still are struggling to get the basic education we need for our people to get the trades, to go into trades.

So a lot of the funding that's available through government and also through this project was used to train our people to be – as carpenters and heavy equipment operators and other things that was needed at the site, so that we have some people working at the site now that are trained. And that's one of the things we wanted. We wanted – we want our people to be working, to be trained at the site.

MS. O'BRIEN: And related to that, can we go to, please, page 9? And this is a summary of Chapter 3, which is the workplace policies and conditions for the IBA, and here, the objectives are to help Innu to get qualified for and to reduce barriers to getting jobs on the project and also to ensure that the workplace respects Innu culture and Innu language and treats the Innu equally.

And I'd just like you to speak to that, because although many – not – most Innu people are bilingual; they speak two languages. English is not the first language of most Innu people, is that not right?

MR. POKER: That is right, yes. We have – I think, at the beginning there was a lot of problems at the site. People, I guess, were – our – the Innu people weren't accepted to be in those construction jobs. There was a lot of, I guess, they want us to push us out. The contractors didn't want the Innu, but we wanted – we negotiated this agreement, and one of the things that – we want our people to be hired. That's why we have this agreement, the IBA agreement.

We want jobs; we want business opportunities as well. And we got some of that. I know it's not

perfect, but we got jobs over there, and people are trained. They can go into other – once the project is done, they will be qualified to – for other projects at (inaudible) Voisey's Bay. They be trained. A lot of training have happened. I think they can carry it over at the other project at the Voisey's Bay.

MS. O'BRIEN: And also if we could please go to page 10, because you have been speaking now about getting Innu people employed, so get them, you know, just jobs, but there was also – sorry, are we on page 10? Yep. Sorry. There was also a section here – hang on. Yes, sorry, here is where I want to be.

There was also – Chapter 4 of the IBA addressed Innu business opportunities. So this is for – a section that addressed, you know, Innu people starting their own businesses being employers themselves and getting opportunities to work on the project, and that's related to the Innu business registry which is also set up under the IBA agreement. Could you explain for the Commissioner what the Innu business registry is and how that works to help Innu businesses get off the ground?

MR. POKER: The registry is the Innu Nation business registry, and people – and businesses that start up, they register their business at the registry, so those people can qualify to get business opportunities from the Lower Churchill. So there is a requirement that the Innu – I think it's 51 per cent of the business in order to be recognized as – to be on the registry. So that will help our people to get the crack at some of those business opportunities that may arise from this project.

THE COMMISSIONER: So 51 per cent owned by the Innu people, you mean?

MR. POKER: Yes.

THE COMMISSIONER: Yeah.

MR. POKER: I think that's the –

MS. O'BRIEN: And also if we could go to, please, page 17. Because the IBA also addresses environmental protection as well.

So this is – the section here. It's Chapter 5 of the IBA, covers environmental protection. So this – what this agreement requires I believe is keeping Innu people involved in how to have ongoing monitoring, evaluation and other measures to help protect the environment. Is that right?

MR. POKER: That's the ongoing, yes.

MS. O'BRIEN: And page 22.

So there's some payments to the Innu, so if you could just explain to the Commissioner what those are. They're outlined here. I understand there's two payments, there's an initial implementation payment, and then there's also annual payments as the project goes forward.

MR. POKER: There's payment coming in out of – as a result of the flooding of the Upper Churchill, and also there's some money coming in from the Lower Churchill as well. So there's – those are the agreements that we are – that we receive payments from.

MS. O'BRIEN: So the Upper Churchill is under the redress agreement and the payments for the Lower Churchill come under this section – this chapter, Chapter 7. Is that right?

MR. POKER: Yes, yeah.

MS. O'BRIEN: Of the IBA.

Okay.

Are there ongoing consultations between the Innu and Nalcor with respect to the project?

MR. POKER: There's – yes, I think so, yeah. I'm pretty sure there are.

MS. O'BRIEN: In terms of the concerns that have been raised by the Innu, I know you said that not every concern was addressed, but are there any concerns outstanding that are – that you believe have not been satisfactorily addressed?

MR. POKER: I think most of the issues that – are satisfactory, but some of the issues that weren't – that were said, I think, were satisfactory to the Innu Nation.

MS. O'BRIEN: And, Mr. Poker, now your paper's in evidence, as is the full IBA, Commissioner, as is the summary and a number of other – the ratification and a few other documents, but those are all the questions I'd had for you. But is there anything else from the paper, Mr. Poker, that you would like to highlight for the Commissioner's benefit?

MR. POKER: No.

MS. O'BRIEN: Okay. Thank you.

Other people will have questions for you.

THE COMMISSIONER: Okay.

So, Mr. Poker, I understand that you have a flight. You're supposed to be taking a flight back today, tonight?

MR. POKER: I was supposed to, yeah.

THE COMMISSIONER: Okay.

I'm not sure how many people are going to be wanting to ask you questions here. I'm just sort of looking around now to get an idea, because I would like to get you back on the flight if I could. And I know you've had some health issues as well.

So is anybody planning to be longer than 20 minutes with Mr. Poker?

Nobody is putting up their hand. Okay.

So I'm going to go through the list and we'll see what we can do to get you finished today.

So the Province of Newfoundland and Labrador.

MR. RALPH: No questions.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: No questions.

Thank you.

THE COMMISSIONER: Concerned Citizens Coalition.

MR. BUDDEN: Yes (inaudible.)

Hi, Mr. Poker. My name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition. And I really just have one question for you; it is to do with the North Spur.

And my question is: Did the – at the time that this was signed, did the Innu Nation have any concerns about the safety of the North Spur or anything had been done to address that? And, if so, were those – in your opinion, were those concerns addressed through the mitigation process?

MR. POKER: Yeah. I think our people were concerned the strength of the North Spur area. And I believe the Innu Nation were satisfied in addressing those concerns by Nalcor.

MR. BUDDEN: Sorry, I cut you off. What was the last thing you said?

MR. POKER: I'm sure the Innu Nation were satisfied with the mitigation that took place at the North Spur.

MR. BUDDEN: Okay.

Are you able to say how they –

MR. POKER: I'm not –

MR. BUDDEN: – were satisfied?

MR. POKER: I don't know exactly what it is. I don't know. But in order for the Innu Nation to agree to it, I think – I believe their concerns were taken into consideration.

MR. BUDDEN: Okay.

So I take it what you're saying is that you're not sure exactly how they were looked after.

MR. POKER: Yeah, that's exactly – that's correct.

MR. BUDDEN: Sure. But you don't think it would have been agreed to if they hadn't been looked after?

MR. POKER: Yeah.

MR. BUDDEN: Okay. Thank you.

Those are all my questions.

THE COMMISSIONER: Okay.

Edmund Martin.

MR. SMITH: No questions.

THE COMMISSIONER: Okay.

Kathy Dunderdale.

MS. E. BEST: No questions.

Thank you.

THE COMMISSIONER: Former Provincial Government Officials '03-'15.

MR. T. WILLIAMS: Good afternoon, Mr. Poker. I'm Tom Williams. I'm representing former government officials.

MR. POKER: Okay.

MR. T. WILLIAMS: Just a couple of very brief questions arising out of the end of your direct testimony with Ms. O'Brien.

And you had spoken with respect to some of the new businesses that had started there. You indicated there's a registry of new businesses, any new businesses that have started?

MR. POKER: Yes.

MR. T. WILLIAMS: Do you have any idea how many new companies would have started since the project commenced?

MR. POKER: No, I don't. But I do know there are businesses that have contracts out.

MR. T. WILLIAMS: Okay. Any – would we be talking tens or hundreds?

MR. POKER: Tens.

MR. WILLIAMS: Okay.

And any idea of what areas those businesses are in?

MR. POKER: One of these that I'm aware of is busing. They are busing the workers from Sheshatshiu to the site. Other area – there is translation services as well that were available. What else is there?

MR. T. WILLIAMS: Supply services, security, only because I know of certain –

MR. POKER: Yeah, they were flying workers – the IDLP, Innu Development Limited Partnership, flying workers out of here, St. John's, and other areas of the province to the work site. I think the other thing is they provide the catering services.

MR. T. WILLIAMS: Okay. And these would be catering services on site, I trust.

MR. POKER: Yeah.

MR. T. WILLIAMS: On the project site.

MR. POKER: Catering services are available there by the Innu Nation – not the Innu Nation but Innu Development Limited Partnership.

MR. T. WILLIAMS: And I noticed when we were there, we were fortunate enough to get a tour of the site just a week or so ago, and one of the posters that were on the wall in the – at the site in the residence was – there was a big one up there, and correct me if I'm wrong, but I thought it read: celebrating a million hours of work by Innu employees. Would that be correct?

MR. POKER: That would be correct, yeah.

MR. T. WILLIAMS: That's correct.

And would these people have been employed in private corporations or they were hired directly by the project through Nalcor or –?

MR. POKER: Private corporations, yeah.

MR. T. WILLIAMS: Okay.

Okay, that's all the questions I have.

Thank you very much.

THE COMMISSIONER: Okay.

Did I say Kathy Dunderdale?

MS. E. BEST: You did. We have no questions.

Thank you.

THE COMMISSIONER: Thank you.

Julia Mullaley and Charles Bown.

MR. FITZGERALD: No questions.

THE COMMISSIONER: Thank you.

Robert Thompson.

MR. COFFEY: No questions.

THE COMMISSIONER: Consumer Advocate.

MR. HOGAN: My name is John Hogan. I'm the counsel for Consumer Advocate. I just have a couple of quick topics to run through with you.

The New Dawn Agreement and the IBA specifically, which Ms. O'Brien walked you through the summary. The financial aspect of that, I just want to talk about, and the compensation that flows to the Innu Nation. Were you involved in the negotiations for that specific part of the IBA?

MR. POKER: No.

MR. HOGAN: So you have no knowledge about how the numbers were reached or the numbers that were, went back and forth – what numbers were important to the Innu Nation?

MR. POKER: No.

MR. HOGAN: No. So who would have knowledge of that?

MR. POKER: Hmm.

MR. LUK: Excuse me.

Commissioner, I just want to caution my friend here, that there are commercial sensitivities to what he appears to be heading towards. And I'm not quite sure where he is, but I just want to caution him and the room that –

MR. HOGAN: Sure.

MR. LUK: – we're headed towards an area of commercial sensitivity.

MR. HOGAN: So is it possible, Commissioner, I'm just, you know –

THE COMMISSIONER: You're just asking a question now of who he might – who might be – might've been involved in these negotiations.

MR. HOGAN: If he doesn't know the answer we don't have to worry about it, but – yeah. So who would know the answer to that question?

MR. POKER: I guess the –

MR. HOGAN: Pardon me?

MR. POKER: The present Innu Nation leadership would have that answer.

MR. HOGAN: You mean more than one person?

MR. POKER: Yep.

MR. HOGAN: And you sat through – I think I saw you – you sat through the testimony all day of Mr. Gover?

MR. POKER: Yep.

MR. HOGAN: So you heard him talk about the duty to consult? You remember all that?

MR. POKER: I remember that, yeah.

MR. HOGAN: Okay. And were you aware of the delegation authority that the government could delegate down to Nalcor this duty to consult?

MR. POKER: Yes.

MR. HOGAN: You're aware of that. So, did you realize, or were you part of the negotiations for the duty to consult? Did that involve you, specifically?

MR. POKER: No.

MR. HOGAN: Okay. So, again, who would that be?

MR. POKER: That would be Nalcor and the province.

MR. HOGAN: Nalcor and the province, but on the behalf of the Innu Nation, who would have been that person – that point person?

MR. POKER: The – to consult?

MR. HOGAN: In the consultation process.

MR. POKER: We consult our people at our – that's our job.

MR. HOGAN: What I mean is the government has a duty to consult –

MR. POKER: Yeah.

MR. HOGAN: – it delegated aspects of that to Nalcor. You heard Mr. Gover talk –

MR. POKER: Yeah.

MR. HOGAN: – about that today.

So maybe broadly speaking, as a member of the Innu Nation and your other fellow members, what did they know, or what did you know about who you were consulting with? Were you consulted – did you feel that you were consulting with the government, or with Nalcor, or with Nalcor on behalf of the government?

MR. POKER: I think both – probably both.

MR. HOGAN: So did you – would you specifically distinguish between Nalcor and the government or were they one in the same?

MR. POKER: They were different. They were – the deputy minister was present at the negotiations and also Nalcor, Nalcor officials.

MR. HOGAN: Okay.

MR. POKER: There was two sets of people; government and also the Nalcor.

MR. HOGAN: Okay. That's all the questions I have.

MR. POKER: Okay.

MR. HOGAN: Thank you.

MR. POKER: Thank you.

THE COMMISSIONER: All right, Nunatsiavut Government?

MR. GILLETTE: No questions for Mr. Poker, thank you.

THE COMMISSIONER: NunatuKavut Community Council?

MR. COOKE: No questions.

THE COMMISSIONER: Conseil des Innus de Ekuanitshit?

MR. SCHULZE: No questions, Mr. Commissioner.

THE COMMISSIONER: Grand Riverkeeper Labrador/Labrador Land Protectors?

MS. URQUHART: No questions, Commissioner.

THE COMMISSIONER: Okay. Former Nalcor Board Members?

MS. G. BEST: No questions, thank you.

THE COMMISSIONER: Okay. Innu Nation?

UNIDENTIFIED FEMALE SPEAKER: We have no questions to follow up.

THE COMMISSIONER: Thank you.

All right, Mr. Poker, thank you very much for your testimony. You're free to go. Hopefully, (inaudible) plane.

MR. POKER: Thank you.

THE COMMISSIONER: Thank you very much.

I think we'll end now for the day and we'll start again tomorrow morning at 9:30, I guess. Our first witness tomorrow will be –

MR. LEARMONTH: Todd Russell.

THE COMMISSIONER: Todd Russell for tomorrow morning. Okay, good.

All right. Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.