



COMMISSION OF INQUIRY  
RESPECTING THE MUSKRAT FALLS PROJECT

---

Transcript | Phase 1

Volume 11

---

*Commissioner: Honourable Justice Richard LeBlanc*

Thursday

4 October 2018

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

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** Good morning.

All right, Mr. Learmonth.

**MR. LEARMONTH:** The first witness today will be Todd Russell.

**THE COMMISSIONER:** All right, Todd Russell.

**MR. LEARMONTH:** Right.

**THE COMMISSIONER:** And, Mr. Russell, do you wish to be sworn or affirmed this morning?

**MR. RUSSELL:** Sworn, please.

**THE COMMISSIONER:** Sworn. Okay, just place your right hand on the Bible. Stand up just for a moment.

**CLERK:** Do you swear that the evidence you shall give for this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**MR. RUSSELL:** I do.

**CLERK:** Please state your full name for the record.

**MR. RUSSELL:** Todd Russell.

**CLERK:** Thank you.

**MR. LEARMONTH:** Good morning, Mr. Russell.

**MR. RUSSELL:** Good morning, Sir.

**MR. LEARMONTH:** Where do you live, Mr. Russell?

**MR. RUSSELL:** I live in Happy Valley-Goose Bay.

**MR. LEARMONTH:** Yes.

And how long have you lived in Happy Valley or Labrador?

**MR. RUSSELL:** Since April of 1995.

**MR. LEARMONTH:** April 1995.

And what is your present position?

**MR. RUSSELL:** I'm the president of the NunatuKavut Community Council.

**MR. LEARMONTH:** And that's often referred to as NCC?

**MR. RUSSELL:** Yes.

**MR. LEARMONTH:** Is that an acceptable way for me to refer to it?

**MR. RUSSELL:** It's fine.

**MR. LEARMONTH:** Okay. Thank you.

And how long have you been president of NCC?

**MR. RUSSELL:** In terms of my affiliation formally with the organization, I was elected in 1992 as a councillor. I was elected in 1994 as the president of then the Labrador Metis Nation. I left the organization in 2005 and was an MP for Labrador from 2005 until 2011. And, subsequently, I was re-elected in 2012 and have been re-elected and I currently serve as the president of the NunatuKavut Community Council.

**MR. LEARMONTH:** Could you briefly explain your duties as president?

**MR. RUSSELL:** Well, I oversee the governance board of the Labrador – of the NunatuKavut Community Council. We're responsible, obviously, for meeting the objectives for which the organization was formed. I have a responsibility to my people to ensure that their rights and their interests are upheld.

We pursue programs and services on behalf of our people. We provide various governance

functions and I chair the board that is responsible for those governance functions.

**MR. LEARMONTH:** Thank you.

Now, you testified in Goose Bay – Happy Valley-Goose Bay about the historical use of your people of the land around the Churchill River that – near the Muskrat Falls Project and elsewhere. Today, I'm going to ask you to state your position on the consultation that was provided by the Government of Newfoundland and Nalcor to your people, both before sanction and a little bit after sanction also. Do you – can you – you understand that – the parameters of that? Okay.

Can you state your position on what concerns the NCC had with respect to the Muskrat Falls Project before sanction?

**MR. RUSSELL:** Well, I remember the discussions, particularly around Lower Churchill development or hydroelectric developments, on what people now call the Churchill River, has been a topic of a lot of discussion for many, many years. And various provincial administrations have, I think, at times toyed with the idea of moving forward with either a Gull Island project or a Muskrat Falls Project or a combination of these.

And I remember in the mid-1990s when we were engaging, I suppose to some extent, with the province, with Newfoundland and Labrador Hydro or Nalcor now, we had always put forward the position that if there was going to be a project, then we want to be at the table in a real, meaningful, tangible way and our organization was seized with some of that work.

And in 1998 there was a resolution passed that said that before those developments happen that we needed to be involved. We had to have our interests put before and to be involved in a proper consultation and accommodation process. I think it would be fair to say that there was very little light shown to us in terms of an opening, a door opening, or some process opening for us to be involved in that particular way. Most of the doors were shut –

**MR. LEARMONTH:** You're speaking around 1998 you said?

**MR. RUSSELL:** 1998, 2000 and even up into the early 2000s.

**MR. LEARMONTH:** Yeah.

**MR. RUSSELL:** And this was the, yes, in regards to the possibility and the talk about a Lower Churchill Project taking place or a transmission line. But, of course, there were other developments happening in Labrador as well, or projects happening in Labrador where we weren't really being consulted or involved.

So there was a pattern of either being shut out, or if there was a little opening it was very, very minimal. And even if we got in, it always seemed that our interests were being minimized and certainly not being taken into account in terms of project implementation or going forward.

So it was a pretty rocky road and the relationship between us and the province and Nalcor was ... it certainly wasn't a good relationship that we had. It was a pretty rocky relationship for the most part.

**MR. LEARMONTH:** And you speak of a rocky relationship. Would that apply to the period 1998 until 2004 or '05? Is that what you're speaking of?

**MR. RUSSELL:** Yeah, and I think what's indicative is that in – you know, they were building a road through Southern Labrador and we really weren't being consulted, certainly no accommodation and we went to court. We went to court to seek clarity from the courts about the government's duty to consult when it came to the – well, within the Labrador Metis Nation, now NunatuKavut Community Council.

So we went to court in 2005 and again in 2007 and we won those court cases which said that we were owed a duty to consult, at least when it came to the Trans-Labrador Highway project, at least, the court said, at a minimal level because that's what the case was about.

**MR. LEARMONTH:** Mm-hmm.

**MR. RUSSELL:** But they also made other pronouncements that indicated that the duty to

consult was real and that it was owed to us by the Government of Newfoundland and Labrador.

**MR. LEARMONTH:** Okay.

And that decision was confirmed by the Court of Appeal of Newfoundland, I think you said, in 2007?

**MR. RUSSELL:** Yes, and if I remember correctly, the Government of Newfoundland and Labrador sought leave to appeal to the Supreme Court of Canada and the Supreme Court of Canada did not hear that appeal.

**MR. LEARMONTH:** That was –

**MR. RUSSELL:** They left the decision undisturbed.

**MR. LEARMONTH:** Yes.

Okay, after 2007 – now we're getting closer to the Muskrat Falls question – can you provide us with a – your account or version of the issues that your people had and how they were addressed by the Government of Newfoundland and Labrador.

**MR. RUSSELL:** And just so the Commission knows, I wasn't the president at the time but I was aware of some of the dealings that the organization was having. So I guess I'll relay to you what I know, what I observed and what I learned first-hand at times from people within the organization.

**MR. LEARMONTH:** That'll be fine.

**MR. RUSSELL:** It is my understanding that from the outset our organization had concerns with the process. It was my understanding that they had concerns with the way the project was being scoped, what they call – did it include the transmission line, did it include Muskrat and Gull, these kinds of questions.

So there were concerns about the process. There were concerns about how the project was being scoped, there were concerns about the level of resourcing that was being offered through this particular process, the JRP process and then there were the other – I suppose some will say –

more tangible, but more people-focused issues around impacts.

Our organization, from what I can recall, raised issues about methylmercury, raised issues about impacts on hunting, impacts on fishing, impacts on harvesting, impacts upon land use, trapping, impacts upon country foods. There were a range and a variety of issues that our organization had raised up.

**MR. LEARMONTH:** With who?

**MR. RUSSELL:** With – certainly with the Government of Newfoundland and Labrador, certainly with Nalcor and, yes, with the Joint Review Panel itself.

**MR. LEARMONTH:** Okay.

We'll get to the –

**MR. RUSSELL:** And the federal government too.

**MR. LEARMONTH:** We'll get to the Joint Review Panel shortly, but why were you concerned? Why – on what facts or beliefs were these concerns based?

**MR. RUSSELL:** My concerns or the concerns of NCC?

**MR. LEARMONTH:** Of your people, yeah, NCC.

**MR. RUSSELL:** Well, it was pretty obvious that the project was being built in an area that our people have extensively used and were continuing to use. And some people continued to use areas near or adjacent to the project site right now.

**MR. LEARMONTH:** Yeah.

**MR. RUSSELL:** So there was certainly a lot of overlap from –

**MR. LEARMONTH:** Hmm.

**MR. RUSSELL:** – even from physically the issues of where the construction was going to take place, where the roads and right-of-ways were going to be built and the impact that would

have on all of our traditional uses and contemporary uses of that particular area.

**MR. LEARMONTH:** Okay.

Now, I understand that your people were involved in the Joint Review Panel process. Is that correct?

**MR. RUSSELL:** Yes.

**MR. LEARMONTH:** Were you – I think you were a Member of Parliament at that time, were you?

**MR. RUSSELL:** That's right.

**MR. LEARMONTH:** So you weren't coordinating the submissions and presentation to the Joint Review Panel. Is that correct?

**MR. RUSSELL:** You're correct.

**MR. LEARMONTH:** Yeah.

Anyway, I'd like to bring up Exhibit P-00041 which is the report of the Joint Review Panel, August 2011, and at page 23 and continuing on to page 24.

**THE COMMISSIONER:** That's Tab 12. But you don't have that in your booklet; it's just the front page, so you can look at it on your screen.

**MR. LEARMONTH:** Yeah, it should be on your screen before you, Mr. Russell. It's not in the book.

**MR. RUSSELL:** Okay.

**MR. LEARMONTH:** Okay.

So this is a – on page 23 there's a statement about the Inuit, Metis and then NunatuKavut Community Council here. They're "only able to provide limited information about current land and resource use activities for traditional purposes by Inuit-Metis because of its injunction application and the lack of time and financial resources to provide detailed hearing submissions."

Now, I just want to stop there before I continue on. What – were the financial resources

provided to your group, in your opinion, reasonable and in any event sufficient?

**MR. RUSSELL:** Absolutely not.

**MR. LEARMONTH:** Please expand on that.

**MR. RUSSELL:** It's my understanding that the organization wished and wanted to provide a fulsome presentation of our concerns and interests to the panel. It's my understanding that the organization had approached Nalcor in particular, to seek resourcing in order to do some land use studies, cultural studies, anthropological studies, maybe even archaeology, I'm not quite sure on that. But there was a range of activities that the organization had approached – I believe it was Nalcor – to get the resources so that we could present that information in a fulsome way to the panel.

A hundred-thousand dollars or whatever the amount was, was going to go nowhere to achieving that particular end and – or very little. I mean it's not a lot of resources for the complexity of this particular development, the anticipated and now known impacts, and then having the requisite resources to deal with all of that.

Like, if you put it in a comparison – and I know looking after the fact, Mr. Commissioner, but this Commission, you know, the government has allocated \$30 million after the fact to look at what went wrong, so to speak.

And here we are, we're into consultation – supposed consultation before the project happens, and the testimony yesterday said you should be so happy that we bumped up the participant funding envelope to a million dollars so that 10 Indigenous groups could all participate, and as the process was described, we could participate with a Cadillac process, even if we only deserved a Lada.

And my reaction to that is that I don't buy it – first of all, that premise is not a good one. I'm pretty confident that this was not a Cadillac process. Secondly, regardless if it's a Cadillac or a Lada or whatever you're driving, you got to have a person to drive it. You got to have some fuel in the tank, or you're going nowhere. And

so far as I'm concerned, they might describe their process as a Cadillac; what they presented was something like a Lada and, certainly, very little fuel to get you anywhere.

And so, you know, I mean, that kind of describes how we felt about the consultation process in general, broad terms.

**MR. LEARMONTH:** Did the lack of financing, as you've described it, bear any part in – or was that the reason that the presentation to the Joint Review Panel was limited? Is that one of the reasons anyway?

**MR. RUSSELL:** Absolutely. Yesterday, we also heard testimony that when the provincial government gets into these consultation processes or these projects, they put together, like, an environmental committee they say, and then they say they bring in all this expertise – people who are scientists, people who are anthropologists or people with all kinds of expertise about facets or aspects of the project. We didn't have the resources to bring that kind of expertise to our particular participation in these particular processes.

So it seems a little bit – maybe unfair is the right word? Certainly, there was not a lot of balance in terms of the resources that we had to participate and what the government itself supposedly brought to this particular process. And certainly there was – there were inequities as well in terms of the participant funding envelopes, as can be attributed to the findings or the evidence that was presented yesterday in terms of different funding amounts. You know, the highest being 500,000, I believe, in one instance to as low as twenty-something thousand for other Indigenous groups.

**MR. LEARMONTH:** Yeah.

And then on page 24, the second – the first full paragraph beginning with “the Panel concluded.” I just wanna read that out.

That's page 24, Exhibit 00041: “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 the Inuit-Metis in the Project area. The Panel

recognized that additional information could be forthcoming during government consultations. To the extent that there are current uses in the Project area, the Panel concluded that the Project's impact on Inuit-Metis land and resource uses, after implementation of the mitigation measures proposed by Nalcor and those recommended by the Panel, would be adverse but not significant.”

Did you take any – can you provide a comment on your assessment of that conclusion?

**MR. RUSSELL:** I have seen that section, and I have read that particular section.

First of all, when “the Panel recognized that additional information could be forthcoming during government consultations,” that's obviously true, and to the extent that the “current uses in the Project area, the Panel concluded that the Project's impact ... would be adverse but not significant,” I – “after implementation of the mitigation measures proposed by Nalcor”?

I am at a loss to understand what particular mitigation measures were put in place specific to the concerns that were raised by the NCC at the time. I am at a loss to understand if there – it was one specific mitigation or accommodation measure made when it came to the impacts on the Inuit of NunatuKavut.

**MR. LEARMONTH:** Okay.

Now –

**MR. RUSSELL:** And secondly, I'm not sure what it – what does “adverse but not significant” mean? I don't – we don't really know what that – where that comes from.

**MR. LEARMONTH:** I wouldn't attempt to assist you in bringing that out. I mean, the words mean what they mean. I suppose they're open to interpretation, so I can't help you there.

After the – you received the report of the Joint Review Panel, in August 2011, did you continue to engage in some form of consultation with the Government of Newfoundland and Nalcor? When I say you, I mean your group, yeah.

**MR. RUSSELL:** After?

**MR. LEARMONTH:** After August 2011.

**MR. RUSSELL:** Engage in consultation ...

**MR. LEARMONTH:** Well, did the government consult your group about matters that were of concern to you?

**MR. RUSSELL:** From what I can recall, there was – there were ongoing consultations, maybe, with respect to the Labrador-Island Transmission Link, because that process was a separate process in terms of consultation, and that came under a comprehensive review report, as I understand it. So there might've been some consultations – quote unquote consultations – that were happening during that particular project.

There was also – if I can recall, there might have been some reference to additional consultations – 'cause there were various phases, if I can recall, to these things – on the permits, so there might've been some consultation on specific permits.

But as far as I can recall, it seemed like the JRP was it. That was the consultation. The government's consultation efforts were all funnelled it seemed – or very substantially funnelled through the JRP –

**MR. LEARMONTH:** Yeah.

**MR. RUSSELL:** – process.

**MR. LEARMONTH:** Well, were there other discussions with government on the concerns of NCC after the filing of the Joint Review Panel report?

**MR. RUSSELL:** I'm not aware that there were discussions as a part of a consultation process.

**MR. LEARMONTH:** And what about with Nalcor?

**MR. RUSSELL:** I know that there were meetings, you know, certainly some meetings were being held. I can't speak to whether they would form part of the consultation process or not.

**MR. LEARMONTH:** Were you present at any of those meetings?

**MR. RUSSELL:** No.

**MR. LEARMONTH:** No. That was before you were –

**MR. RUSSELL:** Yes.

**MR. LEARMONTH:** – president?

**MR. RUSSELL:** I was present in some meetings after 2011 or 2012.

**MR. LEARMONTH:** Just give us a description of your interpretation of what went on in those meetings where you were present.

**MR. RUSSELL:** Where I was present?

**MR. LEARMONTH:** Yes, and give us some time frame also.

**MR. RUSSELL:** Well, I can also say that, during the JRP process or the consultation process, it was sometimes difficult to understand who we had to talk to, whether it was Nalcor or whether it was the provincial government, who was doing what aspect of what consultation.

And I only say this in the context – 'cause you asked me the question of what was it like when I started to become involved in more direct meetings with either the provincial government and/or Nalcor, and it was confusing. We would meet with a Nalcor representative, and they would say: well, we don't make any decisions on this kind of thing, whether we should engage with you in this particular way or not. That's up to the provincial government. And then if you go to the provincial government, at times they would sort of say to us: well, we have Nalcor sort of taking care of those particular issues. And so we would have to sort of move somewhere else.

So it wasn't really clear, even during the consultation process, of what aspects of consultation were Nalcor responsible for and what was the province responsible for. And so that persisted. And it was evident in at least two or three of the meetings I had with Nalcor and with the provincial government. And so, you

know, it seemingly that that kind of structure or process was in place, certainly during the environmental assessment, but it continued afterwards.

**MR. LEARMONTH:** Yeah.

So did you feel that at any time you made any progress in the consultation progress – process that was offered by the Province of Newfoundland or Nalcor? You know, was any progress made which addressed your concerns in whole or in part.

**MR. RUSSELL:** I would have to say, almost 100 per cent, no.

**MR. LEARMONTH:** Okay.

**MR. RUSSELL:** It's – and I suppose like, when you look back and you can hardly point to one mitigation measure, one accommodation measure, either on the Labrador-Island Transmission Link or on the Lower Churchill consultation process. It's remarkable really, isn't it?

**MR. LEARMONTH:** Now yesterday, Mr. Aubrey Gover stated that, generally – I'm not quoting – that the provincial government went to extreme lengths to consult with Indigenous groups in the lead up to the sanctioning of Muskrat Falls hydroelectric project. That's what he said, extreme lengths. Do you have any comment on that evidence?

**MR. RUSSELL:** It was extremely minimal. I mean, extremes can go both ways. So I certainly disagree with that statement.

In my own view, if I want to share a view, it seemed like to me that the province almost, you know, abdicated its responsibilities when it came to consultation. It seemed to us, though, even though we were being kicked from one door to another door, that a lot of it did rest with Nalcor. And if we were going to go somewhere else in regards to consultations, it seemingly wasn't very – where was the government at in that, the provincial government? It seemed like to be very little that they possessed in terms of the consultation obligation after they supposedly delegated it to Nalcor.

And it was – and I have to say another thing, it was confusing. Sometimes, you know, we were being told things like Nalcor and the Crown are inseparable, indivisible. In other times they were divisible.

**MR. LEARMONTH:** What time frame are you speaking to?

**MR. RUSSELL:** In the EI process.

**MR. LEARMONTH:** The EI process. That would have been before – like 2011, before.

**MR. RUSSELL:** Yeah.

**MR. LEARMONTH:** Yeah.

Now, I wanted to go into some of the specific areas of concern that you were expressing to government and Nalcor. First, did you have any concerns about the North Spur? Was that an issue –

**MR. RUSSELL:** That –

**MR. LEARMONTH:** – that your group had concerns about and conveyed those concerns to government and or Nalcor?

**MR. RUSSELL:** There were concerns around dam stability and some of the structural elements, but I can't recall people raising – like the specific concern around the North Spur, I can't recall that in that particular context.

**MR. LEARMONTH:** Okay.

What about methylmercury?

**MR. RUSSELL:** Absolutely.

**MR. LEARMONTH:** What time did the methylmercury concern become apparent to your group?

**MR. RUSSELL:** I became aware of this by looking at some of the documents, perusing some of the documents, but very, very early on I believe it was – they were scoping the issues that the panel should be looking at. Even as early as that, we raised the issues of methylmercury.

**MR. LEARMONTH:** Yeah.



And just very briefly, what was the concern that your group had on methylmercury?

**MR. RUSSELL:** Well, the production on methylmercury. The impacts within the reservoir, as I can recall, and certainly downstream, and the impacts upon country foods and the health and well-being of our people.

**MR. LEARMONTH:** Yeah.

Did your group have any concerns about your use of the land for trapping?

**MR. RUSSELL:** Absolutely.

**MR. LEARMONTH:** Were they conveyed to government?

**MR. RUSSELL:** They were conveyed to the panel, as far as I understand, and –

**MR. LEARMONTH:** And later to government, or was it just to the panel?

**MR. RUSSELL:** I'm fairly confident that the government was aware of our concerns around trapping, yes.

**MR. LEARMONTH:** Do you recall discussing issues about trapping with government and or Nalcor?

**MR. RUSSELL:** After 2012?

**MR. LEARMONTH:** Yeah.

**MR. RUSSELL:** Yes.

**MR. LEARMONTH:** Okay.

Was any progress made to address your concerns, in your opinion?

**MR. RUSSELL:** Well, there's – I know – I don't know how we do this kind of stuff, Mr. Commissioner, but there's – we have people that have traplines that were within the project area. And supposedly – so there's – you know, people trap for marten, and a marten box or a marten trap is attached to a tree, you know. Maybe, you know, a little ways up the tree. Probably four feet, five feet. That kind of thing.

And so there's a – we have a picture. It's very iconic. It is of a – this was a wooded area, if you can imagine. You know, a beautiful area and people would've trapped in there and harvested in there. And then it became part of the project area. And so there were traps in there, like marten traps. And there is a picture of what they called a mitigation measure where everything is clear cut. There's only one stump like this of a tree left in this clear-cutted area with a marten box on it. But because the marten box was not disturbed, they said that that was a mitigation.

**MR. LEARMONTH:** When was that?

**MR. RUSSELL:** That was during the early construction phase at the Muskrat Falls Project area.

**MR. LEARMONTH:** Did you personally see this cleared area with a marten box?

**MR. RUSSELL:** I didn't personally see the – I personally seen cleared areas, but I have a picture of the marten box. I personally seen the picture.

**MR. LEARMONTH:** Yeah.

Now, I want – I don't want to get into any detailed discussion about the protest and so on, but was your group officially involved in the protest that resulted in the matter being referred to the committee, methylmercury?

**MR. RUSSELL:** Yes. We were involved in a number of underground actions or protests, and we were involved in – and we had officially declared our involvement in underground action in the fall of 2016.

**MR. LEARMONTH:** And you had a representative on the committee that was reviewing the methylmercury issue?

**MR. RUSSELL:** On the IEAC?

**MR. LEARMONTH:** Yes.

**MR. RUSSELL:** Yes.

**MR. LEARMONTH:** Okay. And that issue is unresolved at the present time?

**MR. RUSSELL:** Yes.

**MR. LEARMONTH:** Is it – okay, I’ll leave it at that. There’s been no formal resolution of that with respect to the recommendations made of the committee. Am I correct in saying that?

**MR. RUSSELL:** You are correct.

**MR. LEARMONTH:** Okay.

Just for the record I believe your group signed an agreement with Nalcor a couple of years ago. Can you just give us a brief summary of the circumstances that went into the signing of that agreement and the effect that it’s had on your relations with the government and/or Nalcor?

**MR. RUSSELL:** The agreement you’re referring to is what we call the Community Development Agreement. That’s –

**MR. LEARMONTH:** Yeah, so December 4, 2017 –

**MR. RUSSELL:** Yeah.

**MR. LEARMONTH:** – I believe it was signed.

**MR. RUSSELL:** Yes, so that – it’ll be one year this coming December.

**MR. LEARMONTH:** Yeah.

**MR. RUSSELL:** We certainly – at least on their – you know, we’ve always felt that it was important that we have good relationships with other levels of government, with project proponents that are proposing to do projects in areas and on lands that could impact our people’s health and way of life.

We’ve always taken the position that we would rather be in a good integral process that was respectful and that was well resourced. In many regards, I suppose, we’ve always wanted in – we have always wanted to be at the tables. We’ve always preferred to be in discussions or negotiations about our people’s futures and where we wanted to go as a people. And in that vein, we continued with that and I continued with that when I came back to the organization as president. And we approached the governments and we approached Nalcor, and we

kept going back and back and back and saying that there must be a table that we can sit at together to sort through our issues and our matters.

And even though we made those particular advances – and it certainly wasn’t met with a lot of openness many, many times – but there were changes in administration provincially. There were changes at Nalcor in terms of leadership. We saw that as maybe another opportunity to try and at least have some amicable relationship. And with new leadership, new approaches maybe, there was openness.

And I remember, you know, having a meeting with Mr. Marshall who said: I can’t believe that they never sat down and brought you guys in and done an agreement with you guys, you know. I was in BC when I worked with First Nations in that area and, you know, and they – we had great partnerships and great co-operative agreements. And he said: You’re going to be there for a long, long time, we know it, and we hope to be there for a long, long time. It just makes sense that we have a better relationship than what we have.

And so there was a little bit of an openness. And from what I can gather, I mean, he needed the approval of the provincial government and we finally sat at a table to talk about a CDA. But it’s not a consultation agreement, it is not an IBA, it is a – I would call it a relationship agreement where we and Nalcor have agreed to improve our relationship, to have processes where we could talk with one another, where we could express concerns and they could respond, where there were areas of co-operation, maybe we could find those areas and work on them together.

So, you know, the CDA is certainly, in my view, an improvement in our relationship with Nalcor. And I believe that that has implications for our relationship with the province, because the province, even though they weren’t in the room when it came to negotiations, they were in the room in the sense that many times what was discussed at the table with Nalcor was brought back to provincial officials and those in, I guess, positions of authority in terms of ministers.

**MR. LEARMONTH:** How do you know that –

**MR. LUK:** Excuse me.

**MR. LEARMONTH:** – there was the involvement of –

**MR. LUK:** Mr. Commissioner, I do have a question.

As the witness is describing, to some detail, an agreement that hasn't been made an exhibit in this proceeding, I do wonder whether it'd be useful for that to happen, for all of us to be able to look at the provisions that the witness is describing.

**MR. LEARMONTH:** Well, can I – may I respond to that?

**THE COMMISSIONER:** Sure.

**MR. LEARMONTH:** I'm not – I just wanted to record the fact or have it recorded that this agreement was signed. I'm not going into the agreement at all, I'm going to leave it that the agreement was signed. And then Mr. Russell is indicating that – not to put words in his mouth – that this was a starting point for an improvement, perhaps in relations. So I'm not going into the terms of the agreement, so I see no reason why it should be put in evidence.

**THE COMMISSIONER:** Yeah, I – Mr. Luk, I have to say I'm not really going into the agreements that were – that are entered into. I'm not going into what transpires after the IEAC and things of that nature. I think this is, again, part of this factual understanding that I'm trying to get with regards to how – what consultation has occurred and how it's gone. So I'm not sure that we really need the agreements, it's not within my ambit and I don't really think it's necessary at this stage.

**MR. LEARMONTH:** Okay. Thank you.

**THE COMMISSIONER:** Sorry, Mr. Learmonth.

**MR. LEARMONTH:** I'll just leave that subject by asking two points of clarification. When you referred to a meeting with Mr. Marshall where he said that where it's like he can't believe that you haven't had meetings and so on, are you

referring to Stanley Marshall, the president of – and CEO of Nalcor at the present time?

**MR. RUSSELL:** I am.

**MR. LEARMONTH:** You are. Okay.

And these – this meeting with Mr. Marshall where he said this, would that have been in negotiations leading up to the signing on December 4, 2017, of the Community Development Agreement?

**MR. RUSSELL:** Some meetings were prior and some meetings were during.

**MR. LEARMONTH:** Okay, very well.

My next question is – I want to refer you to some comments made by Mr. Aubrey Gover of the Government of Newfoundland yesterday. Now, he said that those Indigenous groups that deserve the highest levels of consultation received it, and that those who would be deserving of a lower level of consultation received more than they would've deserved. Do you have any comment on that?

**MR. RUSSELL:** We're getting back to the Cadillac again, but the highest level of consultation –

**MR. LEARMONTH:** That's what I said – that's what he said.

**MR. RUSSELL:** But do the facts bear that out?

**MR. LEARMONTH:** I'm asking you for your comment on that. I can't give evidence.

**MR. RUSSELL:** That is not – I don't believe that's a fair characterization of the consultation process. And let's just say that working from his premise, it's interesting that he talks about 10 Indigenous groups all getting a Cadillac when you might have only deserved a Lada, as he put it. Yet, from my observations, nine say that it was inadequate, that it wasn't appropriate, that it wasn't fair – these consultation processes. So I fail to see how there is alignment between what Mr. Gover posits to this Commission and what actually happened on the ground.

**MR. LEARMONTH:** Okay, fine.

Those are my questions.

**THE COMMISSIONER:** Okay.

Mr. Russell, I just want to ask for your indulgence a bit because – and I realize you were supposed to testify yesterday and you stayed over. I appreciate that.

We have another witness this morning that requires translation and for scheduling reasons the translator is not available this afternoon. So what I was hoping to do, with the concordance of yourself and as well the others, is that we would just ask you to sit back for a few minutes and I will bring you back for cross-examination.

Does that cause any hardship to you?

**MR. RUSSELL:** Well, I was hoping to get out at 1 today on a flight.

**THE COMMISSIONER:** Okay.

Well, let me just see how much cross-examination there might be here. Does anyone plan to be any extensive time with Mr. Russell this morning?

Okay, all right.

Well, let's see how it goes and I have to be mindful too that – anyway, I'm trying to manage this the best way I can and I'll try to get it figured out.

The Province of Newfoundland and Labrador.

**MR. RALPH:** No questions, Commissioner.

**THE COMMISSIONER:** Nalcor Energy.

**MR. SIMMONS:** Thank you, Commissioner.

Good morning, Mr. Russell.

I'm Dan Simmons. I'm counsel for Nalcor Energy here. I won't be long. I'll be mindful of your flight as best I can.

**MR. RUSSELL:** That's okay, Sir. Thank you.

**MR. SIMMONS:** You had been brought by Mr. Learmonth to a portion of the Joint Review

Panel report. Maybe we can bring that up again, please. I think it's P-00041 and it was page 23.

**MR. RUSSELL:** Yes.

**MR. SIMMONS:** And Mr. Learmonth, I think, read this part of this section to you.

Can we scroll down a little, please, to the top of page 24?

There – and in that passage there was a reference there to resources. Maybe it's at the bottom of 23, if we could scroll back up again, please. Please stop there. Yeah.

There's a statement there that: "The NunatuKavut Community Council indicated ... it was only able to provide limited information about current land and resource use activities for traditional purposes by Inuit-Metis because of" – and there's several reasons there – "its injunction application and the lack of time and financial resources to provide detailed hearing submissions."

Now, I think you've described for us how you resumed the office of president of the NunatuKavut Community Council at some point in 2012?

**MR. RUSSELL:** Yes.

**MR. SIMMONS:** Yes.

So during the time that the environmental assessment was under review by the Joint Review Panel, that's when you were the MP for the Labrador riding in the federal Parliament, right?

**MR. RUSSELL:** That's right.

**MR. SIMMONS:** Right.

So I gather the evidence you've given about that process is generally what you would've known as a member and perhaps from what you've seen looking back at the documentary record. Is that fair?

**MR. RUSSELL:** Yes, and both, like, as a Member of Parliament but –

**MR. SIMMONS:** Yes.

**MR. RUSSELL:** – remember I was also a member of –

**MR. SIMMONS:** Yes, that’s what I –

**MR. RUSSELL:** – of my –

**MR. SIMMONS:** – a member of a (inaudible) –

**MR. RUSSELL:** – Indigenous organization as well.

**MR. SIMMONS:** Yes, okay.

So are you able to shed any light on how the – about the choice, it seems, that the council made to perhaps apply its resources to the injunction application that it took? Because the – it seemed to rely on that as being one of the reasons why it couldn’t fully participate in the Joint Review Panel proceedings. Or do you know anything about that?

**MR. RUSSELL:** Well, I know there was an injunction application.

**MR. SIMMONS:** Mmm.

**MR. RUSSELL:** I know it wasn’t successful.

**MR. SIMMONS:** Mm-hmm.

**MR. RUSSELL:** But it’s my understanding that the organization at the time took that particular route, again, trying to get in –

**MR. SIMMONS:** Yeah.

**MR. RUSSELL:** – to say: We need more time, we need more resources.

**MR. SIMMONS:** Yeah.

Can we bring up Exhibit P-00268, please? Which is the submission of the Government of Newfoundland and Labrador, and just go to page 2. We’re just going there ’cause there’s a quote there from that decision that I want to refer to you just to give you an opportunity to make some comment on it.

So paragraph 7 there refers to the 2011 decision in the NunatuKavut injunction application that was before the Supreme Court of Newfoundland and Labrador. And beginning in the middle, it reads there: “The Honourable Mr. Justice Garrett A. Handrigan stated: ‘I do not accept that Nunatukavut was not consulted appropriately. Perhaps more could have been done to hear and address their concerns but I cannot say what it would have been...My review of the massive amount of documents filed for this application indicates that Nunatukavut was involved at each stage of the EA process starting when the Project was registered and continuing until public hearings began four years later. It was accommodated to the extent that was appropriate and participated as fully as it wished.’”

So I just wanted to bring that to your attention to see if you have any comment or reaction to the conclusions that were made in that case in 2011.

**MR. RUSSELL:** Well, first of all, when it comes to this particular document that’s the first time I’ve read it –

**MR. SIMMONS:** Mm-hmm.

**MR. RUSSELL:** – or at least listened to you reading it.

**MR. SIMMONS:** Mm-hmm.

**MR. RUSSELL:** I can only say that I guess that was one of the findings of the court. But it’s certainly not one that we’ve agreed with.

**MR. SIMMONS:** Thank you very much.

I don’t have any other questions.

**THE COMMISSIONER:** Concerned Citizens Coalition.

**MR. BUDDEN:** No questions.

**THE COMMISSIONER:** Edmund Martin.

**MR. SMITH:** No questions. Thank you.

**THE COMMISSIONER:** Kathy Dunderdale.

**MS. E. BEST:** No questions.

**THE COMMISSIONER:** Former Provincial Government Officials '03-'15.

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

**THE COMMISSIONER:** Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** No questions.

**THE COMMISSIONER:** Robert Thompson.

**MR. COFFEY:** No questions.

**THE COMMISSIONER:** Consumer Advocate.

**MR. HOGAN:** Mr. Russell.

Sorry. My name is John Hogan and I am counsel for the Consumer Advocate.

**MR. RUSSELL:** Good Morning.

**MR. HOGAN:** I won't be long either but I do have a few follow-up questions, I guess, on your testimony this morning.

When Mr. Learmonth took you through the beginning of the consultation process, I think, you said that you or your group, the NCC, went to Nalcor to look for more funds in relation to consultation. Is that correct?

**MR. RUSSELL:** Certain aspects, I think, of consultation in the sense of – my understanding was that they would – they were seeking resources to do appropriate studies in order to be able to present that information to the panel in a way that was detailed and meaningful and that could have an impact upon the work of the Joint Review Panel, and maybe even an impact upon the project itself.

**MR. HOGAN:** I understand why you would want more funding. I understand that the funding came from the provincial government and the federal government – about \$100,000 for NCC.

**MR. RUSSELL:** I'm not sure of the exact figures. I think it's somewhere around there, yes.

**MR. HOGAN:** Okay.

But none of that funding came from Nalcor. Is that correct, from your understanding?

**MR. RUSSELL:** The participant-funding program that I believe you're referring to, Nalcor would not have contributed to that.

**MR. HOGAN:** I guess, my question is: Why go to Nalcor? What was the relationship with Nalcor to ask for funding, specifically, for the consultation for the JRP process? Was there a relationship with Nalcor that, obviously, where you felt you could go to them, or someone at Nalcor, looking for funding?

**MR. RUSSELL:** There was no doubt that there were discussions that were taking place between NunatuKavut and Nalcor. And again, I guess it comes back to that there were certain aspects of the consultation process that was delegated to Nalcor. I also understood at the time that Nalcor was funding, you know, certain types of activities in some particular Aboriginal context, but certainly not in all.

**MR. HOGAN:** In relation specifically to the Muskrat Falls Project?

**MR. RUSSELL:** Yes.

**MR. HOGAN:** Okay.

And do you have any specific knowledge of the amounts of funding or what that funding was provided for by Nalcor as opposed to by the provincial government?

**MR. RUSSELL:** Well, all I can say is that we had a sheet that showed the participant funding envelope and the various allocations that were made out of the participant funding envelope. And we learned yesterday that that was approximately a million dollars, or somewhere around there –

**MR. HOGAN:** Right.

**MR. RUSSELL:** – with about 500 from the feds and 500 from the province. I know that there were some resources that came from Nalcor. I can't speak to the amount.

**MR. HOGAN:** All right. Some to NCC or to the groups in general?

**MR. RUSSELL:** There were some to NCC, yes.

**MR. HOGAN:** Okay.

And you just mentioned it again then about the – you use the word abdication. The province abdicated its duties to Nalcor. So I wanna explore that a little bit.

Were you aware of any specific letter of direction to NCC or any sort of correspondence saying: do we recognize the province has a duty to consult? But this – these specific items or these specific procedures are being delegated to Nalcor.

**MR. RUSSELL:** It's possible that it exists, I suppose, if such a letter was actually written, but I haven't seen it. I'm not aware of it.

**MR. HOGAN:** So maybe it wasn't written. And I'll put this to you: was the relationship such that no letter needed to be written because NCC was of the understanding that they were one and the same?

**MR. RUSSELL:** There was some confusion.

**MR. HOGAN:** Yeah, and you used that word earlier, confusion.

**MR. RUSSELL:** Yes.

**MR. HOGAN:** So historically, was that confusion always there? Now you've said, historically, the relationship was fairly rocky with Hydro and NCC and Nalcor. Was that confusion always there between who you were supposed to be dealing with?

**MR. RUSSELL:** Yes. There was – you get what you call – what's the phrase? You know, you get bumped from pillar to post?

**MR. HOGAN:** Right.

**MR. RUSSELL:** So, you know, that seemed to be a theme.

**MR. HOGAN:** And you said sometimes they told you they were divisible, and sometimes they told you they were indivisible.

**MR. RUSSELL:** Yeah. And I've heard that, not only from the province but from the feds. You know, some – whatever suits – if it's fine to be divisible today, fine. If it's fine to be indivisible tomorrow, that's fine too.

**MR. HOGAN:** There's no dark line to say when it was –?

**MR. RUSSELL:** Well, it's hard to figure it out, isn't it?

**MR. HOGAN:** Did it affect NCC in any of the consultation processes with regards to the Muskrat Falls Project regarding this confusion?

**MR. RUSSELL:** Well, as I've indicated, yes, there was times that there was some confusion, but then things, I guess, started to get funnelled a little bit through the JRP. And as I think we learned yesterday, or what was certainly a suspicion of ours was that the province sort of abdicated to Nalcor, and then the rest was sort of funnelled through this JRP process. So, you know, it can be quite, quite confusing when you're on the ground: who do you deal with about what issue.

**MR. HOGAN:** And I guess in regards to the Muskrat Falls Project specifically, and I don't want to necessarily use a word that's not appropriate, but I'm going to use this word: who had control over the consultation process?

**MR. RUSSELL:** It's a good question. All I know is that we had a panel that did some things, we had Nalcor that done some other things, and we had a province that said: these guys are doing it, we're sort of sitting back, but if you got a question, come to us.

**MR. HOGAN:** Well, someone was in control, but you had a question you could go to someone else. So I can see how that would be a bit confusing.

Do you have any names of people involved at the consultation process for this project that you were told to go to or that you did go to, either on the provincial government side or on the Nalcor side?

**MR. RUSSELL:** I can't speak to that, specifically, no.

**MR. HOGAN:** Okay. Can you speak specifically –?

**MR. RUSSELL:** I know that lots of times Gilbert Bennett was in the room for a lot of the meetings.

**MR. HOGAN:** Who's that? I missed the name.

**MR. RUSSELL:** Mr. Bennett was certainly in the room for a lot of meetings, but, you know, I can't say that people actually told us to go there all the time.

**MR. HOGAN:** Sure.

You mentioned other projects besides the Muskrat Falls Project that you've been involved in. Was that confusion – did that confusion exist with other proponents or with Nalcor and Hydro, or would the confusion reign with regards to the Muskrat Falls Project, specifically?

**MR. RUSSELL:** The Labrador-Island Transmission Link?

**MR. HOGAN:** No, let's forget about the Lower Churchill. I mean, you mentioned that Hydro and Nalcor had been involved in other projects in Labrador that you were involved with as well where there would have been some consultation. Is that right?

**MR. RUSSELL:** Well, there's been lots of projects happening in Labrador, but I was referring to, like, specifically the Trans-Labrador Highway.

**MR. HOGAN:** What I want to know is, we've talked about the confusion you had with the Muskrat Falls – not you, but the confusion at the Muskrat Falls Project. Did the same level of confusion exist on other projects, or was this specific to Muskrat Falls?

**MR. RUSSELL:** I would say there are some elements of confusion with some of the other projects. And even trying to navigate some of these environmental assessment processes, sometimes it was a single window, like with the province. Sometimes it was a joint review. At times there could be anything from, like a screening to a joint panel review report. So,

yeah, these are not simple processes to try to navigate even in the best of times.

**MR. HOGAN:** Okay.

**MR. RUSSELL:** But certainly, yes, there's often confusion about the process and about how we engage.

**MR. HOGAN:** And the last topic I'll go over with you is you talked about meeting with Mr. Stan Marshall and you mentioned future IBAs possibly. I guess that's something that –

**MR. RUSSELL:** I didn't mention future IBAs, I just referred that the CDA wasn't an IBA.

**MR. HOGAN:** Wasn't an IBA. Okay.

Is there any objective of your group to assign an IBA?

**MR. RUSSELL:** We would like to have a very fulsome conversation about accommodation, about the – and how that could be achieved, yes.

**MR. HOGAN:** With regards to the Muskrat Falls Project.

**MR. RUSSELL:** Yes.

**MR. HOGAN:** So there's –

**MR. RUSSELL:** An IBA could be one component, as I understand it, of an accommodation agreement.

**MR. HOGAN:** That is an issue that's outstanding, from your perspective.

**MR. RUSSELL:** Absolutely.

**MR. HOGAN:** Okay and there would be – obviously, there's funding that would be allocated through an IBA. That's ...

**MR. RUSSELL:** Well, there could be.

**MR. HOGAN:** Could be.

**MR. RUSSELL:** Yes.

**MR. HOGAN:** Right.



That's all the questions I have.

**MR. RUSSELL:** Thank you.

**MR. HOGAN:** Thank you.

**THE COMMISSIONER:** Innu Nation.

**MR. LUK:** Thank you, Commissioner.

No questions.

**THE COMMISSIONER:** Okay.

Nunatsiavut Government.

**MR. GILLETTE:** No questions for Mr. Russell.

Thank you.

**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:** Former Nalcor board members.

**MR. GRIFFIN:** No questions, Commissioner.

**THE COMMISSIONER:** And NunatuKavut Community Council.

**MR. COOKE:** I think I just have maybe one or two questions, Mr. Russell, just to clarify.

And I'll take you to P-00241 which is the JRP report. And you've already been shown the section regarding NunatuKavut at pages 23 and 24. So if we could go there, Madam Clerk.

My only question is really – if you'd scroll down, the first full paragraph Mr. Russell says: "The Panel concluded ... based on information identified through the environmental assessment process, there were uncertainties regarding the

extent and locations of current land and resource use by the Inuit-Metis in the Project area." Then it says further: "The Panel recognized that additional information could be forthcoming during government consultations."

So my question for you is – Mr. Learmonth, I think, raised this with you and you mentioned kind of future consultations regarding specific permits and the like. Well, my question is: Do you – in your knowledge, were there any consultations regarding the uncertainties regarding the extent and locations of current land and resource use by NunatuKavut in the project area?

**MR. RUSSELL:** Absolutely not.

**MR. COOKE:** Thanks. Those are my questions.

**THE COMMISSIONER:** Redirect, Mr. Learmonth.

**MR. LEARMONTH:** No redirect.

**THE COMMISSIONER:** All right.

Thank you, Mr. Russell. You're free to step down.

Thank you.

**MR. RUSSELL:** Thank you, Sir.

**THE COMMISSIONER:** Next witness.

**MR. LEARMONTH:** Next witness is Chief Jean-Charles Piétacho.

**THE COMMISSIONER:** Okay, Chief Piétacho?

Okay, can you turn your mic off just for a minute, Mr. Learmonth? Go ahead.

**MR. SCHULZE:** The – sorry, the security guard tells me he's meeting with the interpreter.

**THE COMMISSIONER:** Okay, so maybe we should interrupt that meeting and indicate that we're ready to go.

**MR. SCHULZE:** Sounds like a good idea.

**THE COMMISSIONER:** Okay.

Just step right up here, Ms. Wilkshire and Chief Piétacho. Have a seat there.

All right, so my understanding this morning is, is that the witness wishes to speak in French. It's not his first language – your first language is Innu, I understand – but you wish to speak in French and that we will be having your evidence interpreted this morning. And it's by Ms. Wilkshire and so I'll just get this all in place now.

At the moment, I understand, Ms. Wilkshire, your wish is to – you wish to be affirmed this morning? Okay. Just stand before the mic, please, if you would.

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** Do you affirm that you will well and truly interpret the evidence that is presented from the English language to the French language and from the French language to the English language, to the best of your skill and ability?

**DR. WILKSHIRE:** Yes.

**THE COMMISSIONER:** Okay.

And just state your name, please.

**DR. WILKSHIRE:** Claire Wilkshire.

**THE COMMISSIONER:** And, Ms. Wilkshire, you're familiar with French, obviously?

**DR. WILKSHIRE:** Yes.

**THE COMMISSIONER:** Are you bilingual?

**DR. WILKSHIRE:** Yes.

**THE COMMISSIONER:** Okay.

And you had an opportunity to meet with the witness and you're satisfied that you are going to be able to translate?

**DR. WILKSHIRE:** Yes.

**THE COMMISSIONER:** Okay, you can be seated there now.

**MR. LEARMONTH:** Yeah.

I just wanted to say before Chief Piétacho is sworn. It was Chief Piétacho's strong preference that we have an Innu translator here today so he can translate – so he could speak in his first language. But for various reasons the Commission was unable to accommodate this request –

**UNIDENTIFIED MALE SPEAKER:** Excuse me.

**MR. LEARMONTH:** – and we thank Chief Piétacho for agreeing to testify in his second language, which is French, and we'll do our best to ensure that there's an Innu translator present should Chief Piétacho testify later in this commission.

**THE COMMISSIONER:** Okay so maybe Ms. Wilkshire, if you would, if you could you just explain to the Chief what's said by Mr. Learmonth. I'm gonna slow him down so that he speaks just in phrases so you'll be able to follow it, but I think you can get the gist of what was said? Just as long as the Chief knows.

Just speak up, you have to say it out loud –

**DR. WILKSHIRE:** So the gist is that the request had been made to speak in Innu, is that correct? And that –

**THE COMMISSIONER:** Right, and we were not able to accommodate him.

**DR. WILKSHIRE:** Right.

Donc, il n'était pas possible de répondre à votre demande de parler en Innu, donc c'est pour ça qu'ils ont fourni un traducteur français-anglais.

**CHIEF PIÉTACHO:** Mm-hmm.

**THE COMMISSIONER:** And can you express my regret that we were not able to accommodate him this morning?

**DR. WILKSHIRE:** Le commissaire regrette le fait qu'il n'ait pas été possible de répondre à votre demande.

**THE COMMISSIONER:** Okay?

So ask Chief Piétacho to stand up.

**DR. WILKSHIRE:** On vous demande de vous lever, Monsieur le chef.

**THE COMMISSIONER:** And Chief Piétacho wishes to be sworn, did you say Mr. Learmonth?

**DR. WILKSHIRE:** Vous voulez être assermenté?

**THE COMMISSIONER:** Yes? Okay.

**DR. WILKSHIRE:** Oui.

**THE COMMISSIONER:** So again, just to read the oath and phrases please.

**CLERK:** Can you take the Bible in your right hand please?

**DR. WILKSHIRE:** Prenez la Bible dans votre main droite, s'il vous plaît.

**CLERK:** Do you swear –

**DR. WILKSHIRE:** Est-ce que vous jurez –

**CLERK:** – that the evidence you shall give to this Inquiry –

**DR. WILKSHIRE:** – que ce que vous direz à cette enquête, cette commission –

**CLERK:** – shall be the truth, the whole truth –

**CHIEF PIÉTACHO:** Mm-hmm.

**DR. WILKSHIRE:** –sera la vérité, la vérité entière –

**CLERK:** – and nothing but the truth, so help me God?

**DR. WILKSHIRE:** – et que la vérité –

**CHIEF PIÉTACHO:** Oui, je (inaudible).

**DR. WILKSHIRE:** Yes.

**UNIDENTIFIED MALE SPEAKER:** Yes.

**CLERK:** Please state your name for the record.

**CHIEF PIÉTACHO:** Jean-Charles Piétacho.

**CLERK:** Thank you.

**THE COMMISSIONER:** Okay, so one of the things that we're gonna have to do, just for the witness and for the translator is to speak into the mic so that we can hear exactly what's being said.

**MR. LEARMONTH:** Okay.

So the procedure I'll follow, Dr. Wilkshire, is that I'll try and keep my questions as short as the circumstances permit and then you can convey the translation to Chief Piétacho and then –

**THE COMMISSIONER:** Now I think what might have to happen, Mr. Learmonth, is – just go in phrases because your questions – I don't think it's fair to the translator to try to translate a long question –

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** – so if you could just go in phrases, and then she'll translate, and then similarly with regards to the answers, we can ask – if you could ask Chief Piétacho to just take his time so that you can translate verbatim as best as you can?

**DR. WILKSHIRE:** Okay.

**THE COMMISSIONER:** Okay?

**MR. LEARMONTH:** Okay.

Please state your full name.

**DR. WILKSHIRE:** S'il vous plait, dites votre nom en entier.

**CHIEF PIÉTACHO:** Jean-Charles Piétacho.

**MR. LEARMONTH:** Yes.

And what position do you occupy with the Ekuanitshit Indigenous group?

**DR. WILKSHIRE:** Et quel est votre fonction avec le groupe que vous représentez?

**CHIEF PIÉTACHO:** Chef Innu.

**DR. WILKSHIRE:** He's the Innu Chief.

**MR. LEARMONTH:** Innu Chief.

How long have you been Innu Chief?

**DR. WILKSHIRE:** Vous êtes chef depuis combien de temps?

**CHIEF PIÉTACHO:** Depuis 1991, et réélu dernièrement pour un autre mandat de trois ans.

**DR. WILKSHIRE:** Since 1991, and then recently re-elected for another three-year mandate.

**MR. LEARMONTH:** I understand that your father, Philippe was a chief before you – is that correct?

**DR. WILKSHIRE:** Votre père Philippe était chef avant vous? C'est correct?

**CHIEF PIÉTACHO:** Avant moi, et mon grand-père aussi.

**DR. WILKSHIRE:** Before him, and his grandfather also.

**MR. LEARMONTH:** Yup.

Chief Piétacho, I wanna ask you some questions about what concerns that your people had about the Muskrat Falls Project (inaudible) –

**DR. WILKSHIRE:** Il va vous poser, donc, des questions concernant les inquiétudes que vous avez, et votre peuple, par rapport au projet Muskrat Falls.

**MR. LEARMONTH:** Yeah.

That were communicated to the Government of Newfoundland and Labrador or Nalcor –

**DR. WILKSHIRE:** Qui ont été communiqués au gouvernement du – de Terre-neuve et Labrador, ou à Nalcor –

**MR. LEARMONTH:** – before the Muskrat project was approved (inaudible) –

**DR. WILKSHIRE:** –avant l'approbation du projet –

**MR. LEARMONTH:** – on December 17, 2012.

**DR. WILKSHIRE:** – le 17 décembre, 2012.

**MR. LEARMONTH:** Can you state your concerns, Chief Piétacho?

**DR. WILKSHIRE:** Est-ce que vous pouvez identifier vos inquiétudes – les sujets que vous avez soulevés?

**CHIEF PIÉTACHO:** (Innu-aimun spoken.)

**MR. LEARMONTH:** Okay.

Dr. Wilkshire, could you –

**DR. WILKSHIRE:** No, I can't; that's not French.

**MR. LEARMONTH:** Pardon?

**DR. WILKSHIRE:** I said, no, I can't. That's not French.

**MR. LEARMONTH:** I'm sorry.

Are you able to answer in French? We're very sorry that we weren't able to have an Innu translator. We did our best but it didn't work out.

**CHIEF PIÉTACHO:** (Innu-aimun spoken.)

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** So let's –

**CHIEF PIÉTACHO:** Je me sens pas respecté ici.

**DR. WILKSHIRE:** I do not feel respected here.

**THE COMMISSIONER:** Okay. All right.

**CHIEF PIÉTACHO:** Je me sens pas bien ici.

**DR. WILKSHIRE:** I do not feel good here.

**CHIEF PIÉTACHO:** Parce qu'on respecte pas ma langue, ma vie, ma culture.

**DR. WILKSHIRE:** My language, my life, my culture are not being respected.

**MR. LEARMONTH:** All right.

**CHIEF PIÉTACHO:** Je sens – j'aurais aimé parler dans ma langue.

**DR. WILKSHIRE:** I would've liked to speak my language.

**MR. LEARMONTH:** Okay.

**CHIEF PIÉTACHO:** La langue seconde, qu'est le français, n'est pas ma langue.

**DR. WILKSHIRE:** My second language, French, is not my language.

**MR. LEARMONTH:** Right.

**CHIEF PIÉTACHO:** Et ce que je vais exprimer ici, n'aura pas le chemin qui vient de mon cœur.

**DR. WILKSHIRE:** What I'm going to say here will not come from my heart.

**MR. LEARMONTH:** Well, I –

**THE COMMISSIONER:** Let me just stop there, just for a second.

So, could you ask the Chief if he – again, express my apology – but would he prefer that I actually set his testimony over to another time when I can actually get an Innu translator?

**DR. WILKSHIRE:** Le commissaire exprime ses regrets de nouveau, et il vous demande si vous aimeriez reporter à plus tard votre témoignage, pour qu'il puisse essayer de trouver un interprète pour vous – un interprète Innu.

**CHIEF PIÉTACHO:** Sincèrement, là – j'aimerais sentir un respect.

**THE COMMISSIONER:** Okay.

**DR. WILKSHIRE:** Sincerely, what I would like is to feel respected.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** So what we will do, Chief – again my apologies – we will arrange for you to testify at another time during the Inquiry –

**DR. WILKSHIRE:** Donc, nous allons nous arranger pour que vous puissiez présenter votre témoignage un peu plus tard pendant cette enquête –

**THE COMMISSIONER:** – to present your evidence on the issues that are – that we're talking about today.

**DR. WILKSHIRE:** – pour présenter vos représentations concernant les sujets dont on va parler aujourd'hui.

**THE COMMISSIONER:** We'll be in touch with your counsel –

**DR. WILKSHIRE:** On va contacter votre conseiller judiciaire –

**THE COMMISSIONER:** – to arrange a time that's not only convenient for us but also convenient for you.

**DR. WILKSHIRE:** – pour trouver un moment qui va nous convenir à nous mais également à vous.

**THE COMMISSIONER:** Is that satisfactory?

**DR. WILKSHIRE:** Est-ce que cela vous satisfait?

**CHIEF PIÉTACHO:** Oui. Pis même j'ai une solution pour vous.

**DR. WILKSHIRE:** And I have a solution for you.

**THE COMMISSIONER:** Okay.

**CHIEF PIÉTACHO:** On voudrait bien en discuter là, ou à un autre moment.

**DR. WILKSHIRE:** We'd be happy to talk about it now or at another time.

**THE COMMISSIONER:** Why don't we do this: Mr. Schulze, your client wishes to suggest some sort of a – discuss something. Maybe we should just take a break now; you can discuss that with Commission counsel and we'll see if we can't accommodate in some particular way.

**DR. WILKSHIRE:** On va faire une pause, donc, maintenant pour que votre conseiller judiciaire –

**THE COMMISSIONER:** So we'll take 10 minutes now.

**DR. WILKSHIRE:** – puisse parler et – d'accord, on va prendre dix minutes.

**CLERK:** All rise.

### Recess

**THE COMMISSIONER:** All right. So just to deal with what just happened, again, I – and, Mr. Schulze, I'm sure you'll express this to your clients, I understand they're gone. You know, there was an error made in preparing for today in the sense that we were not able to locate an Innu translator; and, as a result, we had understood the possibility that French could be used.

But I certainly appreciate the position of the witness and, as a result, we will do – we will, basically, accommodate his needs to testify. And I understand there'll be further discussions between Commission counsel and you, Mr. Schulze, with regards to arranging that in the not too distant future for a time that's, basically, convenient to the Chief and, as well, convenient for us.

**MR. LEARMONTH:** (Inaudible.)

**THE COMMISSIONER:** Okay. Can you turn your mic off, Mr. Learmonth?

**MR. SCHULZE:** That's correct, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

All right, so we'll proceed now with our next witness, or witnesses

**MR. LEARMONTH:** Yes, the next witnesses will form a panel – Carl McLean and Rodd Laing – representatives of the Labrador Inuit slash Nunatsiavut Government.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Could they please take the stand?

**THE COMMISSIONER:** Carl McLean and Rodd Laing.

Okay. Mr. McLean, do you wish to be sworn or affirmed?

**MR. MCLEAN:** Sworn.

**THE COMMISSIONER:** Okay.

**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. MCLEAN:** I do.

**CLERK:** State your full name for the record.

**MR. MCLEAN:** Carl Gordon McLean.

**THE COMMISSIONER:** Mr. Laing, do you wish to be sworn or affirmed?

**MR. LAING:** Affirmed, please.

**THE COMMISSIONER:** Okay.

**CLERK:** Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

**MR. LAING:** I do.

**CLERK:** Please state your name for the record.

**MR. LAING:** Rodd Laing.

**CLERK:** Okay.

**THE COMMISSIONER:** Be seated.

Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

Mr. McLean, where do you live?

**MR. MCLEAN:** North West River, Labrador.

**MR. LEARMONTH:** Yes.

And Mr. Laing, where do you live?

**MR. LAING:** Nain, Labrador.

**MR. LEARMONTH:** Okay.

Mr. McLean, what is your present position, employment-wise?

**MR. MCLEAN:** Presently retired.

**MR. LEARMONTH:** When did you retire and from what organization did you retire?

**MR. MCLEAN:** I retired from the Nunatsiavut Government as deputy minister of lands and natural resources, and I retired on August 24 of 2018.

**MR. LEARMONTH:** I understand you've gone back to work, part-time basis.

**MR. MCLEAN:** Well, yes. They brought me back to see this through and, you know, based on my knowledge up to the point I retired.

**MR. LEARMONTH:** Mr. Laing, how – what is your association with the Nunatsiavut Government and when did you first go to work for them?

**MR. LAING:** I'm the director of environment, and I started just over six-and-a-half years ago.

**MR. LEARMONTH:** And you've worked full-time in that capacity since then?

**MR. LAING:** I started as the environmental assessment manager, then the research manager

and then, just over two years ago, I became the director of environment.

**MR. LEARMONTH:** Okay.

Madam Clerk, would you please bring up Exhibit P-00269 – six, nine.

**THE COMMISSIONER:** So that would be tab 4 in your – there's a binder there and it should be –

**MR. LEARMONTH:** Oh –

**THE COMMISSIONER:** – tab 4.

**MR. LEARMONTH:** – it's there, yeah.

Do you – gentlemen, do you see that document?

**MR. MCLEAN:** Yeah.

**MR. LAING:** Yes.

**MR. LEARMONTH:** Is it familiar to you?

**MR. MCLEAN:** Yes it is.

**MR. LAING:** Yes.

**MR. LEARMONTH:** What role, if any, did you have in the preparation of this document, Exhibit P-00269?

**MR. MCLEAN:** This was prepared – well, it was authored really by both of us in preparation for this Inquiry to provide, I guess, a summary of our position to the Inquiry on what our concerns and what our issues are with regards to the Lower Churchill Project.

**MR. LAING:** Both of us were involved.

**MR. MCLEAN:** Yeah.

**MR. LEARMONTH:** Will both of you, please, acknowledge that this a true and correct statement of the position of the Nunatsiavut Government to the best of your knowledge, information and belief.

**MR. MCLEAN:** It is to my best knowledge and belief.

**MR. LAING:** Yes.

**MR. LEARMONTH:** And you stand by the – what’s stated in this document, both of you, do you?

**MR. MCLEAN:** I do.

**MR. LAING:** Yes.

**MR. LEARMONTH:** Thank you.

Okay. I want to start at – right at the beginning of it, and there’s a reference there to the Nunatsiavut Government involvement in the Lower Churchill Project in relation to the Joint Review Panel under the *Canadian Environmental Assessment Act*. Were either or both of you involved in that process? Well, I take it that Mr. Laing wouldn’t have been.

**MR. LAING:** No.

**MR. LEARMONTH:** You weren’t working at the time for –

**MR. LAING:** Exactly.

**MR. LEARMONTH:** – Nunatsiavut. But Mr. McLean, were you involved in the Joint Review Panel process?

**MR. MCLEAN:** Yes, I was.

**MR. LEARMONTH:** And what role did you have?

**MR. MCLEAN:** Well, I was the deputy minister of lands and natural resources. The process was actually being led by our former director of environment, Tom Sheldon, but Tom reported to me. So I was certainly aware of the happenings of the environmental assessment process and was involved in a lot of the discussions and actually attended much of the hearing.

**MR. LEARMONTH:** Did you testify at the hearings?

**MR. MCLEAN:** No, I didn’t.

**MR. LEARMONTH:** Okay. But you were present for many of the hearing days?

**MR. MCLEAN:** Yes.

**MR. LEARMONTH:** Yeah.

**MR. MCLEAN:** I – actually, I did testify. It was near the end of the process that I was a witness at the environmental assessment. Just for one day.

**MR. LEARMONTH:** Now, I’m going to read paragraph two of the – from page 1 of Exhibit P-00269. “As a result of the lack of response from Nalcor, the Province of Newfoundland and Labrador and the Federal Government to these interventions and initiatives, including not responding to the recommendations of the Joint Review Panel ... the NG was forced to partner with academic researchers and institutions to show through additional peer-reviewed science that Labrador Inuit’s concerns were valid. Again, the results of the peer-review literature were dismissed along with the concerns of Labrador Inuit.”

Now before I go on there, did – was it the position of the Nunatsiavut Government that Nalcor and the Province of Newfoundland failed to respond properly, in your opinion, to the recommendations of the Joint Review Panel?

**MR. MCLEAN:** If I may, could I back up a little bit before the Panel report –

**MR. LEARMONTH:** Please do.

**MR. MCLEAN:** – to the environmental assessment process? And I’ll let Rodd fill in if I miss anything, but – we were certainly engaged in the environmental assessment process. It was our view that the Lower Churchill Project would affect the Labrador Inuit settlement area, our rights, our culture, our way of life, our health.

So we actually participated in the discussions around the study area, the scoping, and we pushed to have the project area include Lake Melville because, you know, it was our feeling through research we did and listening to our beneficiaries that, in fact, the Upper Churchill Project impacted Lake Melville, so, you know, why wouldn’t the Lower Churchill Project?



So we provided input to Joint Review Panel – to the province for the federal government back then, through (inaudible) – that, you know, we didn't think the project area was identified correctly; it should've expanded into Lake Melville. So that was kinda where it started.

**MR. LEARMONTH:** Can you just explain why it was important for you to ask that Lake Melville be included in the area?

**MR. MCLEAN:** Sure. Well, Lake Melville is certainly an important area for Labrador Inuit that use and live in Lake Melville and Rigolet area. We have over 2,700 beneficiaries that live in the area that depend on Lake Melville for their food, their culture, their health and their way of life. And, you know, any impacts to that were a concern to us.

**MR. LEARMONTH:** Okay.

**MR. MCLEAN:** So we wanted to make sure that potential impacts from the project were assessed properly through the environmental assessment, and could be dealt with, you know, by that process.

**MR. LEARMONTH:** Okay. Thank you. So just continue –

**MR. MCLEAN:** I'm not sure if Rodd (inaudible) –

**MR. LAING:** Yeah, no, that's good. I mean the Joint Review Panel actually acknowledges that there are the long-term effects from the Upper Churchill, and that is laid out in the Joint Review Panel.

**MR. LEARMONTH:** Okay. I interrupted you. Continue on.

**MR. MCLEAN:** So that's why it's important. We participated through those discussions but in the end, you know, the area didn't change really. It was still the mouth of the river, Goose Bay Narrows; that was the extent of where the assessment was done through the environmental impact statement.

There was no work done by the proponent out into Lake Melville, in the preparation of the environmental impact statement, and that's – was and, well, still is really a huge concern to us.

**MR. LEARMONTH:** Okay.

So after the recommendations of the Joint Review Panel were filed in August 2011, did you continue to deal with this issue by contacting the Government of Newfoundland and/or Nalcor?

**MR. MCLEAN:** Well, we made over 30 submissions to the Joint Review Panel. The majority of those were related to impacts to Labrador Inuit; impacts to our health, our environment, our way of life, our culture, and also socio-economic impacts for the people that live in the area were also brought up.

So we were quite extensive. You know, we got very little funding from the regulators, I guess, to participate but this issue we felt was so important to us we expended a lot of resources and time of our own to make sure that we provided the Joint Review Panel with the information we thought was important to address our concerns.

So once the Panel report came out we were quite positive. We were – we thought the Panel did a good job in hearing us and expressing and putting forward recommendations that addressed our concerns. There are many recommendations that we think addressed impacts to the Labrador Inuit and our settlement area downstream, and we responded to the Joint Review Panel report and provided our position on what the report was saying to both levels of government, both to – back to the Joint Review Panel but also to the Government of Newfoundland and Labrador and to the federal government.

Rodd – I'm not sure –

**MR. LAING:** Yeah, and I think in addition to that – from the Joint Review Panel report, they clearly indicated there would be significant adverse effects against Labrador Inuit, including affecting Inuit rights. Beyond that, it also said that the lack of consideration about the fate of mercury downstream into Lake Melville by Nalcor. They identified that.

They also highlighted that the dietary and cultural importance and the impacts of that would be highlighted. And that – the idea that there would be no measurable effects in the downstream environment on Labrador Inuit was unsubstantiated.

And I think – you see in our interventions after the Panel report – that these pieces needed to be addressed and still need to be addressed.

**MR. LEARMONTH:** I'd like to bring up P-00041 – that's the Joint Review Panel Report, at page 23.

**UNIDENTIFIED MALE SPEAKER:** What tab?

**MR. MCLEAN:** What tab would that be?

**THE COMMISSIONER:** You're not gonna see that one on your book.

**MR. MCLEAN:** Okay –

**MR. LEARMONTH:** That would be on your screen only, yeah.

**THE COMMISSIONER:** (Inaudible) your screen.

**MR. MCLEAN:** Okay.

**MR. LEARMONTH:** Page 23 – down towards the bottom under the heading: Inuit.

So the – one of the findings on page 23 of the Joint Review Panel was – and I'm gonna read it: "The Nunatsiavut Government and Inuit participants stated that the project would adversely affect their traditional land and resource use activities in Lake Melville and on land and water within the Labrador Inuit Settlement Area as well as land and water identified in Schedule 12-E of the Labrador Inuit Land Claim Agreement."

"They were particularly concerned about the potential for methylmercury contamination because of the importance of harvesting activities in that area," – excuse me – "for the continuation of their traditional lifestyle. Should consumption advisories be required in Goose

Bay and Lake Melville, the panel concluded that the project would have significant adverse effects on the pursuit of traditional harvesting activities by Labrador Inuit, including the harvesting of country food."

Do you have any comment as to whether that's a proper reflection of the position of the Nunatsiavut Government and the Labrador Inuit at the time of the filing of the report on August – in August 2011?

**MR. MCLEAN:** Yeah, we certainly agree with that paragraph. I think there's other things that probably come into play, too, but that's certainly in – you know, we agree with what's stated there.

**MR. LEARMONTH:** Yeah.

Now, in – we'll deal later with the methylmercury issue, which is a big concern, I know, to your people – but were there other issues, environmental or otherwise, that were of concern to the – to your people in relation to the Muskrat Falls Project?

And, if there were other areas of concern, please tell us what they were.

**MR. LAING:** Absolutely.

I mean, fundamentally there's the rights and title issue of Labrador Inuit and how this all relates to the impacts and the actual area of impact as determined as the study area of the Joint Review Panel.

Additionally, socio-economic concerns related to the project and benefits for Labrador Inuit; health and well-being beyond just the methylmercury issue, but things like culture, harvesting, land use and how that connects to Inuit health and well-being; and just ensuring that the consultation process, as defined in the Labrador Inuit Land Claims Agreement, was completed appropriately.

Within that there – we've had concerns related obviously to full clearing; setting up an impact management agreement for Labrador Inuit if there are impacts as a result of the development

of the Lower Churchill Project; and the establishment of the Independent Expert Advisory Committee, which was established; and then ensuring that there was a joint decision-making process over monitoring and management of the downstream environment for Labrador Inuit.

**MR. LEARMONTH:** Okay.

Now, so once again, we know about the methylmercury, but the social impacts that you referred to, can you expand on that a little bit?

**MR. LAING:** Absolutely.

Inuit have a right to use their environment – the traditional use of their environment – and any impact to their environment indirectly and directly affects Inuit health and well-being. So the socio-economic impacts of this – if a person cannot go out and harvest their traditional food, they're being – going to be forced to find alternatives for their food, including store-bought foods or otherwise, fully recognizing that Labrador Inuit face some of the highest food insecurity rates in Canada. And impacts of this on the – project impacts are going to have a significant impact on Inuit health and well-being for that.

So if you're required to already go and buy more store food than to live off the land, not only are you affecting things culturally, but there's going to be an economic impact on Labrador Inuit.

**MR. MCLEAN:** So like that – sorry, that social impacts and health impacts, too, around community issues. Many – as I've mentioned, many Labrador Inuit live in the Upper Lake Melville area. We know from other large projects that, you know, with the influx of people, of money, often they indirectly impact social and the health of the people in the area.

A lot of that is around increased drug use, increased alcohol use, high rent, increases in rent. And many Aboriginal people are on the lower end of the scale with regards to economic health, I guess. And, you know, as we hear – you know, a lot of – one of the gaps, I think, in many environmental assessments in the past have been around those type issues.

So there were some of our interventions through the environmental assessment that addressed those things and, you know, suggested that there needs to be some mechanism to look at those issues and mitigate impacts where they could be. So, you know, I wanted to add that too.

**MR. LEARMONTH:** Thank you.

Now, at some point was there some debate about whether Lake Melville was connected to the project, the Churchill River?

**MR. MCLEAN:** I don't know if there was debate –

**MR. LEARMONTH:** Yeah but –

**MR. MCLEAN:** – about whether they're connected or not, but –

**MR. LEARMONTH:** – wasn't there some discussion at some point? Wasn't there some discussion about that Lake Melville really shouldn't be included because it was separate from the Churchill River?

**MR. MCLEAN:** Well, it wasn't included in the initial project area; the project area was identified initially at the mouth of the Churchill River and then was expanded to the Goose Bay Narrows. Through the environmental assessment, many of our interventions were downstream from that into our settlement area which includes Lake Melville.

You know, to us, it's all connected because during the later of the environmental assessment, Fisheries and Oceans research report came to light which was the first time we've seen, anyway, in literature where it identified that there's still – they linked mercury from the Upper Churchill Project or the Smallwood Reservoir, down to the environment into Lake Melville.

But that was the first – unfortunately, during the Upper Churchill Project there was no data collected downstream into Lake Melville to relate back to that project. This was done very late in the game; 30 years later, really, is what we're talking about. But that was brought forward during the latter stages of the Joint Review Panel process.

**MR. LEARMONTH:** So this issue of methylmercury wasn't addressed at the time of the Upper Churchill development. Is that correct?

**MR. MCLEAN:** Not that I'm aware of, not downstream into Lake Melville anyway. It may have in the reservoir area.

**MR. LEARMONTH:** Yeah.

**MR. MCLEAN:** But certainly not downstream into Lake Melville.

**MR. LEARMONTH:** But, just to be clear, I mean Lake Melville is connected to the river. The river runs right into Lake Melville, right?

**MR. MCLEAN:** Well, certainly, the—

**MR. LEARMONTH:** Yeah. It's one system is what I'm saying.

**MR. MCLEAN:** The headwaters of the Churchill River is the Smallwood Reservoir and tributaries of the Smallwood Reservoir that feeds into the Churchill River, that feeds into Lake Melville. And what our research – the independent research has shown since, really, the latter stages of the Joint Review Panel process, is that 80 per cent of the fresh water in Lake Melville originates from the Churchill River and its headwaters.

**MR. LEARMONTH:** Right.

Now, just carrying on with – going back to Exhibit P-00269, page 1. That would be in your tab 4. Do you see that?

**MR. MCLEAN:** Yeah.

**MR. LEARMONTH:** We're just continuing on, the last sentence in the second paragraph: Additionally, the NG started the Make Muskrat Right campaign, which identified the four asks of the Nunatsiavut Government: Fully clear the future Muskrat reservoir; negotiate an impact management agreement with the NG; establish an Independent Expert Advisory Committee, IEAC; grant Inuit joint decision-making authority over the downstream environmental monitoring and management of Muskrat Falls.

This Make Muskrat Right campaign was an initiative of the Labrador Inuit, the Nunatsiavut Government?

**MR. MCLEAN:** Yes, it was.

**MR. LEARMONTH:** And when was that initiative commenced?

**MR. LAING:** It would be kind of late spring of 2016, I believe.

**MR. MCLEAN:** Yeah, and just a bit of background on why we started that campaign.

**MR. LEARMONTH:** Okay.

**MR. MCLEAN:** The last – I guess around 2012 we saw the gap in baseline data downstream in Lake Melville. So we worked to put together an independent team of experts that could look at issues we thought were important to Labrador Inuit in relation to Muskrat Fall Project.

A lot of it was around sea ice. Like, Lake Melville is our travel routes too and sea ice is extremely important, so any changes to sea ice and, I guess, the ability for Labrador Inuit to travel on the sea ice, we want to address. We wanted to look at environmental impacts, health impacts but, most importantly, one of the more important ones to us was the impacts from methylmercury. So we put together a team of experts from academic institutions for the most part, from several universities that could look at those issues for us.

**MR. LEARMONTH:** What universities?

**MR. MCLEAN:** The main one around methylmercury was Harvard University. And we secured the expertise of Elsie Sunderland, Dr. Elsie Sunderland, who is a world-renowned expert in mercury and methylmercury. Memorial University were an important part of the project as was, I believe, the University of Manitoba.

Rodd?

**MR. LAING:** Yeah. And, in addition to that, some of the on-the-ground staff also came from the University of Connecticut who have a working relationship with Harvard University.

**MR. LEARMONTH:** How was the cost of this report paid? Was it funded by the government or Nalcor, or by your group itself?

**MR. MCLEAN:** The only funding – the government funding that we received directly was from the Nunatsiavut Government. The majority of funding came through ArcticNet, which was – I'll let Rodd explain ArcticNet, he knows a little more.

**MR. LAING:** Yeah, ArcticNet is a consortium of arctic researchers that work together. It is a group that's existed now for 14 years that funds arctic science and Inuit-based projects in the North.

Yeah, and in addition to these pieces for the Make Muskrat Right campaign, I think it's just important to remember that these four things, and through this academic piece, are – the majority of these recommendations are actually recommendations of the Joint Review Panel from 2011. I think it's just important to recognize that.

**MR. LEARMONTH:** Yeah, I just want to know, I mean what happened between 2011 – August 2011, when the Joint Review Panel report was filed, and this Make Muskrat Right campaign was started? I mean that's a five-year period, we'll say – almost a five-year period. What discussions, if any, were you having with the government and/or Nalcor on the methylmercury issue?

**MR. MCLEAN:** I would say that the first three years were concentrating on collecting data, putting together a good baseline of the environment in Lake Melville. Because, frankly, up to that point, there was little to no work done in Lake Melville to understand, first of all, what is the baseline there, what is the environment like now, how does that environment work?

So we saw important through ArcticNet to do a comprehensive research project. And what I mean by comprehensive is to look at everything from water flows, to how does it interact with the rivers coming into it, what is – the system look like with regards to salt water, fresh water. What comes – you know, I'm not sure how many of you are familiar with Lake Melville, but the water that comes in to Lake Melville goes

out through a very narrow channel at Rigolet called the narrows. It's probably only, you know, altogether up to half a kilometre wide.

So all that water in Lake Melville channels out through Rigolet, so we actually made sure we understood how the waters comes in and out at that point. We put moorings in for a full three seasons, so it was all part of the ArcticNet research project – not we put moorings in, but the research project put moorings in – to make sure we understood the system. And as the research was gathered – we thought it was important – as we gained more knowledge, we conveyed that, first of all, to the province and, you know, to Nalcor.

**MR. LEARMONTH:** When would that have been roughly?

**MR. MCLEAN:** Probably 2015 we probably started revealing, you know, a lot of the findings because they were just coming to light then. It took about three years to get adequate data to make, I guess, predictions or to make – to say we had a good enough understanding to say anything really.

So we actually worked with those experts to – we met with government and Nalcor and we actually held press conferences here in St. John's starting very early on to – the first thing we revealed, and we didn't know or the experts didn't even know, was that Lake Melville was already extremely efficient at converting mercury to methylmercury, even before this project. And that's because of its stratified layer where – and what I mean by that, it's a – the top portion of Lake Melville, right from the mouth of the Churchill River all the way out to Rigolet, is stratified and the majority of fresh water flows across the top of Lake Melville –

**MR. LEARMONTH:** How deep is the top that you're referring to?

**MR. LAING:** It depends on where you are within the lake. I mean, the naming of Lake Melville is actually, kind of, misleading; it's actually a large brackish estuary. So Lake Melville itself is actually stratified with salt water below, based on the density of the salt water and then you have fresh water on top. And

at that surface, being stratified means that the fresh water stays on top of that salt water.

So depending where you are on the lake, the closer you are to the Churchill River you're going to have a fresh layer on top and as you go out towards Rigolet, that fresh layer actually stays on top of that stratified area. So we had moorings that were established, through the scientific research program, that were put on both sides of the narrows. So it looked at current flow, it looked at the stratification of the water and we could see how that – the movement of the water across the surface.

And I think just something, just for clarity and for – so that people understand is there is a difference between the scientific report of 2016 of the Nunatsiavut Government and the peer-reviewed publications of Harvard University that have been published from this. And those are very different in the sense that peer-reviewed science is completely independent science that have been put out into and reviewed by their peers for this work.

**MR. LEARMONTH:** And so there was –

**THE COMMISSIONER:** Can I just – we're starting to wander in an area that, again, I want to remind the parties not that I'm disinterested in this but, again, I have terms of reference that I have to follow. And I'm not going to be making a decision about whether or not – what – who is right or who is wrong on the methylmercury issue; that's not for me. I don't – I won't have that expertise to even review.

So mostly what I want to concentrate on today is, you know, I'm interested in the fact that you did some studies, there were findings made. What happened after the findings were made? And I think if we could stick to the actions that were actually taken or whatever, those are the things that I'll be able to review and to comment on in any report that I give.

**MR. LEARMONTH:** Okay. Thank you.

So you had the Harvard report we'll call it. And then that was peer-reviewed, is that right?

**MR. LAING:** Yeah, it's a published scientific –

**MR. LEARMONTH:** Yes.

**MR. LAING:** – paper.

**MR. LEARMONTH:** Okay.

So after that process was completed, the peer review, what did you do with the reports?

**MR. MCLEAN:** Well, we –

**MR. LEARMONTH:** Did you give them to government and Nalcor or how did you handle that?

**MR. MCLEAN:** Well, they were published publicly – the peer-reviewed reports were published by the researchers in accomplished journals. So they were public as soon as that peer review was completed.

So we – even before that we conveyed as much information as we could that the scientists allowed us to, because, you know, time was important. We understood time was important, project was underway. We wanted to make sure that we – people understood what these reports were saying and hopefully worked with us on how to address the concerns that were coming out of them.

And our concerns that were in the response to the panel report were kind of being confirmed to us in the later research that was done.

**MR. LAING:** Yeah, and when the first published paper came out from Dr. Amina Schartup, there was a press conference in 2015 held here in St. John's. And then again, on August 4, 2016, there was a meeting in Goose Bay that included representatives from the province, Nalcor, the three Indigenous groups, the affected communities, as well as Nalcor scientists. And we all sat around the table –

**MR. MCLEAN:** And federal government.

**MR. LAING:** – and federal government as well – and talked about the impacts and the results of these papers, and the existing outstanding issues related to our concerns from the Joint Review Panel and the lack of response to those recommendations.

**MR. LEARMONTH:** Did that meeting or any subsequent meetings provoke a response from the Government of Newfoundland?

**MR. LAING:** Well, can you define what you mean by response?

**MR. LEARMONTH:** Well, you were raising the methylmercury issue as a concern for the reasons that you stated below. And you are communicating these concerns to the government, I presume, expecting that there'd be something done about it. It wasn't just an idle conversation.

And what, if any, response did you get from the Government of Newfoundland and Labrador or Nalcor to the – after the reports were presented and you requested something be done. What response did you receive?

**MR. MCLEAN:** Well, first of all, there was a chairperson of that meeting that Rodd just referred to. That was – it was lead – like, this person was put in place by the province. We got minutes of that meeting back. We didn't think that the minutes were an accurate reflection of that meeting at all with regards to a lot of the concerns that were brought forward by the experts that were around that table.

We responded on a couple of occasions to try to get an accurate reflection of the minutes. We weren't having much success, so what we actually did was we recorded that whole meeting, and we just provided, in the end, a transcript of that recording, and to us, that was the accurate reflection of the meeting, not the minutes that were put forward by the province.

So you know, it was frustrating all along. We went at it twofold, really, to raise our concerns. We met – we requested meetings with Nalcor officials; we requested meetings with provincial officials. We had to send at least three letters, I know, to provincial leaders, ministers and the Premier to try to, in the end, get a meeting.

That happened in the end, because we weren't getting anywhere with the officials. Every time we spoke to Nalcor, they said – basic response was: we'll do whatever the regulators tell us. So we'd go back to the province to talk about some of the recommendations from the panel report

that – they'd say: well, that's not us. That's directed at Nalcor or the federal government.

So we were – we felt a lot of things were getting bounced around with nobody really taking ownership, I guess, of trying to talk through mitigation with us, really. You know, the basic response from Nalcor was we'll do whatever the regulators tell us. And to them, the regulator was both the federal government and provincial government.

**MR. LEARMONTH:** Who were you dealing with at Nalcor?

**MR. MCLEAN:** At that time it was their environmental staff and Gilbert Bennett was their lead in those discussions during that period of time.

**MR. LEARMONTH:** And what was Mr. Bennett's attitude towards this from your observation?

**MR. MCLEAN:** From my observation it was pretty dismissive, for the most part.

**MR. LEARMONTH:** Dismissive?

**MR. MCLEAN:** Not – the tone was dismissive. You know, he certainly took time to listen to us, but in the end, there was no – we didn't – felt there was no action taken after that, other than, well, we'll do whatever the regulators tell us.

**MR. LEARMONTH:** That was the regular answer that you'd get from Nalcor?

**MR. MCLEAN:** From when Gilbert Bennett was involved, yes, that was the answer –

**MR. LEARMONTH:** Yeah.

**MR. MCLEAN:** – we most often got.

**MR. LEARMONTH:** Yeah.

And who were you dealing with at the Government of Newfoundland? You're dealing with Gilbert Bennett and others from Nalcor, but who with the Government of Newfoundland were you dealing with at this time?

**MR. MCLEAN:** At which period of time?

**MR. LEARMONTH:** The time that you were having these discussions with Gilbert Bennett?

**MR. MCLEAN:** Around the methylmercury –

**MR. LEARMONTH:** Yes.

**MR. MCLEAN:** – issue?

**MR. LEARMONTH:** Yes.

**MR. MCLEAN:** Certainly – there's a combination. It was Department of Environment officials at the time. Martin Goebel was one of their leads – certainly their main lead, I think. This was post-EA, now. This was after the report, and we're moving on here.

We elevated when we could to the ministerial – deputy minister – ministerial level. So Jamie Chippett was the deputy minister at my level. The minister – I know we had several meetings with Minister Trimper, who was Minister of Environment at the time. Subsequent to that, there was Minister Joyce, and now it's Minister Parsons.

There's also – higher level than that meetings, there were some meetings held that included our President Lampe, our minister at the time – was Darryl Shiwak – and also Premier Ball. So there were different level meetings held through this whole process.

**MR. LEARMONTH:** Okay.

So after you submitted your reports – the Harvard study and the peer review to government – you had these discussions with both Nalcor and government. Did any – was there any resolution?

**MR. MCLEAN:** No.

**MR. LEARMONTH:** No.

**MR. MCLEAN:** Still no resolution, as far as we can see, on our main issue around methylmercury.

**MR. LEARMONTH:** Yeah.

Now, I don't wanna go into great detail, but I'd just like to you bring this forward, too, 'cause

we know that there was a protest and that lead to the establishment of a committee and so on. Can you just give me a brief summary of the events that happened – that lead up to the striking of this committee to review the methylmercury issue?

**MR. MCLEAN:** Yeah, well – I'll speak and then let Rodd speak, but soon after this meeting that had all the people around the table, including the other Aboriginal groups and our expert, Elsie Sutherland, was on the phone and – where we provided the transcript of the meeting. After that, things – there were protests by residents of Upper Lake Melville.

After that, there was, I guess, even hunger strikers that were Labrador Inuit of the area, and things were seen to be elevating with regards to, I guess, people – you know, things were – everybody was getting concerned of what was happening, so we actually requested a meeting with high-level provincial officials to say look, we have to get together and talk through this. We got to figure this out.

And – but, at the same time, that's when people stormed the gate and it wasn't – you know, we didn't, certainly, lead those things. We were certainly aware of them. Many of them were our beneficiaries.

So fortunately, the province – and others, I guess, saw the importance of getting together at high level to try to work through the issue, and that's when this October 2016 meeting between leaders of the Indigenous groups and the Premier was held here in St. John's. It went from about to – 12 hours or more, 2 o'clock in the day 'til 2 o'clock the next morning. That's where there was an agreement to form an Independent Expert Advisory Committee.

**MR. LEARMONTH:** And when was this meeting, roughly?

**MR. MCLEAN:** October 28, I believe. 28 – around that time – 27?

**MR. LAING:** 26.

**MR. MCLEAN:** 26 – 2016.

**MR. LEARMONTH:** Right.



So one of the results of that meeting was that the Independent Expert Advisory Committee was struck, is that right? Or shortly after the meeting the Independent Expert Advisory Committee was struck?

**MR. MCLEAN:** Well, there was an agreement to – for the groups to get together and come up with a terms of reference of an Independent Expert Advisory Committee. That process took much longer than anybody expected, I think. And finally, in – I believe it was June 2017, when the terms of reference were agreed to, and we – actually, the Independent Expert Advisory Committee started their work, I believe, in August 2017.

**MR. LEARMONTH:** August 2017.

Were you – either of you gentleman involved in the work of the committee?

**MR. MCLEAN:** We were both involved in talking through to agree to a terms of reference. I was appointed by the Nunatsiavut Government as their representative on the Oversight Committee of the Independent Expert Advisory Committee and Rodd was appointed as the alternative to me on the Independent Expert Advisory Committee Oversight Committee.

**MR. LEARMONTH:** Okay. And did – the committee subsequently filed a report with recommendations, is that correct?

**MR. MCLEAN:** Yes.

**MR. LAING:** Yeah. There's two sets of recommendations – there's a set that came out last fall and another set of recommendations that came out in April of this year.

**MR. LEARMONTH:** Okay. Now, have the recommendations been followed?

**MR. MCLEAN:** One of them – the first set of recommendations – I think, on monitoring?

**MR. LAING:** Yeah.

**MR. MCLEAN:** I think that was addressed, and the second recommendation in the fall of 2017 – that was made by the IEAC was partially met, I guess – not completely met.

**MR. LEARMONTH:** What was that –

**MR. MCLEAN:** And the –

**MR. LEARMONTH:** – what was that recommendation?

**MR. MCLEAN:** – and the additional – okay, that recommendation in the fall –

**MR. LEARMONTH:** Yeah.

**MR. MCLEAN:** – was for both Harvard and Nalcor. There was two models put forward during this whole process – one was referred to as the Nalcor model – this is around methylmercury inputs and outcomes, I guess. There was one referred to as the Nalcor model and the other one was referred to as the Harvard model.

The recommendation was for those models to be rerun to include the whole system, including Lake Melville, based on, I guess, additional science that come forward over the last year or two, really. So the portion of the recommendation that – of that one – that was not met was, both these models were to be redone by the end of December 2017 and the Nalcor model – they did not meet the timeline to rerun that model – that was – and as far as I know, is still not done, although I did hear reference yesterday that that might now be published, but I haven't seen it.

**MR. LEARMONTH:** Up to today you haven't seen anything in response to that recommendation from Nalcor. Is that right?

**MR. MCLEAN:** Not to the new data coming from the revised model. No.

**MR. LEARMONTH:** Okay. So that was the second recommendation. What about the others?

**MR. MCLEAN:** Do you want to speak to those for –?

**MR. LAING:** For the spring – from the April 2018 recommendations?

**MR. LEARMONTH:** Yes.

**MR. LAING:** Yeah. There – it’s supposed to be a community-established monitoring program from those recommendations that works with the Indigenous groups to establish those monitoring programs. To date, we haven’t worked on that component of these recommendations at all with – there’s no – not been any reach-out to us to establish those portions of the monitoring program – and I do want to be clear that the first set of recommendations from fall of 2017 – there was a request to adapt the monitoring program and that was done – and it was done successfully; however, the April 2018 recommendations have not been addressed. Of any of the recommendations that were agreed to from that, that I’m aware of, that have been addressed – of any of the four that made it to the provincial government.

**MR. LEARMONTH:** Has there been any explanation provided by government or Nalcor as to why these issues have not been addressed?

**MR. MCLEAN:** Well, the recommendations were not specifically directed at Nalcor; they were put to the regulator, which is the Minister of Environment, now –

**MR. LEARMONTH:** Okay.

**MR. MCLEAN:** – Minister Parsons, I believe is the minister now.

**MR. LEARMONTH:** Yeah.

**MR. MCLEAN:** They went to Minister Joyce, who was minister at the time, back April 13, 2018. The answer we’ve been getting in the emails and conversations was: we’re still reviewing them. So I’m assuming that’s where it’s at, they’re still reviewing them, and I think we heard that yesterday from Aubrey Gover.

**MR. LAING:** Yeah.

**MR. LEARMONTH:** As of yesterday, it’s still under review?

**MR. MCLEAN:** That’s my understanding, yeah.

**MR. LEARMONTH:** But isn’t the plan to flood the reservoir next year in the – next summer?

**MR. MCLEAN:** That was the plan when we were part of the IEAC. Our understanding of the timeline was summer, fall 2019 for full flooding.

**MR. LEARMONTH:** Okay.

**MR. LAING:** And I think, related to that, what’s really important is the recommendation of – the clearing recommendation, which is an adaptation of full clearing to, you know, not steep slopes, avoiding areas that don’t need to be cleared. It – the recommendation that was agreed upon at that Independent Expert Advisory Committee which included everyone, was that that should be done during cold months to reduce impact of additional mercury inputs through the disturbance of soil and other things.

So critically, timeline-speaking, we are in a very short timeline for the implementation of these recommendations if the current timeline stands.

**MR. LEARMONTH:** Cold time doesn’t mean during the winter.

**MR. LAING:** Well it’s to the – ensure that the ground is frozen, to be less disturbed, unlike in the summer where the soil is soft for the removal.

**MR. LEARMONTH:** Well anyway –

**MR. LAING:** Yes.

**MR. LEARMONTH:** – I just wondered how you could do it in the winter with the snow, but anyway – yeah.

**MR. MCLEAN:** Well late fall –

**MR. LAING:** Late fall.

**MR. LEARMONTH:** Late fall.

**MR. MCLEAN:** – would probably be preference.

**MR. LAING:** Yeah, and –

**MR. LEARMONTH:** But this is late fall now.

**MR. MCLEAN:** And we’re getting there –

**MR. LAING:** Yes.

**MR. MCLEAN:** – certainly.

**MR. LAING:** We are getting there.

**MR. LEARMONTH:** Okay.

**MR. LAING:** And just one point I wanted to make relative to the timelines that we were discussing here a few minutes ago, is that those protests and what really led to the, kind of, final piece of that is, when Nalcor announced the original impoundment of the first stage of the reservoir, when they were building the cofferdam to allow for the building of other pieces.

And I think that that's just important; that that is something that led to this in the timeline, of the lack of response to recommendations. In 2016, you're five years past the JRP and it's the same recommendations that we were striving for. So that's – I think it's important that that's clarified to them.

**MR. LEARMONTH:** Thank you.

**MR. MCLEAN:** You know, just coming out of that October 2016 meeting with the Indigenous leaders and the premier, one of the, I guess, agreements coming out of that was that the initial flooding to build the cofferdams – that would be done, but in the spring the water would be brought back to the original level.

**MR. LEARMONTH:** Okay.

**MR. MCLEAN:** That was agreed to by the premier and the province, but come spring, the – unbeknownst to all of us, really, was that that really couldn't be done because of the issues around bank stability.

And so, you know, that – it was frustrating, that, you know, even though it was commitment (inaudible) they came back in the spring and said we have to release water because of – or we can't release water because the banks would become more unstable when we do that.

Now we were provided with reports that kind of back that up from their engineers – SNC-Lavalin engineers, I believe. But, you know, it's a lot of frustrations for us through this whole thing.

**MR. LEARMONTH:** Well, the – I take it that the – your concerns about the methylmercury point have not been adequately addressed by the Government of Newfoundland and/or Nalcor – is that correct?

**MR. MCLEAN:** That's correct.

**MR. LEARMONTH:** Yeah.

And, in addition to the methylmercury issue, which you've covered, are there any other items of concern that you have been dealing with the Government of Newfoundland and Labrador or Nalcor on? Any other concerns besides the methylmercury issue that remain – we'll say, unresolved?

**MR. LAING:** Yeah – yes.

There are. And I think those – you can see those related to our Make Muskrat Right campaign asks that exist.

Yes, some are tied to methylmercury but the others are: negotiating an impact-management agreement with ourselves as the government and the province. One of the – that request – there's a letter that was actually sent to Premier Ball in January that has still not been addressed with us.

So we are now entering our eighth month – or ninth month – without a response to that piece. And that has been something that we've been working on since 2016.

Again, grant joint – Inuit joint decision-making over monitoring and management in the downstream environment – this still is something that we need to work on from those pieces. And then the fully clearing of the reservoir – obviously tied to methylmercury.

**MR. LEARMONTH:** But I take it that you're not against the Muskrat Falls Project; your group is not against the Muskrat Falls Project – is that correct?

**MR. MCLEAN:** No, we –

**MR. LEARMONTH:** (Inaudible) you're not suggesting that it not be commissioned or anything like that?

**MR. MCLEAN:** No.

The Nunatsiavut Government has never come out and said to – the project should not go ahead. Our concern has always been there will be – we think, without proper mitigation, there will be significant impacts to Labrador Inuit. And our goal has always been to make sure that we do what mitigation is needed to minimize those impacts to Labrador Inuit before the flooding. And, you know, we're kind of running out of time, if the project was not going to be delayed.

**MR. LEARMONTH:** And you're still waiting?

**MR. MCLEAN:** We're still waiting.

**MR. LAING:** And I think something related to that, too, is there's always this idea that compensation is mitigation. And that's been thrown around a lot during this project. From our perspective compensation isn't mitigation. You mitigate something to avoid those impacts, to reduce the need for that, and so I think that's critically important related to this.

Right now, you know, saying that we'll wait to see what the impacts on Inuit are before we actually make a decision on that is essentially saying you're going to wait and use Inuit as a research project to see what the impacts of methylmercury are. And right now we have the ability to mitigate related to this and I think it's important that we take that opportunity, that we can, to do that.

**MR. MCLEAN:** And if I can just add that we're really the only Aboriginal group right now that has a settled land claim. Our settlement area is defined. In our land claim agreement it talks about the precautionary principle. Decisions should be made or – should be made using the precautionary principle, which to us means if there's a – your caution, you – it's not let's wait to see what happens and then deal with it. If there's a chance that this will happen, let's find ways to deal with it before it happens.

That's to us, in simple terms, what the precautionary principle says. And both the province and the federal government have signed on to that language and have agreed to it. So I think that's a very important part of the discussion.

**MR. LEARMONTH:** Okay.

Thank you very much for your presentation.

Was there anything else you wanted to add or have you covered everything?

**MR. LAING:** I think (inaudible).

**MR. MCLEAN:** No, we're fine with that.

**MR. LAING:** I think were good.

**MR. LEARMONTH:** Okay, well, thanks again.

And now the other counsel or parties with standing will ask any questions they have.

**THE COMMISSIONER:** Government of Newfoundland and Labrador.

**MR. RALPH:** No questions.

**THE COMMISSIONER:** Nalcor Energy.

**MR. SIMMONS:** No questions. Thank you.

**MR. LEARMONTH:** (Inaudible.)

**THE COMMISSIONER:** Concerned Citizens Coalition.

Barry, could you turn your mic off?

**MR. BUDDEN:** Good day, gentlemen.

My name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition. I just have a couple of questions.

First one is: What concerns did your government have with respect to the stability and safety of the North Spur?

**MR. MCLEAN:** Well, we chose – that's – the North Spur is outside the Labrador Inuit Settlement Area, so we did not focus on that issue at all. We chose to focus on that impacts downstream into the Settlement Area.

**MR. BUDDEN:** Okay.

So can I take it from that that you did not express any concerns through the consultation process?

**MR. MCLEAN:** That's correct.

**MR. BUDDEN:** Okay.

Thank you.

**THE COMMISSIONER:** Edmund Martin. No questions?

**MR. SMITH:** No questions.

**THE COMMISSIONER:** Thank you.

Kathy Dunderdale.

**MR. GRANT:** No questions.

**THE COMMISSIONER:** Former government – Provincial Government Officials '03 to '15.

**MR. T. WILLIAMS:** No questions.

**THE COMMISSIONER:** Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** No questions.

**THE COMMISSIONER:** Robert Thompson.

**MR. COFFEY:** No questions.

**THE COMMISSIONER:** Consumer Advocate.

**MR. HOGAN:** My name is John Hogan, counsel for the Consumer Advocate.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible) microphone.

**MR. HOGAN:** You guys heard me, right?

**MR. LAING:** Yes.

**MR. HOGAN:** I just have a couple of follow-up questions. Madam Clerk, if we could bring up Exhibit P-00269, page 1, second paragraph.

**THE COMMISSIONER:** So tab 4 in your book.

**MR. LAING:** Okay.

**MR. HOGAN:** So you both sat through the evidence this morning, so I – it's similar questions I've asked already. I just wanna be a little briefer with you, I think, but it says: "As a result of the lack of response from Nalcor, the Province of Newfoundland and Labrador and the Federal Government to these interventions and initiatives, ...." This is in response to the Joint Review Panel.

So I just wanna ask you guys about your discussions, with what parties, throughout the process – the Joint Review Panel process and subsequent to that. You've named Nalcor and the federal government and the provincial government here in this submission to the Inquiry.

Who did you deal with mostly, for example, in the consultation process? Was it Nalcor? Or was it the province? Or did you have the same confusion that NCC had as well?

I don't even know who's gonna answer this.

**MR. MCLEAN:** I'll start. So we're talking about through the environmental assessment process.

**MR. HOGAN:** Sure. Yes.

**MR. MCLEAN:** Our main contact with the province through the environmental assessment process was their Environmental Assessment Division. I think Paul Carter – there's different Paul Carters, but Paul Carter who worked in their Assessment Division was our main contact there. With Nalcor, I guess, through the environmental assessment process, our main contact was – I think it was Todd Burlingame I think that's how you pronounce it – Burlingham maybe – something like that.

That was our main contacts with Nalcor and the province through the environmental assessment process.

**MR. HOGAN:** And when the process started for the JRP, was there any letter of direction or

anything given to you by the provincial government to say we're delegating our duty to consult to Nalcor, and specifically these are the issues that deal with – that individual with at Nalcor as opposed to the Department of Environment at the government, the provincial government?

**MR. MCLEAN:** Not that I'm aware of. Not that I am aware of.

**MR. HOGAN:** So how would you know when you would go to ask that individual at Nalcor versus the individual at the Department of the Environment?

**MR. MCLEAN:** Flavour of the day, I guess really, but –

**MR. HOGAN:** Pardon me?

**MR. MCLEAN:** The flavour of the day maybe, but –

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MR. MCLEAN:** No, seriously. I think, you know, depending on the issue, we always tried to – we knew – we realize that there is a proponent and there is a regulator with this, so we've always tried to convey our concerns on information that we were gathering to both of those or all of those; both federal government, provincial government and the proponent, you know, every chance we had, really, to – because, you know, that's how you resolve things through, you know, regular dialogue, a back and forth. You need to understand where each other is.

Unfortunately, a lot of times we found there was – we were conveying information but we didn't get a lot of back and – so it was hard to figure out sometimes what that other party was feeling, and – but, you know, we kept at it and we're still at it. We keep engaging where we can to try to get resolution and mitigation where we think it should be.

**MR. HOGAN:** Were you concerned maybe that the information you were conveying to one side wasn't reaching the other side or vice versa?

**MR. MCLEAN:** Not really, because we kind of went at it two-prong. We tried to convey to all three parties really – federal, provincial and the proponent – where we, you know, where we thought was important.

**MR. HOGAN:** That's all the questions I have.

Thank you.

**MR. MCLEAN:** Thank you.

**MR. COMMISSIONER:** Thank you.

Innu Nation. Okay, so the same problem with the mic. Any – no questions, Mr. Luk?

**MR. LUK:** No questions.

**MR. COMMISSIONER:** Thank you.

Nunatsiavut Government.

**MR. GILLETTE:** No questions, other than what's already been canvassed.

Thank you.

**MR. COMMISSIONER:** Yeah, I should've asked you last anyway. Pardon me for that.

The NunatuKavut Community Council.

**MR. COOKE:** No questions.

**MR. COMMISSIONER:** The Conseil des Innu de Ekuanitshit.

**MR. SCHULZE:** No questions, Mr. Commissioner.

**THE COMMISSIONER:** Grand Riverkeepers, Labrador, Labrador Land Protectors.

**MS. URQUHART:** Hello, my name is Caitlin Urquhart, and I'm representing the Grand Riverkeepers and Labrador Land Protectors. Which I expect you're familiar with as a number of your members and beneficiaries are members of our organization.

I actually just wanted to clarify; you were just speaking about the precautionary principle and this is, of course, a foundational principle within

the way that we look at environment, the way we look at mitigation and I just wanted to clarify that essentially this is a principle that says that even if the science isn't settled, if there's still debate you still need to mitigate.

And so that's – again, this idea of preventing the harm or sometimes – when we're talking about methylmercury we're talking about clearing trees – the science may not be settled but, however, we still need to take steps in order to prevent harm. Is that you're understanding? I just wanted to see if you wanted to elaborate on that at all.

**MR. LAING:** Yeah, I completely agree. I think that that is the reality of this and I think it's also the reality of – mitigation is important, especially related to methylmercury and the fact that there's no actual safe level of methylmercury. There are guideline levels for Canada through Health Canada. There are guideline levels through the EPA from the US, but mitigation will reduce those levels.

You can argue all you want about the science, but there's agreement that consumption advisories will be needed, related to this project. And then there's also agreement that mitigation measures will reduce the levels of methylmercury relative to that. So the core principles of the precautionary approach would apply to this, and I think if you applied those they're – you know, you're reducing the impacts on Labrador Innu.

**MS. URQUHART:** That's all.

Thank you.

**THE COMMISSIONER:** Former Nalcor board members.

**MR. GRIFFIN:** No questions, Commissioner.

**THE COMMISSIONER:** Thank you.

And as I said, Nunatsiavut Government, you're still content?

**MR. GILLETTE:** Yes, Commissioner.

Thank you.

**THE COMMISSIONER:** Thank you.

All right. Thank you very much, gentlemen.

So we're at 10 after 12; I expected to be a little longer than this today. And I understand our next witness is not ready until tomorrow morning. Am I right on that?

Okay, so afternoon off – if we can say that. If we can call it being off. And we'll start tomorrow morning at 9:30. I understand our witness is Stephen Bruneau, and that's the only witness we have scheduled for tomorrow.

So we'll adjourn then until tomorrow at 9:30.

**CLERK:** All rise.