Committee Snapshot

COMMITTEES AS THEY HAPPEN. BRIEF. CONCISE.

Standing Committee on Environment and Sustainable Development (ENVI)

Tuesday, April 17, 2018 (11:00 am)
Room 410, Wellington Building, 197 Sparks Street

Topic on the Agenda:

Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Meeting Highlights:

- The committee continued its study of Bill C-69, The Impact Assessment Act, welcoming representatives from the Canadian Parks and Wilderness Society, Smart Prosperity Institute, Suncor Energy Inc., Assembly of First Nations, British Columbia Assembly of First Nations, Fort McKay First Nation, Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping, and a law professor from the University of Calgary who appeared as an individual.

- Chief Kluane Adamek, representing the Assembly of First Nations, objected that issues concerning jurisdiction, inherent and constitutionally protected rights, nation-to-nation relationships, and reconciliation, but many of these are not addressed in Bill C-69. She pointed out that the Chiefs-in-Assembly have called on the AFN to work with Canada to ensure legislation respects First Nations treaties, rights, titles, jurisdictions, agreements, and recognizes traditional territories, but that any phase in this engagement process cannot be construed as consultation. She expressed dissatisfaction with the public interest test and regulatory choice of a project list, argued that the bill must enable First Nations to fulfill their rights and responsibilities, and called on the government to work with First Nations to establish the laws, policies, and practices needed to respect their rights and status as self-determining people.

- Terry Teegee, from the British Columbia Assembly of First Nations, suggested that Bill C-69 falls short in terms of the recognition of the core principles of UNDRIP, and expressed great concerns in regards to the legislation failing to recognize Indigenous jurisdiction and ability to make decisions. He pointed out that this was an issue with Kinder Morgan, as First Nations made their decisions and were not recognized in the final decisions of the major projects. He also suggested that provisions for Indigenous-led reviews may be impossible to implement, as Indigenous governance may not be recognized and First Nations may not receive proper resources required to lead their own impact assessment process.

- Fort McKay First Nation Chief Jim Boucher noted that he was perplexed to see the government relinquish fiduciary duty to First Nations to assess and mitigate developmental impacts that affect reserve lands and traditional territories. He explained that his concerns with Bill C-69 relate to the lack of requirement for proponents, First Nations, and governments to work together to ensure adequate impact assessments are meaningful and give adequate respect to First Nations peoples and lands. He argued that Bill C-69 cites transboundary effects but not impacts on reserves or traditional lands arising from activities on provincial lands – adding that these are in effect transboundary

- Chief Ernie Crey of the Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping suggested that the provisions of IAA and CERA that delegate authority to Indigenous governing bodies are too restrictive, and will defeat the objectives of advancing reconciliation and involvement in major projects. He stressed the need to ensure there is enough time to inform Indigenous communities effectively.

- Law professor Martin Olszynski, appearing as an individual, argued that Bill C-69 should be amended to include a duty of scientific integrity on those persons involved in the impact assessment process, capturing at the minimum objectivity, thoroughness, and accuracy. He also argued that proponent data and models should be presumptively public unless

confidentiality is requested and granted. He highlighted a long and troubling history of reliance on unproven mitigation mechanisms to push projects forward, and recommended provisions to ensure those measures be demonstrably effective.

- Alison Ronson from the Canadian Parks and Wilderness Society asserted that to improve Bill C-69, language should be included that requires all projects in federal parks and protected areas to undergo impact assessment unless there will be insignificant environmental impacts. She called for the bill to include the International Union for Conservation of Nature guidelines for impact assessments near world heritage sites.

- Stewart Elgie, on behalf of the Smart Prosperity Institute, suggested that Bill C-69 is an improvement over CEAA 2012 in both environmental and economic aspects, but could be better. He argued that the most important part of the Act is that it creates a place to deal with larger regional and strategic assessments, but that this does not require them to happen. He argued that the act should include language to encourage doing more regional and strategic assessments. He also recommended ensuring assessment of all parts of the project, stating that project splitting undermines the whole goal of environmental assessments.

- Suncor Energy Inc.'s Virginia Flood acknowledged the need to address concerns about climate change and restore confidence in impact assessments, adding that it is critical for Canada's future that the federal legislative agenda proceeds with care to ensure environmental policy is enacted in a way that ensures competitiveness. She expressed support for broad based carbon pricing mechanisms if balanced with other regulations and fiscal relief, while taking into account competitiveness with other jurisdictions that do not have the same cost.

- Several questions from Liberal members of the committee involved free, prior, and informed consent, with John Aldag asking how the government might better incorporate it into Bill C-69 considering the number of impacted communities on any project. Kluane Adamek explained that there is no a one-size-fits-all approach to achieving free, prior, and informed consent, but that a dialogue between government and Indigenous people is needed to establish how it will be obtained and respected. Terry Teegee recommended that First Nations be allowed to create groups or appear as independents, and have the resourcing to look at the project and assert their rights. Mike Bossio wondered how free, prior, and informed consent should be reflected in the IAA. Sara Mainville from the Assembly of First Nations explained that the AFN has been working on processes with the federal government to better inform them on how to have a process that fits in with other diverse processes. She related that Indigenous nations have been establishing schematic designs for the decision made in the IAA to see if there is room for a joint decision with a committee or a joint decision-making group with Indigenous groups involved.

- Conservative MPs expressed dismay that foreign investment is leaving Canada and sought to get input from both panels regarding this issue. Chief Ernie Crey highlighted the importance of foreign investment in Canada and the benefits from it, adding that he was troubled by the idea that foreign investment is on the decline because of a lack of certainty. Chief Jim Boucher noted that Canada should be encouraging investment and setting the stage for that investment to occur. He suggested that CEAA is an important piece, and that people need to be confident that they are not powerless with respect to their concerns about a project.

- NDP MP Linda Duncan asked both panels about the obligation to enter into regional assessments before a project is reviewed, and wondered if there should be specific triggers for regional assessment. Chief Jim Boucher answered that regional assessments should be included in the Act, and that it is incumbent on Canada to ensure the jurisdiction is not only reserve lands. He indicated that any effects on the right to hunt, trap, and fish should be assessed. Stewart Elgie pointed out that many of the regional assessments include areas and activities in provincial jurisdictions, and so would work best if the federal and provincial governments cooperate. He recommended encouraging as many assessments as possible and at least having a list of what is viewed as the priorities, while Alison Ronson noted that it is hard to figure out how to trigger a regional assessment with cross boundary effects.

Committee Snapshot

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Witnesses in Appearance:

Organization/Department	Individual	Title/Position
As an individual	Martin Olszynski	Assistant Professor, Faculty of Law, University of Calgary
Canadian Parks and Wilderness Society	Alison Ronson	National Director, Parks Program
Smart Prosperity Institute	Stewart Elgie	Executive Chair
Suncor Energy Inc.	Virginia Flood	Vice-President, Government Relations
Assembly of First Nations	Kluane Adamek	Interim Regional Chief, Yukon Region
Assembly of First Nations	Sara Mainville	Legal Counsel
Assembly of First Nations	Graeme Reed	Senior Policy Analyst
British Columbia Assembly of First Nations	Terry Teegee	Regional Chief
Fort McKay First Nation	Chief Jim Boucher	
Fort McKay First Nation	Alvaro Pinto	Executive Director, Sustainability Department
Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping	Chief Ernie Crey	Indigenous Co-Chair
Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping	Tim Dickson	Legal Counsel, Indigenous Caucus

Witness Testimony:

Panel I

Martin Olszynski (As an individual) declared that there are shortcomings in the bill, especially with the role of science in impact assessments. He suggested that it feels like “CEAA 2012 plus” (Canadian Environmental Assessment Act, 2012), containing all the same parts but with some expanded upon, adding that one important theme is that the science of impact assessments needs more rigour. He remarked that scientific opinions are often “pressured” and the results or interpretation changed. He argued that stronger guidelines and standards are needed, but that Bill C-69 falls short on this score. He pointed out that the word “science” or “scientific” only appears five times in the bill, and stressed that science is foundational to the impact assessment process – with every subsequent step reliant on scientific information. He suggested that Bill C-69 should be amended to include a duty of scientific integrity on those persons involved in the impact assessment process, capturing at the minimum objectivity, thoroughness, and accuracy. He highlighted a gap between legislative contents of the public registry and agency’s internal project files, adding that registry provisions in section 105 of the proposed Act should match the agency's internal files in section 106. He also argued that proponent data and models should be presumptively public unless confidentiality is requested and granted. He noted that there has never been an explanation as to why proponent data and models should not be readily available. He acknowledged that some are proprietary, but that these would be covered by the *Copyright Act* and should not be confidential. He suggested that the Act puts a lot of emphasis on baseline studies and that mitigation is critical for the impact assessment process. He explained that there is a long and troubling history of reliance on unproven mitigation mechanisms to push projects forward, and recommended provisions to ensure those measures be demonstrably effective. He added that the government could allow some reliance on uncertain mitigation techniques if the proponent agrees to adaptive management; however, he noted that adaptive management is good in theory but is not being done in practice. He recommended amending the bill to include language to ensure adaptive management is done if proposed and approved, and that the committee should bar reliance on it if it is not prepared to do so.

Alison Ronson (Canadian Parks and Wilderness Society) noted that there is growing scientific consensus that the world's sixth mass extinction event is ongoing and exacerbated by human activities. She suggested that, globally, parks and protected areas are a proven solution to slow this down. She explained that pieces of legislation that create protected areas do so for nature and for ecosystems, and that the highest possible standard of impact assessment should be applied in these areas – adding that Bill C-69 falls short in this regard. She argued that the Act largely follows the structure of CEAA 2012 and, if a project is not listed on a project list, the responsible department is required to determine if the project is likely to cause adverse environmental effects. She suggested that this determination regime waters down impact assessments in protected areas while causing problems with transparency, accountability, and public consultation. She asserted that CEAA 2012 and Bill C-69 do not provide good guidance on how a federal authority should conduct its determination of a project, with Parks Canada's impact assessment regime conducted according to an internal policy that is open to interpretation and applied inconsistently. She explained that, since 2012, over 1500 development projects have been assessed by Parks Canada and have been found to not have significant environmental effects despite scientific and public concerns. She pointed out that the 1992 Act had provisions to recognize the status of federal protected areas, with an immediate presumption that projects in those areas would undergo an impact assessment informed by the regulations. She added that there was an exclusion list that detailed which projects in parks would not need an impact assessment, such as routine maintenance, while the project list showed which would require greater impact assessments. She suggested that CEAA 1992 required more comprehensive study, coordinated by the Environmental Assessment Agency and with resources provided for public consultation, and was more protective of ecological integrity than CEAA 2012. She noted that Bill C-69 largely maintains the same structure and will perpetuate the same problems with development in parks and protected areas. She explained that section 86 of the bill now obligates the federal authority to provide notice of intention to conduct determination, then allows them to make that determination in 15 days – adding that this is wholly inadequate. She argued that, to improve Bill C-69, language should be included that requires all projects in federal parks and protected areas to undergo impact assessment unless there will be insignificant environmental impacts. She called for the bill to include the International Union for Conservation of Nature guidelines for impact assessments near world heritage sites.

Stewart Elgie (Smart Prosperity Institute) suggested that Bill C-69 is an improvement over CEAA 2012 in both environmental and economic aspects, but that it could be better. He acknowledged that the purpose of the Act will be more explicit in having sustainability as its purpose; he expressed support for this, but noted it would be a challenge to meet this mandate in a way that is efficient without adding time to the approval process. He argued that the most important part of the Act is that it creates a place to deal with larger regional and strategic assessments, but that it does not require them to happen. He pointed out that the urgent will take priority over the important and will squeeze out these assessments, adding that the Act should include language to encourage doing more regional and strategic assessments. He noted that projects are only as good as what is covered by the assessment, and stated that the Act has no guidance as to what designated projects will be assessed. He suggested that the Act could specify that any project likely to cause significant adverse effects will be assessed, or could ask the minister to create criteria as she has already done in a separate document – adding that this would increase predictability and consistency. He recommended ensuring assessment of all parts of the project, and explained that project splitting undermines the whole goal of environmental assessments. He argued that assessment should look at all connective actions, as has been the case in the U.S. for 30 years. He acknowledged that the bill is trying to strengthen the requirement for transparency and accountability at the approval stage, and is better than CEAA 2012 for project approval. He noted that more guidance is good for proponents, but pointed out that the challenge is that sustainability involves economic, social, and environmental considerations and thus some trade-offs. He suggested the bill be explicit as to what the trade-offs are. He continued that the Act could do more to hardwire innovation by using impact assessments to encourage it. He acknowledged that this requires considering best available technologies, but suggested it should say "technologies or practices", and that there should be a justification offered if it is determined that using the best available technologies is not feasible. He added that this should be put in the approval criteria as well. Finally he argued that the bill unnecessarily tries to define federal jurisdiction, and that this adds complications.

Virginia Flood (Suncor Energy Inc.) noted that Suncor has been an active participant in the consultations to provide views on CEAA 2012, and highlighted the need to maintain competitiveness in the industry. She suggested that the perception is that the pace, scale, and scope of environmental regulatory change is rapid, vast, and unprecedented. She acknowledged the need to address concerns about climate change and to restore confidence in impact assessments, adding that it is critical for Canada's future that the federal legislative agenda proceeds with care to ensure environmental policy is enacted in a way that ensures competitiveness. She expressed support for broad-based carbon pricing mechanisms if balanced with other regulations and fiscal relief, while taking into account competitiveness with other jurisdictions that do not have the same cost. She added that the government needs to lead with one eye on

the environment and one on the economy. She noted that Suncor strives to be leaders in sustainability, but pointed out that limited market access and restrictive policy measures lead to project uncertainty and the diversion of investment. She explained that direct investment in Canada has fallen, including the retreat of investment in the oil sands. She expressed support for a strong environmental policy but argued that this is not mutually exclusive from a competitive regulatory framework. She highlighted the transition from CEAA 2012 to the new model, and noted that legislative change introduces uncertainty. She recommended that Bill C-69 clarify the transitional provisions to mitigate uncertainty, adding that there is uncertainty regarding the bill's final wording, the coming into force date, what activities will be included, and what guidance will be associated with the new act and regulations. She recommended changes to provisions to ensure that projects undergoing CEAA 2012 assessment will continue unless the proponent requests a transition to the new Act.

Panel II

Chief Kluane Adamek (Assembly of First Nations) noted that First Nations groups participated in the 2016 consultations with cautious optimism, expressing how First Nations envision the complete overhaul of environmental regulation and legislation. She explained that key concepts including jurisdiction, inherent and constitutionally protected rights, nation-to-nation relationships, and reconciliation were repeatedly mentioned in the consultations. However, she argued that many things are not addressed in the legislation, including concerns regarding ministerial or cabinet decision-making and the approval for major projects using a public interest test. She recommended that the government ensure that the legislation is a beacon to all of Canada that a new era of reconciliation is ongoing where First Nations rights, interests, and jurisdictions are promises kept, not ignored or overlooked. She added that this would support reconciliation called for by the TRC, including observing and implementing UNDRIP. She noted that Chiefs-in-Assembly have called on the AFN to work with Canada to ensure legislation respects First Nations treaties, rights, titles, jurisdictions, agreements, and recognizes traditional territories. She added that the Chiefs also made it clear that any phase in this engagement process cannot be construed as consultation, and that time must be taken to consult directly with rights holders in manner respectful to their circumstances and requirements. She pointed out that the AFN plays a role in communication, coordination, and facilitation but is not a rights holder. She pointed out that while Canada announced full and unqualified support for UNDRIP, which affirms Indigenous peoples' human rights, that this does not mean Canadian law is meeting these minimum standards. She expressed a commitment to working on that effort and on realizing section 35 rights so that it is not necessary to spend years and millions of dollars fighting in the courts. She expressed dissatisfaction with the public interest test and regulatory choice of a project list in the bill, but acknowledged that real legislative time limits require making this bill a workable law that will achieve free, prior, and informed consent (FPIC). She argued that the bill must enable First Nations to fulfill their rights and responsibilities, and called on the government to work with them to establish laws, policies, and practices needed to respect their rights and status as self-determining people. She pointed out that FPIC was not created in UNDRIP or in any bill, as it already exists and is an essential element of the right of all peoples to self-determination. She noted that consent is the essence of mature relationships, and is central to treaty making between self-determining nations. She suggested that the Act needs a better process that is designed with First Nations from the start, pointing to examples of joint decision-making in the modern treaty context such as the Arctic Council. She noted that the CEAA expert panel recommended a process for impact assessment that incorporated First Nations as governments and decision makers at all stages of the process in accordance with their own laws and customs, and required consent before a project could be approved. She added that it is important to understand the AFN is considering what the legislation says and requires, not the expressed spirit of the Act. She pointed out that laws must be written in anticipation of future governments, who may be hostile to Indigenous rights and authorities. She recommended that the bill ensure that ministerial discretion does not infringe on First Nations rights, but moves forward towards a more cooperative, respectful, and jurisdictional arrangement consistent with treaties and rights. She noted that the AFN's written brief called for the protection of First Nations' inherent and constitutionally protected rights, the full inclusion of traditional knowledge systems, and joint decision-making with First Nations governing authorities. She acknowledged that the inclusion and protection of section 35 rights is an important step, but argued the over-reliance on discretionary clauses does not fully protect these rights, adding that they are not aligned with current case law nor do they meet the requirements of constitutional duties outlined in Sparrow or Haida. She noted there was no requirement or duty under the Act to comply with the test in Sparrow for minimal impairment or justification for proven rights, or the test under Haida to accommodate impacts on asserted rights. She pointed out that the minister or governor-in-council must uphold and protect section 35 rights. She expressed strong support for the inclusion of traditional knowledge in the proposed Act, but suggested that the current wording of the provisions is problematic and recommended using the term "Indigenous knowledge systems" while also improving confidentiality and intellectual property provisions to align with UNDRIP. She added that, ultimately, the objectives of reconciliation cannot be achieved if the final decision to approve a project can be made unilaterally without confirmation that the views and concerns of other parties have been addressed. She argued that First Nations' inherent jurisdictions must be recognized, including the ability to

make final decisions at all stages of impact assessments in accordance with their own laws and customs. Lastly, she recommended that the Impact Assessment Act (IAA) and Canadian Energy Regulator Act (CERA) include strengthened provisions to ensure shared decision points through early engagement, assessment, and monitoring phases.

Terry Teegee (British Columbia Assembly of First Nations) noted that the Prime Minister had commented on the relationship with Indigenous people as being the most important relationship and that they had a meeting last week with the province of B.C. and federal government looking to fully implement Indigenous peoples' rights and reconciliation. He suggested that Bill C-69 falls short in recognition of the core principles of UNDRIP, and expressed concerns in regard to the legislation failing to recognize Indigenous jurisdiction and ability to make decisions. He pointed out that this was an issue with Kinder Morgan, as First Nations made their decisions and were not recognized in the final decisions of the major projects. He acknowledged that the IAA does recognize Indigenous peoples' rights and title, but noted the expert panel on environmental assessments made a clear indication that Indigenous people need to be recognized when it comes to the final decisions on major projects. He also suggested that provisions for Indigenous-led reviews may be impossible to implement, as Indigenous governance may not be recognized and First Nations may not receive proper resources required to lead their own impact assessment process. He noted that the expert panel suggested giving Indigenous traditional knowledge the same weight as Western knowledge, and highlighted how this is necessary to give different world views with major projects and provide better understanding for how Indigenous peoples use the land. He explained that the deficiencies in IAA are also in CERA with respect to recognizing the jurisdiction and ability for Indigenous people to make decisions in regard to UNDRIP – and more importantly their ability to make FPIC decisions. He suggested that there should be provisions for resourcing and funding Indigenous peoples and elders' participation throughout the process, as well as having communication strategies with Indigenous peoples to fully understand some of the scientific explanations with environmental assessments, stressing that this is important to ensure the informed part of FPIC. He added that this goes both ways, as the governments of Canada and the provinces need to understand the Indigenous world view prior to any major project being greenlit. He suggested this was a flaw with Kinder Morgan, as it does not meet the standards for some of the First Nations.

Chief Jim Boucher (Fort McKay First Nation) explained that Fort McKay is at the centre of the oil sands in Alberta, and that oil sands production has increased from 250,000 barrels per day in the 1970s to 2.5 million today – with the majority of the increase taking place in the last two decades. He pointed out that this growth takes up 75% of his First Nation's traditional territory through mineral leases awarded by the provincial government without proper consultation. He noted that his First Nation's sustainability department blends scientific expertise with traditional knowledge for sustainable development that is defined as meeting the social needs of the present without compromising those of future generations. He highlighted the need for economic opportunities that enable passing on traditional lands to future generations. He suggested that Bill C-69 affirms the government's commitment to recognize Indigenous rights and traditions, adding that it has been easy for governments to talk about reconciliation but harder to translate that into action. He noted that he was perplexed to see the government relinquish fiduciary duty to First Nations to assess and mitigate developmental impacts that affect reserve lands and traditional territories, and First Nations people and treaty rights to the lower orders of government. He pointed out that Fort McKay is not opposed to oil sands development, but is also surrounded by oil sands development that has increased 1000% since the 1970s. He suggested that working with industry to advance shared objectives requires mutual respect and acknowledgement, adding that section 35 grants First Nations the right to continue a way of life. He noted that it also demands the identification of the full range of impacts to First Nations and takes action to mitigate and accommodate their concerns. He explained that the concerns with Bill C-69 relate to the lack of requirement for proponents, First Nations, and governments to work together to ensure adequate impact assessments are meaningful and give adequate respect to First Nations peoples and lands. He argued that Bill C-69 cites transboundary effects but not impacts on reserves or traditional lands arising from activities on provincial lands – adding that these are in effect transboundary. He pointed to existing tailings ponds that contain massive amounts of contaminated water, where a breach from any mine would devastate homes and reserves, but then have no federal presence following approval. He added that tailings ponds have been approved by default since the 1990s based on the advance of future technologies that have still not arrived. He noted other examples include large projects on the border of the Moose Lake reserve and poor air quality issues that have been inadequately administered by the province.

Chief Ernie Crey (Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping) suggested that the provisions of IAA and CERA that delegate authority to Indigenous governing bodies is too restrictive, and will defeat the objectives of advancing reconciliation and involvement in major projects. He stressed the need to ensure that there is enough time to inform Indigenous communities effectively. He offered an overview of the Indigenous Advisory and Monitoring Committee for the

Trans Mountain Pipelines and Marine Shipping, explaining that over 60 Indigenous communities came together to monitor pipelines and shipping. He noted that the federal government agreed and committed to developing an oversight committee with Indigenous communities. He pointed out that significant funding of nearly $65 million over 5 years was approved, and the committee was formally established in July 2017. He explained that there are up to 13 Indigenous members and 6 from the federal government and National Energy Board. He pointed out that the Indigenous members seek to represent the interests of 117 affected Indigenous nations and communities, but do not formally represent them – as there are too many affected to allow that. Instead, he suggested that they are selected by the nations in particular regions to sit on the committee and to seek to represent Indigenous interests broadly – and emphasized that this does not replace the duty to consult. He noted that the role of the Indigenous Advisory and Monitoring Committee is to monitor to ensure rules and conditions are being followed, to give advice about those rules, and to give funding to communities for projects relating to the pipelines and shipping.

Questions for Witnesses:

Panel I

Mike Bossio (Liberal) asked if witnesses support the new early planning phase, if there should be meaningful public participation and funding for it in the early planning phase – and if so, why this is important, whether the witnesses are satisfied with the provisions in bill C-69, and if they have any recommendations for reform if they are not. He wondered if the government should be establishing a statutory right of appeal, and what else is needed for accountability purposes.

Stewart Elgie (Smart Prosperity Institute) noted that early planning is vital to provide clarity, scope, and direction for an environmental assessment. He suggested that most cases going to court have been a result of a large group feeling that their concerns did not have a venue to be heard. He added that the first goal is to do things right so no one feels the need to appeal or sue, but explained that there are better outcomes from specialized review panels, as judges often do not know that particular area. He clarified that he would not use the word “appeal” as it should not be an open-ended right of appeal, but should be narrowed to substantial and serious areas.

Martin Olszynski (As an individual) explained that public participation provides an opportunity for groups to resolve contentious issues. He added that, when done impartially, this secures greater acceptability of a project. He pointed out that the federal court of appeal often declines to look at the science as it is not in their wheelhouse, adding that courts have a role but specialized review bodies would be better.

Ed Fast (Conservative, Vice-Chair) noted that Ms. Flood referenced competitiveness and said there is ongoing diversion and retreat of investment in Canada. He quoted Suncor’s CEO as saying that the company will not be exercising large capital projects that have been recently finished unless there are some changes and improvement in competition. He asked what was meant by that, and why Suncor would spend billions in building capacity and not use those projects. He also quoted Suncor’s CEO as saying that the cumulative impacts of regulation and higher taxation is making Canada a more difficult jurisdiction to allocate capital in, and wondered what was meant by higher taxation. He asked what taxes should be rolled back to make the economic and investment environment more attractive, and whether Bill C-69 as written will improve Canadian competitiveness.

Virginia Flood (Suncor Energy Inc.) explained that the large capital projects are long life assets that require assumptions at the start, adding that there are several contributing areas including lack of market access, low commodity prices, and uncertainty with new regulations and policies. She stated that Suncor is supportive of many of the government’s policies, including work on climate change and putting a price on carbon. She suggested that the change from the U.S. being their biggest customer to now being their biggest competitor has caused issues that are not specifically focused on taxation. She related that she was at the committee to discuss environmental assessments and not the specifics of the taxation regime, reiterating that Suncor is supportive of broad-based carbon taxation. She explained that there are some aspects in Bill C-69 that need improvement to provide better certainty and clarity, but expressed support for many aspects of the bill – including the focus on Indigenous communities.

Linda Duncan (NDP, Vice-Chair) asked if strategic and regional assessments should be left up to the Agency or minister's discretion, or should be specified in regulations or statutes as to the criteria for them. She also asked if the law should specify timing. She noted thatthere is a lot of concern about the designated project list and loss of the law list. She wondered if the solution to this is in expanding ways to add projects to the designated list, or going back to the law list.

Martin Olszynski (As an individual) suggested that the more criteria included in the legislation the better, as this provides certainty and predictability.

Stewart Elgie (Smart Prosperity Institute) reiterated that this is the most important part of the Act but suggested that it is not possible to legislate a certain number of assessments and it is hard to create criteria. He pointed out that many of the regional assessments include areas and activities in provincial jurisdictions, and so would work best if the federal and provincial governments cooperate. He suggested that there is a need to encourage as many assessments as possible and at least have a list of what is viewed as the priorities. He noted that the law list meant there were thousands of screenings each year, and that this has been largely eliminated since. He argued that, if the trade-off of not doing those screenings is good quality regional assessments, it will result in better outcomes for the economy and environment.

Alison Ronson (Canadian Parks and Wilderness Society) noted that it is hard to figure out how to trigger a regional assessment with cross boundary effects. She suggested that one glaring question is whether a project will impact parks, especially those with world heritage status.

Virginia Flood (Suncor Energy Inc.) explained that Suncor supports strategic and regional assessments, as long as they inform and support other decision-making and are not simply repeating a project assessment.

William Amos (Liberal) noted the previous comments on constitutional jurisdictions, and asked how the bill is asserting or not asserting proper federal jurisdiction – and wondered about the proper way to go about that. He then asked about project splitting and the idea of one project, one assessment. He prompted Ms. Flood for her thoughts on the notion of a specialized review tribunal or some kind of recourse to be used in limited circumstances, to avoid a historic pattern of panel reports getting litigated and spending years in the court systems.

Martin Olszynski (As an individual) explained that the last word on federal jurisdiction was the 2010 Mining Watch Supreme Court decision as to whether the Department of Fisheries and Oceans could reduce its environmental assessment responsibilities to just those parts that would have an impact on federal jurisdiction. He recalled that the Court decided there was no ability to do that under the Act, so the mine was triggered by a fisheries impact assessment that enabled the federal government to assess the whole thing. He recommended reading the report of the federal review panel on the New Prosperity Gold-Copper Mine Project, pointing out that a great deal of thought went into determining what was a federal effect, provincial effect, and incidental effect. He noted that the panel concluded that effects on grizzly bears were a federal issue because the destruction of the lake would have an impact on their habitat. He added that the interconnectedness of ecosystems and species makes determining jurisdiction of a project rather difficult. He noted that the idea of cooperative federalism is useful for the one project, one assessment mantra – adding that the federal government, by having jurisdiction, can set the baseline of a strong, rigorous environmental assessment and can invite the province to collaborate on it.

Virginia Flood (Suncor Energy Inc.) suggested that it would be a good idea to have people who are knowledgeable looking at all the facts, adding that litigation takes time and creates uncertainty.

Robert Sopuck (Conservative) expressed shock at how little discussion there has been on the impacts on people and communities, arguing that he had heard an academic discussion and that the effect of these processes on communities is devastating. He noted that Mr. Bloomer of the Canadian Energy Pipeline Association, spoke about Canada's toxic regulatory environment at a previous meeting and quoted him as saying that, if the goal is to curtail oil and gas production and have no more pipelines, Bill C-69 may have hit the mark. He asked if Mr. Bloomer overstated the case. He pointed out that the Royal Bank CEO recently urged the government to act to stem the outflow of capital, and suggested that Ms. Flood was understating the seriousness of the impact on the economy. He asked for comment on the people and investment aspect.

Virginia Flood (Suncor Energy Inc.) suggested that Suncor has a very comprehensive process and works closely with other companies, as well as in and with those communities. She noted that it is critical to have a process where companies engage with community members. She declined to comment on what Mr. Bloomer said, but explained that a robust environmental assessment that provides confidence is needed, adding that there is a big difference between a pipeline project and a mine or oil sands, as there are more communities with often differing views involved in linear projects like roads, phone lines, and pipelines. She suggested that without a robust economy there will not be a robust environment. She spoke about the need to have processes that look at all aspects of it, economic, social, and environmental, figure out how that works for Canadians, and get the best projects going forward.

Panel II

John Aldag (Liberal) asked for any additional thoughts on how the IAA and any of Bill C-69 could incorporate FPIC in a manner that could work with the number of impacted communities on any project.

Tim Dickson (Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping) recommended making sure that the provisions in both IAA and CERA that allow for the delegation of decision-making authority are realistic and achievable. He noted that the provisions define those that can receive authority as Indigenous governing bodies, but suggested this is not achievable when there are many nations impacted by a project. He explained that the Act should provide for more flexibility, as there may be times when there is sufficient support from the Indigenous nations to form a body that, while not replacing the duty to consult, would be able to exercise some authority. He suggested that the government could let the regulations and the minister make a determination on a case-by-case basis as to when delegation is appropriate and to what kind of body.

Kluane Adamek (Assembly of First Nations) explained that there is no one-size-fits-all approach to achieving FPIC, but that a dialogue between government and Indigenous people is needed to establish how FPIC will be obtained and respected. She suggested looking at the nation-to-nation relationship in order to ensure FPIC is navigated, obtained, and respected.

Terry Teegee (British Columbia Assembly of First Nations) noted that, in the Council's experience with many nations needing to agree on a project, communication took a great deal of time and resources. He suggested that nations should be allowed to create groups or appear as independents, and have the resourcing to look at the project and assert their right.

Ed Fast (Conservative, Vice-Chair) suggested that there is an underlying assumption that First Nations are opposed to development, and expressed pleasure that Chief Crey made First Nations' prosperity an integral part for reviewing serious environmental impact. He noted that Chief Crey previously indicated that the cancellation of the TransMountain pipeline would cost hundreds of millions of benefits, job training, and business opportunities, and asked what benefits energy projects can have for First Nations communities. He quoted Chief Crey as calling environmentalists "redbaiters" and asked for an explanation on this. He asked how Bill C-69 should be amended to reflect that the delegation of power should be broader than just to Indigenous governing bodies in consultations.

Chief Ernie Crey (Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping) noted that he was speaking as a Chief on this question, and warned that hundreds of millions will be lost to First Nations all along the pipeline route if the project does not proceed. He pointed out that his own community negotiated hard and got mutual benefits, adding that they have been striking bargains and arrangements with nearby companies to compete for contracts with prime contractors that Kinder Morgan has. He emphasized that jobs resulting from the pipeline will last, and that the communities are alive with excitement at the prospect. He clarified that he had accused environmentalists of "redwashing" their agendas and goals, and explained that they slip their own agendas to First Nations and try to fly their agendas under the Indigenous flag in many instances, although he acknowledged that this is not the case in all circumstances. He cautioned First Nations leaders and communities about this. He noted that his First Nation wants to see this succeed, and has recommended not constructing legislation that precludes First Nations themselves. He recommended constructing it in such a way that Indigenous nations can form larger groupings that operate under one tent.

Linda Duncan (NDP, Vice-Chair) asked whether there was support for UNDRIP specifically being referenced in the purpose and substantive provisions of the Act. She wondered if the reference to section 35 is sufficient. She noted that other witnesses have called for an obligation to enter into regional assessments before a project is reviewed, and wondered if there should be specific triggers for regional assessment.

Chief Jim Boucher (Fort McKay First Nation) noted that his First Nation is seeking FPIC with respect to a project, with First Nations involved from the start – including in capacity development in the communities. He cited the need for a strong focus on the environmental assessments and clarity with what needs to be assessed, what projects get on the impact list, and the capacity to address concerns that arise with better understanding of what the project entails. He suggested that the reference should be very specific and refer to the points he made. He explained that regional assessments are very important and should be included in the Act, and that it is incumbent on Canada to ensure the jurisdiction is not only reserve lands. He pointed to the right to hunt, trap, and fish in Treaty 8, adding that any effects on those rights and their ability to be able to practice those rights should be assessed. He noted that the Athabasca River contains fish that they are not allowed to eat because of industrial activity, and suggested that the Act should address those even though they are not on federal lands.

Terry Teegee (British Columbia Assembly of First Nations) suggested that UNDRIP should be addressed throughout the Act, adding that the Council has had several meetings with ministers Bennett, Philpott, and Wilson-Raybould in regards to recognition of Indigenous rights. He added that, throughout their proposals, they have recommended the UNDRIP for FPIC in their rights and title, and that section 35 needs to be there as well. He pointed out that it has been reaffirmed in many court cases won by many First Nations.

Kluane Adamek (Assembly of First Nations) explained that the Act needs to go beyond section 35 and cannot merely consider adverse impacts on section 35 rights. She suggested that it is incredibly important that the legislation considers a rights recognition framework and continues to advance recognition of Indigenous rights in Canada. She added that considering adverse effects has to be at the forefront of legislation.

James Maloney (Liberal) noted that the Natural Resources committee has heard conflicting opinions on how projects are received and the impacts on different communities, as well as what happens when organizations coopt Indigenous voices. He asked how the proposed legislation impacts Indigenous participation in the process generally. He shared the rest of his time with Mr. Bossio.

Tim Dickson (Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping) suggested that the bill takes some steps in the right direction, but that a lot of room for improvement remains. He explained that it is important that the legislation be specifically looking beyond section 35 rights to UNDRIP and participation by Indigenous peoples. However, he stressed that there must be funding to make that happen. He pointed out that there should be support for the formation of advisory committees and similar groups that can effectively engage in the regulation of the projects, whether on the approval process or post-approval. He asserted that having the flexibility to form these committees and let Indigenous sides speak for themselves through the formation of large groupings – where there is the desire to do that – must be provided for in the legislation.

Mike Bossio (Liberal) wondered how FPIC should be reflected in the IAA, noting that some have said that FPIC is a veto while others say the rights of one group do not abrogate the rights of others.

Sara Mainville (Assembly of First Nations) explained that AFN has been working on processes with the federal government to better inform them on how to have a process that fits in with other diverse processes. She noted that Indigenous nations have their own laws and legal traditions. She suggested that they have been establishing schematic designs for the decision made in the IAA to see if there is room for a joint decision with a committee or a joint decision-making group with Indigenous groups involved. She explained that they would like to see strong recognition of inherent governing authority. She noted that there is also a big capacity piece that needs to be talked about with the federal government, including with Ministers McKenna, Carr, and Bennett. She pointed out that this is included in their submission as a very friendly suggestion about the Ministers engaging with each other on a specific capacity building piece in the legislation to ensure that happens. She added that what the AFN also wants to see is capacity for the First Nations with respect to FPIC, including Indigenous governments making a decision.

Colin Carrie (Conservative) noted that foreign direct investment numbers are shocking, with the numbers in 2017 being half of those from 2015. He pointed out that the Prime Minister said that they cannot shut down the oil sands tomorrow but that they need to be phased out, and that people are giving up on investing in Natural Resources in Canada because of a hostile environment. He asked if there is anything in Bill C-69 that will help Indigenous communities work to attract more foreign investment and get rid of uncertainty.

Chief Ernie Crey (Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipelines and Marine Shipping) suggested that Aboriginal peoples are cast in the role of those opposed to development, but that Canada needs investment in its natural resources in order to maintain its status and values. He acknowledged that Indigenous and non-Indigenous communities are separate, but noted that their economic wellbeing is linked. He highlighted the importance of foreign investment in Canada and the benefits from it, adding that he is troubled by the idea that foreign investment is on the decline because of a lack of certainty.

Chief Jim Boucher (Fort McKay First Nation) noted that Canada should be encouraging investment and setting the stage for that investment to occur. He suggested that CEAA is an important piece and that people need to be confident that they are not powerless with respect to their concerns about a project. He pointed out that other issues surround First Nations in terms of constitutional and treaty rights, adding that it is up to the government to resolve those concerns and develop capacities in the communities so people are educated, participate in the economy, and are independent.

Future Business:

The committee will continue examination of Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, on Wednesday April 18, 2018, at 3:30pm.

- Scheduled witnesses include: Joshua Ginsberg (Ecojustice Canada), Bill Namagoose and Jean-Sébastien Clément (Grand Council of the Crees (Eeyou Istchee)), Jamie Kneen (Mining Watch Canada), Anna Johnston (West Coast Environmental Law Association), Stephen Hazell (Nature Canada), Jay Morrison (Paddle Canada), Rodney Northey (As an individual)

MPs in Attendance:

Liberal	Conservative	New Democrat
Deborah Schulte (Chair)	Ed Fast (Vice-Chair)	Linda Duncan (Vice-Chair)
John Aldag	Robert Sopuck	
William Amos	Colin Carrie	
Mike Bossio		
Darren Fisher		
Jonathan Wilkinson		
James Maloney		
Sean Fraser		