



ONTARIO ENERGY BOARD

FILE NO. EB-2025-0313

Enbridge Gas Inc.

VOLUME: 1

DATE: July 9, 2026

BEFORE: Damien A. Côté
Patrick Moran
James Sidlofski

Presiding Commissioner
Commissioner
Commissioner

THE ONTARIO ENERGY BOARD

Enbridge Gas Inc.

Cedar Springs Community Expansion Project

Oral Argument

Hearing

held in person and virtually
at 2300 Yonge Street, 25th Floor, Toronto, Ontario
on Thursday, July 9, 2026, commencing at 9:30 a.m.

Volume 1

A P P E A R A N C E S

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I N D E X O F P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
--- Upon commencing at 9:30 a.m.	1
LAND ACKNOWLEDGEMENT	1
APPEARANCES	3
SUBMISSIONS BY B. GRAY (ENBRIDGE):	4
QUESTIONS BY COMMISSIONER MORAN:	32
QUESTIONS BY COMMISSIONER SIDLOFSKI:	47
--- Upon recessing at 10:54 a.m.	52
--- Upon resuming at 11:10 a.m.	52
QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:	52
SUBMISSIONS BY B. RABINOVITCH (SIX NATIONS)	72
--- Upon recessing at 12:24 p.m.	100
--- Upon resuming at 1:26 p.m.	100
QUESTIONS FROM COMMISSIONER MORAN:	125
QUESTIONS BY COMMISSIONER SIDLOFSKI:	138
QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:	146
--- Upon recessing at 2:52 p.m.	159
--- Upon resuming at 3:10 p.m.	159
SUBMISSIONS BY S. POPE (OEB):	160
QUESTIONS BY COMMISSIONER SIDLOFSKI:	175
QUESTIONS BY COMMISSIONER MORAN:	180
QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:	183
SUBMISSIONS BY B. GRAY (ENBRIDGE):	185

I N D E X O F P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:	200
--- Whereupon the proceeding concluded at 4:24 p.m.	207

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
EXHIBIT K1.1: Enbridge compendium	160
EXHIBIT K1.2: SIx Nations compendium	160
EXHIBIT K1.3: OEB STAFF compendium	160

1 Thursday, July 9, 2026

2 --- Upon commencing at 9:30 a.m.

3 PRESIDING COMMISSIONER CÔTÉ: Okay. Good
4 morning, everybody. I will begin with a land
5 acknowledgement this morning.

6 **LAND ACKNOWLEDGEMENT**

7 PRESIDING COMMISSIONER CÔTÉ: By acknowledging
8 the land on which we operate, we recognize the unique
9 relationship each of us has with the land and the
10 Indigenous peoples who have been living and working
11 here for thousands of years. With these words, we
12 renew our commitment to learning and reconciliation.

13 The Ontario Energy Board acknowledges that our
14 headquarters in what is now called Toronto is located
15 on land covered by Treaty 13, and it is the territory
16 of the Anishinaabeg Nation, the Haudenosaunee Nation,
17 and Wendat Nation. The long and rich history of this
18 land is marked by many other treaties and nation-to-
19 nation agreements, including the Dish With One Spoon
20 and the Two Row Wampum Belt covenants.

21 Traditionally, this land was a meeting place for
22 many Nations from Turtle Island and is now home to
23 many First Nations and Métis peoples and Inuit. I'm
24 grateful for the opportunity to live, work, and learn
25 on this land, and we acknowledge our shared
26 responsibility to all the relations as we work toward
27 a sustainable, equitable energy sector across
28 Ontario.

1 So good morning, everybody. We will get started
2 this morning. This, for the record, is case EB-2025-
3 0313. It is the Enbridge Gas Cedar Springs Community
4 Expansion Project.

5 Today's program is as follows: We will do our
6 registration of appearances. I understand for the
7 record we have no preliminary matters this morning.
8 We will then turn to submissions from the parties.
9 Of course, the Applicant will go first, Six Nations
10 of the Grand River second, OEB Staff will follow, and
11 Enbridge will have an opportunity for reply.

12 The Panel throughout will have potentially
13 questions, and we intend to insert those after each
14 submission. And we may take a pause if needed to
15 prepare or otherwise revise our questions before we
16 do so.

17 It is planned in the schedule that we will have
18 a break at around 11:00 a.m., but there is a chance,
19 as you might appreciate, that a break can potentially
20 happen any time, so we will see how it goes, and we
21 will play it by ear.

22 The Panel assigned to this matter before you
23 today, they consist to my left of Commissioner
24 Patrick Moran and, to my right, Commissioner James
25 Sidlofski.

26 So I will turn now to the registration of
27 appearances. So I would ask for parties to state
28 their name and to spell the last name for the record,

1 please. And I will start with Enbridge Gas Inc., for
2 Short, "Enbridge."

3 **APPEARANCES**

4 B. GRAY: Good morning, Commissioners. My name
5 is Bryn Gray. I am counsel for Enbridge Gas. I am
6 joined to my left by -- with Patricia Squires, who is
7 manager, regulatory applications, leave to construct.
8 To my left is Matthew Webster, senior legal counsel,
9 Enbridge Gas. And to the left of him is Tania
10 Persad, associate general counsel at Enbridge Gas.

11 PRESIDING COMMISSIONER CÔTÉ: Good morning, Mr.
12 Gray. For the record, I believe that is G-R-A-Y?

13 B. GRAY: It is, yes.

14 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.

15 I will turn it to Six Nations of the Grand
16 River.

17 B. RABINOVITCH: Good morning. My name is
18 Brittiny Rabinovitch, and I am counsel to Six
19 Nations. I have with me here my colleague, Allison
20 Spiegel, and Peter Graham, who is the consultation
21 supervisor at Six Nations of the Grand River.

22 PRESIDING COMMISSIONER CÔTÉ: And could we
23 please get the spelling for the record.

24 B. RABINOVITCH: Yes. Spelling of my name is B-
25 R-I-T-T-I-N-Y, R-A-B-I-N-O-V-I-T-C-H. Allison is A-
26 L-L-I-S-O-N, S-P-I-E-G-E-L. And Peter Graham. I am
27 happy to spell that, but I think that has generally
28 one spelling.

1 PRESIDING COMMISSIONER CÔTÉ: Thank you very
2 much, and good morning.

3 B. RABINOVITCH: Good morning.

4 PRESIDING COMMISSIONER CÔTÉ: OEB Staff, over to
5 you.

6 S. POPE: Thank you. Good morning. My name is
7 Stephanie Pope, and I am OEB counsel. And I have
8 with me Natalya Plummer, who is advisor, natural gas.
9 And I have Lindsay Wright, director, natural gas and
10 supply. And in the back here, I have Maya Hribar, an
11 articling student at the OEB, and I have Shelly-Anne
12 Connell, hearings advisor. Thank you.

13 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you,
14 and good morning.

15 Okay. With that, I believe we are ready to
16 proceed. So I am looking at Enbridge, Mr. Gray, I
17 believe, will get us started with your submissions.
18 I will turn the floor over to you.

19 **SUBMISSIONS BY B. GRAY (ENBRIDGE):**

20 PRESIDING COMMISSIONER CÔTÉ: It seems to have
21 worked earlier, Mr. Gray.

22 B. GRAY: It was working earlier, but now it is
23 not going on. I can switch spots. Now it is on. I
24 will stay back.

25 Good morning. Enbridge Gas Inc. seeks an order
26 under Section 95(2) of the *Ontario Energy Board Act*
27 exempting it from the requirement to file a leave to
28 construct application for the Cedar Springs Community

1 Expansion Project in Burlington.

2 Enbridge Gas has met, in our submission, the
3 first two technical requirements for this exemption,
4 and our submissions this morning will focus on why
5 this the Panel should determine that the third
6 requirement has been met because the Duty to Consult
7 has been adequately discharged.

8 Before turning to this issue, we want to
9 underscore that Enbridge Gas is committed to
10 meaningful engagement with Indigenous communities and
11 respects Aboriginal and Treaty rights. Enbridge Gas
12 recognizes that consultation is an essential process
13 for identifying potential impacts to rights and
14 measures to avoid or minimize them and that early and
15 ongoing Indigenous engagement is an important part of
16 how it develops projects. The company views every
17 consultation as an opportunity to listen, learn, and
18 build positive relationships.

19 With that in mind, my submission will focus on
20 three issues today.

21 First, I will briefly describe the project and
22 certain features that demonstrate that it is very
23 unlikely to have any adverse impact on Aboriginal and
24 Treaty rights.

25 Second, I will set out the exemption
26 requirements and the applicable Duty to Consult
27 principals.

28 Third, I will explain how the Duty to Consult

1 has been met for each identified Indigenous group.

2 Turning first to the project. It is a small-
3 scale natural gas distribution project in Burlington.
4 It is estimated to cost \$2.7 million and involves the
5 construction of approximately 3.2 kilometres of 2-
6 inch polyethylene pipeline adjacent to existing
7 routes. The project arises from the province's
8 natural gas expansion program and will provide
9 natural gas service to approximately 61 residential
10 customers. And the project is supported by the City
11 of Burlington.

12 To illustrate the size and location of the
13 pipeline, I want to take you to a map at Tab 3A of
14 our compendium. So this map is taken from the
15 environmental report which was prepared in part when
16 Enbridge was contemplating a longer pipeline.

17 And we have highlighted -- so the longer
18 pipeline that was initially contemplated is in red.
19 We have highlighted in green the pipeline that is
20 before you in the existing application. And the
21 right-of-way, as you can see, follows existing
22 routes, any semi-rural area of Burlington with
23 houses, and agricultural lands. And there are some
24 images I will take you to later where you can see
25 that more clearly.

26 There are four features of this project that
27 demonstrate the minimal potential for impacts to
28 Aboriginal and Treaty rights.

1 First, the pipeline will be installed within an
2 existing previously-disturbed municipal road
3 allowance using horizontal directional drilling,
4 which, as you know, is a trenchless construction
5 method. This can be seen in the aerial imaging at
6 Tab 3B of our compendium.

7 I would ask to pull up page 2. Keep going
8 forward. Please continue. Keep going forward.
9 Next, next, next page. Right there.

10 So you can see in this image in front of you the
11 right-of-way runs beside Cedar Springs Road in
12 purple. And the two green dots are the drill pit
13 locations for this segment of the pipeline. The
14 remainder of the pipeline in the area in purple will
15 -- the installation of that pipeline will occur
16 underground without any surface disturbance. So the
17 only area on this image that will be disturbed on the
18 surface are the two green dot areas.

19 We go to the next page, 3, is another image --
20 and there is images throughout this exhibit. Another
21 image where you can see the drill pit locations,
22 again, adjacent to the road and the road allowance.
23 And in this case, it is adjacent also to driveways
24 going to residences.

25 And so on this image, again, the only area that
26 is going to be disturbed on the surface are the two
27 areas marked in green. And this imaging was sent to
28 Six Nations at their request to provide additional

1 information on the location of drill sites.

2 As you can see, this installation method
3 significantly limits the disturbance area of what is
4 already a disturbed area. The fact that it is
5 confined to areas already developed for road
6 infrastructure is also consistent with the OEB's
7 environmental guidelines.

8 The second point that I would like to make is
9 that there is no provincial rare vegetation
10 identified in the project area, and no trees are
11 anticipated to be removed during construction. Once
12 construction is complete, the disturbed areas will be
13 returned to a pre-construction condition. And the
14 construction window is about approximately two
15 months, proposed to take place later this fall. I am
16 not going to take you to this, but the references for
17 this are in our compendium at Tab 4B and at Tab 7,
18 Item T.

19 Third, the environmental report for the project
20 identifies appropriate mitigation measures for each
21 category of potential impact, including wildlife, and
22 concludes that no significant adverse residual
23 impacts are anticipated.

24 The summary table setting out findings is at Tab
25 4A of our compendium, which I am not going to take
26 you to, but I just wanted to have that before you so
27 you can look at it. And Enbridge Gas is committed to
28 implementing all of Stantec's recommended mitigation

1 measures.

2 The final point that I want to emphasize is that
3 no Indigenous group has identified any harvesting
4 activities occurring within the road allowance that
5 is being used for this project during the
6 consultation process. To the extent there is any
7 impact, our submission is that it would temporary and
8 limited to the construction period as the pipeline
9 will be underground, and the limited disturbed areas
10 will be restored to pre-existing condition.

11 I want to turn now to the requirements for an
12 exemption in the applicable Duty to Consult
13 principles.

14 Section 95(2) of the *OEB Act* requires the OEB to
15 grant an exemption from leave to construct if three
16 criteria are met under Section 3.0.1(1) of Ontario
17 Regulation 328/03.

18 First, leave must only be required because of
19 the cost trigger under Section 90(1)(b) of the *OEB*
20 Act. This is the case here as the other triggers for
21 leave in Section 90(1) are not met because the
22 pipeline is under 20 kilometres, uses pipe under 12
23 inches, and will have an operating pressure of less
24 than 2,000 kPa's. I won't take you to this, but the
25 facts supporting this are set out in the description
26 of the project facilities which can be found at Tab
27 14 of our compendium.

28 Second, the pipeline must cost more than \$2

1 million, but not more than \$10 million. This
2 requirement is also met because the estimated project
3 cost is \$2.7 million which is confirmed in the
4 project cost schedule at Tab 15 of our compendium.

5 Third, the third requirement and the focus of
6 today's hearing is that the Board determines that the
7 duty to consult has been adequately discharged if it
8 applies in respect of the application. Before
9 addressing why it has been met here, we will first
10 address certain key principles of the Duty to Consult
11 that are relevant to this application.

12 The Duty to Consult is triggered whenever the
13 Crown contemplates conduct that has the potential to
14 adversely impact asserted or established Aboriginal
15 or Treaty rights. Here, the Ministry Of Energy and
16 Mines determined that the project may have the
17 potential to adversely affect asserted or established
18 Aboriginal Treaty rights and delegated the procedural
19 aspects of consultation to Enbridge Gas by way of a
20 delegation letter dated October 19th, 2021.

21 That letter identified MCFN and Six Nations as
22 communities that needed to be consulted, and Enbridge
23 Gas was directed to consult both the elected and the
24 hereditary leadership of Six Nations.

25 We would like to highlight five particular
26 principles that are relevant to assessing adequacy
27 here.

28 First, the depth of consultation required in any

1 given situation varies and depends on the strength of
2 claim and the degree of potential impact of the
3 proposed government action on rights. And this is
4 discussed in the *Haida* decision at Tab C, paragraphs
5 43 to 45 for your reference.

6 At the low end of the spectrum where the claim
7 is weak and impacts are minor, the Crown may only
8 need to give notice, disclose information, and
9 discuss issues raised. At the higher end where the
10 claim is strong or there are established rights and
11 impacts that will be significant, deep consultation
12 may be required including the opportunity to make
13 submissions, participate in the decision-making
14 process, and accommodation.

15 The MEM's delegation letter, which is at Tab 13
16 of our compendium, did not assign a specific depth of
17 consultation and did not identify any particular
18 impact on rights. We submit that the duty to consult
19 falls at the low end of the spectrum, and at most, at
20 the moderate level given the project's minimal
21 footprint within an existing road allowance, the
22 mitigation measures that will be in place to prevent
23 impacts, and the fact that no Indigenous group has
24 identified Aboriginal and Treaty rights that are
25 being exercised within the project area or any
26 related adverse impact to rights.

27 The second principle that I wanted to highlight
28 is that the duty to consult is focused on appreciable

1 impacts to rights flowing from the specific Crown
2 decision at issue, and not broader issues. This is
3 made clear in paragraphs 46 and 49 of the Supreme
4 Court's *Rio Tinto* decision which you can find at Tab
5 E of our compendium.

6 While broader issues may be raised, what the
7 proponent is reasonably expected to address is
8 confined to the adverse impacts flowing from the
9 specific approval sought. I will return later to
10 this point in discussing cumulative effects, issues
11 raised by my friend.

12 Third, consultation must be meaningful and
13 conducted in good faith with an open mind, and it can
14 give rise to a duty to accommodate in certain
15 circumstances, which involves taking steps to avoid,
16 mitigate, or minimize effects on rights.

17 That said, the duty does not guarantee any
18 particular accommodation. It guarantees a right to a
19 process and not a specific outcome. There is no duty
20 to agree and no Indigenous veto, and this has been
21 recognized in numerous cases by the Supreme Court of
22 Canada.

23 A good summary of these principles are set out
24 in the *Ktunaxa* decision of the Supreme Court at
25 paragraphs 79 and 80, which you can find for your
26 reference at Tab D. This is also addressed in
27 paragraphs -- again, for your reference, paragraphs
28 46 to 48 of the *Haida* decision, paragraph 53 of the

1 *Coldwater* decision, which are found at Tab C and Tab
2 G of our compendium.

3 Fourth, consultation is a two-way process.
4 Indigenous groups have reciprocal obligations to
5 participate in good faith, raise concerns early, and
6 identify impacts with specificity. They may not
7 impose unreasonable conditions, refuse to
8 participate, or frustrate good-faith engagement, as
9 the Court has made clear that balance and compromise
10 are inherent in the reconciliation process and that
11 good governance requires decisions to be made in a
12 timely manner.

13 This is underscored again in numerous decisions
14 including, for your reference, in *Haida* at paragraph
15 42, Tab C; *Ktunaxa* at paragraph 79 to 80, which is at
16 Tab D; and the *Long Plain* decision at paragraphs 158
17 to 159, which is at Tab H of our compendium.

18 Fifth, the adequacy of consultation is not
19 measured by a standard of perfection, and there can
20 be mistakes and missteps. This is supported by the
21 *Coldwater* decision at Tab G, and I want to bring this
22 decision up for you.

23 So if you look at paragraphs 38 -- or paragraph
24 38 midway through the paragraph, the cases on point
25 emphasize that consultation need not be perfect. It
26 follows that the Governor in Council -- in this case
27 the Governor in Council was making the determination
28 on the adequacy of consultation -- that the Governor

1 in Council was entitled to give the government actors
2 leeway in assessing whether their efforts resulted in
3 compliance with the duty to consult.

4 The words of this Court in *Gitxaala Nation* are
5 opposite here. In this case, the subjects on which
6 consultation was required were numerous, complex, and
7 dynamic, involving many parties. Sometimes in
8 attempting to fulfill the duty to consult, there can
9 be omissions, misunderstandings, accidents, and
10 mistakes. In attempting to fulfill the duty, there
11 will be difficult judgement calls on which reasonable
12 minds will differ. And then the Court goes on to
13 talk about what is reasonable and meaningful
14 consultation.

15 It is important to also recall that reasonable -
16 - reasonable satisfaction is not assessed in
17 isolation by looking at an individual interaction,
18 but rather, by looking at whether the consultation
19 process as a whole provided for meaningful
20 consultation. And in looking at that, that would
21 include the additional consultation and participation
22 rights afforded to Indigenous groups through the OEB
23 process.

24 As the Supreme Court confirmed in the Chippewas
25 of -- *Chippewas of the Thames* and *Clyde River*
26 decisions, that regulatory processes can be relied on
27 to fulfill the duty to consult. For your reference,
28 the *Chippewas of the Thames* case can be found at Tab

1 I, and the paragraphs discussing this point are
2 paragraphs 32 to 34.

3 In this case, as you are aware, Six Nations has
4 been an active intervenor filing interrogatories,
5 affidavit evidence, and will be making submissions
6 today. All of this can be considered by the OEB in
7 assessing the adequacy of consultation and the level
8 of consultation that has been afforded to Six Nations
9 in this case.

10 The absence, in our submission, of a letter of
11 adequacy from the MEM does not prevent the OEB from
12 making a determination on this issue. The regulation
13 empowers the Board to decide adequacy of
14 consultation, and a positive letter from the Ministry
15 is not a precondition to making that decision.

16 I now want to turn to the third part of my
17 submissions as to why the duty to consult was met.
18 And I am going to address this in two parts.

19 First, I am going to speak to the comprehensive
20 information that was shared with each group that we
21 say was sufficient for them to understand the project
22 and to identify any concerns about potential impacts
23 to Aboriginal and Treaty rights.

24 Second, I will discuss the specific concerns
25 raised and how Enbridge Gas responded, all of which
26 demonstrates a meaningful process.

27 Dealing first with the information provided,
28 Enbridge Gas sent four separate notices of the

1 project with information about the nature and
2 specific location of the project. These notices can
3 be found at Tabs 9 to 12 of our compendium, and I
4 will bring one up shortly.

5 The notices were sent in September and November
6 of 2021 before the project was paused and in June and
7 July of 2025 when the project resumed. They
8 collectively provided an overview of the project, a
9 description of the proposed pipeline and maps of the
10 project area, the environmental study to be
11 undertaken, and its associated timelines and other
12 authorizations that may be required.

13 It also included an offer for capacity funding
14 and invitations to two different virtual sessions
15 that took place in November 2021 and August 2025.

16 The notice in June 2025 at Tab 11 included an
17 invitation to provide input on potential alternative
18 routes and natural environment features in the area.
19 And the e-mail provided notice that Enbridge plans to
20 file a Leave to Construct exemption application with
21 the OEB following the completion of the environmental
22 report.

23 And I just want to bring up that e-mail, which
24 is now before you because there is an issue around
25 notice of the application. And this is an e-mail
26 that was sent on June the 6th to Six Nations.

27 You will see in the third paragraph:

28 "An environmental study in support of this

1 project will be conducted by Stantec Consulting
2 Ltd. Following the study, an environmental
3 report will be completed in the fall of this
4 year. After that, our team plans to file a
5 Leave to Construct exemption application with
6 the Ontario Energy Board." (as read)

7 I raise this again because the Six Nations have
8 -- have raised concerns about not receiving notice
9 about the Leave to Construct application, and the
10 affidavit of Peter Graham confirms that they received
11 and reviewed this notice. And his affidavit can be
12 found at Tab 2 of the Six Nations compendium,
13 paragraph 5. We don't need to bring that up, but I
14 just commend that reference to you.

15 The notice -- there was a further notice
16 provided in July 2025 that was sent together with a
17 project description report to MCFN, Six Nations, and
18 HDI. And there was an issue with delivery of this
19 notice and the project description report with Six
20 Nations, which I will address momentarily.

21 In addition to the notices, the First Nations
22 were sent an environmental report describing the
23 potential effects of the project on the environment
24 and the recommended mitigation measures, which
25 included a Stage 1 archaeological assessment and
26 further aerial imaging of the right of way, allowing
27 them to clearly see where the project was taking
28 place and the proposed right of way.

1 The environmental report was shared in September
2 2025 with a final version shared in late November
3 2025. The environmental report also identified the
4 fact that the -- that Enbridge Gas would be filing a
5 Leave to Construct exemption application, and that is
6 in Section 1.2.4. The OEB subsequently provided
7 notice of the application to each group once it was
8 filed in November 2025.

9 Turning to the notice issue with Six Nations.
10 On July 18th, Enbridge Gas attempted to send Six
11 Nations the notice of commencement and project
12 description report by e-mail, and as -- this was the
13 fourth notice with respect to the project. The three
14 previous were received by the Six Nations, and that
15 is not disputed. In fact, it is confirmed in the
16 affidavit of Peter Graham.

17 This specific e-mail on July 18th wasn't
18 received due to a delivery failure. Enbridge Gas
19 acknowledges this inadvertent error, but it is
20 important to note that Six Nations had already
21 received the previous notices and, therefore, already
22 had information about the project's nature and
23 location.

24 Moreover, once Enbridge Gas became aware of the
25 issue, it resent the materials. And when the e-mail
26 delivery issue happened again, it hand-delivered the
27 project description report on September the 25th,
28 2025.

1 The environmental report, which included the
2 project description report, was also previously
3 provided on September the 16th and again on November
4 28th. And so Six Nations has had, effectively, both
5 the project description report and the environmental
6 report since September 2025.

7 All three communities were offered capacity
8 funding and numerous opportunities to identify
9 potential adverse impacts on their Aboriginal Treaty
10 rights and to identify any suggestions for avoiding,
11 minimizing, or mitigating potential impacts.

12 Six Nations, MCFN, and HDI were also each
13 invited to participate in field surveys and
14 monitoring of archeological investigations for the
15 project, provided that they entered into monitoring
16 agreements.

17 Six Nations participated in two field
18 investigations; first, an ecological verification
19 survey on October the 21st, 2025; and, second, an
20 ecological vegetation survey on May 28th, 2026, that
21 was conducted specifically at their request.

22 During the May survey, Six Nations
23 representatives accessed portions of the proposed
24 route and had the opportunity to identify potential
25 impacts and any issues of significance. Enbridge Gas
26 understands that no concerns were raised by Six
27 Nations at that time with respect to impacts.

28 In addition to sharing project information,

1 Enbridge Gas was responsive to the issues raised by
2 each group, and the record demonstrates meaningful
3 consultation. I am going to address each group
4 separately. And I will deal first with the
5 Mississaugas of the Credit First Nation.

6 After sharing the project reports and notices,
7 Enbridge Gas met with MCFN virtually in September
8 2025 to provide a presentation on the project, which
9 included an overview of the findings of the
10 environmental report, an update on fieldwork, and to
11 answer any questions they had. I am not going to
12 take you to it, but a copy of the presentation can be
13 found at Tab 8, line item attachment 2.20.

14 MCFN was invited to participate in both
15 archeological and environmental fieldwork in the fall
16 of 2025, and they attended archeological fieldwork in
17 November of that year.

18 Enbridge Gas provided responses to written
19 questions that were submitted by MCFN on two
20 occasions; first, in April 2022 following the initial
21 notice; and, second, in November 2025 regarding the
22 environmental report.

23 MCFN raised a number of questions relating to
24 the environmental report, dealing with issues with
25 respect to pipeline installation methods, potential
26 impacts to water bodies and wetlands, invasive
27 species, post-construction monitoring, baseline
28 studies, and mitigation measures.

1 Enbridge Gas provided responses on November the
2 24th, including noting in response to concerns about
3 the Bronte Creek crossing and that that was a
4 sensitive issue for MCFN. And it noted that this was
5 no longer in project scope and the sole remaining
6 water crossing was a tributary of the grindstone
7 creek and the crossing would be done by horizontal
8 directional drilling underneath the creek bed with no
9 in-water works.

10 MCFN confirmed the following day that it had no
11 further comments, and you can see this correspondence
12 going over what I have just summarized at line item
13 attachments 2.8, 2.43, and 2.44 at Tab 8 of our
14 compendium.

15 As of the date of this hearing, MCFN has no
16 outstanding concerns and has not -- has not
17 identified any specific impact to rights from the
18 project.

19 I will now turn to Six Nations of the Grand
20 River, and I am going to address this in more detail,
21 as the only intervenor in this proceeding.

22 Enbridge Gas acknowledges some early challenges
23 with the delivery of some documents, as I have
24 alluded to earlier, but the record demonstrates that
25 Enbridge Gas was responsive to the issues that were
26 raised and that the consultation process as a whole
27 was substantial and meaningful.

28 In -- since November 2025, three meetings have

1 been held to discuss the project on November 25th,
2 April 21, and May 26 of this year with further
3 correspondence exchanged on specific issues.

4 In addition to reaching an agreement on capacity
5 funding, Enbridge Gas has taken a number of steps in
6 response to issues raised by Six Nations and involved
7 Six Nations' in-field work. These are discussed in
8 the Indigenous Consultation Report at Tab 6, pages 7
9 to 8, and the ICR at Tab 8, lines 3.101 to 3.129.
10 And I am going to summarize some specific examples.

11 First, there was additional fieldwork. At Six
12 Nations' request, Enbridge undertook an additional
13 vegetation survey in May 2026 to identify plant
14 species that could be potentially affected by
15 project-related ground disturbance.

16 During this survey, as I noted, Six Nations
17 accessed portions of the proposed route and did not
18 identify any specific concerns with respect to
19 impacts. This was in addition to the ecological
20 field survey that Six Nations attended in October,
21 which confirmed no changes to the previously
22 identified ecological features.

23 This -- these two environmental surveys -- and I
24 am not going to take you to the specific reference,
25 but I will tell you they are discussed in the
26 Indigenous Consultation Report at Tab 6 on page 8.

27 In addition to the additional fieldwork,
28 Enbridge Gas also provided additional route

1 information and mapping, and this was in response to
2 issues raised in a meeting in the spring of this year
3 where Six Nations asked about potential alternative
4 routes in terms of why the north versus the south
5 side of the street, why there were so many water
6 crossings, and they requested more detailed mapping
7 of the right-of-way and information on drill pit
8 locations.

9 Enbridge Gas provided detailed aerial imaging
10 and design drawings showing the precise planned drill
11 locations. And this is the imaging that I took you
12 to earlier at Tab 3B, although there are many more
13 images that I did not pull up and suggest that you
14 review.

15 Enbridge Gas also explained that the south side
16 of the road was chosen given more customers are on
17 that side and in consideration of impacts to
18 vegetation. It was also clarified similar to the
19 point with MCFN that there is now only one water
20 crossing, and the others have been removed from the
21 scope. This water crossing is an intermittent
22 tributary of the Grindstone Creek.

23 In addition to route information and fieldwork,
24 Six Nations also requested Enbridge Gas to commit to
25 implementing Stantec's mitigation measure
26 recommendations, and that commitment was provided on
27 June the 17th, which I am not going to take you to,
28 but can be found at Tab 8 of our compendium, line

1 item 3.128.

2 In response to questions about tree removals and
3 replacement, during consultation meetings, Enbridge
4 Gas confirmed that they do not anticipate that any
5 trees will be removed during construction and that an
6 arborist report will be shared once it is prepared.
7 And that arborist report, I understand, has not yet
8 been finalized, but will be shared.

9 In response to questions about contingency
10 planning in the event of an inadvertent release or
11 construction issue, Enbridge Gas identified the
12 relevant sections of the environmental report
13 addressing construction, mitigation, and contingency
14 measures, including a contingency plan.

15 In response to Six Nations' stated desire that
16 the project area be restored to a better than
17 preexisting condition, Enbridge Gas explained that it
18 was open to exploring restoration opportunities,
19 including alternative ways to enhance the natural
20 environment, and would consider engaging Six Nations
21 organizations to assist with this work where
22 reasonable and practicable.

23 All of this demonstrates responsiveness and
24 genuine efforts to respond to the issues raised.

25 I want to address a couple of issues raised in
26 Six Nations' factum.

27 First, Six Nations asserts that financial
28 accommodation is required. With respect, the duty to

1 consult does not require financial accommodation.
2 Accommodation is typically focused on avoiding,
3 mitigating, or offsetting impacts to rights through
4 project design changes and environmental and
5 monitoring measures, and there is no right, as I
6 indicated earlier, to a specific form of
7 accommodation.

8 The delegation letter is also consistent with
9 this where it speaks to modifying the project to
10 avoid or minimize impacts with no mention in the
11 letter of financial accommodation.

12 In addition, it is important to note that the
13 duty to accommodate is not automatic. It doesn't
14 arise every time there is a duty to consult, and it
15 requires a more significant impacts to rights.

16 This is made clear in *Haida* where accommodation
17 is not mentioned in discussing what is required at
18 the low level of consultation. Here, there is no
19 evidence of even an appreciable adverse impact as
20 there is no information to suggest rights are being
21 exercised in the right-of-way between the road and
22 existing development, and any impact would be very
23 limited and temporary to the construction period
24 given that the pipeline will be underground.

25 In the circumstance, there is no impact to
26 accommodate. Even if there was, the denial of a
27 financial accommodation request does not render the
28 consultation deficient, consistent with the OEB's

1 recent decision in *Port Colborne*, which I am not
2 going to take you to, but the reference is at Tab F,
3 page 31 of our compendium.

4 And I will point out two other references that
5 you can look at in your own time, the *Haida* decision
6 at Tab C, paragraph 47, and the *Coldwater* decision at
7 Tab G, paragraphs 51 to 53.

8 Second, Six Nations has also raised cumulative
9 effects and suggests that this significantly deepens
10 the level of consultation. In our submission, that
11 is not what the law requires here. Cumulative
12 effects can inform the duty to consult, but the duty
13 remains focused on the impact flowing from the
14 specific decision at issue.

15 In certain circumstances, it can deepen the
16 level of consultation and accommodation required, but
17 even in that case the focus is still on avoiding or
18 minimizing any additional incremental impact from the
19 project. It is not about addressing broader
20 cumulative effects that are not caused by the
21 project.

22 And I just want to take you to the *Chippewas of*
23 *the Thames* decision on this point at Tab H. No, that
24 is -- sorry, it must be an earlier -- it is Tab I.
25 Yeah. So in -- I am going to go to paragraph 41.

26 In response to specific concerns that were
27 raised by the Chippewas of the Thames about
28 cumulative impacts, the Supreme Court said the

1 following at paragraph 41:

2 "The duty to consult is not triggered by
3 historical impacts. It is not the vehicle to
4 address historical grievances. In *Carrier*
5 *Sekani* --" (as read)

6 Which is the *Rio Tinto* decision that I was
7 referring to earlier:

8 "-- this Court explained that the Crown is
9 required to consult on the adverse impacts
10 flowing from the specific Crown proposal at
11 issue, not on larger adverse impacts of the
12 project of which it is a part. The subject of
13 consultation is the impact on the claimed
14 rights of the current decision under
15 consideration. *Carrier Sekani* also clarified
16 that an order compelling consultation is only
17 appropriate where the proposed the Crown
18 conduct, immediate or prospective, may
19 adversely impact on established or claimed
20 rights.

21 That said, it may be impossible to understand
22 the seriousness of the impact a project on
23 Section 35 rights without considering the
24 larger context. Cumulative effects of an
25 ongoing project, and historical context, may
26 therefore inform the scope of the duty to
27 consult. This is not an attempt to address --
28 redress -- attempt the redress of past wrongs;

1 rather, it is simply to recognize an existing
2 state of affairs and to address the
3 consequences that may result from the project."
4 (as read)

5 For cumulative effects to be relevant, in our
6 submission, there must be an underlying novel and
7 appreciable impact from the project that becomes a
8 more significant impact due to existing cumulative
9 effects that are limiting the exercising of rights.

10 Here, there is no information to suggest that
11 rights are being exercised in the right-of-way, and
12 therefore it is highly unlikely that there will be
13 any impacts given the location and nature of the
14 project and highly unlikely that cumulative effects
15 are going to further contribute to any impact or make
16 any impact more severe.

17 Enbridge Gas acknowledges that there were some
18 issues early in the process relating to timelines and
19 information sharing but submits that they were
20 addressed, and they do not render the consultation
21 inadequate.

22 With respect to the concern raised about the
23 deadline for providing comments on the environmental
24 report, this deadline did not prevent Six Nations
25 from providing comments after October 31st, and
26 Enbridge Gas encouraged comments after this deadline
27 and had several subsequent meetings with Six Nations
28 to discuss components of the report, including

1 mitigation measures.

2 With respect to the disclosure of the OEB
3 application, I have addressed this point that while
4 Six Nations did not advise the -- sorry, while
5 Enbridge Gas did not advise the Six Nations when it
6 submitted the OEB application, it did have advanced
7 notice that the application was going to be
8 submitted, and they obviously have had the
9 opportunity since that time to participate in the
10 proceeding and raise any concerns with respect to the
11 application.

12 With respect to concerns that were raised about
13 a more structured -- having a more structured
14 approach to consultation, Enbridge was responsive to
15 this request, and it changed its engagement lead, met
16 with Six Nations in person multiple times, and
17 committed to a more predictable engagement process.
18 Through those meetings, Enbridge has discussed the
19 project in detail, and at the April 21st meeting, Six
20 Nations confirmed that consultation with Enbridge had
21 improved.

22 These issues did not ultimately impact Six
23 Nations' ability to engage in the consultation
24 process and have their concerns considered. They
25 have raised a number of issues, and these were
26 reasonably responded to and addressed, and
27 consultation has been sufficient in the
28 circumstances.

1 I want to turn now briefly to the Haudenosaunee
2 Development Institute, which I will refer to as
3 "HDI."

4 HDI, importantly, is not a separate Indigenous
5 community. It was identified for consultation as the
6 representative of the hereditary leadership of Six
7 Nations.

8 Enbridge Gas shared the same project information
9 with HDI as was provided to the other identified
10 communities. HDI has not identified any specific
11 concerns about impacts to Aboriginal or Treaty rights
12 from this project. Rather, discussions between
13 Enbridge Gas and HDI have focused on monitoring and
14 consultation arrangements for Enbridge Gas projects
15 going forward, and specifically, HDI's desire for a
16 more structured engagement approach that moves away
17 from project-by-project discussions.

18 Enbridge Gas has been responsive to that
19 request, and on June 22nd, it confirmed alignment
20 with HDI on advancing a more structured approach and
21 confirmed certain external steps. These discussions
22 are ongoing but are not specific to this project.

23 And as of this hearing, Enbridge Gas is not
24 aware of any outstanding concerns that HDI has raised
25 about potential impacts from this project.

26 In conclusion, Enbridge Gas is committed to
27 meaningful engagement with Indigenous communities.
28 It acknowledges that there were certain challenges

1 with the delivery of certain information and comment
2 deadlines on the environmental report, but the record
3 demonstrates that Enbridge Gas took concrete steps to
4 address these issues.

5 The project description report was hand
6 delivered, comments on the environmental report were
7 accepted beyond the initial deadline, meetings were
8 held, and responses were provided to specific
9 concerns. Six Nations was also given the opportunity
10 to participate in fieldwork, and a specific survey
11 was arranged at their request. The result is a
12 record of genuine and responsive consultation.

13 All three identified Indigenous communities
14 received sufficient information to identify impacts
15 to rights, and no community has identified a specific
16 adverse impact on an Aboriginal or Treaty right, and
17 MCFN and HDI have no outstanding concerns.

18 The first two criteria for an exemption are met,
19 in our submission, and are uncontested in this
20 hearing.

21 The third criteria, the adequate discharge of
22 the duty to consult, in our submission based on what
23 we have gone through, has also been met.

24 Enbridge Gas respectfully submits that the OEB
25 grant the requested exemption. Those are my
26 submissions subject to your questions.

27 PRESIDING COMMISSIONER CÔTÉ: Thank you very
28 much, Mr. Gray, for those submissions. We will have

1 questions. I will begin to my left. Commissioner
2 Moran, over to you.

3 **QUESTIONS BY COMMISSIONER MORAN:**

4 COMMISSIONER MORAN: So a couple of questions by
5 way of clarification, I think, to start with, Mr.
6 Gray.

7 You have pointed to the fact that notice was
8 given four times which seems like a lot of notice.
9 But as I listened to what you said, you indicated
10 that two of those notices happened back in 2021, and
11 then the project was put into abeyance. Are you
12 really counting on those two notices as evidence of
13 sufficient notice given that you had, back in 2021,
14 decided not to proceed with the project until several
15 years later?

16 B. GRAY: Yes. I think those notices cannot be
17 discounted. I am not saying those notices in
18 themselves were sufficient notice. I am saying that
19 the notices all combined, four collectively, were
20 sufficient notice. And on top of that, the -- all
21 Indigenous groups received the environmental report
22 as well as notice of the application. So all of
23 those -- all of those documents together are
24 sufficient notice.

25 I don't think we can remove the notice that was
26 provided or not consider the notice that was provided
27 in 2021. The Six Nations have acknowledged in their
28 affidavit that they received those notices, and MCFN

1 specifically responded to that notice. So I do think
2 that they need to be considered, but we are not
3 basing our submissions solely on those notices. It
4 is really the subsequent notices and the further
5 reports that are key to the notice.

6 COMMISSIONER MORAN: And just another question
7 on the two original notices. What kind of
8 communication happened back in 2021 when Enbridge
9 decided to put the project on hold? Was everybody
10 informed of that?

11 B. GRAY: I don't think there was a specific
12 notice that the project was going to be put on hold.

13 COMMISSIONER MORAN: Moving to 2025, I guess you
14 pointed to two occasions when there was further
15 notice of the project. And you talked about the fact
16 that the current project is a smaller version of what
17 was originally contemplated. Was that original
18 larger project the subject of the original two
19 notices?

20 B. GRAY: Yes. And it was the subject of the
21 June notice as well. The footprint shrank in the
22 application itself. And so the environmental report
23 also covered the larger area.

24 COMMISSIONER MORAN: And just curious, why was
25 the project shrunk in that way between 2021 and 2025?

26 B. GRAY: I believe that there were issues with
27 costs associated with -- with the project that
28 resulted in shrink -- in order to make the project

1 feasible, that resulted in shrinking the length of
2 the right-of-way.

3 COMMISSIONER MORAN: Right. And what would
4 happen if you now add the rest of that project down
5 the road? Is there a way of understanding what the
6 sort of relative value is of the additional part that
7 you are currently not proceeding with?

8 B. GRAY: I am not in a position to answer that,
9 but I don't know if anyone else...

10 P. SQUIRES: Yeah, we don't have information on
11 the remaining part of the scope at this time that was
12 removed from the project.

13 COMMISSIONER MORAN: You also have described
14 this project as small and with very minimal impact as
15 a basis for saying that really there is no impact
16 overall on any Section 35 protected rights.

17 And I guess I am -- just as a general question,
18 if the project is so small and the impacts are so
19 little, I am puzzled as to, you know, why we are here
20 today to begin with, I mean, given the ability to
21 have the conversation with the potentially affected
22 Indigenous communities that were identified in the
23 Ministry's delegation letter. What would you point
24 to as the reason why we are here today?

25 B. GRAY: I think there is a disagreement about
26 what is required from a duty to consult perspective
27 as between Six Nations and Enbridge. Enbridge has,
28 in our submission, gone above what is required, and

1 Six Nations takes the position that additional steps
2 are required, including a financial accommodation and
3 some level of additional consultation relating to
4 cumulative effects. But it has not provided specific
5 information that grounds a basis for any such
6 requirements.

7 And so I think there is -- I think that is
8 really why we are here. You should ask Six Nations
9 the same question. I will say this is not -- I work
10 in the space. It is a hundred percent of the focus
11 of my practice. This is not an uncommon situation
12 where a proponent or a government disagrees with an
13 Indigenous community about the level of consultation
14 or whether consultation has been adequate. And the
15 hundreds of cases that have been brought with respect
16 to the adequacy of consultation are evidence of that.

17 COMMISSIONER MORAN: So in the context of the
18 communication that went out, and it turned out there
19 was a bounce back, how do things work with inside
20 Enbridge?

21 You know, you have got a letter of delegation
22 from the Ministry. These are the people you need to
23 talk to. You send something out. How do you track
24 what happens after that that would allow an
25 undetected bounce back, as you described, to occur?
26 Like, what -- how have you designed your process to
27 maintain a relationship with the Indigenous
28 communities that you encounter on a regular basis,

1 given who you are? How could something like that
2 happen?

3 B. GRAY: I think there is still, unfortunately,
4 some -- and this is not unique to Enbridge at all.
5 It is for all proponents -- there is a manual aspect
6 of logging correspondence. Maybe things will get
7 better with AI. But -- so it is dependent on all --
8 you know, each -- each correspondence being logged.

9 And so if there is a bounce back missed, it is
10 missed. And in this case, it is unfortunate that
11 that responding e-mail was missed by the employee
12 that sent the e-mail in the first place. And so it
13 was not brought to six -- to Enbridge Gas' attention
14 until Six Nations did, and we acknowledge that is
15 very unfortunate and took steps to rectify that.

16 And, obviously, Enbridge Gas will be, and has
17 said this in the submission, more attentive going
18 forward to ensure that correspondence -- you know,
19 that there is no -- looking for bounce backs to make
20 sure that the correspondence -- and confirming with
21 Nations that correspondence is received.

22 COMMISSIONER MORAN: All right. So maybe you
23 could describe what steps you have taken so that this
24 doesn't happen again?

25 B. GRAY: So I think that -- I believe that
26 Enbridge has indicated in its -- in submission that
27 it will take steps to verify and -- and reminded its
28 employees about, you know, any bounce backs to flag

1 those, but it will take steps to verify
2 communications are received.

3 COMMISSIONER MORAN: So I am just curious, you
4 get a letter from the Ministry of Energy saying that
5 we think the duty to consult is triggered; and so,
6 therefore, we want you to go out and engage with the
7 communities. Why isn't the response to that letter,
8 you know, let's pick up the phone -- we have contacts
9 with all these communities, let's pick up the phone
10 and start talking and then send out emails and avoid
11 the problem and all -- why is this sort of done in
12 the opposite way where you kind of e-mail out a
13 notice and see what happens?

14 B. GRAY: So I think this needs to be looked at
15 in a broader context of the fact that Indigenous
16 groups are inundated with requests for consultation.
17 And so -- and this is a very common -- so trying to
18 get someone on the phone with limited staff is going
19 to be a difficult exercise.

20 And so this is a very common approach taken by
21 proponents and governments to provide written notice
22 first, which provides basic information about the
23 project, a project map, location, et cetera, with
24 follow-up communications. It also is helpful to
25 provide that written advanced communication so there
26 is something to ground the subsequent conversation.

27 COMMISSIONER MORAN: Okay. So fair enough. You
28 send out a written thing, and then the idea is to

1 follow it up with some kind of contact, which seems
2 to me to be a way to avoid the bounce back problem.
3 Because if you follow up and they say they never got
4 it, then you can address it at that point. But that
5 didn't seem to happen in this particular case.

6 B. GRAY: The follow-up didn't happen at the
7 July meeting, but you -- it does need to be
8 considered that there was going to be further
9 communication with respect to the project, and there
10 was with respect to the environmental report. And
11 when that further communication happened, the issue
12 was identified, and the project description report
13 was provided.

14 COMMISSIONER MORAN: Okay.

15 So that leads me to my next question, then: Why
16 was the decision made to file the application prior
17 to opening up the dialogue with Six Nations?

18 B. GRAY: Well, I would say the dialogue began
19 with the notices, and six -- and Enbridge Gas, when
20 Six Nations raised issues with respect to the project
21 in September, offered to meet with Six Nations.
22 There was a meeting in October with respect to
23 another project where general issues were discussed.
24 And there was a further meeting with respect -- in
25 November of 2025.

26 I think it is important to note, though, that
27 the period -- proponents are not expected or
28 governments are not expected to undertake all

1 consultation before an application is filed. That is
2 good practice in terms of early engagement to have
3 early engagement. But consultation, a large portion,
4 and I would say the most significant portion often --
5 oftentimes occurs after an application is filed
6 because then there is more details, and there is
7 further consultation.

8 And what matters is the consultation is adequate
9 by the time the decision is made around the adequacy
10 of consultation and the specific Crown approval is
11 sought. And so I think it is important to think
12 about it from that time span and realize that
13 consultation does not need to be satisfied before the
14 application is submitted.

15 COMMISSIONER MORAN: Okay. No, fair enough. I
16 was more asking about the timing and how you would
17 make sure that it is not left until down -- well,
18 until you are well down the road with everything
19 filed and everything.

20 I guess my related question is the issue of the
21 environmental report prepared by Stantec. To what
22 extent did Stantec -- or to what extent was Stantec
23 instructed to engage with Indigenous communities in
24 preparing the environmental report which was filed
25 with the application?

26 B. GRAY: Do you want to --

27 P. SQUIRES: Yeah, I just wanted to follow-up on
28 one of your earlier questions with respect to the

1 timing of the application. Another consideration for
2 Enbridge Gas was that this is a natural gas expansion
3 program application, and the deadline for submitting
4 those applications in order to qualify for the grant
5 funding that is associated with that program was
6 December -- the end of December of 2025.

7 We had a number of applications that we filed
8 between the September and December period, and we
9 were trying to get them all in on a fairly even
10 schedule so that they weren't all coming in at once,
11 recognizing, of course, that even in filing it in
12 November that that did not signify the end or any
13 milestone in consultation. It was partly to meet the
14 deadline imposed by the program.

15 COMMISSIONER MORAN: Okay. In order to be able
16 to get the subsidy for the expansion program?

17 P. SQUIRES: Correct.

18 COMMISSIONER MORAN: So -- so then back to my
19 next question, then. The -- Stantec was engaged to
20 propose the environmental report. To what extent
21 were they instructed to engage with Indigenous
22 communities in the preparation of that report, given
23 the reality that many of the protected rights under
24 Section 35 are -- have an environmental component to
25 them, archaeological or harvesting or what have you?
26 To what extent was Stantec instructed at all to
27 engage with the relevant communities that had been
28 identified by the Ministry?

1 B. GRAY: To my knowledge, Stantec wasn't
2 instructed to engage during the preparation of the
3 environmental report, and this is a very common
4 approach. It would be more unusual for a consultant
5 to be engaging in the preparation of the report
6 unless there was some advanced agreement around
7 studies and stuff like that.

8 But it is very common for proponents to have
9 consultants prepare reports, share those reports in
10 draft before they are submitted, seek comments, and
11 continue to engage on those reports with respect to
12 any environmental impacts that have been identified,
13 and that is what occurred here.

14 COMMISSIONER MORAN: So the Stantec
15 environmental report was filed as a draft report and
16 then shared with the Indigenous communities for
17 comment?

18 B. GRAY: It was share -- sorry. It was shared
19 as a draft report in September, and it was filed with
20 the application in November.

21 COMMISSIONER MORAN: And was -- do you know if
22 there was any interaction between Stantec and the
23 people that it was shared with?

24 B. GRAY: Well, there wasn't -- so there was
25 interaction -- I am not sure if there was interaction
26 with MCFN, but with MCFN, there was specific
27 comments. So when they received the environmental
28 report, they read the report. They raised specific

1 questions. They sent those to Enbridge, and specific
2 questions were responded to. There was also an in-
3 person meeting where discussion about that took
4 place. I am not sure -- we could go back and look
5 whether Stantec was at that meeting or not.

6 With respect to Six Nations, there were
7 subsequent meetings after the application was
8 submitted where the environmental report was
9 submitted. And Six Nations attended two vegetation -
10 - or environmental surveys, which would have been
11 with Stantec.

12 So -- so Six Nations had access to Stantec at
13 least through the environmental surveys, and we can
14 confirm whether they were present at specific
15 meetings.

16 P. SQUIRES: I can also comment that Stantec
17 follows consultation guidelines provided by Enbridge,
18 so there would have been direct outreach by Stantec
19 directly to Indigenous communities as directed by
20 Enbridge. So there would have been direct contact
21 that way.

22 COMMISSIONER MORAN: Okay. Thank you.

23 Now, you indicated with respect to HDI that
24 Enbridge is considering a more structured approach as
25 part of relationship-building, I guess, so that it is
26 not done on a project-by-project basis, which seems
27 different from some of the submissions that you made
28 with respect to, well, it is usually done on a

1 project-by-project basis.

2 To what extent is that something that has been
3 considered only in relation to HDI as opposed to
4 generally in building relationships, as the Supreme
5 Court has said is essential to reconciliation. To
6 what extent is Enbridge considering a more structured
7 approach generally to all of the Indigenous
8 communities that from time to time it is asked to
9 dialogue with by the Ministry?

10 B. GRAY: So, I mean, I think it is important to
11 note in response to that question that there is no
12 kind of uniform approach or desire by Indigenous
13 communities to consult in a specific way.

14 Indigenous communities are fine with the
15 project-by-project engagement approach. Others want
16 a different approach. And what Enbridge does is
17 tries to tailor consultation and respond to specific
18 asks of Indigenous communities as they arise vis-à-
19 vis the consultation process.

20 I want to underscore, though, the fact that
21 Enbridge Gas is looking at a more structured approach
22 to consulting on multiple projects doesn't change
23 what the Panel is required to look at in this
24 proceeding because it is assessing the adequacy of
25 consultation for this project.

26 And so just because a proponent or a government
27 decides to, for reasons of not inundating groups with
28 too much information and, you know, helping to

1 streamline and identify projects of concern in a more
2 kind of higher-level approach involving multiple
3 projects, it doesn't change the duty to consult
4 requirements. And the duty to consult is ultimately
5 focused on impacts flowing from the specific project
6 approval at issue.

7 COMMISSIONER MORAN: The -- in the aftermath of
8 the multi-phase rates case, Enbridge Gas now has an
9 Indigenous working group. Is this kind of issue on
10 the table for discussion with that working group when
11 it comes to the project pipeline, so to speak, that
12 Enbridge is looking at on an annual --

13 B. GRAY: I am not able to speak to that. I
14 don't -- I am not involved in that.

15 P. SQUIRES: Yeah, I am not either.

16 MS. PERSAD: Is it working now? Yeah. So as
17 part of the Indigenous working group, the meetings
18 for which I do attend, we do file annual reports with
19 the Ontario Energy Board as part of the deferral and
20 variance account clearance proceedings. And so the
21 activities are all documented in that report, and we
22 do discuss all manner of consultation with the
23 Indigenous groups in those meetings.

24 And we have look -- we have been looking at, you
25 know, forms of modifying that -- those consultations
26 in many respects with those discussions, and those
27 discussions are ongoing. And anything that we have,
28 you know, agreed to to date is documented in those

1 reports that have been filed with the OEB, another
2 one of which is to be filed with the upcoming filing,
3 I think, in mid-July, perhaps this month, or end of
4 July.

5 COMMISSIONER MORAN: And do your project
6 colleagues to your left know about this?

7 T. PERSAD: The people from the Enbridge side
8 who participate in these Indigenous working group
9 meetings are the same people that work on these
10 projects, yes. So there is communication internally
11 about all of those efforts.

12 COMMISSIONER MORAN: Okay. That is fair. All
13 right.

14 And then I guess just to end up, the -- in
15 looking at this proceed and recognizing that we
16 haven't, obviously, make a decision one way or the
17 other, and clearly you are taking a position on which
18 way that should go, what lessons have you learned
19 from this process that are important?

20 B. GRAY: So I think as I said at the outset,
21 Enbridge looks at every consultation as an
22 opportunity to learn and improve. I think you have
23 identified in your questions some areas where there
24 could be improvement around, you know, verifying
25 communications are received, picking up the phone
26 perhaps at an earlier point in the process to try to
27 get discussions off on a better footing right at the
28 get go.

1 So, you know, I think there are opportunities
2 that have been identified through this process to be
3 -- have kind of earlier and more in-person or over-
4 the-phone engagement at the outset rather than
5 relying entirely on, you know, notices at the early
6 stage.

7 COMMISSIONER MORAN: Thank you.

8 My last question, then, is -- and tell me if
9 this is an unfair characterization because I don't
10 want to be unfair. But I think in listening to
11 everything that you've said, what I'm taking away is
12 that from your -- from Enbridge's perspective, to the
13 extent that the duty to consult is triggered in the
14 present case, it is at the low end of the spectrum,
15 which only requires notice and information. Is that
16 a fair enough characterization of your position?

17 B. GRAY: I would say largely. I would say at
18 the low end of the spectrum, it requires notice and
19 an opportunity to discuss concerns. So we are not
20 suggesting that it is just notice, but there is,
21 together with that, an opportunity to discuss
22 concerns. And that is what took place here through
23 three separate meetings on the project as well as the
24 exchange of correspondence and opportunities to raise
25 concerns with respect to the environmental report.

26 COMMISSIONER MORAN: Thank you, Mr. Gray.

27 Mr. Chair, those are my questions.

28 PRESIDING COMMISSIONER CÔTÉ: Thank you,

1 Commissioner Moran. We will go to Commissioner
2 Sidlofski.

3 **QUESTIONS BY COMMISSIONER SIDLOFSKI:**

4 COMMISSIONER SIDLOFSKI: Thank you. Good
5 morning, Mr. Gray. I just have a couple of questions
6 for you.

7 You had said earlier that you can't assess the
8 adequacy of consultation in isolation. Question,
9 really, is did the process as a whole provide for
10 adequate consultation, including through the OEB's
11 regulatory process? I think I am paraphrasing, but I
12 think I am pretty close.

13 B. GRAY: Yeah.

14 COMMISSIONER SIDLOFSKI: The consultation that
15 took place before -- before Enbridge filed the
16 application didn't take place very long before
17 Enbridge filed its application; correct?

18 B. GRAY: Well, I would say it did if you
19 include the notices in 2021. The Indigenous groups
20 were first informed about the project at that time.
21 One Indigenous group did respond, and there was
22 interaction and discussion about the project at that
23 point in time. And then notice again was provided in
24 June and July of 2025. And then there was
25 opportunities for further engagement prior to the
26 submission of the application.

27 Again, I just want to underscore the point that
28 Enbridge similar to -- Enbridge Gas, similar to other

1 proponents, does not look at consultation as having
2 to be fully completed before an application is filed.
3 It is really early engagement.

4 The duty to consult technically isn't triggered
5 until the Crown is making a decision, which it is not
6 contemplating making a decision until the application
7 is filed. And so it is good practice to engage in
8 early engagement, but it is well recognized that
9 consultation continues after the application is filed
10 and up to the point that the decision is made, and
11 then there is ongoing consultation following project
12 approval.

13 COMMISSIONER SIDLOFSKI: I am looking at the
14 delegation letter at Exhibit H, Tab 1, Schedule 1,
15 Attachment 2 to your application, and the appendix to
16 that letter sets out a number of responsibilities for
17 the proponent.

18 And the first responsibility in that list is
19 providing notice and information about the project to
20 Indigenous communities with sufficient detail and at
21 a stage in the process that allows the communities to
22 prepare their views on the project and, if
23 appropriate for changes to be made to the project.

24 So I understand your comment about notice in
25 2021. You -- you, Enbridge -- didn't proceed with
26 the project until 2025, and you filed the application
27 in November of 2025 to meet the deadline for filing
28 expansion applications. So that project didn't

1 proceed for four years, almost four years after you
2 gave the initial notice.

3 I understand your comment about the need for --
4 to go through the OEB's regulatory process. I am
5 wondering, though, if you could give me your views on
6 how adequate an opportunity there was for you to make
7 changes to the application between the June/July
8 meetings in 2025, the -- I think the project -- the
9 project report was actually delivered to Six Nations
10 when?

11 B. GRAY: In September.

12 COMMISSIONER SIDLOFSKI: September '25. And you
13 filed in November. So I am -- I would be interested
14 in your comments on how the community would have had
15 an opportunity to prepare its views and for changes
16 to be made between September and November when you
17 did file.

18 B. GRAY: Well, I think it is important to look
19 at the experience of MCFN. They received everything
20 at the same time minus, I guess, the project
21 description report, which the Six Nations didn't
22 receive. They read the report. They provided
23 comments. They indicated that they had no further
24 comments on the environmental report before it was
25 submitted. So there is an example of an Indigenous
26 group that did have -- or had sufficient time to
27 respond in advance of the application.

28 I would underscore again that changes to an

1 application or changes to a project are not limited
2 to before an application goes in. Projects
3 frequently change in scope and conditions once
4 applications are made, and there was no specific
5 request here from Six Nations to change the route
6 which I think is important to underscore.

7 They went out for field surveys twice, they have
8 received detailed imaging on the route, the specific
9 drill locations, and Enbridge Gas has not received
10 information saying, please change -- we need to
11 change this route because this is a sensitive area,
12 or this drill location shouldn't -- that shouldn't be
13 the drill location, it should be somewhere else.

14 And so there has been the opportunity to
15 identify concerns about the footprint of the project,
16 and there has been no concerns identified to date
17 that would necessitate a change to the project
18 footprint and scope.

19 COMMISSIONER SIDLOFSKI: Okay. Thanks for that.

20 Just one quick question: One of the other
21 responsibilities that the delegated party has is to
22 follow-up as necessary with Indigenous communities to
23 ensure they receive project notices and information
24 and are aware of the opportunity to comment.

25 This may be more a matter for you to -- for
26 Enbridge to address in looking at its internal
27 processes, but it seems like there wasn't a whole lot
28 of follow-up about the project report.

1 B. GRAY: Yes. And I acknowledge in response to
2 Commissioner Moran's questions that that is a
3 learning in terms of improving the follow-up process.
4 But I would just underscore that you do need to
5 assess the process as a whole and look at whether
6 that ultimately had a consequence at the end of the
7 day on the meaningfulness of consultation. And we
8 would submit that what followed demonstrates that
9 there was -- there has been sufficient consultation
10 when you take into account all of the subsequent
11 meetings and opportunities to provide comments on the
12 environmental report which included the project
13 Description Report.

14 COMMISSIONER SIDLOFSKI: But the consequence
15 there was one of timing, wasn't it? The parties lost
16 a couple of months.

17 B. GRAY: The parties did lose a couple of
18 months through that process in terms of not being
19 able to comment on that aspect, but that -- the draft
20 report was received in September of 2025. We are now
21 in July of 2026. There has been many months to
22 engage on the environmental report and raise
23 concerns. Concerns have been raised. Those concerns
24 have been responded to.

25 COMMISSIONER SIDLOFSKI: Thank you. Those are
26 my questions.

27 PRESIDING COMMISSIONER CÔTÉ: Thank you,
28 Commissioner Sidlofski.

1 I am looking at the clock. It is close to
2 11:00, and there is a chance I am going to be more
3 than six minutes, so I will propose that we take our
4 break now, and that we reconvene at 11:10.

5 B. GRAY: Sure. Thank you.

6 --- Upon recessing at 10:54 a.m.

7 --- Upon resuming at 11:10 a.m.

8 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

9 PRESIDING COMMISSIONER CÔTÉ: Welcome back.

10 Mr. Gray, I intend to proceed as follows: I
11 will give you a bit of a road map and what I will be
12 relying on for purposes of my questions. So it will
13 be essentially three things. It would be helpful if
14 you are able -- these are your documents, if you are
15 able to pull them up, but I am relying more on your
16 July 7th, 2026, updated ICR for one.

17 Second, your oral submissions this morning.
18 Obviously nothing to pull up in that case. And the
19 summary of your written submissions filed this week.
20 So those will be the three documents that I will be
21 referring to throughout the course of my questions.

22 And generally, there will be five themes that I
23 intend to explore with you, of course in the realm of
24 clarifications, stemming from your submissions today
25 and the written submissions previously.

26 The first area I would like to look at is -- and
27 I refer here to your argument summary, the written
28 argument summary. It would be helpful if it is

1 readily available. I would be looking at paragraph
2 3.

3 So at the bottom of that paragraph, the very
4 last sentence, I am seeking your clarification here,
5 Mr. Gray. In particular, I draw your attention to
6 the language that is the following:

7 "That no Indigenous group has identified any
8 harvesting activities occurring within the road
9 allowance." (as read)

10 And then it continues.

11 And then from that, my understanding, and I am
12 going to seek your clarification, I think you are
13 drawing a conclusion that the project is very
14 unlikely to have any adverse impact on asserted or
15 established Aboriginal or Treaty rights.

16 So the clarification I am seeking from you is
17 whether it is your claim that harvesting rights
18 constitute the entirety of Aboriginal or Treaty
19 rights as seems to be implied here by my reading, but
20 I am seeking your assistance to understand what you
21 meant by that claim.

22 B. GRAY: Thank you.

23 In this instance, with respect to the Indigenous
24 groups that have been identified as potentially
25 affected, our submission would be that their -- the
26 rights that they have would be limited to harvesting
27 rights. There is no -- they do not have any title
28 claims to this specific area, and so any rights to

1 the extent they exist in this area would be
2 harvesting rights.

3 PRESIDING COMMISSIONER CÔTÉ: Okay. So if I
4 understand, in this instance, you are making -- for
5 reasons that you have just outlined, you are equating
6 the harvesting with the sum total of the Treaty and
7 Aboriginal rights in this case given the
8 circumstances?

9 B. GRAY: In this case, given these groups,
10 given the location of this project, yes.

11 PRESIDING COMMISSIONER CÔTÉ: Okay. That
12 clarifies. Thank you.

13 Still in the same area, but here I will also
14 draw your attention to the appendix. This is in your
15 updated July 7 ICR, PDF 501 of 504. So I will give
16 you a moment to pull that up. It is at Tab 13 of
17 your July 7th updated Indigenous Consultation Report,
18 page 501. And I will give you specifically what I am
19 looking at here. Bear with me.

20 P. SQUIRES: Excuse me, Commissioner Côté, I
21 think you said Tab 13, but you also said Indigenous
22 Consultation Report. That is at Tab 8.

23 PRESIDING COMMISSIONER CÔTÉ: Oh, I meant as
24 part of your filing of July 7th which included your
25 updated Indigenous Consultation Report at Tab 13, I
26 believe, page 501 of a 504-page document.

27 P. SQUIRES: Maybe I can just instruct our
28 colleague who is running the screens back at the

1 office. I believe we can find that in Tab 8 as well.
2 And if you can repeat the page number, we will find
3 it.

4 PRESIDING COMMISSIONER CÔTÉ: Yes. It is -- it
5 is page 502 of 504 in your July 7th, 2026, filing on
6 the record.

7 B. GRAY: What -- could you tell us what is at
8 the top of the page?

9 PRESIDING COMMISSIONER CÔTÉ: Yeah, so just
10 noting by the page count on the document on the
11 screen of 572, we are probably not on the same
12 document. I can -- I can read it for the record, and
13 I think you have the reference, because it is a
14 single bullet that I wish to draw your attention to.

15 It relates to the appendix found in the
16 procedural delegation, so, in fact, you may be able
17 to find that in the current document as well.

18 B. GRAY: Yeah, yes. So is this -- are you
19 looking at the page "roles and responsibilities
20 assumed directly by the Crown"?

21 PRESIDING COMMISSIONER CÔTÉ: Correct. In the
22 appendix.

23 B. GRAY: Okay. I found that. Yeah, that is
24 page 501 of 572.

25 PRESIDING COMMISSIONER CÔTÉ: So in the appendix
26 where there is the roles and responsibilities
27 delegated to the proponent, on the screen, I see
28 "delegated," so I think you want to scroll down. And

1 we are seeking the appendix. Okay. I think you had
2 it there. So the page below this one, please. There
3 we go. So at the very top, the first bullet there.
4 A lot of work to get to a simple bullet, but for
5 purposes of having a trace, so gathering information
6 about how the project may adversely affect Aboriginal
7 or Treaty rights, a pretty -- I assume I could have
8 read that for the record.

9 What I am seeking from you on that is -- and
10 elsewhere, of course, you claim -- and if I don't
11 have that correct, Mr. Gray, you will correct me --
12 you claim that the project is very unlikely to have
13 any adverse impact on asserted or established
14 Aboriginal or Treaty rights. I think that is in your
15 submission somewhere, of course.

16 What I am seeking is when -- so the delegation,
17 of course, instructs you to do an assessment of those
18 impacts, the identification of those impacts, and
19 then you claim that -- that you have done that.

20 What I am seeking from you, Mr. Gray, is
21 clarification as to the timing of when it is
22 Enbridge, in your position, that you had achieved
23 that, recognizing your April 2026 and May 2026
24 meetings in which, based on your written submissions,
25 a lot of activities and a lot of topics were
26 discussed, some environmental related. You mentioned
27 trees in your earlier submissions.

28 I am trying to situate in time when you were

1 able to draw the conclusion that, in your view, the
2 duty to consult had been satisfied.

3 B. GRAY: So I would say that it would probably
4 have been in the spring -- following the spring
5 meetings, based on what had -- what discussion had
6 taken place. So by that time, Six Nations had
7 significant opportunities to identify impacts to
8 rights. They had not identified any specific
9 impacts. They had raised a number of issues, and
10 those issues had been responded to.

11 And so at that point in time, we would say that
12 consultation was sufficient and adequately
13 discharged.

14 PRESIDING COMMISSIONER CÔTÉ: And, Mr. Gray, if
15 I may clarify what you mean specifically by "spring
16 meeting," so are we indeed talking about the April --

17 B. GRAY: April and -- April and May meeting.
18 So consultation at that point in time was still
19 ongoing, and so there were still discussions about
20 questions that were being raised with respect to the
21 environmental report and the project route and
22 wanting further information.

23 But all of that -- that information was provided
24 both within meetings, and then to the extent not
25 provided in the meetings, it was provided through
26 follow-up -- answers to follow-up requests.

27 PRESIDING COMMISSIONER CÔTÉ: And can I take
28 from that that -- and you will have to assist me on

1 this one -- in your submissions, across the totality
2 of them, your first claim and your first assertion
3 that the duty, in fact, has been satisfied from your
4 perspective would have been submitted to us on the
5 timeline that you have just clarified, namely after
6 your May and April meetings, "spring meetings," as
7 you call them.

8 Would that be -- would your first claim of the
9 duty being satisfied be subsequent to those meetings,
10 or would we find it also elsewhere on the record on
11 an earlier timeline?

12 B. GRAY: Well, so I -- so, first of all, I
13 think it depends on the group that is -- that we are
14 looking at. So with MCFN, I would say the duty to
15 consult was satisfied long before that in the fall of
16 2025 because they indicated that they had no further
17 concerns. HDI has never raised specific project
18 concerns. And so, you know, the discussion has
19 always been about broader frameworks for consultation
20 and monitoring.

21 For Six Nations, I would say that the -- that
22 the remaining information -- and it is in the ICR --
23 was provided in June of 2026, you know, closing the
24 loop on -- on several issues that they had asked
25 about in the meetings.

26 PRESIDING COMMISSIONER CÔTÉ: Okay.

27 So accepting, of course, the three different
28 First Nations with three different timelines, in the

1 case of Six Nations, I am understanding the June 2026
2 filing would be the capture of your initial claim
3 that the duty in the case of Six Nations had been
4 fulfilled in your assessment?

5 B. GRAY: Based on the further information that
6 had been raised, so, I mean, prior -- when the
7 application had been submitted, they hadn't raised
8 specific concerns. But I am saying that as a result
9 of the -- so what -- as a result of the -- of the
10 further meetings where they raised concerns, there
11 was a requirement to engage as a result of those
12 issues. And the -- that requirement was satisfied as
13 of June of 2026.

14 PRESIDING COMMISSIONER CÔTÉ: Okay. Yes. I am
15 merely trying to situate your claim --

16 B. GRAY: Yeah, yeah.

17 PRESIDING COMMISSIONER CÔTÉ: -- and when it
18 occurred in time. I am taking from this exchange
19 that it would likely be found for the first time in
20 June, understanding, of course, there was a lot of
21 back-and-forth leading up to --

22 B. GRAY: Yeah.

23 PRESIDING COMMISSIONER CÔTÉ: -- for purposes
24 of, but the ultimate claim would have been in the
25 June 2026, perhaps in the filing that I was alluding
26 to earlier, the updated ICR, that is?

27 B. GRAY: Yes.

28 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.

1 Okay. I will move on.

2 I wanted to turn next to the *Haida* analysis that
3 you spoke about today that is also in your written
4 submissions. As I heard you today, Mr. Gray, begin
5 your oral submissions, you were talking about your
6 project on the definition side of it. I heard you
7 talk about an area that is already disturbed, a small
8 disturbance anticipated, the mitigation measures, and
9 so on and so forth.

10 In paragraph 6 of your argument summary, that is
11 where I think you begin on your references to *Haida*
12 and -- and then at paragraph 11, I take -- from your
13 summary written submission, I read that to be your
14 assessment of the duty to consult to be owed in this
15 case to be at the low end -- low -- I think your
16 words are "the low to, at most, moderate level"; do I
17 have that right, from your perspective?

18 B. GRAY: Yes, you do.

19 PRESIDING COMMISSIONER CÔTÉ: Okay.

20 B. GRAY: I would say in response to that as
21 well, though, that, in our submission, Enbridge went
22 well beyond that. It was not approaching this
23 consultation from a box-ticking exercise to fulfill
24 the bear minimum. It went well beyond what would be
25 required at the low to moderate level.

26 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
27 for that, Mr. Gray.

28 Where I am going with this is I heard this

1 morning -- well, let me point you first to, of
2 course, noting that there is an October 19, 2021,
3 delegation from the Crown, which I think we were
4 looking at earlier. I heard you today speak about
5 Six Nations in the context of the cumulative effects.

6 I think I heard you interpret their position as
7 being that cumulative effects would deepen the owed
8 consultation, and that is your -- their perspective,
9 and you gave us your side of that. Where I am -- but
10 I also heard you this morning acknowledge that that
11 delegation did not contain the owed depth of
12 consultation from the Crown.

13 So what I am seeking your help with, Mr. Gray,
14 is seeing as that delegation did not contain that,
15 and in that same delegation under the rules of the
16 Crown -- and if we pull it up, it is at page 503 or
17 504, the very -- it is in the appendix, again, of
18 that delegation.

19 Maybe it is worthwhile pulling it up in this
20 time -- in this case. I think it is the very last
21 page of the delegation letter under the part that
22 defines the responsibility of the Crown. So I
23 believe it is in the appendix, if you scroll down, I
24 believe.

25 The label in that letter is "Roles and
26 Responsibilities Assumed Directly By the Crown."
27 That is the header. It is found in the appendix of,
28 I think, what we have on the screen here. Yes. And

1 if you keep scrolling down. There we go, right
2 there. Okay.

3 The second bullet there, ascribe as I read here
4 as a role of the Crown in this distribution of tasks
5 that the assessment of the extent of consultation --
6 this is bullet 2 -- is listed there. Would you
7 acknowledge that as something that is for the Crown
8 to do?

9 B. GRAY: It is listed, but I would say there is
10 law, and we can get you law on this that it is not
11 necessary to kind of do a full-scale assessment with
12 respect to the level of consultation required by the
13 Crown.

14 So they don't have to do a full kind of strength
15 of claim analysis in order to come to a conclusion on
16 the level of consultation that is required. What is
17 ultimately necessary is for this Panel to determine
18 the level of consultation required and whether that
19 level was met.

20 PRESIDING COMMISSIONER CÔTÉ: Okay.

21 So what I am seeking to clarify is -- or as much
22 -- I think we are acknowledging that it is listed
23 here and that in many other cases, that delegation
24 would contain the depth of consultation expected from
25 an applicant. As you noted in your submissions this
26 morning, that did not exist in your 2021 version of
27 that letter.

28 As I also heard from your submissions, perhaps

1 as a consequence for you to clarify, you then made
2 your own assessment effectively, and you determined,
3 as I quoted earlier, to be at the low and, at most,
4 moderate. I just want to understand your line of
5 reasoning in seeking to ensure that I do in seeking
6 the clarification.

7 Do I have generally the -- my read -- is my read
8 accurate from where you are sitting?

9 B. GRAY: Yes, I would say your read is
10 accurate. I think the practice of the Ministry has
11 changed over time. Recall this letter was sent in
12 2021. I think they have been, in more recent
13 delegation letters, identifying the level of
14 consultation expected, but that hasn't always been
15 the case, and it is not always the case in other
16 Crown delegation letters, in my experience.

17 And so in some instances, it is necessary for
18 the proponent to do that level of assessment and for
19 the decision maker ultimately to consider that when
20 making a determination about the adequacy of
21 consultation.

22 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
23 for clarifying. I appreciate that. So that is it
24 for this particular topic of --

25 B. GRAY: Thank you.

26 PRESIDING COMMISSIONER CÔTÉ: I want to turn
27 next to the record of engagement. We heard a lot in
28 your submissions and your evidence about this. Here,

1 if it is helpful, again, I am on the 504-page
2 document. You are on the 572. So we struggle.

3 But I was going to bring you to page 5,
4 effectively, where you essentially speak to your
5 engagement. What I am -- there is a claim in -- I
6 will give you a moment. If you do pull it up, in
7 your July 7th letter, you have a table which starts
8 on page 3 and continues on page 4.

9 B. GRAY: Is this the Indigenous Consultation
10 Report?

11 PRESIDING COMMISSIONER CÔTÉ: It is your -- it
12 is your summary argument, rather, in which you
13 include after paragraph 16 a table.

14 B. GRAY: Oh, sorry. Okay. I can find that.
15 Yes, I have it in front of me.

16 PRESIDING COMMISSIONER CÔTÉ: At the very end of
17 your table, your last row -- so I don't see it on the
18 screen, but I trust you are following, Mr. Gray?

19 B. GRAY: I am following, yes.

20 PRESIDING COMMISSIONER CÔTÉ: Okay.

21 Your last row after December 3rd, 2025, there is
22 the following language, and I quote:

23 "Enbridge Gas filed the application
24 considering, among other matters, the
25 engagement that had already occurred." (as
26 read)

27 Where I am seeking clarification is fairly
28 simple here, Mr. Gray, is simply just to better

1 understand what engagement indeed had occurred. You
2 may have listed some of that in your oral submissions
3 this morning, but can you help me, in that time space
4 at that moment, what indeed had occurred?

5 B. GRAY: So the engagement that had occurred
6 with -- and I will just use Six Nations as an
7 example. And I can speak to MCFN. So with respect
8 to Six Nations, the engagement that would have
9 occurred by that point would have been the three
10 notices that they received, the environmental -- the
11 draft environmental report, the discussion -- the e-
12 mail discussion that followed, and the provision of
13 the project description report, and Six Nations'
14 attendance at the -- the ecological field survey that
15 took place at the end of October.

16 Again, I will underscore in response to this
17 that there is not a requirement to fulfill the duty
18 to consult before the application is filed. It is
19 very common for engagement to continue and use the
20 application as a basis to inform that engagement.
21 What matters is that engagement is adequate by the
22 time there is a decision on the application.

23 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
24 for the clarification and --

25 B. GRAY: And then with respect to MCFN, I would
26 note that in addition to the exchange of information,
27 there was a specific meeting that took place in
28 September where there was a presentation on the

1 project and the environmental work and an opportunity
2 to ask questions. And then there were further
3 exchanges with respect to written questions that MCFN
4 submitted.

5 So there was -- and that same offer of a meeting
6 was made to Six Nations. It is just that the meeting
7 didn't get scheduled until later.

8 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
9 for those clarifications, Mr. Gray.

10 I will move on now, turning to a similar
11 question. In this case, I am calling it the
12 consultation record to use -- you had the word
13 "engagement." I used "engagement" here. I am going
14 to use the word "consultation." So my reference for
15 this one is again in the delegation letter from the
16 Ministry.

17 In its appendix -- and I will give you a moment
18 to situate it again, but I am focusing on the roles
19 and responsibilities delegated of the proponent which
20 is found in the appendix. Or, apologies, it is not
21 the appendix. It is page 2 of the letter, the one
22 that -- there we go. Okay.

23 So it is the top paragraph. I want to draw your
24 attention, and then ask my question about the
25 language consultation. So second line:

26 "Consultation is ongoing throughout the
27 duration of the project including project
28 development and design, consultation,

1 approvals, construction, operation, and
2 decommissioning." (as read)

3 So the emphasis, you may have noted, was project
4 development and design.

5 What I seek to better understand is in your
6 claim that the duty to consult has indeed, as of July
7 or June, been fulfilled, your position, we clarified
8 earlier, if you are also implying or claiming that
9 some consultation -- call it engagement,
10 consultation, as you wish -- did occur during the
11 project development and design phases, and, if so, if
12 you could elaborate.

13 B. GRAY: I think there were opportunities for
14 engagement in the project development and design
15 stage beginning with the notices in 2021. MCFN did
16 respond, and there was some discussion at that stage.
17 Six Nations, which received the notices, didn't
18 respond and didn't take up an opportunity to engage
19 at that point in time. And then engagement continued
20 once further information was raised.

21 I will reiterate a point that I made earlier,
22 that there is -- there were no issues subsequently
23 that were raised that would necessitate a change in
24 the project design of the very short pipeline that is
25 being proposed.

26 And there is -- you know, there were questions
27 about the water courses, and those issues became moot
28 because the design changed in the interim and

1 eliminated the need to cross as many water courses,
2 and the only water course that was left was an
3 intermittent creek -- intermittent tributary to a
4 creek, and there was no in-water works.

5 So in our submission, there were no issues
6 raised subsequently that would necessitate further
7 changes in the design of the project.

8 And including in response to -- you know,
9 Enbridge Gas sent very detailed maps, which I took
10 you to earlier, about the test pit locations and the
11 right-of-way and the design drawings, and no issues
12 were raised in response to that saying, please do the
13 test pit location over here, or, move something
14 there. There were no concerns raised about the
15 specific locations of where the land will be
16 disturbed.

17 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
18 for that, Mr. Gray. I am going to play some of that
19 back to make absolutely certain that I fully
20 understand.

21 So 2021 to 2025, there may have been changes to
22 the project, so I want to focus, of course, on the
23 one before us today for consideration. So that is
24 clarification one.

25 I think I heard you say there were both
26 opportunities for engagement on the now before us
27 project version, and also to the extent there were
28 anything -- any issues brought up, there was an

1 opportunity to engage on those and discuss those.
2 Does that summarize accurately what I am hearing from
3 you?

4 B. GRAY: Yes. There were, yeah.

5 PRESIDING COMMISSIONER CÔTÉ: Okay, thank you.

6 Okay. The last area I wish to explore with you
7 relates to the Letter of Opinion. It is found in
8 effectively the last page of your summary written
9 argument, and in a way, you have mentioned as much
10 this morning in reference to the Letter of Opinion.
11 So I will read you the quote. I think it is the very
12 last paragraph. You say the following:

13 "The OEB has been empowered by regulation to
14 determine whether the duty to consult has been
15 adequately discharged and a Letter of Opinion
16 from the MEM is not a precondition or a basis
17 to delay making a decision." (as read)

18 So I am wishing to better understand your
19 position on that from both this and a version of this
20 you expressed earlier this morning.

21 To the extent the Letter of Opinion is not a
22 precondition or a basis to delay our decision, I
23 think those are your words, what would be your
24 position as to its value?

25 B. GRAY: I mean, I think that there is -- there
26 can be value in the Letter of Opinion because it
27 provides a further secondary opinion to support the
28 opinion that is ultimately reached by the Board. You

1 know it could be similar to the OEB Staff making
2 submissions with respect to their review of the
3 application, but ultimately, the Panel is empowered
4 by regulation to make a decision on the adequacy.
5 And there is nothing in the applicable section of the
6 regulation to say that that decision requires an
7 opinion of adequacy from the Ministry first and/or
8 needs to be informed by an opinion by the Ministry.

9 The Panel is empowered to make this decision,
10 and it has, in my submission, the information before
11 it needed to make that determination.

12 PRESIDING COMMISSIONER CÔTÉ: So to further
13 clarify, if I may, I am not sure you are going as far
14 as calling it evidence like any other evidence. I
15 don't want to put words in your mouth. I am just
16 seeking your clarification.

17 It is pretty clear, I think, that you assert
18 that we can proceed without it in terms of rendering
19 as the final decision maker. But what would be -- if
20 I may invite your submission in terms of the
21 delegation originates from the Ministry, and as, you
22 know, one of the aspects of the Letter of Opinion is
23 to confirm from the Crown's perspective through an
24 opinion that your delegation has indeed been
25 discharged.

26 Would it be -- I would welcome your submission,
27 Mr. Gray, as to, were a Panel to proceed absent a
28 Letter of Opinion, what that would mean for risk, for

1 lack of a better word, as to rendering a decision not
2 knowing from the Ministry its opinion on whether the
3 delegation it gave the applicants has been, in their
4 opinion, fulfilled.

5 B. GRAY: My response to that would be that the
6 Ontario government made a specific decision in
7 enacting this regulation to require this Board to
8 make that determination, and so it is not -- it says
9 nowhere in the regulation that a Letter of Opinion
10 needs to be received first.

11 And so the expectation by the Crown, I would
12 say, is that the OEB, which is a body created by the
13 province, is making a determination on adequacy which
14 may in some instances be informed by a letter, if it
15 is available, but otherwise, if it is not available,
16 the OEB is empowered to make that determination based
17 on applicable legal principles and the evidence
18 before it.

19 PRESIDING COMMISSIONER CÔTÉ: And if I
20 understand from that, it would therefore -- and you
21 will correct me -- be a position that we as a Panel
22 can make our own determination as to whether the
23 procedural aspects and the substantive aspect of the
24 duty to consult have indeed been fulfilled.

25 B. GRAY: That would be my submission. I would
26 go further to say the letter of delegation does not
27 change the duty to consult. What ultimately matters
28 is what the duty to consult requires and what the

1 applicable legal principles require.

2 A letter from the Ministry cannot change those
3 obligations from a duty to consult perspective, and
4 what you have been empowered to determine is whether
5 the duty to consult has been adequately discharged.

6 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you,
7 Mr. Gray. Those were my questions.

8 B. GRAY: Thank you.

9 PRESIDING COMMISSIONER CÔTÉ: Six Nations, we --
10 I am looking at the clock. To the extent you are
11 comfortable, we would start and likely interrupt for
12 a lunch break at some point, and then continue.
13 Would that be agreeable?

14 B. RABINOVITCH: Yes, that is great.

15 PRESIDING COMMISSIONER CÔTÉ: Then in that case,
16 I will turn it over to you for your submissions.

17 **SUBMISSIONS BY B. RABINOVITCH (SIX NATIONS)**

18 B. RABINOVITCH: Perfect. So good morning or
19 almost good afternoon. My name is Brittiny
20 Rabinovitch, as you heard earlier, and I will be
21 making submissions on behalf of the intervenor, Six
22 Nations of the Grand River as represented by the
23 elected council.

24 So I am actually planning to start by going
25 through some of the specific language in the OEB
26 regulations. And I understand that the way that we
27 are going to try and do this is that Enbridge is
28 actually going to be pulling up the documents. They

1 have asked to control the document pull ups for the
2 day. I am content to try that way, and then if we
3 have issues, we can maybe switch it tup.

4 So I would ask that we pull up the general
5 regulation. It is at Schedule B to our oral argument
6 summary. That may be the best direct link there.
7 And I am going to Section 3.0.1. I think that is our
8 compendium. I think it is in the -- it is in our
9 summary of oral argument, at the end of that
10 document. Perfect.

11 So as we know, we are all here with respect to
12 sub C of this provision. And the language that I
13 really just wanted to draw the Commissioners'
14 attention to is that sub C says:

15 "The Board makes the determination that the
16 Crown's duty to consult, if it applies, has
17 been adequately discharged." (as read)

18 And the point I really want to make here is that
19 it is clear that we have to be -- as of the date of
20 the decision, the duty has to already have been
21 discharged. We can't be in the middle of continuing
22 to engage in active consultation. It has to have
23 been discharged.

24 And this is reflected as well in the OEB's
25 environmental regulations for the location,
26 construction, and operation of hydrocarbon projects
27 and facilities in Ontario, that is just below there
28 on the same page. Section 3.2 deals with Indigenous

1 consultation. It has effectively the same language.
2 And it provides that in cases where the duty to
3 consult is triggered, the OEB cannot issue a final
4 decision approving an application unless it is
5 satisfied based on the evidence before it that the
6 duty to consult has been discharged.

7 And so what this indicates here is that the
8 Board has no discretion to be able to grant the
9 approval, in our submission, if that duty has not
10 been discharged. Because of that word "cannot."

11 As I know the Commissioners are all aware, these
12 regulations mirror the well-established case law and
13 duty to consult. And I will just take you to one
14 reference from the Supreme Court of Canada that deals
15 with this. We don't need to pull it up, but it is
16 from the *Chippewas of the Thames*, the Enbridge 2017
17 SCC 41 at paragraph 36, and the Court said:

18 "If the Crown's duty to consult has been
19 triggered, a decision maker may only proceed to
20 approve a project if Crown consultation is
21 adequate." (as read)

22 So, again, reiterating that there is no
23 discretion to grant approval if that duty has not
24 been discharged as of the date of the approval.

25 And the reason that I am starting with
26 emphasizing this -- and I am going to walk through
27 the Commissioners -- I am going to walk through some
28 of the factual background. And I appreciate that you

1 all have a very in-depth knowledge of the facts here,
2 and I won't emphasize things you already know. But
3 the reason I want to draw your attention to this is
4 because, as we will get to, real consultation only
5 actually started on April 21st, 2026. That was the
6 first time that there was an actual meeting about
7 this project.

8 And that meeting, as we will get to, didn't get
9 into any of the real meat and potatoes, as I will
10 call it. It was called an introduction. And I will
11 take you to this in a little bit, but that is
12 actually Enbridge's language, an introduction to the
13 Cedar Springs project. And that is April 21st, '26.

14 And so most of the consultation -- any of the
15 real consultation that has taken place has only been,
16 really, in the past month. We are only now just
17 starting to get into a place where Six Nations has
18 been provided with enough opportunity and information
19 about the project to make its concerns known and to
20 allow Enbridge to respond. And that process, in our
21 submission, is not complete. We are right in the
22 middle of that right now.

23 I would like to go next, as we get into some of
24 the background of consultation and what did or didn't
25 take place with the delegation letter, and
26 appreciating that you are all familiar with this, I
27 would like to just pull up the appendix to the letter
28 and turn to a couple of the particular bullet points

1 there. And this is in our compendium at Tab 1. That
2 is one place to find it.

3 So my friend Mr. Gray in his submissions has
4 suggested that the duty is low in this case. He
5 pointed out that the Crown has not assigned a
6 particular level of the depth of consultation that is
7 required, but in his submission, it is low. And we
8 disagree with that.

9 I agree the Crown hasn't put a label on the
10 level of consultation that it says is required, but
11 in our submission, what the Crown has done in the
12 content of the bullets that it has laid out is made
13 it clear that it expects at least a mid level of
14 consultation in this case, and that is clear from the
15 conditions that it has imposed on Enbridge in that
16 delegation letter.

17 And in my submission, even just looking on its
18 face at this long detailed list of bullet points
19 supports that view. This is clearly not an instance
20 where the Crown is saying, oh, you know, provide a
21 notice, and, you know, that is, more or less, it.
22 There are a number of additional requirements here
23 that the Crown has imposed.

24 So the first bullet that I would like to draw
25 the Panel's attention to is the first black bullet
26 that provides that the -- that Enbridge is to provide
27 notice and information about the project to
28 Indigenous communities with sufficient detail and at

1 a stage in the process that allows the communities to
2 prepare their views on the process and, if
3 appropriate, for changes to be made to the project.

4 And I appreciate that the Panel has already
5 drawn Enbridge's attention to this bullet, and I just
6 want to reiterate that this -- that the Ministry here
7 is explicitly directing to Enbridge that the
8 consultation has to take place at a stage that
9 changes can actually be made. And we will come to
10 the significance of that a bit later in my
11 submissions.

12 And then in the first clear bullet point, it
13 provides that Enbridge is to provide accurate,
14 complete, and plain language information including a
15 detailed description of the nature and the scope of
16 the project and translations where needed. And I
17 will come to this as well, but that has effectively -
18 - that has effectively, in our submission, not
19 happened. And we will come -- we will come to this.

20 But Six Nations requested of Enbridge that it
21 provide a virtual walkthrough of the project at the
22 May 2026 meeting that took place. That was one of
23 the requests that it made of Enbridge. Enbridge
24 asked, do you actually want to go onsite and do a
25 walkthrough, or is virtual sufficient? Six Nations
26 said, virtual is sufficient, but we want to be able
27 to understand the details of what this project is.

28 And then at that May meeting, all that was

1 provided was one slide on a PowerPoint with a low
2 resolution -- essentially a snip of the project, and
3 it was not -- it did not provide Six Nations with
4 sufficient information on the project. There was no
5 ability to have a walkthrough.

6 Enbridge then later, in June of this year,
7 delivered a more detailed outline of the project, but
8 Six Nations has not had the opportunity yet to have
9 the walkthrough with Enbridge that it has requested.
10 So just one example that we will get to of this
11 particular directive by the Ministry not yet having
12 been fulfilled.

13 I will leave that for now because I know that
14 the Panel members are familiar with it, and I may
15 come back to some of these directives as they come up
16 in my later submissions.

17 So as we have -- as we have -- as we have
18 discussed and as some of the Panel members have put
19 to Enbridge, the initial notice went out in 2021.
20 And then I know there were some questions about this,
21 and Six Nations did not hear anything further until
22 2025.

23 So in response to -- I think it was Commissioner
24 Moran's question about whether Six Nations was told
25 that the project was being put on hold and was
26 provided with updates about the status of the
27 project, it was not. It -- there are e-mails in
28 Enbridge's updated consultation record from the last

1 month or two from Mr. Graham, the consultation
2 supervisor, asking Enbridge, is this project still
3 waiting until the city work is completed?

4 And Enbridge says, no, it is not, we are going
5 ahead without that. So it just illustrates that Six
6 Nations was not kept apprised of the status of the
7 project as of 2021.

8 So then skipping ahead to 2025, initial notice
9 was provided in June of 2025, as my friend Mr. Gray
10 pointed out in his submissions. And then in July of
11 2025, Enbridge attempted to deliver that e-mail that
12 didn't go through, as we know, which included the
13 project Description Report.

14 And I know that the Panel has flagged this, but
15 I just want to reiterate that we know that the
16 Ministry -- one of the specific duties that it has
17 imposed on Enbridge in this case is to follow up to
18 ensure that documents have actually made their way to
19 Six Nations. Obviously that did not take place in
20 this case here.

21 My friend Mr. Gray has said that that was
22 effectively an oopsies, but it doesn't affect
23 anything long-term. We disagree. Those were crucial
24 months that Six Nations could and should have had the
25 opportunity to review the substance of the project
26 that it was not -- it was not provided.

27 And, in our submission, it is also a clear
28 breach of the duties as imposed by the Ministry. One

1 of the duties imposed was to ensure delivery that was
2 not done here.

3 This -- this kind of start to the engagement on
4 this project is also important -- this false start, I
5 should say, is also important because ultimately the
6 goal of consultation is trust-building, relationship-
7 building, reconciliation. That is the ultimate goal
8 that consultation accommodation is aiming at.

9 And that is the reason that proponents -- when
10 they are being delegated the consultation by the
11 Ministry, that is the reason that this delegation
12 includes things like make sure that when you send an
13 e-mail, it goes through; make sure that you are
14 actually getting the information through to the
15 Indigenous group in a plain language way that they
16 can absorb.

17 And we need to keep that in mind when we think
18 about what this delegated duty is and the reason that
19 those more procedural aspects are important to the
20 actual core purpose of consultation.

21 And we have heard this from the Supreme Court
22 repeatedly. Consultation is not a box-checking
23 exercise. It is not about pressing send on the e-
24 mail and saying, okay, I have done my part, now I
25 will sit back and just see if we hear anything from
26 Six Nations.

27 And in particular in this case, Enbridge and Six
28 Nations deal with each other on multiple projects at

1 a time. This was not the only project that Enbridge
2 and Six Nations were in consultation with one another
3 on. Enbridge knows Six Nations is active in
4 consultation. When it receives notice of projects,
5 it takes an active stance. So the fact that it heard
6 nothing from Six Nations for months should have been
7 a red flag for Enbridge to follow up.

8 So, regardless, this really gets Enbridge, in
9 our submission, off on the wrong foot in this project
10 with respect to the spirit, the overall spirit of
11 consultation.

12 And Commissioner Moran asked, I think, an
13 important question about why are we not picking up
14 the phone, why are we doing things by these kind of
15 formal e-mails without also trying to engage in that
16 relationship-building? We agree. And I think this,
17 again, goes to that question of box-checking, and we
18 need to be asking ourselves is Enbridge going through
19 the motions of doing this exercise so that it can
20 deliver to the Board a consultation record and have
21 literal checked boxes saying consultation is
22 complete, or is it truly aiming to engage with Six
23 Nations and give it the opportunity to raise its
24 concerns and have an impact on the project? And, in
25 our submission, it is the former in this case.

26 So skipping ahead, then, to September of
27 2016[sic], Six Nations, the next -- the next thing it
28 heard -- the first thing it heard really of substance

1 on the project was on September 16th, 2025, when it
2 received the environmental report from Enbridge.

3 And the environmental report itself emphasized
4 that extensive consultation had taken place. And the
5 environmental report also referred to the project
6 Description Report, which Six Nations to that point
7 had not received.

8 I think it is likely that the environmental
9 report was potentially prepared with pro forma
10 language because it was -- it was -- it was
11 completely inaccurate with respect to Six Nations
12 that extensive consultation had taken place. No
13 consultation had taken place to that point, and, in
14 fact, information had not even been provided to it
15 yet by that point.

16 So -- so just incorrect information, which is
17 problematic, obviously, for a few reasons. One of
18 the reasons it is problematic is because that was
19 another extremely frustrating e-mail for Six Nations
20 to receive. It received this e-mail from Enbridge
21 out of the blue. It receives this environmental
22 report. And then that report contains clearly false
23 information about consultation.

24 And this is, again, exactly the type of thing
25 that Courts have warned us about is these pro forma,
26 oh, yeah, there has been extensive consultation check
27 in the environmental report, and that is what appears
28 to have taken place here.

1 And I would like to pull up the e-mail
2 exchanges, starting with the e-mail from Mr. Graham
3 to Enbridge after he received the environmental
4 report and then the exchanges after that. Because I
5 think this is really the crucial moment in time that
6 shows what did or didn't take place in the lead-up to
7 the application.

8 So in our compendium, it is at Tab F to Mr.
9 Graham's affidavit, which is page 54 of the PDF. And
10 so Mr. Graham here is saying on September 16th:

11 "Good afternoon, Kevin. I received notice of
12 the upcoming project on June the 6th and
13 responded later that day asking if Enbridge
14 could introduce the project at an upcoming
15 meeting. Enbridge never replied, and I heard
16 nothing further until today when I received the
17 draft ER, which emphasized that extensive
18 consultation had taken place." (as read)

19 And just to orient this first paragraph, so Six
20 Nations received notice, fresh notice of the project,
21 on June 6th, 2025, and that was the first that it had
22 heard since 2021.

23 Six Nations responded saying, we have a meeting
24 already scheduled on June 10th between Enbridge and
25 Six Nations. Why don't we talk about this project as
26 part of that meeting? So Six Nations proactively
27 reached out to Enbridge to suggest that. It never
28 happened. Enbridge didn't agree to that. And as we

1 see here in Mr. Graham's e-mail, he is saying
2 Enbridge never replied, actually, to that request.

3 And then he says:

4 "I have heard nothing further until today."

5 (as read)

6 So that is June to September. That is several
7 months later.

8 And then Mr. Graham says:

9 "The ER also noted a project description report
10 was circulated to the Indigenous contact list
11 on July 18th, 2025. The report outlined the
12 preliminary findings of natural heritage and
13 cultural heritage and was shared with
14 Indigenous communities to support and
15 facilitate ongoing consultation efforts." (as
16 read)

17 Mr. Graham says:

18 "I never received a copy of the PDR. Please
19 send it to me. As you know, we are very
20 disappointed with the state of consultation on
21 the other two lines, so I am particularly
22 concerned that this one is starting off so
23 poorly." (as read)

24 And the reason that I wanted to highlight this
25 for you is that Mr. Graham is saying to Enbridge
26 plainly clearly, we are not happy with the way this
27 is going, let's improve things, please talk to us, we
28 want to meet with you about this -- that is what Mr.

1 Graham is saying here -- and, hey, what is going on
2 with this? It is talking about consultation that
3 hasn't happened. So Six Nations is doing its part.
4 It is reaching out and saying, what can we do here?

5 And I would like now to go to the next e-mail.
6 I think if we scroll down to the next page, it is
7 right there at Tab G, and this is Enbridge's
8 response. He -- Mr. Berube says:

9 "Hi, Peter. Trying this again as I am not sure
10 this got to you in an earlier email that I
11 sent." (as read)

12 That was the e-mail that we now know didn't go
13 through. He says here:

14 "There is a 45-day review period for the ER.
15 If possible, we would appreciate any comments
16 on the ER to be received by Wednesday, October
17 31st." (as read)

18 So Enbridge now knows that Six Nations did not
19 have the PDR. And, regardless, it is saying, hey,
20 you have 45 days to get back to us in full with your
21 comments on the project.

22 He says:

23 "I tried to attach the PDR and virtual
24 information session material. It came back as
25 undeliverable." (as read)

26 And for context, the virtual information
27 sessions occurred in August and had concluded by
28 September:

1 "This is the same issue that occurred when I e-
2 mailed you these reports on July 18th. I
3 missed that they came back as undeliverable."
4 (as read)

5 So we know now we have our answer what happened
6 here. They came back as undeliverable, and the
7 person at Enbridge "missed it":

8 "I tried today to summon the separate emails.
9 The reply I got is it didn't go through." (as
10 read)

11 And then he is saying:

12 "I will send a compressed file." (as read)

13 And we know that Six Nations ultimately got a
14 physical copy of the report the following week
15 because they weren't able to work out sending it
16 electronically.

17 So that is the response Enbridge gives to Six
18 Nations outreach, saying, hey, we have a problem
19 here, we are not happy with the way things are going.
20 They respond the same day saying, you have 45 days.
21 That is it.

22 And then I would like to go down to Tab I, which
23 is the next in the chain of correspondence. Mr.
24 Graham says:

25 "Hi, Kevin. That deadline is unworkable for us
26 as we haven't even had our introductory meeting
27 yet. Dawn will send potential dates if you are
28 agreeable. Good to know." (as read)

1 And he is saying that in respect of sending the
2 PDR. And he says:

3 "You could also mail a USB drive." (as read)

4 So Mr. Graham is saying that deadline is
5 unworkable for us. 45 days is not workable. We
6 haven't even had our introductory meeting yet. And
7 recall that Six Nations actually had asked for that
8 meeting to occur in June. So that meeting could have
9 taken place now several months prior, but Enbridge
10 never got back to Six Nations on that.

11 And then the next correspondence we have on this
12 is a detailed e-mail that I will pull up from Mr.
13 Graham to Enbridge about Six Nations wanting to
14 essentially press reset on the relationship because
15 of all the problems that had been occurring on this
16 kind of piecemeal consultation. And that is at Tab
17 K.

18 So this is October 16th now. There has still
19 been no meeting that has taken place. There has been
20 no additional correspondence.

21 Now Mr. Graham is saying:

22 "Good morning, Kevin. The consultation and
23 accommodation process team or CAP team has
24 discussed last week's meeting. That was a
25 meeting on a different matter, not Cedar
26 Springs. We are particularly concerned with
27 Enbridge's contention that our prior meeting
28 discussing the Mississauga and Port Colborne

1 lines does not count and that a response is not
2 forthcoming because it was verbal and not
3 written." (as read)

4 And what that is in reference to is that at the
5 same time in the fall of 2025, Enbridge and Six
6 Nations were in consultation on two other lines, the
7 Mississauga -- Mississauga line and a Port Colborne
8 line.

9 And in one of those meetings, there had been a
10 detailed substantive meeting with respect to the Port
11 Colborne line that had taken place in person orally,
12 and Enbridge had gone away with a series of action
13 items. When Six Nations followed up on those action
14 items, they were told, oh, that meeting "didn't
15 count" because it was oral and the action items
16 weren't set out in writing.

17 Obviously that was incredibly hurtful and
18 frustrating to Six Nations, who, as many Indigenous
19 communities are, are primarily oral people, are
20 primarily relationship-driven people, and for whom
21 in-person meetings are extremely important.

22 So to be told it didn't count because it was
23 oral and not in writing was obviously very
24 frustrating for Six Nations and was part of the
25 impetus -- the reason I am explaining this is that
26 was part of the impetus for writing this letter,
27 which requested essentially a reset to the
28 relationship for all of its consultation efforts,

1 including for the project here.

2 And Mr. Graham goes on to describe this, what I
3 have just described in this paragraph. He says:

4 "As one of my colleagues said upon hearing the
5 status of that meeting, 'But we are an oral
6 people.' The CAP team believes that
7 consultation is impossible under these
8 circumstances. Considering our significant
9 miscommunication about the Mississauga line
10 (including the baseline study issue and claims
11 from both Enbridge and Six Nations during the
12 recent meeting that the other wasn't
13 consulting) and that our key Port Colborne line
14 meeting is being ignored, that the Cedar
15 Springs line is off to a horrendous start, and
16 that Enbridge is not abiding by Six Nations'
17 consultation and accommodations policy we
18 believe that an MOU, which at minimum outlines
19 the structured consultation process, is
20 necessary for meaningful consultation to occur
21 on Enbridge's projects." (as read)

22 So Six Nations here is saying to Enbridge, let's
23 meet, let's set up on a memorandum of understanding
24 that is going to set out our baseline kind of
25 structure to what consultation will look like to
26 improve the problems that we have been having.

27 And then in the bottom paragraph, Mr. Graham
28 says:

1 "As Enbridge acknowledges, we are at a pivotal
2 moment in history, an awakening to reset and
3 build a foundational relationship." (as read)

4 And then the e-mail ends by saying:

5 "We would like a meeting to start crafting an
6 MOU." (as read)

7 And so that meeting that is being contemplated
8 in this e-mail, that meeting took place in November -
9 - in late November 2025, and Six Nations left that
10 meeting feeling like there had been -- like a corner
11 had been turned. They left that meeting feeling,
12 okay, we are starting to improve our relationship.
13 We feel that that was a productive meeting. We are
14 going to establish some policies going forward.
15 Things are on the right track.

16 And then the next thing that happened is that it
17 received a notice of hearing for this application.
18 And unbeknownst to Six Nations, during that meeting
19 which they felt was a reset to the relationship, when
20 that meeting took place, Enbridge had actually
21 already applied for its exemption, and they had not
22 disclosed that to Six Nations at the meeting.

23 And that, again, was an incredibly frustrating
24 and hurtful thing for Six Nations to learn because --
25 and it just -- it undercut any of the progress in
26 terms of relationship building that it thought had
27 taken place at that November meeting. Because it was
28 undercut by the fact that Enbridge essentially on --

1 you know, talking out of both sides of its mouth.

2 On the one hand, saying to Six Nations, yes, we
3 want to start this consultation process with you with
4 this new MOU. And then at the same time, already
5 having applied to the Board, with the implication
6 being consultation is done because we are asking for
7 that project to be approved on the basis that
8 consultation is complete.

9 And so this, from Six Nations' perspective,
10 completely eroded any of the progress that it had
11 felt had been made at that November meeting.

12 And I would like to take a moment just to touch
13 on the June 6th, 2025, letter where Six Nations was
14 given kind of a fresh notice of this project. And my
15 friend -- my friend referred to this letter and
16 relied on it for the fact that it should not have
17 come as a surprise, essentially, to Six Nations that
18 Enbridge had applied for this exemption because in
19 that June letter, it -- the letter provided that
20 Enbridge planned to file its Leave to Construct
21 exemption.

22 And the exact language from that letter -- that
23 letter says that Enbridge:

24 "Planned to file a Leave to Construct exemption
25 application with the Ontario Energy Board."

26 (as read)

27 So there is no timeline provided there. It is
28 not saying we are going to do it, you know, on this

1 particular date.

2 Obviously, the implication is that it would
3 apply once consultation had been complete because
4 that is one of the preconditions to the application
5 being granted. That letter, in my submission, in no
6 way puts Six Nations on notice that at this reset
7 meeting, the application had already been submitted.

8 And I think what we need to recall here, and I
9 will pull up a bit of case law on this, is that
10 Enbridge through that delegation letter is
11 effectively standing in the shoes of the Crown with
12 respect to consultation on this project. And the
13 duty to consult is rooted in the honour of the Crown.
14 So fundamental to the duty, at the heart of the duty,
15 is that it requires the Crown to act honourably. And
16 the Courts -- the Supreme Court has told us a little
17 bit about what that means.

18 And so Enbridge here is taking over that duty to
19 act honourably in discharging its consultation
20 accommodation responsibilities.

21 And I would like to turn up a decision, and it
22 is referenced in Schedule A to our summary of
23 submissions. That might be the fastest link. And it
24 is *Eabametoong First Nation v. Minister of Northern*
25 *Development and Mines*, 2018 ONSC 4316. At Schedule
26 A, just up a bit. Not quite that far. Yeah. And it
27 is at number 3 there. And we are going to go to
28 paragraph 94. I wonder if the best thing might be to

1 just copy the -- just go right to CanLII and copy the
2 neutral citation. Oh, perfect.

3 So paragraph 94. Yeah. So the Court here is
4 discussing some of the content of that honour of the
5 Crown, and they say here:

6 "The other profound aspect of the duty to
7 consult is what is at -- is that what is at
8 stake is the 'honour' of the Crown. Acting
9 honourably is not a matter of form. It is a
10 matter of substance. In the context of the
11 duty to consult, it requires conduct that
12 demonstrates a genuine and good faith intention
13 to listen, consider, and respond to Indigenous
14 concerns.

15 As emphasized in the policy, sharing
16 information and providing feedback are
17 important components of the duty to consult.
18 Maintaining the honour of the Crown also
19 requires conduct that promotes reconciliation
20 rather than distrust and misunderstanding."

21 (as read)

22 And in my submission, when we look at the
23 history of Enbridge's actions and non-actions here,
24 it is one that promotes distrust and not that spirit
25 of reconciliation.

26 So Enbridge in November brought this application
27 for its exemption. Six Nations' only recourse at
28 that point to be able to have any consultation in the

1 project was to intervene in these proceedings. It
2 was essentially given no choice but to seek leave to
3 intervene. That was the only way for it to force
4 even the most basic consultation from Enbridge, which
5 it had not been able to extract up to that point.

6 And recall that by November, there had still
7 been no meetings at all about this project. All that
8 had happened is Six Nations by that point had been
9 sent the environmental report which falsely claimed
10 that consultation had occurred, and it had been sent
11 the PDR. And Six Nations had asked for a meeting, it
12 had asked for an introductory meeting back in June.
13 Enbridge ignored that, and no meeting had yet
14 happened on this project.

15 And then we skip ahead to April of this year
16 when this regulatory proceeding was well underway.
17 It was not until April 21st, 2026, that an initial
18 meeting took place. And I would like to turn up Tab
19 8 of Enbridge's updated compendium, and it is page
20 189 of that PDF. If we could just scroll down a bit.
21 And scroll down a bit further, please.

22 I am just going to ask my colleague to find the
23 language because there is language that I would like
24 to take the Panel to -- and apologies, I don't have
25 it highlighted here - that notes that in Enbridge's
26 notes from the meeting that day, they say "Cedar
27 Springs project introduction." I might just have the
28 wrong page, so I am just going to ask Ms. Spiegel to

1 look that up while I continue, and then I will take
2 the Panel there

3 But it is only to highlight that that April 21st
4 meeting was effectively the beginning of
5 consultation. This was the first meeting at which
6 the project was being presented to Six Nations in,
7 again, that digestible way, that plain language way,
8 that allowed it to ask questions and have that face-
9 to-face interaction.

10 And as we -- as I made submissions on earlier,
11 First Nations is an oral people. They had made that
12 clear to Enbridge by that point that face-to-face
13 meetings were very important to them for
14 consultation.

15 So there is then a second meeting that took
16 place on May 26th, 2026. And so that is just over a
17 month ago, and that is well into this regulatory
18 process. And that is the meeting at which the
19 parties got into what I called the "meat and
20 potatoes" of consultation. That is really the first
21 time Six Nations asks real substantive questions of
22 Enbridge that Enbridge undertakes to go away and get
23 them answers, and then Enbridge starts to send them
24 the answers after that meeting in May.

25 And these responses are -- trickle in throughout
26 the end of May and through June, and that
27 correspondence was submitted to the Tribunal by
28 Enbridge in its updated consultation record.

1 So as I mentioned, Six Nations started to ask
2 questions at that meeting. Enbridge was providing
3 answers. The answers have not all been provided.
4 Six Nations' concerns have not all been satisfied.
5 And I am happy to go through some of the specifics on
6 that.

7 So the first I mentioned at the outset is that
8 at that May meeting, Six Nations asked Enbridge to do
9 a walkthrough of the site, and it said it was content
10 for that to be virtual. But that did not take place
11 at that meeting. It was given just that one photo,
12 and there was nothing in there that actually allowed
13 Six Nations to be walked through in any detail with
14 the -- of the project.

15 Enbridge did send through more detailed mapping
16 in June in one of those e-mails that I mentioned
17 where Enbridge sent its kind of follow-ups to Six
18 Nations' request, but there has not yet been any
19 meeting to walk Six Nations through that.

20 And in my submission, this underscores how truly
21 preliminary consultation still is. Six Nations has
22 not yet been given the chance to be explained by
23 Enbridge what is this project, what are the details,
24 what is the proposal here. And that, in my
25 submission, is something that should be happening at
26 the very outset, not, you know, in the middle of or
27 after the regulatory hearing. This could have
28 happened, in my submission, in June if Enbridge had

1 taken Six Nations up on its request for a preliminary
2 meeting.

3 And just to go back to the language of the
4 directive by the Ministry here, one of those
5 directives to Enbridge is to afford Indigenous groups
6 the opportunity to understand the project in full.
7 That is a component of the delegation of the duty to
8 Enbridge. And in our submission, that has not yet
9 happened.

10 Another outstanding consultation item is Six
11 Nations continues to await the delivery of the
12 consolidated list of Enbridge's vegetation
13 guidelines. So Enbridge has told Six Nations that it
14 has vegetation guidelines that it uses for its
15 projects. Six Nations, over a year ago, in the
16 context of one of the other projects on which it was
17 consulting, asked to see those guidelines. They have
18 not yet been provided. And then Six Nations followed
19 up in one of the spring meetings in the context of
20 this project to say, we still want to see them for
21 this project.

22 And the reason that Six Nations wants to see
23 those guidelines is, essentially, all they have at
24 this point on the vegetation guidelines is Enbridge's
25 word saying, don't worry, we have them, and they are
26 great.

27 Six Nations has historically been consulted with
28 by Metrolinx on separate projects. Metrolinx has a

1 comprehensive vegetation guideline that Six Nations
2 has had the opportunity to review and understand and
3 that Six Nations is generally content is adequately
4 protective. And the reason Six Nations would like to
5 see Enbridge's vegetation guidelines is so that it
6 can compare them to the Metrolinx guidelines and
7 satisfy itself that the Enbridge guidelines are
8 adequately protective in the way that the Metrolinx
9 guidelines are. And so that is outstanding.

10 Another outstanding element of consultation is
11 there was an arborist survey that has been
12 undertaken, and the report has not yet been
13 completed, and it has also not yet been shared with
14 Six Nations because it has not been completed. And
15 that is referred to in Enbridge's submissions at
16 paragraph 17 and also at footnote 2.

17 And in our submission, this report should be
18 completed. Six Nations should be given the
19 opportunity to review it as part of consultation.

20 Enbridge has -- Enbridge -- excuse me -- has
21 said it does not expect any tree removal as part of
22 this project, but we don't have confirmation of that.
23 We don't have the report confirming that. Again, all
24 we have is Enbridge saying, trust us, there won't be
25 tree removal. And Six Nations at this point doesn't
26 have that level of trust without seeing that report.

27 So Six Nations would like to see the report,
28 understand from the arborist perspective whether any

1 tree removal is contemplated, and from there, may
2 have requests about tree planting and reforestation.

3 And then the last thing I want to note on this
4 point is that in the updated consultation record that
5 Enbridge delivered about a week or two ago to the --
6 to the Board, in the little boxes to be checked, one
7 of the boxes asks:

8 "Are there any outstanding concerns on the part
9 of the Indigenous group?" (as read)

10 And Enbridge continued to check "yes" for that
11 box. So Enbridge itself is acknowledging in its
12 consultation record there are outstanding concerns
13 that have not yet been addressed.

14 So taking a step back, what does all of this
15 mean for project approval and for the decision facing
16 the Board today? In our submission, the exemption
17 cannot be granted because the duty has not been
18 discharged.

19 And I would like to take you to an excerpt from
20 *Clyde River*, the Supreme Court of Canada decision on
21 this. And that is in Schedule A, if that is the
22 quickest way to get there. There's a link at
23 Schedule A to our submissions.

24 PRESIDING COMMISSIONER CÔTÉ: Ms. Rabinovitch.

25 B. RABINOVITCH: Yeah.

26 PRESIDING COMMISSIONER CÔTÉ: Pardon the
27 interruption. Did you have a point in mind where we
28 would pause? I don't want to stop your momentum, but

1 I understood you walked through the chronology.
2 Wherever there is a natural point, I will look to you
3 to just flag that first.

4 B. RABINOVITCH: No, that's -- point well taken.
5 I think this would be a natural -- a natural break.

6 PRESIDING COMMISSIONER CÔTÉ: Then in that case,
7 I spotted well. So 12:25. We will give it an hour
8 and reconvene at 1:25.

9 B. RABINOVITCH: Great.

10 PRESIDING COMMISSIONER CÔTÉ: At that time we
11 will let you finish your submissions, and we will
12 follow with questions.

13 B. RABINOVITCH: Perfect. Thank you.

14 PRESIDING COMMISSIONER CÔTÉ: Okay.

15 --- Upon recessing at 12:24 p.m.

16 --- Upon resuming at 1:26 p.m.

17 PRESIDING COMMISSIONER CÔTÉ: All right.

18 Welcome back. I hope you had an enjoyable lunch.
19 Before we return, I just wanted to check if there is
20 anything the Panel needs to be aware of that may have
21 unfolded over lunch. I don't understand there is
22 anything, but I thought I would take a moment and
23 check. Looking around the room, I am seeing none.

24 So in that case, we will return to Six Nations
25 for the continuation of your submissions. Over to
26 you.

27 B. RABINOVITCH: Thank you. I am going to
28 start, actually, just one -- with one final

1 observation on the factual side about field monitors.

2 As my friend referenced in his submissions, in
3 the fall of 2025, there were, I think, two field
4 studies that Six Nations sent monitors to observe.
5 And the point I wanted to make on this is that Six
6 Nations had expressed to Enbridge previously that
7 field monitors are not authorized to conduct
8 consultation. Their role is limited to observing and
9 monitoring the studies, but that consultation was to
10 occur through Mr. Graham or the CAP team.

11 And I will just take you briefly to an e-mail
12 that references that, and it is in the updated
13 consultation record at Tab 8. It is at PDF page 389.
14 And for the record, it is line item attachment 3.39.
15 I will just give Enbridge a moment to pull it up.

16 And so the sentence I wanted to direct your
17 attention to is towards the bottom of the monitor.
18 It says:

19 "As previously relayed to Enbridge, field
20 monitors cannot consult on behalf of Six
21 Nations of the Grand River elected council.
22 That role is reserved for the consultation and
23 accommodation team." (as read)

24 And if we go up to the date just to orient
25 ourselves, that is on October 28th, 2025, and this e-
26 mail was primarily in the context of those other
27 projects that we discussed that were in consultation
28 at the time. But Enbridge had included it in their

1 consultation record for this project because they
2 were all being dealt with around the same time in the
3 statement with respect to monitors, and our
4 submission applies across the board.

5 So that is the last factual point I wanted to
6 make. And I will move on now to where I left off
7 before lunch, which is kind of big picture what all
8 of this means for the project approval.

9 And I wanted to direct the Panel to one quote
10 from the Supreme Court of Canada in *Clyde River* on
11 this. And that is *Clyde River (Hamlet) v. Petroleum*
12 *Geo-Services*, 2017 SCC 40, and we are going to
13 paragraph 39.

14 So the second sentence of that paragraph reads:

15 "Nor, respectfully, can we agree with the
16 majority of the Federal Court of Appeal in
17 *Chippewas* that an NEB decision will comply with
18 Section 35 of the *Constitution Act* so long as
19 the NEB ensures the proponents engage in a
20 'dialogue' with potentially affected Indigenous
21 groups. If the Crown's duty to consult has
22 been triggered, a decision maker may only
23 proceed to approve a project if Crown
24 consultation is adequate, although in many
25 cases the Crown will be able to rely on the
26 NEB's processes as meeting the duty because it
27 is the final decision maker. The key question
28 is whether the duty is fulfilled prior to

1 project approval." (as read)

2 And so this speaks to the question of what role
3 the regulatory process plays in the approval. And I
4 will come to this -- I will come to this a bit later.

5 But one of the points I wanted to make with this
6 paragraph is the Court's emphasis that a dialogue --
7 a "dialogue" is not sufficient and that the ultimate
8 question, whether consultation is through a
9 regulatory process, as it was here with the OEB, or
10 else otherwise, the ultimate question remains the
11 same, and that is whether that duty has been
12 discharged. The Court is saying here that a
13 "dialogue" is not sufficient for that.

14 And I will say a few more words now about the
15 effect and implications of the fact that in this
16 case, effectively all of the consultation has taken
17 place after the application was made, and more
18 specifically, after Six Nations intervened in the
19 application to object to the position that Enbridge
20 was taking, and even more specifically, after several
21 months of that process once we were really
22 approaching the end of that regulatory process.

23 And so from Six Nations' perspective, it was
24 initially given notice of the project in 2021, and
25 then it heard nothing for four years. So four --
26 Enbridge had four years, from the Six Nations'
27 perspective, in which to involve it early in the
28 project planning.

1 And in that period and even in June when it was
2 given fresh notice, Six Nations could have provided
3 meaningful input into the studies that were being
4 presumably done at some point in that four-year
5 period between 2021 and 2025. It could have provided
6 meaningful input in June of 2025 when it asked to
7 meet.

8 And instead, in our submission, Enbridge really
9 took no steps until the 11th hour when it demanded a
10 response from Six Nations within 45 days to its
11 environmental report.

12 And the Supreme Court has told us that -- that
13 the obligation is to consult early, as early in the
14 project phase as we can, to provide as much
15 opportunity as possible for Indigenous communities to
16 weigh in on the proposal and to propose changes to
17 account for accommodations to be made.

18 And I am going to take you to another quote from
19 the Supreme Court of Canada that speaks to this, and
20 it is from *Mikisew Cree First Nation v. Canada*
21 (*Minister of Canadian Heritage*), 2005 SCC 69, and we
22 are going to paragraph 64.

23 We are going to the block quote, and it is a
24 quote from the decision *Halfway River First Nation*.
25 And the quote reads:

26 "The fact that adequate notice of an intended
27 decision may have been given does not mean that
28 the requirement for adequate consultation has

1 also been met. The Crown's duty to consult
2 imposes on it a positive obligation to
3 reasonably ensure that Aboriginal peoples are
4 provided with all necessary information in a
5 timely way so that they have an opportunity to
6 express their interests and concerns, and to
7 ensure that their representations are seriously
8 considered, and wherever possible, demonstrably
9 integrated into the proposed plan of action."

10 (as read)

11 My friend in his submissions pointed out that
12 the duty to consult and accommodate is a right to a
13 process rather than an outcome. But we also need to
14 remind ourselves that the law is clear that that
15 process must include a genuine opportunity to be
16 heard and to participate in the process.

17 If Six Nations is given the chance to review the
18 studies but at a point in time where it is too late
19 for its comments to actually have any effect or for
20 Enbridge to do anything with them, that is not
21 genuine consultation. That does not discharge the
22 duty, in our submission. And that is exactly the
23 kind of thing that the Supreme Court has cautioned us
24 against.

25 And on the timeline, Enbridge in its written
26 submissions has said that it is planning to start
27 construction in October of this year, so three months
28 from now. I am putting that in perspective. The

1 first meeting was in April of this year. The only
2 other meeting was in May of this year. There are
3 still outstanding matters, as we have gone through.
4 Construction is planned for three months from now.
5 That obviously means Enbridge is ready to go. If the
6 exemption is granted, in our submission, all of the
7 evidence suggests that it has no intention of
8 integrating any additional comments from Six Nations.

9 The project -- the project has been effectively
10 ready as of the date of the application. I don't
11 think we have any evidence from Enbridge that it has
12 made any adjustments to the project as a result of
13 Six Nations' comments because it hasn't been provided
14 the opportunity to meaningfully do so, in my
15 submission.

16 And we heard from Enbridge today that the reason
17 that it made its application when it did in November
18 of 2025 is that it had a deadline it had to meet. It
19 needed to file its application for an exemption by
20 the end of December 2025 to qualify for a subsidy.
21 And that, I think we now understand, is the reason it
22 imposed the 45-day response period on Six Nations,
23 presumably was so that it could meet that deadline.

24 Six Nations didn't know this at the time. It
25 wasn't given any notice of this at the time. Why not
26 tell Six Nations about that at that meeting in
27 November?

28 More significantly, the law is clear that that

1 kind of deadline on the proponent's side is not a
2 reason to impact consultation. That cannot have an
3 impact on the consultation.

4 And I am going to pull that decision up. It is
5 *Eabametoong*, and we have -- I have taken you to a few
6 excerpts from this case before. And we are going to
7 paragraph 114.

8 So the Court says in Squamish -- or in *Squamish*
9 *Nation v. British Columbia*, the Court said at
10 paragraph 214:

11 "The Crown may not conclude a consultation
12 process in consideration of external timing
13 pressures where there are outstanding issues to
14 be discussed. As Jack Woodward says in Native
15 Law, the Crown must give the Aboriginal group a
16 reasonable amount of time to respond to a
17 referral and to engage in consultation. The
18 Crown must be prepared to let consultation run
19 its course. It cannot abort the consultation
20 process because of other time pressures where
21 the Aboriginal group is actively engaged in the
22 consultation process, there remain outstanding
23 issues, and there is value to further
24 discussion." (as read)

25 And in our submission, that is exactly what
26 happened here. Enbridge had an external factor. It
27 needed to get its application in by the end of the
28 year for it to qualify for a government subsidy,

1 purely for its own benefit. And because of that, it
2 imposed these artificial pressures on Six Nations.

3 And when Six Nations responded that it wasn't
4 able to meet that timeline, it didn't provide it with
5 any further opportunity for comment. It forged ahead
6 with its application regardless.

7 In our submission, if the exemption is granted
8 with consultation in the state that it is in, any
9 consultation efforts will effectively have amounted
10 to Six Nations just "blowing off steam," and that is
11 a quote from -- from the Courts, because the project
12 would effectively be forging ahead without Six
13 Nations having had the opportunity to provide any
14 actual meaningful input at a time in the project
15 where it could have actually had an impact.

16 And there is two decisions that I would like to
17 draw your attention to that speak to this. The first
18 is Mikisew, *Mikisew Cree*. Oh, sorry. That is what
19 you have up. Apologies. Paragraph 54.

20 And so the Supreme Court of Canada here has
21 said:

22 "Consultation that excludes from the outset any
23 form of accommodation would be meaningless.

24 The contemplated process is not one of simply
25 giving Mikisew an opportunity to blow off steam
26 before the Minister proceeds to do what she
27 intended to do all along. Treaty-making is an
28 important stage in the long process of

1 reconciliation, but it is only a stage." (as
2 read)

3 And then it talks about the facts of that case.

4 And the point that the Court is making here, in
5 my submission, is that connection point between the
6 procedural and the substantive. So the duty to
7 consult is a procedural duty, but for that to have
8 any actual meaning to it, it needs to occur in such a
9 way that allows for the possibility of substantive
10 relief.

11 So, you know, we are not saying that the duty to
12 consult entitles Six Nations to any one particular
13 outcome, but it does entitle Six Nations to a fair
14 process that would allow for the possibility of
15 influencing the project and for the possibility of
16 that engagement happening at a stage in the project
17 where it can have that influence where appropriate.

18 And the second decision I would like to draw
19 your attention to is *Tsleil-Waututh Nation v. Canada*,
20 2018 FCA 153. And we are going to start at paragraph
21 501. And so the Court says here:

22 "As the Supreme Court observed in *Haida Nation*
23 at paragraph 46, meaningful consultation is not
24 just a process of exchanging information.
25 Meaningful consultation 'entails testing and
26 being prepared to amend policy proposals in the
27 light of information received and providing
28 feedback'." (as read)

1 And then it goes on to say:

2 "Where deep consultation is required, a
3 dialogue must ensue that leads to a
4 demonstrably serious consideration of
5 accommodation. This serious consideration --
6 in the Crown's consultation-related duty to
7 provide written reasons for the Crown's
8 decision." (as read)

9 But the initial sentence is not saying that the
10 meaningful consultation and being prepared to amend
11 policies applies only for deep consultation. That
12 initial sentence is talking about all forms of
13 consultation at all levels. It needs to happen in
14 such a way that the Crown -- or in this case, the
15 proponent -- is prepared to amend the proposals in
16 light of the information received, so, again,
17 consistent with what we just saw in *Mikisew*.

18 I would now like to turn to responding to one of
19 the submissions my friend made this morning. Mr.
20 Gray made submissions to the effect that it is normal
21 and appropriate for major parts of consultation to
22 take place after the application period, so in the
23 time between application and decision.

24 And my response to that is that it really
25 depends on the form of the application and what that
26 looks like. Different regulatory bodies have, you
27 know, hugely different approaches to the application
28 process.

1 So taking the example, for example, of an
2 aggregates application, it is known and understood
3 that the time from application to approval is years
4 and years and years, and in that window, that is
5 really where the heavy lifting happens for all of the
6 various studies and that type of thing. And in my
7 submission, this is not at all the case with this
8 type of application. This is a leave to exempt
9 application. It is a much more streamlined summary
10 process not designed to be the beginning or even
11 middle or end of the consultation process.

12 And in my submission, one of the things that
13 makes this clear is the Board's notice of hearing,
14 and I would like to turn that up now. It is -- it is
15 in a tab to Mr. Graham's affidavit. It is at Tab L.

16 So this is the notice of hearing that was sent
17 by the Board to the elected chief of the Six Nations.
18 And if we scroll down to the next page, yeah, the
19 issue in this hearing. So the Board is saying:

20 "The issue that the OEB will consider in this
21 hearing is whether the Crown's duty to consult
22 has been adequately discharged in respect of
23 the project. The OEB must grant the exemption
24 requested by Enbridge Gas if it determines that
25 the Crown's duty to consult has been adequately
26 discharged in respect of the project. In that
27 case, no further approval will be needed from
28 the OEB to allow Enbridge Gas to build the

1 project." (as read)

2 So what the Board is telling us here is that the
3 nature of this approval process -- and I am sure the
4 Panel is more familiar with that than I probably am
5 being that it is your regulatory scheme. But what
6 the Board is telling us here is that the nature of
7 this exemption request is that the Board has called a
8 hearing on this one particular issue, and that if
9 that issue is satisfied, then the approval will be
10 granted

11 So in my submission, it is not an opening or an
12 invitation to make a whole bunch of changes to the
13 project proposal

14 And the other thing of note here in the language
15 of the Board is it is saying that the issue to be
16 considered is whether the Crown's duty to consult has
17 been discharged. Has been. And that is at the
18 outset of the regulatory process.

19 And in my submission again, that is an
20 indication that, from the Board's perspective, the
21 expectation is that as part of this regulatory
22 process, consultation has been engaged in, has been
23 discharged, and that is what the Board is there to
24 determine, has that happened or not. Not is it still
25 happening, will it happen between now and when we may
26 decide to hold an oral hearing, which isn't even a
27 necessary requirement for this type of proceeding.

28 The other point I would like to make on this

1 topic is that in response to a question from the
2 Panel, my friend indicated that Enbridge's position
3 today is that the duty was discharged only after the
4 May 2026 meeting. I believe that was his submission,
5 that after that meeting took place, the duty at that
6 point was discharged.

7 And in my submission, if Enbridge, when it
8 submitted its application, felt that the duty had not
9 yet been satisfied, felt that further consultation
10 was needed prior to a decision from the Board being
11 rendered, the appropriate course of action would have
12 been to advise the Board that the decision be held in
13 abeyance pending the conclusion and the satisfaction
14 of that duty.

15 That is not what Enbridge has done. Enbridge
16 has at all times behaved and acted and taken the
17 position in this proceeding that it would like the
18 Board to render a decision granting the exemption.

19 And I would like to direct the Board to a piece
20 of correspondence from Enbridge in this matter from
21 May 1st, 2026. And this is in the file, but it is
22 not in our compendium. I may ask Ms. Spiegel to
23 direct me to the best way for us to tell Preet to
24 find this letter.

25 So it is in the -- Enbridge's consultation
26 record. Item 3.39. I don't know if -- I don't know
27 if Preet has access or is in the portal, but is that
28 the best way to find the letter? Apologies, I might

1 take you through some of the excerpt, I have it
2 quoted here, while my colleague orients us.

3 So I think the only place in the record for us
4 to find it is in the portal set of submission -- the
5 -- in the online portal as opposed to in any of the
6 compendiums here. On the portal, it is named
7 EGI_response to SNGL_IRRs_Cedar Springs_20260501.

8 And I realize that I am probably putting Ms. Gill on
9 the spot, and I apologize for that.

10 P. GILL: Sorry. What was the date for that
11 letter?

12 B. RABINOVITCH: Yeah, go ahead.

13 P. GILL: What was the date that that letter was
14 sent?

15 B. RABINOVITCH: I can't hear. I don't know if
16 anyone else can hear her.

17 Okay. I think Ms. Spiegel will e-mail it
18 directly to Ms. Gill so she can pull it up for
19 everyone. But I will start with reading out the key
20 section of the letter.

21 So, again, this is dated May 1st, 2026, and it
22 is a letter from Enbridge to the Board in response to
23 the OEB Staff request that this matter be put into
24 abeyance pending a decision letter from the Ministry.

25 And Enbridge wrote:

26 "On April 21st, 2026, Enbridge Gas and SNGR
27 representatives met to discuss the project and
28 another Enbridge Gas project currently under

1 review by the OEB. Enbridge Gas
2 representatives who attended the April 21st
3 meeting understood the discussions to be
4 constructive, focused, and productive. With
5 respect to the project, Enbridge Gas
6 representatives provided information in the
7 meeting on the environmental report process and
8 timing of various studies and provided an
9 overview of certain measures that could be
10 employed to mitigate potential impacts and
11 answered any related questions. Enbridge Gas
12 representatives also explained the route design
13 process and OEB filing timelines." (as read)

14 And then they say:

15 "Enbridge Gas maintains that the consultation -
16 -" (as read)

17 Okay. So the paragraph I was reading is under
18 the heading "Response to SNGR April 20, 2026,
19 Filing." It is the second paragraph that starts "On
20 April 21st." So I have been reading from the
21 beginning of that paragraph, and I am just now on the
22 last couple lines, which are really the operative
23 lines.

24 And Enbridge says:

25 "Enbridge Gas maintains that the consultation
26 undertaken to date, including that achieved
27 through this regulatory process itself, has
28 been adequate to discharge the duty to

1 consult." (as read)

2 So this letter is being written following that
3 initial May 21st meeting, but before the May 2026
4 meeting, and Enbridge is taking a position there that
5 the duty to consult has been discharged. So that is
6 earlier than they indicated today in this hearing.

7 And in my submission, the language used here,
8 Enbridge Gas maintains that the consultation
9 undertaken to date is adequate, is an indication of
10 what, in my submission, is the reality of the
11 position Enbridge has been taking consistently, which
12 is that even prior to that April 21st meeting,
13 consultation had been satisfied.

14 So a bit of a moving target there. But
15 regardless of the -- you know, of pinning down the
16 timing on Enbridge's part of whether it thinks that
17 May meeting was required or not, the Supreme Court
18 has told us that an adjudicative process like this
19 one is not the way to conduct consultation. It is a
20 no-win situation when consultation is driven into an
21 adversarial process.

22 And I would like to take you to *Clyde River*
23 which speaks to this, and we are going to paragraph
24 24 at *Clyde River*. And the statement in *Clyde River*
25 is in the context of an application for judicial
26 review, but in my submission, it applies equally here
27 to this hearing which, you know, is a regulatory
28 hearing, but adversarial judicial-style hearing.

1 So paragraph 24, so the Court says:

2 "Above all, and irrespective of the process by
3 which consultation is undertaken, any decision
4 affecting Aboriginal Treaty rights made on the
5 basis of inadequate consultation will not be in
6 compliance with the duty to consult, which is a
7 constitutional imperative. Where challenged,
8 it should be quashed on judicial review. That
9 said, judicial review is no substitute for
10 adequate consultation. True reconciliation is
11 rarely, if ever, achieved in courtrooms.
12 Judicial remedies may seek to undo past
13 infringements of Aboriginal and Treaty rights,
14 but adequate Crown consultation before project
15 approval is always preferable to after-the-fact
16 judicial remonstrations following an adversarial
17 process. Consultation is, after all, concerned
18 with an ethic of ongoing relationships. While
19 Aboriginal claims can be and are pursued
20 through litigation, negotiation is a preferable
21 way of reconciling state and Aboriginal
22 interests. No one benefits, not project
23 proponents, not Indigenous peoples, and not
24 non-Indigenous members of affected communities,
25 when projects are prematurely approved only to
26 be subjected to litigation." (as read)

27 And so, again, that is in the context of an
28 application for judicial review following project

1 approval, but in my submission, the spirit of what is
2 being said there, that an adjudicated process is not
3 the right way to go about consultation, applies
4 equally here.

5 The reason I think that is important here -- I
6 will get to in one moment. I am going to pull up
7 just one more case, appreciating that I am jumping
8 around the case law a bit. But I am going to take
9 you one more time back to *Eabametoong*, to paragraph
10 124.

11 And in that case, the proponent had argued that
12 meetings that took place after the permit had been
13 issued should be taken into account as part of the
14 consultation. The Court in that case disagreed and
15 reaffirmed that consultation must be fulfilled ahead
16 of time.

17 And so the Court said:

18 "Landore also argues that in assessing whether
19 the Ministry has fulfilled its duty, it is
20 important to take into account the meetings
21 that it had with *Eabametoong* in May, June, and
22 September of 2016, after the permit had been
23 issued. I disagree. First, the duty to
24 consult must be fulfilled before, not after,
25 the decision trigger the duty has been made.
26 Second, the meetings all occurred after the
27 judicial review application had been issued,
28 making them possible a settlement meeting."

1 (as read)

2 So, again, in the context of post-decision
3 consultation, but, in my submission, relevant for the
4 Board to consider here for the overall point that
5 consultation is really to take place before we get
6 into an adjudicated procedure.

7 And so I think, overall, it is relevant to ask
8 ourselves if Six Nations had not intervened in this
9 proceeding and had not opposed the approval, what
10 would have happened in this case? And in my
11 submission, we would not be sitting here holding on
12 oral hearing on the sufficiency of consultation. The
13 April and May 2026 meetings, in my submission, would
14 not have happened.

15 And it is our submission that if this had gone
16 through unopposed, that Enbridge would have made its
17 application, and it may well have been granted
18 without Enbridge taking any further consultation
19 steps.

20 And in my submission, it is only because -- we
21 can tell from the record that it is only because Six
22 Nations has opposed this application that Enbridge
23 has now been effectively forced into properly
24 engaging in consultation. It has only been in the
25 last two months, effectively, that there have been
26 any real meetings on consultation. That has only
27 been in the lead-up to this hearing.

28 In my submission, it is not a coincidence that

1 the Board was delivered with an updated consultation
2 record, including those meetings and the
3 correspondence after, just, you know, a week, a week
4 and a half before this hearing.

5 And that should not be the way things work, in
6 our submission. It should not be that an Indigenous
7 group is required to oppose an application, engage in
8 an adjudicative proceeding to finally force a
9 proponent to the table to engage in real
10 consultation. That is completely contrary to the
11 honour of the Crown element of the duty to consult
12 and that overlying effort of reconciliation that we
13 are all aiming for with the consultation.

14 And in our submission, this proponent's
15 behaviour in this case has effectively been to ask
16 for forgiveness rather than permission with respect
17 to consultation which, again, is directly opposed to
18 the principles here.

19 My friend made submissions this morning that
20 Enbridge "learns from each consultation," but in this
21 case, we have no actual evidence of that. We have no
22 actual evidence of good faith improvements. We
23 thought we were on that path with the meeting from
24 November, and then the rug, from Six Nations'
25 perspective, was pulled out from under it.

26 All we have, in my submission, on the record
27 before the Panel today is evidence that Enbridge
28 needs a regulatory scrutiny to finally start to

1 engage in good faith.

2 And finally on this point, it is our submission
3 that if this application were approved given the
4 record and this history of behaviour, it would
5 effectively be a stamp of approval on the way that
6 Enbridge has conducted itself in this matter. It
7 would embolden Enbridge to continue to take this
8 approach in the future on its future projects. We
9 know it has many projects on the go, in particular,
10 with Six Nations. This is not the end of their
11 relationship. This is part of an ongoing
12 relationship.

13 And that if this were to be approved given the
14 record and given the -- the, you know, number of
15 false starts and mistreatments by Enbridge in this
16 case, it would -- it would send exactly the wrong
17 message about what is required from a proponent who
18 is standing in the shoes of the Crown and fulfilling
19 that honour of the Crown in good faith.

20 I would like to make just two smaller points
21 before I wrap up. The first is on cumulative
22 effects.

23 So the Crown has recognized the significance of
24 cumulative effects. Cumulative effects are not to
25 compensate for historical wrongs, but they are there
26 to put the present approval into context. And the
27 Court talks about this in *Chippewas of the Thames*
28 *First Nation v. Enbridge*. And my friend took you

1 there earlier, and I won't take you back there.

2 But the key point that the Court makes there,
3 from my perspective, is that the Court says that it
4 is -- it may be impossible to understand the
5 seriousness of the impact of a project on Section 35
6 rights without considering the larger context. And
7 it says cumulative effects of an ongoing project and
8 historical context may therefore inform the scope of
9 the duty to consult.

10 This is not an attempt to redress past wrongs,
11 but it is to recognize an existing state of affairs
12 and to address the consequences that may result.

13 And so, in my submission, there are two sets of
14 cumulative effects that need to be considered here.
15 The first is the context of all of the other
16 infrastructure work on Six Nations' territory, and in
17 particular, energy infrastructure.

18 Six Nations' Treaty territory crosses many urban
19 populated areas. It has been extremely urbanized
20 over the last century to two centuries. There are
21 enumerable pipelines, hydro wires, sewer systems that
22 use Six Nations' land. Each one might individually
23 not be major, but collectively, they have a huge
24 impact on the landscape and on Six Nations'
25 Aboriginal and Treaty rights.

26 For each new project, new land is disrupted.
27 The natural habitat is disrupted. In the case of a
28 pipeline like this one, the landscape will now

1 include a new pipeline that wasn't previously there
2 that will be there indefinitely. And so we need to,
3 in my submission, consider this context when we are
4 looking at the impacts of this case in particular.

5 And then the second cumulative effect that, in
6 my submission, needs to be considered here is the
7 context of the larger relationship between Enbridge
8 and Six Nations, which I have already spent a long
9 time talking about. I won't rehash that. The point
10 I want to make here is that, in my submission, that
11 should be included in the overall consideration of
12 what the discharging the duty looks like in this
13 case.

14 We can't look at it in a vacuum. We need to
15 look at it in the context of the overall
16 relationship-building between the two entities.

17 And then the other point that I wanted to touch
18 on is financial accommodation. We disagree with
19 Enbridge's position that the duty to consult and
20 accommodate does not include any requirement to
21 financially accommodate. In Six Nations' submission,
22 financial accommodation does form part of the duty to
23 consult and accommodate. That word is in there,
24 "accommodate."

25 And in appropriate accommodations, financial
26 accommodation is appropriate, in our submission, and
27 should be required. And this is not -- you know,
28 this is not something that has never happened before.

1 This takes place all the time across industries all
2 over the country, including on pipelines.

3 It is now becoming increasingly commonplace to
4 see various types of financial accommodation when we
5 are talking about infrastructure projects; things
6 like profit sharing, equity investment. There are
7 all kinds of financial accommodation agreements that
8 are now being established.

9 So to the extent my friend's position is that
10 financial accommodation, you know, just never forms
11 part of the duty to consult and accommodate, in our
12 submission, that is not a reflection of the state of
13 the affairs now.

14 Turning to the remedy that Six Nations is
15 seeking today. Six Nations' primary position is that
16 the application should be denied, that the exemption
17 should be denied because consultation has not been
18 adequately discharged.

19 And I want to just make a brief comment about
20 the potential for an order that would approve the
21 application, but direct that future consultation take
22 place between the parties. In our submission, that
23 is not appropriate.

24 We looked at the language of the regulations at
25 the beginning of my submission, and in my submission,
26 a directive like that would be contrary to the
27 language of the regulation, which provides that
28 consultation is to be satisfied as of the date of the

1 decision before the exemption is granted.

2 And it would also be, in my submission, contrary
3 to Supreme Court of Canada jurisprudence, which also
4 provides that consultation must be discharged before
5 the decision is made. So that is Six Nations'
6 primary position.

7 In the alternative, the Supreme Court in *Clyde*
8 *River* made a comment that appropriate consultation
9 may sometimes result in the need to seek a
10 postponement of a decision in order to carry out
11 further and adequate consultation.

12 So that is Six Nations' alternative position, is
13 that -- that there should be, at the very least in
14 this case, a postponement or an abeyance, to use the
15 OEB Staff's words, while the consultation process has
16 the breathing room to actually properly play out in a
17 manner that would allow Six Nations to actually weigh
18 in at a moment in time where there can be some actual
19 impact. And that is from paragraph 22 of *Clyde*
20 *River*.

21 And subject to opening it up to questions, those
22 are my submissions.

23 PRESIDING COMMISSIONER CÔTÉ: Thank you, Ms.
24 Rabinovitch. We will proceed with questions. I
25 will, again, start to my left with Commissioner
26 Moran.

27 **QUESTIONS FROM COMMISSIONER MORAN:**

28 COMMISSIONER MORAN: So I have several questions

1 not necessarily connected to one another, but
2 primarily for some clarification and for comment.

3 We heard Enbridge say today that one of the
4 reasons why they send things out in writing or
5 electronically is because folks like Six Nations are
6 all really, really busy. And I am just wondering
7 what would be Six Nations' comment on that
8 observation for you?

9 B. RABINOVITCH: Yeah, I -- I am -- I agree that
10 Six Nations is extremely busy and flooded with
11 consultation notices and, you know, understaffed in
12 that respect. I am sure Mr. Graham would agree that
13 he is a bit underwater.

14 But in our submission, that is not a reason to
15 just send an e-mail and then hope for the best. It
16 has the opposite effect. And that is really why I
17 think the Ministry specifically directed in its
18 delegation letter that Enbridge was responsible for
19 following up and making sure the information actually
20 gets to the Indigenous communities because it also
21 knows that everyone is underwater and dealing with
22 too many of these requests.

23 So I think it is both, and I think it -- I think
24 the fact that Six Nations, you know, is dealing with,
25 you know, all of these requests means that it is even
26 more incumbent on Enbridge to make sure that it is
27 presenting things in a manner that actually gets
28 through to Six Nations and in a way that they can

1 deal with it.

2 And I think one really good example is after
3 they got that initial notice, Mr. Graham wrote the
4 same day and said "Great. We are already meeting
5 next week. Let's talk about this case then." That
6 would have been a great opportunity for Enbridge to
7 say, yes, we will work on your schedule, you know, we
8 have sent the notice out, this project is underway,
9 let's discuss.

10 So I don't think it is to say that notice in
11 writing is not appropriate. I think that is an
12 appropriate way to send out notice. But that doesn't
13 mean that Enbridge shouldn't also be picking up the
14 phone, and I think especially for the type of
15 relationship that Enbridge and Six Nations have where
16 you can see through some of the correspondence, like,
17 once you get into it, there is a lot of back-and-
18 forth that happens.

19 They have that dialogue now. There is no reason
20 that -- you know, there couldn't have been an e-mail
21 saying, like, hey, did you get this, we haven't heard
22 from you, that is unusual.

23 COMMISSIONER MORAN: Enbridge also indicated
24 earlier today that in relation to HDI, which is the
25 traditional side of Six Nations, that a more
26 structured approach is being looked at. And I saw in
27 the record that a similar idea is being pursued with
28 -- by Six Nations with Enbridge.

1 What is the status of that, and how would it
2 coordinate with the HDI initiative given the obvious
3 relationship between HDI and Six Nations?

4 B. RABINOVITCH: Yeah, I don't -- Mr. Graham
5 should feel free to jump in if anything I am saying
6 is not accurate. I don't think there would likely be
7 any coordination between Six Nations-elected counsel
8 and the interaction between HDI and Enbridge. To the
9 extent they are developing a, you know, more
10 structured set of engagement, that would be separate
11 from anything to do with elected counsel.

12 I don't know that there has been any meeting
13 since that November meeting specifically directed at
14 the kind of MOU more structured consultation. I
15 think it has, after that meeting, kind of reverted to
16 the kind of one-off piecemeal approach.

17 COMMISSIONER MORAN: With respect to the
18 environmental report that was prepared by Stantec,
19 which you have made some submissions on, again,
20 Enbridge this morning indicated that as far as
21 instructions go, that Stantec would have been guided
22 by, amongst other things, the OEB guidelines.

23 But I understood you to say that the
24 environmental report, despite saying that there was
25 extensive consultation, that there wasn't any
26 consultation. I just wanted to confirm that.

27 B. RABINOVITCH: Yeah, certainly nothing
28 whatsoever prior to Six Nations receiving the draft

1 report from Stantec. That effectively, you know,
2 came somewhat out of the blue, from Six Nations'
3 perspective. Stantec hadn't reached out ahead of
4 time, for example, to say, hey, we are preparing this
5 environmental report, what are your comments on this
6 preliminary draft? The first they had heard about it
7 was when it was delivered by Enbridge.

8 COMMISSIONER MORAN: You indicated that there is
9 a couple of outstanding items. Have you -- I assume
10 that Enbridge is aware of what those outstanding
11 items are from your perspective; is that true?

12 B. RABINOVITCH: That is probably a question
13 more for Mr. Graham. My understanding is, yes, but I
14 don't want to --

15 P. GRAHAM: Yes, that is correct. And
16 especially the vegetation guideline, for example, in
17 respect to another project. You know, we first
18 brought that up over a year ago, and I think it is
19 unreasonable that we haven't received an adequate
20 response.

21 I mean, surely Enbridge is a very wealthy
22 company with lots of resources. I assume they could
23 have a staff person do that in a day if they were
24 sufficiently interested in responding.

25 COMMISSIONER MORAN: I didn't see anything in
26 the Indigenous consultation record that suggested
27 that Enbridge had looked at those outstanding items
28 and indicated when and how it would deliver those

1 outstanding. Is there -- am I missing anything in
2 the consultation record?

3 B. RABINOVITCH: There is an e-mail from
4 Enbridge in the consultation record following that
5 May meeting that sets out a list of some action items
6 that it was -- that it had already fulfilled and some
7 that it said it would fulfill.

8 And so a number of the items that I listed are
9 referenced in that letter or e-mail. I don't know if
10 all of them are. But I think they are all items that
11 Six Nations has previously raised with Enbridge. And
12 specifically, I think they would have been raised
13 primarily at that May meeting because that has really
14 been the only kind of substantive meeting.

15 COMMISSIONER MORAN: Do you have a timeline in
16 which you expect to receive those outstanding items
17 from Enbridge?

18 B. RABINOVITCH: I mean, the sooner, the better.
19 I don't think Six Nations has imposed any set --

20 COMMISSIONER MORAN: No. My question wasn't
21 about whether you had imposed --

22 B. RABINOVITCH: Okay.

23 COMMISSIONER MORAN: -- the timeline. Has
24 Enbridge given you a timeline in which you could
25 expect to see the outstanding --

26 B. RABINOVITCH: Understood. Understood. I had
27 misunderstood the question.

28 Again, I am not sure the details. I don't

1 believe so. I will leave it there, and I am sure my
2 friend will correct me when he makes his reply
3 submissions if there is something else to add on
4 that.

5 COMMISSIONER MORAN: You indicated that in
6 reference to the field monitors that attended at some
7 of the Enbridge exercises, that you just wanted to
8 make clear that from Six Nations' perspective, field
9 monitors are not authorized to engage in consultation
10 activities.

11 But I take it you will agree that the monitors
12 being present is a way of disseminating information,
13 which would also be part of the requirement under the
14 duty to consult. And so you are not suggesting that
15 that wasn't something that wasn't important; it is
16 just that to the extent that they were there, they
17 weren't saying -- they weren't signing off on
18 anything?

19 B. RABINOVITCH: Yeah, I think -- so their role
20 would be less information-gathering and more
21 observing.

22 So as I understand it, their role is to be on
23 the field, observe Stantec or whomever in the field -
24 - the field studies that they are doing to make sure
25 that there are no red flags from Six Nations'
26 perspective and then report back to the CAP team to
27 the extent there is anything material.

28 So I don't know that it would be fair to say

1 that there -- that it is a part of consultation in
2 the sense that it is information-gathering on behalf
3 of Six Nations. I think what would be a more
4 accurate description is that it forms part of the
5 overall kind of body of consultation in that Six
6 Nations has been, you know, told about the field
7 study, given an opportunity to have someone there,
8 and has someone there, but not specifically on the
9 kind of information-sharing side of things.

10 That is the piece that Six Nations has, you
11 know, drawn the line and said that the information-
12 sharing, the decision making, the kind of substantive
13 what do we do with this information needs to happen
14 through the CAP team.

15 COMMISSIONER MORAN: If the field monitors
16 observe something -- I guess this is my science bias,
17 observation is a form of gathering information -- I
18 am assuming that that information, their observations
19 would be -- would play into the overall consultation
20 process.

21 B. RABINOVITCH: Yes.

22 COMMISSIONER MORAN: I just want to make sure --

23 B. RABINOVITCH: Yes.

24 COMMISSIONER MORAN: -- that I understand the
25 point you are making.

26 B. RABINOVITCH: Yes, yes. Certainly. The
27 point that I was trying to make is that to the
28 extent, you know -- to the extent there is any

1 information to be conveyed from the study itself,
2 that would need to come to the CAP team for them to
3 kind of ingest it. So if Stantec has information
4 that it wants to convey, that that would need to go
5 to the CAP team, not to the field monitors.

6 COMMISSIONER MORAN: Thank you.

7 I want to touch base on your reference to *Clyde*
8 *River* and specifically in relation to the judicial
9 review not being a substitute for consultation and
10 because judicial review is an after-the-fact process.
11 And I guess I am trying to understand what that means
12 in our context.

13 As I understand *Clyde River*, there an NEB
14 process at first, and it dealt with the way it dealt
15 with the issues in front of it, and then there was
16 judicial review.

17 B. RABINOVITCH: Yeah.

18 COMMISSIONER MORAN: You are not suggesting that
19 our process is kind of a judicial review after the
20 fact consideration, are you?

21 B. RABINOVITCH: No, I am not. I think the
22 distinction -- I think the overall point is that a
23 regulatory process can -- a regulatory process can
24 form part of the consultation kind of framework where
25 appropriate. But the type of process where that
26 would be appropriate is where the regulatory body is
27 vested with the powers to oversee and participate in
28 consultation, and that was the case in *Clyde River*.

1 The NEB in that case, the Court said part of its
2 mandate, part of the NEB's job, was to participate in
3 the actual oversight of the consultation and the
4 delegated authority of that consultation. And that
5 is not the case with the regulatory proceeding here
6 which is a much more adjudicative style proceeding
7 where the regulatory framework that the OEB operates
8 under, the Panel's job today, is to render a
9 decision, yes, no, has consultation been discharged.

10 The OEB is not empowered, in my submission, to
11 engage in the actual doing or oversight of the
12 discharge of that duty. So I think that is the
13 distinction there.

14 COMMISSIONER MORAN: So how would you see
15 Section 4 of the *OEB Act* play into this where it
16 expressly says that the OEB is an agent of the Crown,
17 and then there is another section that talks about
18 addressing any issue of question of law, fact, and so
19 on? You don't see those as playing into this process
20 in that way?

21 B. RABINOVITCH: I think -- I mean, I don't
22 disagree that the OEB is an agent of the Crown. I
23 think that the key provision for purposes of, you
24 know, scoping the OEB's job for this particular
25 hearing and for the leave to exempt is a binary
26 question of, under sub C, has the duty been
27 discharged, yes or no.

28 As part of that exercise, certainly the Board is

1 empowered to delve into questions of fact and
2 questions of law, which is what we have been here
3 discussing. But ultimately, it is being tasked with
4 asking -- with answering one particular question. It
5 is not being tasked with overseeing the process of
6 consultation itself.

7 COMMISSIONER MORAN: So how does that fit with
8 your alternative remedy to postpone the decision on
9 this point? I am assuming that in postponing it, you
10 would be expecting us to give some direction to
11 Enbridge and Six Nations about the next steps that
12 have to be taken before you can come back. Is that
13 not overseeing the process to some extent?

14 B. RABINOVITCH: I think to the extent there
15 would be any direction, my expectation is that it
16 would just be to direct that consultation be
17 completed with perhaps a timeline or a direction to
18 return or provide an update, but not that the Board
19 would participate in, you know -- not that the Board
20 would participate in any meaningful way in the
21 carrying out of the discharge of that duty.

22 The Board, I -- in my view, the scope of the
23 Board's authority under this decision-making power
24 here does not extend to, for example, you know,
25 holding a meeting with Six Nations to say, you know,
26 what has Enbridge done, what has the Crown done, what
27 can we do here.

28 It would be merely to say, okay, report back,

1 and we will then at that point, once the parties are
2 satisfied, make a determination on whether the duty
3 has been discharged, yes or no.

4 COMMISSIONER MORAN: Okay. So it sounds like
5 you are suggesting that we can't roll up our sleeves
6 and get involved in the meetings, but are you also
7 suggesting that we can't actually identify the areas
8 that have to be addressed?

9 B. RABINOVITCH: No. I think certainly --
10 certainly the Board -- I think that would be part of
11 its ability to -- part of its authority on questions
12 of fact and law would be to provide a direction on
13 areas that it thinks have been lacking and need to be
14 addressed. I think that would be within the scope of
15 the Board's authority.

16 COMMISSIONER MORAN: And presumably, if we were
17 denying it, which is your primary request, we could
18 do the same thing in denying it; right?

19 B. RABINOVITCH: Yes, I would agree with that.

20 COMMISSIONER MORAN: In that context, all that
21 has happened is that they don't get an exemption;
22 they will still need to come and apply for a Leave to
23 Construct, presumably guided by some direction from
24 the Board about how the duty to consult will be
25 addressed there.

26 Are you in agreement with the fact that in the
27 absence of the exemption, the OEB is still in the
28 same position as the Crown actor to determine if the

1 duty to consult has been discharged in a regular
2 Leave to Construct application given we have done
3 that on a number of occasions already?

4 B. RABINOVITCH: Yes. I think that the way that
5 you have expressed it, I would agree with that
6 expression.

7 COMMISSIONER MORAN: Thank you. All right. I
8 am almost done here.

9 So my last question, given that you are seeking
10 either to have us deny the exemption request or to
11 put the process in abeyance pending issues to be
12 addressed, I didn't hear you argue for what that
13 would look like. What specifically -- if we were to
14 consider putting this process into abeyance pending
15 certain actions to be taken, what would those actions
16 be, from your perspective?

17 B. RABINOVITCH: So I think --

18 COMMISSIONER MORAN: From Six Nations'
19 perspective.

20 B. RABINOVITCH: Yeah. I think the starting
21 point would be the items -- the outstanding specific
22 items that I identified.

23 I think the other thing would be at least one
24 subsequent meeting, partly to do the walkthrough of
25 the site that hasn't -- the virtual walkthrough of
26 the site that hasn't happened yet, and address any
27 other outstanding concerns.

28 I think based on the kind of final versions of

1 the arborist report and any other outstanding
2 environmental reports that come in, Six Nations would
3 need to be afforded the time to, you know, review,
4 digest, and potentially make comments.

5 And then all of that would need to happen in the
6 context of being able to actually have changes made
7 to the proposal -- or to the project, excuse me, as
8 appropriate. So there -- I don't know that this
9 would necessarily be a part of -- this would be more
10 an Enbridge thing, but there would just need to be --
11 there needs to be some assurance on Six Nations' side
12 that this isn't for not, that it is not, you know,
13 the blowing off steam quote that the Court used, that
14 there -- that the consultation and the review of the
15 arborist reports and any other reports, that those
16 actually can be incorporated where appropriate.

17 COMMISSIONER MORAN: I guess in the abeyance
18 situation, everybody would have to come back in front
19 of us and argue whether that happened or not in any
20 event.

21 B. RABINOVITCH: Or everyone agrees.

22 COMMISSIONER MORAN: Prior to that happening,
23 there is an agreement and a settlement, yes. Fair
24 enough. Well, very much those are my questions.

25 PRESIDING COMMISSIONER CÔTÉ: Thank you,
26 Commissioner Moran.

27 Commissioner Sidlofski.

28 **QUESTIONS BY COMMISSIONER SIDLOFSKI:**

1 COMMISSIONER SIDLOFSKI: Thanks for your
2 submissions, Ms. Rabinovitch. That might actually
3 have shortened the questions I have.

4 Your position is clear, I have definitely heard
5 it, that the consultation must be discharged before
6 the application is brought and before the decision is
7 made. You have said both of those things, right,
8 that the duty to consult must be discharged before
9 the application is brought and the Board's decision
10 is made? Okay. Sorry --

11 B. RABINOVITCH: No, I -- yes, I think that is
12 fair. Obviously, most significantly before the
13 decision is made in this case, in our submission,
14 also before the application was brought.

15 COMMISSIONER SIDLOFSKI: And I am looking in
16 particular at Part B of your summary that you filed.
17 And I looked at the references you gave in the
18 section, and I have heard your submissions today.
19 And the gist of it is that the approval can only be
20 granted if the duty to consult has been discharged,
21 but I am not completely clear, so I am hoping you can
22 help me, on your submissions in paragraph 15 of your
23 summary. It seems to be a paragraph that is saying a
24 lot.

25 So you make a number of statements there. And
26 you have suggested, you have submitted today, that
27 Enbridge began consultation at a meeting that took
28 place after it applied to the Board because that was

1 consultation in the spring. Those were meetings that
2 took place this spring. And you went on to say as a
3 matter of law, Enbridge cannot consult after the fact
4 to make up for its earlier failures. And I am
5 wondering about that. I have a couple questions
6 about that.

7 First of all, what do you mean by "after the
8 fact"? Is it -- clearly, I understand that you mean
9 it can't -- this can't happen after the Board makes a
10 decision, but after the fact when? Enbridge can't
11 consult after the fact -- after filing the
12 application? What do you mean by "after the fact"?

13 B. RABINOVITCH: Yeah, I think - so the point of
14 the after the fact, I think, in that paragraph and
15 kind of more broadly in my submissions is that in
16 this case, the timing of Enbridge's kind of change of
17 heart, effectively, with respect to consultation
18 aligns with the lead up to this hearing.

19 And it is our submission that the meetings that
20 happened in the spring took place because we were
21 headed towards this -- this hearing and because
22 Enbridge knew that it would be faced with regulatory
23 scrutiny, not out of a good faith genuine desire to
24 consult with Six Nations in a way that could actually
25 impact the process.

26 So that is what "after the fact" means. It
27 means after the ability to actually have an impact on
28 the project, after the time had passed to have

1 genuine dialogue in a good faith manner, and just
2 because the regulatory hearing was upcoming,
3 effectively.

4 And I am not -- just to clarify my position, our
5 position is not that there should no longer be any
6 dialogue or consultation that takes place after the
7 project approval. Of course the dialogue should be
8 ongoing. If there are any changes, we would want to
9 know about that. We would want the opportunity - Six
10 Nations would want the opportunity to weigh in. It
11 is not to say, you know, the door closes as soon as
12 the application goes in.

13 But before that application goes in, in my
14 submission consultation needed to have occurred to
15 such an extent that the constitutional duty had been
16 discharged. The Ministry's letter setting out the
17 responsibilities of Enbridge, that that had all been
18 satisfied. So there needed to be a threshold met
19 prior to that application going in, and then there
20 can be -- you know, there can and should be more and
21 additional consultation. But the actual meat and
22 potatoes, as I described earlier, that has happened
23 in the spring, that that can and should have happened
24 before the application.

25 COMMISSIONER SIDLOFSKI: So if we accept that
26 that didn't happen before the application was filed,
27 are you -- are you suggesting that it can't be fixed
28 now? For example, through an abeyance process?

1 My concern is that I am -- I feel like I might
2 be hearing two things. One is this was bad from the
3 start, consultation didn't really happen until there
4 was the pressure of the proceeding, but consultation
5 seems to have taken place because meetings had
6 happened in the spring. And yet on the other hand, I
7 am hearing that it may not be fixable.

8 B. RABINOVITCH: Yeah, I think -- so I think the
9 things that are not fixable are the -- kind of the
10 breach of trust that we say occurred in that early
11 set of -- the kind of late 2025 period, early '26
12 period. That, in our submission, is not fixable.

13 Has consultation now taken place and is
14 continuing to take place? Yes, it has. Six Nations
15 is not trying to, you know, veto this project and say
16 it can't go ahead at all.

17 So, you know, ultimately, can the parties get
18 there on the path that they have been going down the
19 past couple of months? Yes, they can. But in our
20 submission, that is the kind of fundamental
21 unfairness to Six Nations' position here. It was
22 forced to object and intervene in this regulatory
23 proceeding to be able to have any of that take place.

24 So there is a piece of it that is not fixable.
25 In our submission, the reason that Enbridge has now
26 started to fix things is just because it is here
27 today.

28 And can consultation, you know, be adequately

1 discharged? Yes. You know, there is -- if the
2 parties continue down a good-faith path, yes, there
3 is. We are not saying that can never happen. But
4 that is where the kind of fundamental unfairness to
5 Six Nations lies is if we hadn't come here today, if
6 Six Nations hadn't objected, in our submission, none
7 of that would have happened. And there needs to be
8 some -- there needs to be some repercussion, in our
9 submission, on Enbridge's part, some understanding
10 and knowledge that that is not an acceptable way to
11 go about consultation.

12 COMMISSIONER SIDLOFSKI: And since you have
13 given the two alternatives, one repercussion is
14 denial of the application. The other -- the other
15 possibility is abeyance -- excuse me -- the other
16 possibility that you have suggested may be abeyance
17 in the alternative to allow for further consultation
18 in -- presumably in the hope that the duty can be
19 discharged at some point; is that right?

20 B. RABINOVITCH: Yes, that is right. And that
21 is always Six Nations', you know, goal, that it will
22 work collaboratively with proponents and the Crown
23 to, you know, have an actual real dialogue and to be
24 able to carry out consultation. That is always the
25 hope. That is always the end goal.

26 COMMISSIONER SIDLOFSKI: And if there were a
27 refusal or a denial of the application and another
28 application, a conventional Leave to Construct

1 application, were brought as opposed to this
2 proceeding, which is about an exemption, I am
3 assuming that the consultation that has taken place,
4 for better or worse, would still be part of that
5 record, but there would, I assume, be more
6 consultation after that.

7 Similarly with the abeyance, the point of the
8 abeyance would be to ensure that there is more
9 consultation, and the Board may give some further
10 guidance on that if -- if we determine that is the
11 way to go. Do you see a difference in the outcomes
12 between those two alternatives?

13 B. RABINOVITCH: I don't think there would be a
14 difference, from Six Nations' perspective, in terms
15 of the kind of scope of consultation that would be
16 required. Six Nations is only involved in the, you
17 know, regulatory process from the perspective of that
18 duty to consult and meeting that duty, but the actual
19 content of that duty wouldn't change depending on
20 which regulatory process was being followed. Does
21 that answer it? I can't tell if I have answered your
22 question.

23 COMMISSIONER SIDLOFSKI: No, I think it does.
24 Thanks.

25 Sorry. If you bear with me, I will just see if
26 I can cut down on the questions I had. Oh, I just --
27 and this will be my last question, I think.

28 In the -- and I know there are numerous ways to

1 get to this, but I have highlighted it for myself in
2 looking at the Enbridge updated Indigenous
3 Consultation Report. That is a 353-page PDF
4 document, and I am looking on page 352. But it is in
5 a number of places. It is in a number of versions of
6 documents.

7 But it is the statement that Six Nations
8 confirmed that it had no concerns with the capacity
9 funding offered for the project and noted that
10 engagement with Enbridge Gas had improved. That
11 would have been -- that would have come out of the
12 April 21st meeting. And I am -- that is a statement
13 from Enbridge. I am wondering if you have any
14 comments on that? I would give you an opportunity to
15 respond to that.

16 B. RABINOVITCH: Yeah, so there has been an
17 agreement, at least an agreement in principle, on
18 capacity funding between Enbridge and Six Nations.
19 So Six Nations has no -- doesn't take any issue with
20 capacity funding.

21 COMMISSIONER SIDLOFSKI: And sorry -- sorry to
22 interrupt, but my issue was less with the capacity
23 funding. I just wanted to read the whole --

24 B. RABINOVITCH: Okay.

25 COMMISSIONER SIDLOFSKI: -- sentence for you to
26 give you the context. It was more about -- and I
27 apologize about that. That's my fault.

28 But it was more about the assertion that the

1 engagement with Enbridge Gas has improved.

2 B. RABINOVITCH: Yes. I think -- in particular,
3 with reference to the May meeting and Enbridge's kind
4 of follow-up e-mails following that meeting, that,
5 from Six Nations' perspective, is an improvement in
6 the consultation and in the interactions between
7 Enbridge and Six Nations.

8 COMMISSIONER SIDLOFSKI: Okay. Thanks. Those
9 are my questions.

10 Commissioner Côté.

11 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

12 PRESIDING COMMISSIONER CÔTÉ: Thank you.

13 Ms. Rabinovitch, I have probably four things for
14 you, potentially some follow-ups. We will see how it
15 goes.

16 The first relates to the *Haida*. You will see a
17 resemblance to some of the questions I was asking
18 earlier today. So I would like to hear your take on
19 the *Haida* analysis in this case. Let me ground it
20 for you.

21 So from what I heard from your friend, the
22 Applicant, today, low end, or at most, medium, I
23 think were their words. From what I heard from you,
24 I believe -- this is what I want to check -- you
25 walked us through the bullet points in the
26 delegation, and I think you inferred from there that
27 it kind of looks like medium. I just wanted to
28 verify if I am understanding your position on the

1 depth?

2 B. RABINOVITCH: Yeah, Six Nations' overall
3 position is medium to high, in particular, when you
4 factor in the cumulative effect and overall context
5 that I talked about towards the end of my
6 submissions. I think the Ministry delegation letter,
7 I would categorize the, you know, content of what it
8 was delegating as medium.

9 And Six Nations agrees with all the points made
10 in the delegation letter. It agrees that, you know,
11 all of those -- all of those points are necessary,
12 and then, you know, plus when you are factoring in
13 the historical context and some of these other
14 factors.

15 PRESIDING COMMISSIONER CÔTÉ: Thank you.

16 A follow-up on that: Similar to the Applicant,
17 you two are at the mercy of arriving at that
18 conclusion on your own off of the information you
19 have before you because, again, not being included in
20 the delegation, you draw your own conclusions from
21 your own assessment, and as you have just explained,
22 this is where you land; correct?

23 B. RABINOVITCH: Yeah, I think that is correct.

24 I also think, you know, *Haida* tells us that it
25 is a spectrum and we can use words like "low,"
26 "medium," "high," but when it comes down to it, it is
27 really about the substance of what is required.

28 And in our submission, you know, there are some

1 kind of core elements to the substance required here.
2 One of the main ones is the opportunity to be
3 presented with the information, the opportunity to
4 digest that information and be given the chance to
5 have it explained in meetings, and then to have a
6 real and true opportunity to make proposals,
7 recommendations, and have the opportunity to have
8 those be incorporated in the project at a stage in
9 which it can truly be -- there could truly be changes
10 made.

11 That is what I would characterize kind of broad
12 strokes as the kind of main foundational substance of
13 the procedural right, as we would characterize it.

14 PRESIDING COMMISSIONER CÔTÉ: And would you
15 agree that having assessed medium to high in your
16 case, you are effectively calibrating your
17 expectations of behaviour during the process
18 accordingly? And your submissions today would have
19 been informed by having assessed that medium to high.
20 From your perspective, is this being met or not?

21 B. RABINOVITCH: I think that is -- I think that
22 is generally right, although I would say that many of
23 the failing -- you know, what we are articulating as
24 failings in this case are failings regardless of
25 where it falls on the spectrum.

26 And I took -- I took the Panel to some of the
27 decisions that talk about that, but -- even at the
28 lowest level, we have the Courts telling us we need

1 to give actual proper notice, we need to make sure
2 it's understood and digested, we need to give the
3 opportunity for real, you know, dialogue and
4 engagement. Those happen even at the low, low end of
5 the spectrum.

6 And so, you know, were Six Nations' expectations
7 of Enbridge calibrated to medium to high? Maybe.
8 But I think that, you know, overall, its expectations
9 were that, you know, Enbridge meet its, you know,
10 just general baseline duties and that those were not
11 met in this case.

12 PRESIDING COMMISSIONER CÔTÉ: Okay.

13 So if I am hearing, effectively you are saying,
14 even if I -- and you are not, but even if you did
15 assess it at low, your submission would be that it
16 fails at low as well?

17 B. RABINOVITCH: That would be my submission.
18 And I -- Six Nations' expectations in this case, I
19 think, are also, you know, generally informed and
20 consistent with the articulation by the Ministry in
21 its delegation letter.

22 And so I think that -- I think that that is a
23 helpful aid in determining whether -- you know,
24 whether that duty has been discharged is to look at
25 the articulation by the Ministry and think about how
26 that relates to the facts here.

27 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.

28 Okay. I will move on to something you and

1 Commissioner Moran talked about, your reference to
2 *Clyde River* at 24, the judicial review court
3 proceeding. I just wanted to zoom in, just -- I was
4 listening carefully, but I want to make sure I have
5 it all.

6 Well, first of all, I observe that in the
7 context of that decision at 24, it makes reference to
8 courtrooms and judicial review. I guess my first
9 question, the OEB being a tribunal, would you agree
10 there is an element of flexibility and arguably more
11 informality than you would find in a court by
12 comparison; is that a fair statement?

13 B. RABINOVITCH: Just to clarify, do you mean in
14 terms of the process or the decision rendered or in
15 what...

16 PRESIDING COMMISSIONER CÔTÉ: Generally. The
17 rules of evidence as they apply to a tribunal versus
18 a court.

19 B. RABINOVITCH: Yeah, I think -- I think, you
20 know, depending on the -- depending on the tribunal,
21 oftentimes a regulatory proceeding does have a bit
22 more -- may have a bit more flexibility than a
23 judicial review.

24 I think the real -- the real point, though, is
25 that, you know, regardless of the kind of flexibility
26 or lack of flexibility in the process or the rules of
27 evidence, when we have arrived at the point of having
28 an adversarial process in a courtroom or a room, like

1 a courtroom with a court reporter and decision
2 makers, that in and of itself is a failing of the
3 duty because the entire point is relationship-
4 building, trust-building.

5 And when -- when we get to the point of being
6 here, in our submission, Six Nations had no choice in
7 this case. It was the only way to get Enbridge to
8 the table. When we get to this point, it is already
9 a loss for everyone.

10 And that is -- that is really, I think, the
11 takeaway from *Clyde River* as it applies to the
12 proceeding today. Obviously it is different. You
13 know, judicial review is post-decision. This is pre-
14 decision. But the structure of this -- of this
15 particular regulatory mandate of the Board is styled
16 effectively as, you know, an adjudicative proceeding
17 with submissions, evidence, and a question that the
18 Board is tasked with answering, yes/no, and that
19 really defeats the underlying purpose of the judicial
20 review.

21 Obviously it happens. You know, my friend
22 mentioned we have hundreds of cases that -- you know,
23 that go to these regulatory hearings or to courtroom
24 disputes, but that is not -- that is not the goal.
25 And in our submission, we shouldn't have had to get
26 to this point. We should have had a good, you know,
27 healthy dialogue. We should have been given the
28 opportunity by Enbridge to have that without

1 resorting to this.

2 PRESIDING COMMISSIONER CÔTÉ: Okay.

3 If I may, something else you talked about in a
4 different context, but nonetheless, is the second
5 part of the duty to consult, which is the duty to
6 accommodate. Because I really want to make sure we
7 clarify this point.

8 If -- in this category, if -- if we -- we
9 mentioned various remedies, abeyance. The one that I
10 am curious about here in your submission is what does
11 the duty to accommodate mean from the final decision
12 maker on the duty to consult and duty to accommodate?
13 Could you elaborate on how you would understand that
14 in this context?

15 B. RABINOVITCH: Sure. Easy question. I think
16 the duty to accommodate is -- sorry. That was
17 sarcasm. I realize that probably didn't come through
18 -- because it is, I think, a very live and heavily
19 discussed question right now in this space.

20 But the duty to accommodate, I think, can mean a
21 variety of things. Some of the cases we talked --
22 that we looked at today talk about it in the context
23 of making a change to a project based on input from
24 an Indigenous group. That would be a form of
25 accommodation, in my submission.

26 And then another, you know, bucket, if I can
27 call it that, of accommodation is financial
28 accommodation, so some financial benefit or redress

1 to the Indigenous group in recognition of the fact
2 that a piece of their Treaty land is being used for
3 the benefit of other people, entities, not its
4 benefit, oftentimes to its detriment, with
5 historically no benefit to the community and no
6 financial compensation to the community. So that --
7 that is kind of, you know, large scale what I would
8 describe as the duty of financial accommodation.

9 The -- you know, the state of the law on
10 requiring financial accommodation is, I think,
11 nascent. And the point that I was really trying to
12 make in response to my friend's position is that it
13 is happening. Financial accommodation, you know, of
14 a variety of forms is becoming increasingly
15 commonplace, expected, understood, and a really
16 integral part of that duty to consult and
17 accommodate. So that is the kind of big-picture
18 answer.

19 PRESIDING COMMISSIONER CÔTÉ: Can I zoom in a
20 bit?

21 B. RABINOVITCH: Yes, please.

22 PRESIDING COMMISSIONER CÔTÉ: So if that is the
23 "what" in respect of the duty to accommodate in the
24 context we are in --

25 B. RABINOVITCH: Yes.

26 PRESIDING COMMISSIONER CÔTÉ: -- where we make
27 the finding --

28 B. RABINOVITCH: Yes.

1 PRESIDING COMMISSIONER CÔTÉ: -- on the duty to
2 consult, are you extending -- is it your submission
3 you'd extend that we also have a duty to accommodate
4 role here, not just specifically here, but generally?

5 B. RABINOVITCH: Yeah, so it would be my
6 submission that certainly the Board would be
7 empowered as part of its regulatory authority to
8 impose a financial accommodation. Certainly, in my
9 submission, that is entirely consistent with, you
10 know, its overall powers to make determinations on
11 the adequacy of consultation and accommodation. That
12 is a part -- that is the A in the duty to consultant
13 and accommodate.

14 And so financial accommodation, in my
15 submission, is, you know, just part of that -- part
16 of the kind of bigger bucket of accommodation and
17 would fit into the Board's overall regulatory powers.
18 In this case, Six Nations, you know, is not taking a
19 position that it is owed any specific monetary amount
20 as financial accommodation, taking into account, you
21 know, the purpose of the project, the, you know, kind
22 of public interest purpose of it. But as a general
23 matter, it is Six Nations' position certainly that it
24 is entitled to financial accommodation where there is
25 -- where there is an adverse impact on its land.

26 I think in our earlier submissions, we had taken
27 the position that financial accommodation was needed
28 in this case here. We have, you know, focused our

1 submissions on what we really view as the primary --
2 excuse me, I use my hands too much -- what we view as
3 the primary failings of Enbridge which are more
4 procedural in this case. But, you know, wholesale,
5 it is certainly Six Nations' position that financial
6 accommodation is necessary and appropriate.

7 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
8 for clarifying. I will move on to my next area.

9 I was inquiring -- well, first of all, let me
10 note that you have listed a number of outstanding
11 items, and some of my colleagues were engaging you on
12 that, so that's relevant here. The vegetation
13 guidelines, for example.

14 I asked Enbridge this morning about their
15 mention of harvesting rights, and then I was trying
16 to clarify whether it was their submission that it
17 constituted the entirety of Aboriginal Treaty rights.
18 And I don't want to put words in their mouth, but I
19 believe we ended up with the conclusion that in this
20 case, in these specific circumstances, the answer is
21 generally yes. And if I don't have that right, I
22 will stand to be corrected.

23 What I would like to understand from you is a
24 similar question. Effectively those outstanding
25 items, from a lens of Section 35 rights, how would
26 you characterize them?

27 B. RABINOVITCH: Yeah. So the Treaty land in
28 this case is the Nanfan Treaty which entitles Six

1 Nations to harvesting rights. That is why we have
2 been talking about harvesting specifically today.

3 It also, in our submission, an appropriate
4 interpretation of that Treaty entitles Six Nations to
5 economic benefits stemming from, you know,
6 historically the harvesting rights, but updated to,
7 you know, modern day economic benefits derived from
8 the land.

9 In terms of the actual specifics of harvesting
10 rights, as I mention in my submissions, Six Nations
11 Treaty territory is significantly urbanized. You
12 know, it includes a number of major cities across
13 kind of southwestern Ontario.

14 So the fact that, in this case, the pipeline is
15 across a roadway or it runs along a roadway is not
16 necessarily to say that there is no harvesting,
17 right, that applies to that area. Through, you know,
18 no fault of Six Nations' own, much of its land is
19 urban land, and so its harvesting areas have gotten
20 smaller and smaller.

21 And in our submission, the inherent harvesting
22 right attached to the Nanfan Treaty is such that Six
23 Nations as a community is entitled to make inquiries,
24 request changes to the pipeline that would
25 potentially affect potential harvesting areas.

26 So it is less about, do we have specific
27 evidence that, you know, such-and-such individual
28 person uses that exact square footage to harvest, you

1 know, X, Y, Z plant. In our submission, that is not
2 the right away -- it is not the appropriate way to
3 approach it.

4 The inquiry is, more generally, this Treaty
5 provides for harvesting rights, so what does that
6 mean for the natural habitat and what can we do to
7 ensure that the natural habitat is being disturbed as
8 little as possible, that the plant life around there
9 is being disturbed as little as possible? What can
10 we do to reforest the area or replant trees to
11 increase the potential wildness of the area and the
12 harvesting potential for the area?

13 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
14 for that.

15 My last area relates to the honour of the Crown
16 that you walked us through today. I am seeking a bit
17 of your assistance here. I may be putting two things
18 that don't belong together, but I will hear from you
19 what your thoughts are on this.

20 This morning, I think we heard from Enbridge --
21 it is also in their written submission -- about the
22 adequacy of consultation is not measured by a
23 standard of perfection -- you may recall that
24 submission -- and there can be missteps and mistakes
25 in fulfilling the duty to consult. That is a quote I
26 have, I forget from where, but I think it one of the
27 cases that Enbridge relies on.

28 In your case, you walked through the narrative

1 of the honour of the Crown and what that means.

2 Now, those two things may not perfectly overlap,
3 but they kind of have an aspect of them which kind of
4 start looking similar. I was wondering if you -- I
5 would love to hear from you as to -- maybe the
6 easiest way of asking you is how you would respond to
7 the need not be perfect aspect as you think of the
8 honour of the Crown. I would love for you to help us
9 out in your submission of linking those two things or
10 not, if you can't.

11 B. RABINOVITCH: Yeah. I agree, I think they
12 are linked. I agree the standard isn't perfection.
13 But I do think the standard is to -- for proponents
14 of the Crown, whoever has been tasked with
15 consultation, to approach it with a real spirit of
16 good faith and reconciliation.

17 And I think the, you know, "mistake" here of
18 that e-mail not going through wasn't, you know --
19 wasn't a small thing that had no knock-on effects.
20 We have to look at it in a larger context and we have
21 to look at the why. And the reason, in our
22 submission, that that was missed and that there was
23 no follow-up is because of the larger kind of
24 underlying problems with the way that Enbridge had
25 been approaching consultation and is continuing to
26 approach consultation with Six Nations.

27 Because it is not just one e-mail bounce back.
28 I mean, it is that, and that should have been caught.

1 And, you know, the Ministry specifically said make
2 sure things go through. But then months went by.
3 And so when months go by, then you -- then, you know,
4 in my submission, the good faith, you know, approach
5 on Enbridge's part would have been to say, okay, that
6 is a little strange. We usually always hear from Six
7 Nations right away. Hey, we have a meeting with them
8 coming up. Why don't I, you know, mention it here,
9 why don't I drop a note.

10 So it is less about, you know, was one mistake
11 made, was one e-mail not properly sent, and more
12 about how does that fit into the overall approach to
13 consultation which, in our submission, fell below the
14 standard of, you know, effectively honourable conduct
15 standing in the shoes of the Crown.

16 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
17 for clarifying. Those are my questions. I will look
18 at my colleagues -- I don't think we have anything
19 further for you.

20 So 2:52. I am going to suggest this might be a
21 good time for a break and then we will reconvene.
22 And we will do that for 15 minutes, which takes us
23 to, I believe, 3:07. We will reconvene with the OEB
24 Staff's submission, and we will follow with
25 Enbridge's reply.

26 --- Upon recessing at 2:52 p.m.

27 --- Upon resuming at 3:10 p.m.

28 PRESIDING COMMISSIONER CÔTÉ: Welcome back,

1 everybody. Other than slight microphone issues,
2 there are two other issues to deal with before we
3 begin.

4 The first, of course, is we omitted -- I omitted
5 to mark the compendia as exhibits as we started this
6 morning. So, Ms. Pope, I will turn it to you for the
7 numbers, please.

8 S. POPE: Thank you.

9 So we can mark Enbridge's compendium as K1.1.

10 **EXHIBIT K1.1: Enbridge compendium**

11 S. POPE: And Six Nations compendium as K1.2.

12 **EXHIBIT K1.2: Six Nations compendium**

13 S. POPE: And OEB Staff's compendium as K1.3.

14 **EXHIBIT K1.3: OEB STAFF compendium**

15 PRESIDING COMMISSIONER CÔTÉ: Thank you, Ms.
16 Pope.

17 It occurs to me that while there is a name in
18 front of me, I did not introduce myself this morning.
19 I believe the record will be clear by now, but
20 Commissioner Côté was the third member of the Panel
21 this morning. So let the transcript reflect that,
22 please

23 Okay. With that, I think we are back on track
24 to go to OEB Staff submission at this time. And, Ms.
25 Pope, I will turn it over to you.

26 **SUBMISSIONS BY S. POPE (OEB):**

27 S. POPE: Thank you.

28 So I will be relatively brief today. As the

1 parties have already set out, a central issue for the
2 OEB to consider, and the one that is being primarily
3 addressed today, is whether the Crown's duty to
4 consult has been adequately discharged.

5 OEB Staff's main submission today is that based
6 on the materials in the record of proceeding, and
7 particularly the recent updated consultation report -
8 - Indigenous Consultation Report, or ICR, submitted
9 by Enbridge Gas, the one that goes up to June 26,
10 2026, it appears that the duty to consult has been
11 adequately discharged, subject to the close of record
12 of proceeding, and particularly the Letter of Opinion
13 from the Ministry Of Energy and Mines which is
14 forthcoming.

15 In terms of what I will briefly address today,
16 our written summary includes some information about
17 the legal principles underlying the duty to consult,
18 but in my view, the parties have adequately addressed
19 the case law today, and so I will not cover that.
20 But I do refer the Panel to OEB Staff's written
21 summary should you [audio cut] further information on
22 that.

23 What my submissions will cover today is, number
24 1, first of all, the OEB's main submission which I
25 have just outlined. And in that regard, I will speak
26 about the environmental guidelines and the Ministry's
27 delegation letter and also the recent updated ICR
28 from June of 2026.

1 And then secondly, I will briefly touch on the
2 forthcoming letter of opinion and submissions on next
3 steps.

4 And three, finally, I will conclude by speaking
5 to conditions of approval should the OEB approve the
6 application.

7 So regarding the OEB's environmental guidelines
8 for the location, construction, and operation of
9 hydrocarbon projects and facilities in Ontario, or
10 "the environmental guidelines" for short, in order to
11 ensure that the OEB has all of the information it
12 requires to make a determination on the duty to
13 consult, the OEB has developed a process to ensure
14 that all relevant concerns and evidence are placed
15 before the OEB through the hearing process.

16 And one of the early steps in this process is
17 that the Ministry Of Energy and Mines determines if
18 the duty to consult is triggered by the proposed
19 project, and, if so, will expressly delegate the
20 procedural aspects of the consultation to the
21 Applicant.

22 And indeed for this matter, as we have heard
23 today, the Ministry Of Energy and Mines did delegate
24 the procedural aspects of consultation to Enbridge
25 Gas and identified specific groups to be consulted,
26 including the Mississaugas of the Credit First
27 Nation, the Haudenosaunee Confederacy Chiefs Council
28 through the Haudenosaunee Development Institute, or

1 HDI, and the elected council of Six Nations, the
2 intervenor in this proceeding.

3 And the Ministry specified in that letter the
4 responsibilities that Enbridge had. And the parties
5 have already discussed this at length, but in brief
6 summary, they include providing notice and
7 information about the project with sufficient detail
8 and at a stage that allows the communities to prepare
9 their views on the project, following up with
10 communities to ensure they receive notices and
11 information and are aware that they can comment,
12 gathering information about how the project may
13 affect Aboriginal or Treaty rights, bearing costs
14 associated with the procedural aspects of
15 consultations, considering and responding to comments
16 and concerns and answering questions and discussing
17 and implementing changes as appropriate.

18 So I am now going to turn to looking at a few
19 documents from the June 2026 ICR that speak to how
20 Enbridge Gas has been engaging in consultation
21 recently, and none of this is new. We have heard
22 from both parties on it today, but nonetheless, I am
23 going to speak to it. And I would ask that we pull
24 up OEB Staff's compendium at Tab 1. Thank you.

25 So Tab 1, if you just scroll down there to the
26 beginning of the document, please, which is the next
27 page. So this tab of OEB Staff's compendium is
28 Attachment 2 to the most recent updated ICR that

1 Enbridge Gas submitted, and these are summary tables
2 that Enbridge Gas has prepared.

3 They are essentially summaries of the
4 consultation with the three communities to be
5 consulted with, and this summary is eight pages long.
6 And I am just starting here because it is somewhat of
7 an efficient way to give some submissions on this
8 topic in a brief manner, but the parties have already
9 talked about all of the things I am going to talk
10 about.

11 The first page of this summary addresses
12 consultation with HDI. And we can see from the first
13 page here that there is a summary of project
14 information that was given to the community. It
15 includes notification, maps of the project location,
16 notice of upcoming project and the environmental
17 report, and information on Stage 1 and 2
18 archaeological assessment fieldwork. And this same
19 list appears in the summary tables for the other
20 communities as well showing the documents that they
21 received.

22 But staying with HDI for a moment, if I can
23 summarize this summary even further, it indicates
24 that Enbridge Gas and HDI have had discussions
25 regarding a proposed standard monitoring agreement,
26 which would be separate from capacity funding, which
27 has also been offered. And HDI and Enbridge have
28 also had discussions around requests by HDI aimed at

1 establishing a new broader engagement framework so
2 that their consultations in future are not based on a
3 project-by-project approach.

4 And Enbridge Gas has indicated in this table
5 that they are not aware of any specific concerns from
6 HDI related to potential impacts from the project.

7 And if we could please move down to page 2 of
8 this compendium, yeah. So on this page near the
9 bottom, the summary begins for Mississaugas of the
10 Credit First Nation, and, again, on this page, it is
11 just listing the documents that have been provided to
12 the community.

13 And then if we could keep scrolling to page 3.
14 So we have this section here at the bottom:

15 "Did the community members or representatives
16 have any questions or concerns?" (as read)

17 If I can just summarize further what it says
18 here, it is -- among other things, it states that
19 Enbridge Gas and their consultant Stantec met with
20 the Mississaugas of the Credit First Nation to
21 discuss the project, and then the Mississaugas of the
22 Credit First Nation provided written questions to
23 Enbridge Gas about the project, and Enbridge Gas
24 responded.

25 And this summary table indicates that as of June
26 26th, 2026, the Mississaugas of the Credit First
27 Nation have not identified any outstanding concerns,
28 and it also states that capacity funding has been

1 provided to the community on this same page, page 3.

2 I would ask that we scroll now to page 4. So
3 this is where the summary begins for consultation
4 with Six Nations, but I would actually ask that we
5 keep scrolling down to page 7 of this document.

6 Thank you.

7 So this is where Enbridge Gas has updated this
8 summary table since the previous ICR. On this page
9 of the summary, Enbridge Gas has included some recent
10 updates, and these are mainly regarding two meetings
11 that were held that we have heard about today, one on
12 April 21st, 2026, and the other on May 26th, 2026.

13 And I will take you to some other documents
14 about these meetings. But without reading the
15 summary to the Panel, in this summary, if you scroll
16 down a little bit, it appears from this summary --
17 for -- regarding both meetings, but especially the
18 May 26th, 2026, meeting that Six Nations asked a
19 number of questions about the project, and those
20 questions were answered by Enbridge Gas. And I will
21 take you to some other relevant documents about this
22 as well.

23 If we could keep scrolling to Tab 2, please. It
24 is at page 12 of the compendium. There it is, Tab 2.
25 Thank you. And please go to the content of Tab 2.
26 Thank you. So I thought that it would be helpful for
27 the Panel to have these references for your review.

28 So this is an e-mail from May 25th, 2026, from

1 Enbridge Gas to Six Nations. And attached to this e-
2 mail, which I will show you, are Enbridge Gas' notes
3 about the meeting that took place on April 21st,
4 2026.

5 And so if we can just scroll down slightly. So
6 this meeting was about two projects: The first being
7 the Port Colborne reinforcement project, and then
8 Cedar Springs, the project at hand, was also
9 addressed. So this first page of these notes here is
10 about Port Colborne.

11 And if you keep scrolling, please, to the next
12 page and keep going. This is the page where the
13 notes for Cedar Springs begin. We can see the
14 heading there, "Cedar Springs Project Introduction."

15 And then if you keep going to the next page,
16 please, there is continued notes here. Six Nations
17 asked some questions about the project. I won't read
18 them to you, but they are available, of course, for
19 the Panel in the file. And Enbridge answers some
20 questions about the project.

21 And then I would ask if we could go to Tab 5, if
22 we could skip ahead to Tab 5 in the compendium. It
23 is on page 25. Thank you. So this is an e-mail from
24 May -- sorry -- from June 17th, 2026, regarding the
25 May 26th, 2026, meeting. And this is an e-mail where
26 Enbridge Gas is providing Six Nations with copies of
27 their notes from the meeting, the second meeting in
28 May.

1 And before we go to the actual notes, I just
2 want to highlight this e-mail also states:

3 "In response to Action Item Number 2, namely
4 Enbridge Gas commits to implementing Stantec's
5 mitigation measure recommendations. I can
6 confirm that Enbridge followed Stantec's
7 recommendations, as noted in the mitigation
8 measures section of the filed application."
9 (as read)

10 So this is where one of the things that Six
11 Nations had requested in that meeting was a
12 commitment that Enbridge would be following Stantec's
13 recommendations, and so this is Enbridge Gas
14 responding to that.

15 And if we can scroll down, please, to the next
16 page. So this is the beginning of the notes
17 regarding this meeting. And there has been much talk
18 of this meeting today, so I wanted to make sure that
19 the Panel is aware of these notes. I am not planning
20 to go through them in any detail with the Panel, but
21 they are available for the Panel.

22 And we can see that Enbridge Gas provides a
23 project description and a tentative schedule, and
24 then there are a variety of questions that Six
25 Nations asks about the project.

26 And if you could just scroll to the next page,
27 please, you can see the meeting notes go on, and Six
28 Nations asks a variety of questions.

1 And if you could please keep going. This is
2 where the notes conclude. And these are the action
3 items that are listed by Enbridge Gas as coming out
4 of this meeting on May 26th. So there has been some
5 talk of the action items today. They are listed
6 here. One of them is the commitment to implementing
7 Stantec's mitigation measures, which was in that e-
8 mail. And there is some others here as well.

9 One of them is Enbridge Gas providing a map of
10 the proposed route overlaying a Google map. There
11 are some tabs in our compendium, Tabs 3 and 4, that
12 show Enbridge Gas' responses on that, providing that
13 map as well.

14 So these notes are fairly extensive, and they
15 show Six Nations asking a lot of questions about the
16 project and Enbridge Gas answering them.

17 And so I just wanted to take the Panel to these
18 particular documents because for OEB Staff, we are
19 focused on these most recent meetings, and we are
20 submitting that the duty to consult has been
21 adequately discharged at this point.

22 And we know from the submissions that we have
23 heard today and from the evidence on the record,
24 there were some issues in Enbridge Gas' consultation
25 with Six Nations. Six Nations has raised a number of
26 concerns including that Enbridge Gas failed to
27 deliver key documents before the draft environmental
28 report, failed to hold an introductory meeting

1 regarding the project, and generally proceeded on a
2 timeline that did not provide for meaningful
3 consultation in a context where Six Nations had
4 concerns about Enbridge Gas' consultation on other
5 projects.

6 Based on the updates that are now on the record
7 in the most recent ICR, it does appear to OEB Staff
8 that Enbridge Gas has continued the consultation.
9 They have had two meetings now about this project.
10 Six Nations has also recently attended an ecological
11 field survey as well on May 28th, 2026, which I
12 understand from Enbridge's submission today was
13 requested by Six Nations.

14 It appears that Six Nations has asked a number
15 of questions about the project and has made some
16 requests for further information and further study to
17 be done. Enbridge Gas has answered the questions and
18 has provided some follow-up information and has made
19 some commitments for -- to provide further
20 information as well that is not available yet.

21 OEB Staff submits that with these further
22 updates on the record, it appears that the duty to
23 consult has been adequately discharged. Enbridge Gas
24 noted in the written summary of their submission
25 today that Enbridge Gas acknowledges that Six Nations
26 has raised concerns regarding engagement on the
27 project, which Enbridge Gas has worked to
28 substantially address.

1 And OEB Staff agrees with that. Based on the
2 recent updates to the ICR going up to June 2026, it
3 does appear that Enbridge Gas has worked to address
4 Six Nations' earlier concerns with the consultation
5 process based on -- based on what is on the record.

6 And I would like to just turn back to the OEB
7 guidelines, which -- environmental guidelines, which
8 I raised at the beginning of my submissions. And I
9 am wondering if we could bring them up. They are not
10 actually in the compendium of OEB Staff. We just
11 provided a link to them. But they are available in
12 full in the compendium from Enbridge Gas at Tab 5, if
13 that is the easiest way to bring them up. Thank you.
14 And if you could go to page 18. Thank you.

15 So I would just like to bring the Panel's
16 attention to this paragraph at the top. So it says:

17 "The Applicant should file an Indigenous
18 Consultation Report with its application to the
19 OEB. The Indigenous Consultation Report should
20 describe the consultation activities that were
21 undertaken and timing." (as read)

22 Et cetera, et cetera. It goes on to say that:

23 "A matrix can be used to summarize the
24 consultation record." (as read)

25 And then it says:

26 "Prior to the Leave to Construct proceeding,
27 the Leave to Construct record being closed by
28 the OEB, the Ministry of Energy will provide a

1 letter to the Applicant expressing its view on
2 the adequacy of the Indigenous consultation
3 based on materials provided to the Ministry Of
4 Energy. It is noted that the consultation
5 should start in the pre-application stage and
6 is likely to continue during OEB's review of
7 the application, and in some cases, may
8 continue through the life of the project. The
9 Applicant is expected to file with the OEB the
10 letter from the Ministry Of Energy and keep the
11 summary of the consultation record up to date
12 until the OEB renders its decision." (as read)

13 So what I want to submit, first of all, in
14 relation to the OEB environmental guidelines is that
15 they specifically contemplate that consultation
16 should continue during the OEB's review of the
17 application, and in some cases, through the life of
18 the project. And the Applicant is expected to keep
19 the summary of the consultation record up to date
20 until the OEB renders its decision.

21 And OEB Staff submit that it appears that that
22 is what has occurred here in Enbridge Gas'
23 engagement, that is Enbridge has continued the
24 consultation process during OEB's review of the
25 application and has undertaken further steps since
26 some of the issues that Six Nations raised have
27 occurred.

28 And we have heard some submissions today that

1 there are some action items that are outstanding from
2 those meetings, and I have shown the Panel the
3 relevant notes to that. I am sure that Enbridge Gas
4 will also speak to those action items. But Enbridge
5 Gas has committed to continuing to engage throughout
6 the life of the project, and I submit to you that
7 that is an anticipated part of the OEB's process in
8 the environmental guidelines. It is not unusual that
9 -- necessarily that there would be outstanding items,
10 and that does not necessarily mean that the duty to
11 consult has not been adequately discharged.

12 Regarding this paragraph that I have brought up
13 for the Panel as well, I also just want to move on to
14 talking briefly about the Letter of Opinion, which is
15 also discussed in this paragraph.

16 So as part of this type of proceeding, the
17 Ministry Of Energy and Mines provides a Letter of
18 Opinion. I acknowledge that the -- this paragraph
19 actually specifically refers to Leave to Construct
20 proceedings, but this same process is used in Leave
21 to Construct exemption proceedings.

22 And as part of this type of proceeding, the
23 Ministry provides a Letter of Opinion about the
24 sufficiency of consultation, and that is not yet
25 available on the record of this proceeding, and so
26 the record is not closed yet.

27 And I just want to highlight that the Letter of
28 Opinion is a step contemplated within the guidelines,

1 and it is part of the OEB's current process. The
2 Ministry provides that letter, and Enbridge is
3 expected to file it.

4 And the reason I just want to point that out is
5 because I think we have heard today from Enbridge Gas
6 that the OEB can make a decision without that letter,
7 but I think it is important that we situate that
8 letter.

9 As part of the OEB's regular process, it is
10 expected that Enbridge will file that letter, and I
11 haven't heard a reason today to deviate from that
12 process. It doesn't mean that the Panel cannot, but
13 I haven't heard a reason to deviate today.

14 So to the extent that it becomes necessary, the
15 application could be placed in abeyance to provide
16 more time for the Letter of Opinion to be filed.

17 And finally, on the last note that I wanted to
18 address, which was conditions of approval, if the OEB
19 determines that the Crown's duty to consult has been
20 adequately discharged, and the OEB does grant the
21 exemption sought by Enbridge Gas, then OEB Staff
22 submit that it would be appropriate for the OEB to
23 impose the conditions of approval that are the same
24 as those that have been imposed in other recent
25 applications before the OEB.

26 And in our summary of written submissions, I
27 have provided links to some of the recent decisions
28 of the OEB including the most recent decision, the

1 Port Colborne reinforcement decision, but there are
2 some others as well in there.

3 And these conditions of approval are also the
4 same ones that are proposed by Enbridge Gas in their
5 application. And there is a copy of their proposal
6 in our compendium at Tab 7, but I won't take you
7 there in the interest of time. But it is OEB Staff's
8 submission that those conditions of approval are
9 appropriate.

10 And those are my submissions today subject to
11 your questions. Thank you.

12 PRESIDING COMMISSIONER CÔTÉ: Thank you, Ms.
13 Pope. I will look to my left to see if there are any
14 questions.

15 Commissioner Moran?

16 COMMISSIONER MORAN: Thank you. I have no
17 questions.

18 PRESIDING COMMISSIONER CÔTÉ: Okay. Then I will
19 look to my right.

20 Commissioner Sidlofski?

21 **QUESTIONS BY COMMISSIONER SIDLOFSKI:**

22 COMMISSIONER SIDLOFSKI: Just a quick question,
23 Ms. Pope. You acknowledged that there are
24 outstanding items. There were commitments made by
25 Enbridge to provide further information. Are you
26 concerned at all that without that information that
27 Enbridge has already agreed to provide, there may not
28 be an ability for Six Nations to have any influence

1 on the project without seeing those first?

2 If the Board were to determine now that the duty
3 is met, what does that -- how meaningful do those --
4 do those follow-up -- and I don't mean to belittle
5 them by referring to them as "follow-up items," but
6 to those other items that Enbridge committed to
7 provide, how meaningful are those items when -- you
8 know, if the Board has already decided that the duty
9 to consult has been met?

10 S. POPE: So if I can just clarify your
11 question. You are asking if the Board does order an
12 exemption for Enbridge Gas, what is the value of
13 continuing to provide -- to answer those outstanding
14 items?

15 COMMISSIONER SIDLOFSKI: Well, I am -- I
16 understand your point about there being an
17 expectation the consultation will continue through
18 the life of the project. But if the Board were to
19 grant the exemption here on the basis that the duty
20 to consult has been met, then does Six Nations have a
21 meaningful opportunity to influence the project as it
22 proceeds when the Board has already determined that
23 the duty is met, the exemption from Leave to
24 Construct is granted, the project goes ahead?

25 If we agree that the consultation needs to be
26 meaningful, which is a very brief summary of the Six
27 Nations' position, then how meaningful do you see the
28 consultation -- that ongoing consultation being when

1 the material -- when material that Six Nations may
2 need to determine whether there should be changes to
3 the project, or whether in its view there should be
4 changes to the project, don't come until the project
5 has already been approved?

6 S. POPE: I think that -- I guess I will say a
7 couple of things.

8 One is I do think that it is normal and typical
9 that there would be continuing consultation and there
10 would be documents that would continue to be provided
11 after an approval by the OEB. I think it is quite
12 typical that Enbridge would commit to engagement
13 throughout the life of the project, and things can
14 come up at any time. And so, you know -- and
15 Enbridge Gas has a responsibility to go back to the
16 Ministry if anything arises that could change the
17 depth of consultation that is required.

18 That being said, if the Panel looks at the
19 outstanding items and, you know, is of the view that
20 any of them are significant enough that these two
21 meetings that have happened to date have not given
22 Six Nations the true opportunity to identify impacts
23 on their rights and, you know, identify those --
24 those impacts so that they can be addressed, then it
25 would be necessary for those outstanding items to be
26 fulfilled before the project could go forward.

27 COMMISSIONER SIDLOFSKI: Just one other
28 question: In your -- very early on in your comments,

1 you said that given the updated consultation report,
2 in Staff's view, the duty has been met subject to
3 receipt of the letter.

4 S. POPE: That is right.

5 COMMISSIONER SIDLOFSKI: So the Board should --
6 in your view, in Staff's view, the Board shouldn't be
7 making a determination yet until that letter is
8 received?

9 S. POPE: That is correct. And the reason for
10 that is because it is part of the OEB's process.
11 This is, you know -- the OEB has an extensive process
12 set out in the environmental guidelines to ensure it
13 has the information before it.

14 The Crown coordinates -- or the Ministry
15 specifically coordinates the duty to consult
16 obligations that are delegated and they have insights
17 into that process that can be valuable, and I would
18 submit to you that that is why it is a typical part
19 of the OEB's process to have that Letter of Opinion
20 on the record. And, you know, I haven't heard any
21 reason why the OEB should deviate from its typical
22 process.

23 COMMISSIONER SIDLOFSKI: So let me just try to
24 tie your two thoughts together here, then -- or what
25 I see as two thoughts.

26 One is the Board's standard process is to
27 require the letter or to wait for the letter, so the
28 Board should be doing that here?

1 S. POPE: Yes.

2 COMMISSIONER SIDLOFSKI: But the fact that Six
3 Nations is waiting for material from Enbridge that is
4 directly related to the project, that is not what --
5 that is not a reason to delay approval of the
6 application?

7 S. POPE: I mean, I acknowledge that they are
8 related, obviously, because if the Board puts this
9 into abeyance in order to wait for the Letter of
10 Opinion, more of these action items might be
11 fulfilled during that time, and Enbridge Gas can
12 provide an update to the Board on that.

13 Whether there will -- I mean, I have no sense of
14 when that Letter of Opinion will be provided, so I
15 don't know how long that period of time would be and
16 whether it would be enough for Enbridge to satisfy
17 all of the action items that they have committed to
18 and just generally continue, you know, to have an
19 another meeting, for example, if that is what the
20 Board is looking for. I don't know if there would be
21 enough of a timeline for that because I don't know
22 when the Letter of Opinion will be provided.

23 But I do acknowledge that if the OEB puts this
24 matter into abeyance to wait for the Letter of
25 Opinion, that is going to provide more time as well
26 for consultation to continue. And it should continue
27 during that period because Enbridge has committed to
28 continuing throughout the life of the project to

1 consult, and they have committed to certain specific
2 actions.

3 COMMISSIONER SIDLOFSKI: Thank you, Ms. Pope.

4 Commissioner Côté, that is -- those are my
5 questions.

6 PRESIDING COMMISSIONER CÔTÉ: Thank you. I will
7 be returning to Commissioner Moran.

8 **QUESTIONS BY COMMISSIONER MORAN:**

9 COMMISSIONER MORAN: I just want to follow-up on
10 this question of the Letter of Opinion and how it
11 helps us. I mean, we have a regulation that says
12 that we, the OEB, are supposed to determine if the
13 duty to consult has been adequately discharged.

14 What, in your view, in the Letter of Opinion
15 that we might get from the Ministry will be helpful
16 given that the Indigenous consultation record is in
17 front of us, given that we have had public
18 submissions from Enbridge about the sufficiency of
19 the process, and public submissions from Six Nations
20 about the sufficiency of the process, and public
21 submissions from Staff about the sufficiency?

22 A separate process that isn't public, how will
23 that assist us when all we see is a summary of --
24 with a conclusion that we have talked to a few
25 people, we don't necessarily say who they are? How
26 does that help us? Like, and why is it necessary?

27 I mean, I get that there is a reference to it in
28 our process, but our process description isn't a law.

1 I mean, it is just a general statement about how we
2 generally would do things. But in this particular
3 case, for the exemption request that Enbridge has
4 made, how does a Letter of Opinion assist us?

5 S. POPE: When I say that OEB Staff submissions
6 are subject to the Letter of Opinion, I only mean
7 that, you know, if there was something in the Letter
8 of Opinion that, you know, changed, you know, OEB
9 Staff's view, that, you know, they would respond to
10 that accordingly.

11 That being said, I think that that occurs
12 rarely. I think for the most part, they are not very
13 detailed letters.

14 So in terms of how it will assist the Panel, it
15 may not assist in the sense of changing anything
16 dramatically in terms of the outcome of this
17 proceeding. And I guess when I suggest that when --
18 when I suggest that the Panel should wait for it, it
19 is more because I am suggesting that the OEB should
20 uphold its own procedure and follow its own procedure
21 that it set out.

22 And as I mentioned, the Ministry does coordinate
23 duty to consult obligations of Enbridge Gas, and they
24 do have insights that are -- that we are not privy to
25 necessarily until they provide that assessment.

26 So I think it can -- it can provide some
27 information that is helpful. But I am not suggesting
28 to you that it is, you know, going to be necessarily

1 accorded a lot of weight in your ultimate
2 conclusions.

3 COMMISSIONER MORAN: So how does it work, for
4 example, in a scenario where we agree with Enbridge
5 to say, you know, the Panel is going to decide if the
6 duty to consult has been discharged, and we get a
7 letter while we are deliberating from the Ministry
8 that says, well, the procedural aspects look okay to
9 me and -- but we are going the other way on the
10 ultimate duty to -- like, again, I am just trying to
11 understand what that letter would have anything to do
12 with what we have to decide and how it would help us
13 in any particular way.

14 S. POPE: So you are saying if you received a
15 letter that suggested that there were outstanding
16 issues, how would the Panel approach that?

17 COMMISSIONER MORAN: Or a letter that says there
18 aren't any outstanding issues from the Ministry's
19 perspective --

20 S. POPE: Yeah.

21 COMMISSIONER MORAN: -- but in the meantime, we
22 have got all the submissions we have received in this
23 process, and we are dealing with what is on our
24 record. How do you deal with that potential
25 dissonance?

26 S. POPE: I think it would be really context
27 dependent on, you know, what it specifically says. I
28 mean, it would be open to the Panel to make a

1 decision, you know, to go forward, to take that
2 letter into account, and go forward, and make their
3 decision in any way that they see fit. But of
4 course, the Panel can seek more information if
5 necessary as well. More submissions from the
6 parties, for example.

7 COMMISSIONER MORAN: Okay. Thank you.

8 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

9 PRESIDING COMMISSIONER CÔTÉ: Just one from me,
10 Ms. Pope, if I could clarify.

11 So I heard the position of OEB Staff in terms of
12 the duty to consult. I also heard in some of the
13 exchange that some activities can continue throughout
14 the lifecycle. I am not sure if that the word you
15 used but...

16 What I am trying to clarify is that it obviously
17 can't be both. The duty to consult at some point is
18 fulfilled or it is not. I accept that relationships
19 can continue, but where I struggle is how we can have
20 it both ways of making a finding yea or nay. If I
21 heard correctly some of the exchange, the implication
22 that the continuation is in fulfillment of the duty
23 to consult still.

24 Did I misunderstand that? Could you help me
25 clarify? Perhaps I missed something.

26 S. POPE: Yeah. So I think that Six Nations's
27 position, you know -- and obviously I am paraphrasing
28 -- but, you know, there is a bright line where the

1 duty to consult is completed, and that is when it is
2 discharged, and then it is finished. And that whole
3 process needs to be completed before the OEB can
4 approve the application.

5 And what I submit is that you have to determine
6 that the duty to consult has been adequately
7 discharged in order for the project to go forward,
8 but there is still an ongoing obligation of Enbridge
9 Gas to continue throughout the life of the project to
10 consult. I recognize that, you know, it is quite a
11 complex idea, but that would be how I would put it.

12 PRESIDING COMMISSIONER CÔTÉ: Perhaps, may I
13 suggest, to test, once the duty to consult has been
14 fulfilled, perhaps what you mean is that post that,
15 there can be further engagement and relationship
16 building and so on and so forth. But at that point,
17 a determination has been on the fulfillment of the
18 duty to consult.

19 S. POPE: Yeah, I would just note that the
20 language in the regulation is "adequately
21 discharged," not "fulfilled." I -- you know, I just
22 think that is a little bit of a different tone. So I
23 would just point that out, that it is "adequately
24 discharged." But that the OEB is determining if the
25 duty to consult has been adequately discharged for
26 the project to go forward, but that doesn't mean
27 there is no obligation to continue consultation.

28 And indeed in many of the OEB's decisions -- I

1 don't have any offhand to point you to, so I
2 apologize -- but, you know, the OEB will actually
3 indicate that the Applicant has an obligation to
4 continue engagement. So that is, you know, part of
5 the conditions of approval in a sense.

6 PRESIDING COMMISSIONER CÔTÉ: Yeah, I would say,
7 from my experience, that is fairly normal. I think
8 your point about perhaps the language that does exist
9 indeed, but we are the final decision maker. If not
10 us making a determination on the duty to consult,
11 there is arguably no one else. So whatever the
12 language is, I guess I am interpreting it as we as
13 the final, at least in this context.

14 But I think you have clarified the area I wanted
15 to check, so thank you for that.

16 Okay. I believe I am looking to my right to
17 Enbridge. As a courtesy, having heard all the
18 submissions, are you prepared right away to provide
19 your reply?

20 B. GRAY: Yes.

21 PRESIDING COMMISSIONER CÔTÉ: Okay. Then in
22 that case, we will do so. We will turn it over to
23 you, Mr. Gray.

24 **SUBMISSIONS BY B. GRAY (ENBRIDGE):**

25 B. GRAY: Thank you, Commissioner. We have
26 several points that we do want to respond to, but
27 before we do, we just want to acknowledge that there
28 are certain aspects of consultation here that

1 obviously could have been handled better,
2 particularly in terms of the follow up on the July
3 notice, and we agree that it would have been better
4 to provide additional notice of the intention to file
5 an OEB application before it was submitted.

6 We appreciate how this would have been received
7 and appreciate Six Nations sharing its perspective on
8 this and the consultation process. Enbridge Gas is
9 continually looking to improve relationships, listen
10 to feedback, and this process has been helpful in
11 identifying ways in which Enbridge can continue to
12 improve its communications in future consultation.

13 This does not, however, change our submission
14 that the duty to consult has been adequate for this
15 project. Missteps can be made, and missteps here
16 don't render consultation inadequate or suggest that
17 consultation was not undertaken in good faith.

18 If you take a step back and look at the entire
19 process and the full engagement record, including the
20 meetings that took place this spring, it is clear
21 that it was conducted in good faith and consultation
22 was meaningful.

23 Consultation continued after the application was
24 filed, and the duty to consult only has to be
25 discharged once the decision by the OEB is made. I
26 differ from my friend here on this point: It does
27 not have to be discharged when the application is
28 filed.

1 The duty to consult is only formally triggered
2 as a legal matter when the application for a
3 government authorization is filed because it is the
4 Crown decision that triggers the duty, not the
5 project.

6 There are no cases I am aware of where a Court
7 has determined that consultation need to be completed
8 before an application for a government authorization
9 is filed. And as I made submissions this morning,
10 consultation routinely continues after
11 authorizations, applications, and studies have been
12 filed.

13 The determination that is required by the
14 regulation that governs this decision is not whether
15 the duty to consult was met when the application was
16 made. It is whether it has been met when the OEB
17 makes its determination, which is now.

18 I want to respond very briefly to the point
19 about the checked box on the Indigenous consultation
20 summary at Tab 6 of our compendium where Enbridge Gas
21 acknowledged that there were outstanding concerns
22 from Six Nations.

23 This was not an acknowledgement that
24 consultation was inadequate or had not yet been
25 fulfilled. It was a recognition that Six Nations
26 were participating in this proceeding, raising
27 concerns, and were going to -- going to be
28 participating in an oral hearing that was scheduled.

1 And so given that, and we knew that there were
2 outstanding concerns, Enbridge Gas recognized that
3 there were. But those outstanding concerns are not,
4 in our submission, issues that render consultation
5 inadequate nor is the information that my friend says
6 is outstanding. That also doesn't render the
7 consultation inadequate, and I will return to that.

8 My friend made the submission that real
9 consultation only started in April 2026 or was really
10 -- or kind of was the beginning of consultation. In
11 our submission, this is incorrect.

12 In addition to the written notices and the
13 sharing of the environmental report, there was a
14 meeting to discuss the project in November, and the
15 case law does not say that written communication and
16 information sharing isn't consultation. In fact,
17 sharing information in writing is a fundamental part
18 of consultation because think about project
19 approvals. They are often accompanied by detailed
20 environmental studies and other supporting studies.

21 All of that information is shared in writing for
22 Indigenous groups to review, and that is all part of
23 the consultation record. It is not just verbal
24 meetings that count for the purposes of consultation.

25 And I just want to take you to the *Ktunaxa*
26 decision at paragraph 80, which is at Tab D of our
27 compendium. And this is the fourth bullet down under
28 paragraph 80 where it talks about the content of the

1 duty to consult and accommodate varying.

2 Second sentence:

3 "Cases with a weak claim, a limited Aboriginal
4 right, or minor intrusion may only require
5 notice, information, and response to queries."
6 (as read)

7 There is nothing in this passage or in the case
8 law that is before you that would say that --
9 particularly at a low level of consultation, that
10 there needs to be -- there can only be consultation
11 through in-person meetings. In fact, all of these
12 things can be provided in writing.

13 The cases do speak to a two-way dialogue, but
14 two-way dialogue can occur in writing. And that --
15 there is evidence before you about that. MCFN raised
16 questions in writing on two different occasions, and
17 those questions were answered. And on the last
18 occasion, MCFN indicated that they had no other
19 concerns.

20 And so it is not the case that consultation can
21 only take place through meetings and doesn't start
22 until there are meetings. And I would say it would
23 have significant implications for the resources and
24 time of Indigenous groups' proponents and governments
25 if the hundreds to thousands of notices that are
26 received by Indigenous groups each year mean that
27 there has to be in-person meetings for consultation
28 to be sufficient.

1 Suggesting that real consultation only started
2 in April also doesn't consider reciprocal
3 obligations. Consultation, as the Court has made
4 clear on many occasions, and I have referred you to
5 case law in our written submission -- consultation is
6 a two-way street, and Six Nations have reciprocal
7 obligations to engage and raise concerns early and
8 with specificity.

9 And just so that there is no misunderstanding,
10 it is not the case that Enbridge didn't try to meet
11 before April. I would like to take you to the ICR
12 for Six Nations, which is Tab 8, beginning at Item
13 3.49 on November the 28th. So this was after the
14 November meeting and after the OEB application was
15 filed.

16 So 3.49, you can see at the bottom of that
17 entry, Enbridge Gas is looking -- so this is an e-
18 mail to Six Nations, and at the bottom:

19 "Enbridge Gas is looking for an opportunity to
20 discuss the documents and will work to set up a
21 meeting shortly." (as read)

22 December 18th, Item 3.52, there is an e-mail
23 from Enbridge Gas to an SNGR representative to
24 request availability to meet to discuss the project.

25 December 19th, there is an e-mail to follow up
26 on meeting dates. That is Item 3.53.

27 If you go over to the next page, Item 3.55,
28 January 19th, an Enbridge Gas representative e-mailed

1 to, again, request availability to meet to discuss
2 the project and welcomed any comments on the draft ER
3 that had been sent in September.

4 3.56, again, on January 23rd, there was a
5 follow-up for dates for a meeting.

6 3.57, February the 2nd, there was also a follow-
7 up to set a meeting.

8 And then on February 2nd, a Six Nations
9 representative e-mailed Enbridge to advise that Six
10 Nations was retaining a lawyer and would be in touch
11 shortly to -- when -- when Six Nations had discussed
12 with their counsel.

13 Then if you turn over, Item 3.67. There is
14 another request from Enbridge for a meeting on
15 February 18th.

16 February 24th, Item 3.69. Again, Enbridge Gas
17 expressed interest in scheduling a meeting with
18 respect to the project.

19 And then you can see on Item 3.78, March 2nd,
20 the meeting is ultimately set by that time, and it is
21 set then for April 21st to accommodate Six Nations'
22 schedule.

23 So there was repeated offers and attempts to
24 arrange meetings to discuss this application earlier,
25 and Six Nations had the detailed environmental
26 report, which I encourage you to look at and look at
27 the appendices to see all of the existing images of
28 the right-of-way and all of the information that is

1 provided on potential environmental effects and
2 mitigation measures, all of which Six Nations had and
3 could review and provide comments on.

4 With respect to the submission that the letter
5 of delegation outlines incidents of engagement that
6 would be consistent with a moderate level of
7 consultation and, therefore, the government is
8 expecting a moderate level of consultation, in our
9 submission, the duty has been met at a moderate level
10 for the same reasons we have already outlined in our
11 submissions this morning.

12 There has been substantial information
13 exchanged, in-person meetings, and things have been
14 done in response to the concerns raised by Six
15 Nations.

16 With respect to the -- the submission by my
17 friend that the adjudicative approach is not a way to
18 go about consultation, in our submission, this is
19 only applicable to court proceedings, and it does not
20 apply to regulatory proceedings.

21 The Supreme Court was clear in *Clyde River* and
22 *Chippewas of the Thames* that the Crown can rely on
23 regulatory processes to fulfill the duty to consult.
24 And in my submission, these were with respect to the
25 National Energy Board, and in my submission, the
26 National Energy Board process is not sufficiently
27 distinguishable from the OEB process to suggest that
28 the OEB process cannot be relied upon, in part, to

1 fulfill the duty to consult.

2 We are not saying, to be clear, that -- that
3 consultation should -- you know, has only been
4 undertaken through the OEB process. We are saying
5 that it afforded additional consultation over and
6 above the consultation that has been undertaken by
7 Enbridge.

8 I want to deal now with the item about the
9 submission that there are multiple outstanding items
10 flowing out of the spring meetings.

11 In our submission, the only outstanding item is
12 the arborist report and is the only outstanding item
13 we were aware of until we heard the submissions of my
14 friend, and we don't agree, respectfully, that those
15 items are outstanding.

16 So with respect to the arborist report, the
17 arborist report is being finalized, and I understand
18 it will confirm that there is still no trees being
19 removed. And I understand that this will be shared
20 early next week.

21 I want to take you -- just in terms of the point
22 about action -- you know, outstanding items, I would
23 like to go to the minutes for the May 26th meeting,
24 which -- just one second. OEB Staff compendium, Tab
25 2. That is actually better to go -- yeah, I am going
26 to do that. Okay. I actually would like to --
27 sorry.

28 I would like to pull up our compendium because

1 there is a subsequent piece of correspondence that I
2 wanted to refer to. So this is page 486 of our 572-
3 page compendium. It is the second page -- or sorry -
4 - the third page of the minutes from the May 26th,
5 2026, meeting.

6 So if you can look -- if you look at the action
7 items, Enbridge Gas to provide meeting presentation
8 slides; Enbridge Gas to share documents stating that
9 Enbridge Gas commits to implementing Stantec's
10 mitigation measure recommendations; three, Enbridge
11 Gas to share arborist report once available; four,
12 Enbridge Gas to provide a map of the proposed route
13 overlaying a Google map showing vegetation and will
14 not include streets that are no longer in the project
15 scope.

16 And then if you go to the next page, this is an
17 e-mail on June the 26th following up on the meeting
18 and setting out various items that were -- more
19 information on the various follow-up items.

20 You will see from those action items in the
21 meeting, those action items do not include providing
22 Enbridge's vegetation guidelines, and they do not
23 include providing a virtual tour of the project site.
24 And I will come back to that point. But before I do,
25 I want to go up to the minutes from the April
26 meeting, which the end action items are at page 475
27 of our compendium.

28 So the first three items -- because this was a

1 meeting that was discussing both Port Colborne and
2 Cedar Springs, the first three items deal with Port
3 Colborne, as does, actually, the vegetation
4 guideline. But it does -- I do want to address that
5 because it references the vegetation guideline.

6 So the action item from this meeting was
7 Enbridge Gas request Metrolinx's vegetation guideline
8 and review it. So the action -- the request that was
9 documented and sent and not -- there was no follow up
10 to say, no, that is not the action item. The request
11 was to look at Metrolinx's vegetation guidelines.

12 And you can see in the minutes that the request
13 to look at it was a result of their ten -- their
14 approach of having a 10-to-1 replacement for tree
15 removals.

16 In our submission, that is not relevant for this
17 project because Enbridge Gas has confirmed that there
18 will be no tree removals as a result of this project,
19 and we will be sharing an arborist report early next
20 week to confirm that.

21 The next item was dealing with contracting
22 opportunities from Port Colborne.

23 Next item was dealing with the name of the
24 proposed Burlington project that paused Cedar
25 Springs.

26 Second-last item was inviting Six Nations to
27 attend an additional field survey as required, and
28 that happened, and they did participate in the field

1 survey at the end of May.

2 And then the final item was to connect Enbridge
3 Gas with Six Nations' tourism not related to this
4 specific project.

5 So you will see in those two minutes, there is
6 nothing in those action items saying there is still a
7 virtual tour outstanding or that Enbridge Gas needs
8 to provide its vegetation guidelines.

9 I want to address, though, the virtual
10 walkthrough. My understanding based on discussions
11 with individuals that were in the meeting is that
12 Enbridge did provide a virtual walkthrough in the
13 meeting on May the 26th.

14 They showed an initial image of the right-of-
15 way, and then they went to Appendix F and went
16 through the environmental -- sorry -- Appendix F of
17 the environmental report. And they went through the
18 environmental alignment sheets, which shows various
19 images of the right-of-way.

20 And that was Enbridge Gas's understanding of the
21 virtual walkthrough and that it was completed in the
22 meeting.

23 In addition, Enbridge Gas subsequently provided
24 detailed aerial images and design drawings showing
25 all of the specific drill location sites, which are
26 at Tab 3B of our compendium. This provides far more
27 information about the right-of-way than any virtual
28 presentation would provide.

1 We encourage you to look at the images again to
2 see the level of information provided on the route,
3 the specific areas of impact from drilling, and the
4 very small footprint of those drill locations.

5 No concerns have been raised since that data has
6 been sent. There has been no request to change drill
7 site locations or concerns about specific vegetation
8 at those drill site locations. And it is important
9 to note there also was this vegetation survey where
10 Six Nations was taken to the drill site location so
11 they could see the vegetation that was at those drill
12 site locations.

13 And, again, no concerns following that meeting
14 were raised by Six Nations to say these drill --
15 these drill site locations need to be changed because
16 of some specific sensitivity around vegetation at
17 that particular site.

18 And it is only -- because of the construction
19 method, it is only the drill site locations where
20 vegetation will be disturbed. And it will be
21 restored to pre-construction condition.

22 I just want to very briefly speak to the Nanfan
23 deed because, Commissioner Côté, this came up in
24 response to a question that you raised about the
25 rights that could be impacted. I just want to
26 underscore that the Nanfan deed speaks only to
27 hunting rights in the text of the Nanfan deed. It
28 does not speak to broader harvesting rights or

1 economic benefit rights. And it would be only
2 hunting put -- hunting on land that is not put to an
3 incompatible use.

4 There is also a dispute between Ontario, Canada,
5 and Six Nations as to whether the Nanfan deed is a
6 treaty, and this is a matter that is currently at
7 issue in litigation between Six Nations, Ontario, and
8 Canada.

9 With respect to the points raised about
10 financial accommodation, the fact that proponents
11 negotiate these arrangements typically for much
12 larger projects that have significant impacts does
13 not mean that it is legally required. And my friend
14 acknowledged the law is nascent on this. There is no
15 cases before you saying it is required because they
16 do not exist.

17 Financial accommodation is not common for small-
18 scale projects of this nature where no specific
19 impacts to rights have been identified.

20 My friend has suggested that this was a box-
21 ticking exercise and blowing off steam. I encourage
22 you to look at the entire record in considering that,
23 and I would submit that it is far from it.
24 Comprehensive information was shared. And a box-
25 ticking exercise is just sending out information and
26 doing nothing in response to concerns and not
27 listening in meetings when concerns are raise raised
28 and not really responding. That is not what happened

1 here.

2 There has been significant dialogue. There has
3 been further information provided, invitations to
4 participate things, vegetation surveys arranged that
5 didn't previously exist. And there hasn't been any
6 request to amend the route since the project resumed
7 in 2025.

8 And I, again, commend the environmental report
9 to you, which they have had since September 2025,
10 that shows detailed images of the route alignment at
11 that time, which was a larger alignment.

12 Given that the only matter left is an arborist
13 report, and the arborist report is going to confirm
14 information already provided, in our submission,
15 there is no reason to put this into abeyance. The
16 Letter of Opinion is also not necessary.

17 As noted, you have received detailed written and
18 oral submissions and have a large record before you.
19 Typical practice of the OEB is not a legal
20 requirement, and you do not need a letter to make a
21 determination. Requiring a letter creates
22 unnecessary duplication as the OEB is in a position
23 to comprehensively determine whether the duty to
24 consult has been met.

25 In our submission, looking at all the entire
26 consultation process, the Duty to Consult has been
27 met, and the Panel should grant the application given
28 that Enbridge has met the respective requirements.

1 Those are my submissions. Thank you.

2 PRESIDING COMMISSIONER CÔTÉ: Thank you, Mr.
3 Gray, for those submissions. I will turn to my
4 colleagues yet again.

5 Commissioner Moran? Commissioner Sidlofski? I
6 will have --

7 B. GRAY: Sorry.

8 PRESIDING COMMISSIONER CÔTÉ: I will have some
9 questions for you, Mr. Gray, if you are ready.

10 B. GRAY: Yes, yes.

11 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

12 PRESIDING COMMISSIONER CÔTÉ: Mr. Gray, you
13 walked us through the December-January timeline just
14 now, moments ago. You were pointing out the
15 difficulty setting up a meeting. We heard earlier
16 what was going on around that same time period. I
17 heard the word, I think, "trust," "frustration" a few
18 times from your friend opposite. Are you -- and you
19 started your reply by acknowledging some of the
20 difficulties. I don't want to put words in your
21 mouth.

22 Can you help me reconcile all of the above? It
23 seems from this record and from today's submission,
24 quite clear what was occurring in the December-
25 January timeline, which would then in turn explain
26 why the repeated attempts on Enbridge's part were
27 failing.

28 Do you want to comment on maybe squaring that

1 circle a little? Because on the face of it, it seems
2 pretty clear the reasoning as to why the attempts of
3 Enbridge were not succeeding. So I would like to
4 reconcile that with your opening acknowledgement, if
5 you can.

6 B. GRAY: Yeah. Sure. I can't really speculate
7 on why Six Nations wasn't able to meet or didn't wish
8 to meet. That could be a possible explanation.

9 What I can say is from a duty to consult
10 perspective, even if there is frustration, that is
11 not a basis to deny meeting. The duty to consult is
12 clear that there are reciprocal obligations. And in
13 our respectful submission, it is unreasonable to
14 refuse to meet, and that request for meetings -- if
15 there are genuine concerns about a project, requests
16 for meetings should be responded to, and meetings
17 should be arranged in a timely manner so that
18 consultation could be undertaken.

19 PRESIDING COMMISSIONER CÔTÉ: Thank you for
20 clarifying.

21 You also spoke about and pointed to the other
22 two Nations that are not here today a few times, both
23 in your earlier submissions and now. You did so in
24 this context in terms of how the process can unfold
25 in writing. I want to make sure that I am
26 understanding you properly here.

27 You are not in so doing at -- looking at the
28 other two and what unfolded there, implying that you

1 expect exactly the same across all peoples; that is
2 not what you are implying?

3 B. GRAY: No.

4 PRESIDING COMMISSIONER CÔTÉ: Okay. What you --
5 are you demonstrating how, in one case, such
6 methodologies achieved a particular end, and in other
7 cases, the same methodologies did not? Can you
8 elaborate on your purpose in that contrasting, if,
9 indeed, it is not your intent to imply and equate
10 that each people will attract the same treatment or
11 may have the same impacts or the same rights and so
12 on and so forth.

13 Because I just want to clarify -- I just want to
14 clarify my understanding as to what you mean in those
15 contrasting elaborations, please.

16 B. GRAY: Sure. My comment was in response to
17 the suggestion that consultation didn't begin
18 effectively until April.

19 And so I first was explaining that the law is
20 very clear that written communications can form part
21 -- do form part of consultation, and then I used the
22 MCFN example as an example of how consultation can be
23 still meaningful through written communications.

24 That is not to suggest that other Indigenous
25 groups don't have a different view as to how they
26 want to be consulted. And Enbridge Gas does attempt
27 to tailor, and I think you see examples of that and
28 discussions of that in the record where it is trying

1 to change its approach to engagement in response to
2 specific concerns that are raised.

3 And so that -- and that is the, I think,
4 helpfulness of the flexibility of the duty to consult
5 in that there is not a single way to discharge it,
6 and different Nations have different approaches as to
7 how they want to be consulted. But that doesn't --
8 just because a First Nation wants to be consulted in
9 person and in a meeting doesn't mean that the written
10 communications shared and all of the reports shared
11 don't constitute consultation and don't give rise to
12 obligations to share their views on any concerns that
13 they have with respect to those documents. And there
14 were meetings in this case subsequently in which the
15 project was discussed.

16 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
17 for those clarifications.

18 I have two more for you. One relates to the
19 action items or the outstanding items. You walked us
20 through the two meetings that have unfolded in April,
21 May, or the recent ones.

22 B. GRAY: Yes.

23 PRESIDING COMMISSIONER CÔTÉ: You pointed to
24 certain action items. Now, I would like to confirm I
25 understand that these minutes are documented and
26 captured by Enbridge; do I have that correct?

27 B. GRAY: Yes, they are. And sent to Six
28 Nations.

1 PRESIDING COMMISSIONER CÔTÉ: Is that process of
2 sending to a validation process?

3 B. GRAY: I can't speak to the specific purpose
4 myself, but I believe it likely is. It is very
5 common for proponents to send minutes of meetings to
6 First Nations after engagements have occurred, and
7 then the First Nation can provide comments as to
8 whether or not any revisions to those minutes or
9 action items need to be made.

10 PRESIDING COMMISSIONER CÔTÉ: Okay. Because you
11 will appreciate that the record as we have it after
12 today will have you point to those minutes and what
13 was recorded, hence why I want to clarify.

14 B. GRAY: Yeah, no, absolutely.

15 PRESIDING COMMISSIONER CÔTÉ: And the
16 submissions received which are not completely
17 converging with -- so we are left with a bit of a
18 difference of opinion there. Would that be your
19 understanding as well?

20 B. GRAY: Yeah, yes, I think we are left with a
21 difference of opinion.

22 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
23 for that clarification.

24 Mr. Gray, the last thing I have for you is we --
25 when we are talking to your friend, Six Nations, we
26 talked about the what now. And there were various
27 scenarios and the category of remedies that were
28 advanced. I didn't hear anything in your reply in

1 respect of those.

2 Do you care to leave us with something on the
3 record or -- if so, I would welcome the position of
4 Enbridge on any of the above unless, of course, you
5 tell us that there is one position from your
6 perspective, that is, the one you hold. But you
7 didn't provide any response to what was said
8 opposite, and I was curious about that.

9 B. GRAY: Sure. So our submission remains that
10 the requirements have been met and thus the exemption
11 should be granted. We are of the view that an
12 abeyance is not justified here given that the
13 arborist report is the only item outstanding, and
14 there are no tree removals that are going to be
15 undertaken. So the sharing of the arborist report is
16 not going to change the design of the project or the
17 construction of the project because no construction
18 is contemplated.

19 Similarly, the virtual walkthrough, as I have
20 said, did happen and more detailed information than
21 what would be provided in a virtual walkthrough was
22 subsequently shared. And there was no response to
23 that information to suggest, again, that there would
24 be -- you know, necessitate request for changes to
25 the route. And so, from our submission, there does
26 not need to be further consultation with respect to
27 the virtual walkthrough.

28 And with respect to the vegetation guidelines,

1 there has been detailed information already shared
2 with respect to Enbridge's approach to vegetation
3 management. It is relating to a -- and that isn't
4 going to change the design of the project to the
5 extent that there are further comments with respect
6 to vegetation management. It is really more targeted
7 to restoration. And so those comments can be
8 received and considered after an exemption has been
9 granted.

10 And Enbridge Gas has already indicated that it
11 is open to discussing additional approaches to
12 restoration with Six Nations and involving a Six
13 Nations company in restoration activities.

14 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.
15 Those were my questions. Give me a minute to consult
16 my colleagues here, and then we might be nearing the
17 end.

18 Always good to check out of an abundance of
19 caution. You never know. I forgot to introduce
20 myself earlier, so I don't want to make that same
21 mistake twice. With that, I believe that brings us
22 to a close.

23 I'd like to thank all those who participated
24 today for quite substantial discussions and
25 submissions, and we are grateful for that. It will
26 assist us in doing what lies ahead, as you might
27 appreciate, but we are grateful for your time and
28 good participation today.

1 So with that, I will call the case EB-2025-0313
2 Enbridge-Cedar Springs Community Expansion Project
3 oral argument portion of the proceeding closed, and
4 we will adjourn at this time. Thank you. Have a
5 good rest of your day.

6 --- Whereupon the proceeding concluded at 4:24
7 p.m.