



ONTARIO ENERGY BOARD

FILE NO.	EB-2025-0313	Enbridge Gas Inc.
VOLUME:	1	
DATE:	July 9, 2026	
BEFORE:	Damien A. Côté	Presiding Commissioner
	Patrick Moran	Commissioner
	James Sidlofski	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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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 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 submissions 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 roads. 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 of
11 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 roads,
22 in a semi-rural area of Burlington with houses, and
23 agricultural lands. And there are some images I will
24 take you to later where you can see that more
25 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 these findings is
25 at Tab 4A of our compendium, which I am not going to
26 take you to, but I just wanted to have that before
27 you so you can look at it. And Enbridge Gas is
28 committed to implementing all of Stantec's

1 recommended mitigation 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 and 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 or treaty rights and delegated the
19 procedural aspects of consultation to Enbridge Gas by
20 way of a 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, an issue
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:

25 "The cases on point emphasize that consultation
26 need not be perfect. It follows that the
27 Governor in Council --" (as read)

28 In this case the Governor in Council was making

1 the determination on the adequacy of consultation:

2 "-- that the Governor in Council was entitled
3 to give the government actors leeway in
4 assessing whether their efforts resulted in
5 compliance with the duty to consult.

6 The words of this Court in *Gitxaala Nation* are
7 opposite here. In this case, the subjects on
8 which consultation was required were numerous,
9 complex, and dynamic, involving many parties.
10 Sometimes in attempting to fulfill the duty to
11 consult, there can be omissions,
12 misunderstandings, accidents, and mistakes. In
13 attempting to fulfill the duty, there will be
14 difficult judgement calls on which reasonable
15 minds will differ." (as read)

16 And then the Court goes on to talk about what is
17 reasonable and meaningful consultation.

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

27 As the Supreme Court confirmed in the Chippewas
28 of -- *Chippewas of the Thames and Clyde River*

1 decisions, that regulatory processes can be relied on
2 to fulfill the duty to consult. For your reference,
3 the *Chippewas of the Thames* case can be found at Tab
4 I, and the paragraphs discussing this point are
5 paragraphs 32 to 34.

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

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

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

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

27 Second, I will discuss the specific concerns
28 raised and how Enbridge Gas responded, all of which

1 demonstrates a meaningful process.

2 Dealing first with the information provided,
3 Enbridge Gas sent four separate notices of the
4 project with information about the nature and
5 specific location of the project. These notices can
6 be found at Tabs 9 to 12 of our compendium, and I
7 will bring one up shortly.

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

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

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

26 And I just want to bring up that e-mail, which
27 is now before you because there is an issue around
28 notice of the application. And this is an e-mail

1 that was sent on June the 6th to Six Nations.

2 You will see in the third paragraph:

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

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

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

24 In addition to the notices, the First Nations
25 were sent an environmental report describing the
26 potential effects of the project on the environment
27 and the recommended mitigation measures, which
28 included a Stage 1 archaeological assessment and

1 further aerial imaging of the right of way, allowing
2 them to clearly see where the project was taking
3 place and the proposed right of way.

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

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

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

27 Moreover, once Enbridge Gas became aware of the
28 issue, it resent the materials. And when the e-mail

1 delivery issue happened again, it hand-delivered the
2 project description report on September the 25th,
3 2025.

4 The environmental report, which included the
5 project description report, was also previously
6 provided on September the 16th and again on November
7 28th. And so Six Nations has had, effectively, both
8 the project description report and the environmental
9 report since September 2025.

10 All three communities were offered capacity
11 funding and numerous opportunities to identify
12 potential adverse impacts on their Aboriginal or
13 treaty rights and to identify any suggestions for
14 avoiding, minimizing, or mitigating potential
15 impacts.

16 Six Nations, MCFN, and HDI were also each
17 invited to participate in field surveys and
18 monitoring of archeological investigations for the
19 project, provided that they entered into monitoring
20 agreements.

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

26 During the May survey, Six Nations
27 representatives accessed portions of the proposed
28 route and had the opportunity to identify potential

1 impacts and any issues of significance. Enbridge Gas
2 understands that no concerns were raised by Six
3 Nations at that time with respect to impacts.

4 In addition to sharing project information,
5 Enbridge Gas was responsive to the issues raised by
6 each group, and the record demonstrates meaningful
7 consultation. I am going to address each group
8 separately. And I will deal first with the
9 Mississaugas of the Credit First Nation.

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

18 MCFN was invited to participate in both
19 archeological and environmental fieldwork in the fall
20 of 2025, and they attended archeological fieldwork in
21 November of that year.

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

27 MCFN raised a number of questions relating to
28 the environmental report, dealing with issues with

1 respect to pipeline installation methods, potential
2 impacts to water bodies and wetlands, invasive
3 species, post-construction monitoring, baseline
4 studies, and mitigation measures.

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

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

19 As of the date of this hearing, MCFN has no
20 outstanding concerns and has not -- has not
21 identified any specific impact to rights from the
22 project.

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

26 Enbridge Gas acknowledges some early challenges
27 with the delivery of some documents, as I have
28 alluded to earlier, but the record demonstrates that

1 Enbridge Gas was responsive to the issues that were
2 raised and that the consultation process as a whole
3 was substantial and meaningful.

4 In -- since November 2025, three meetings have
5 been held to discuss the project on November 25th,
6 April 21, and May 26 of this year with further
7 correspondence exchanged on specific issues.

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

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

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

27 This -- these two environmental surveys -- and I
28 am not going to take you to the specific reference,

1 but I will tell you they are discussed in the
2 Indigenous Consultation Report at Tab 6 on page 8.

3 In addition to the additional fieldwork,
4 Enbridge Gas also provided additional route
5 information and mapping, and this was in response to
6 issues raised in a meeting in the spring of this year
7 where Six Nations asked about potential alternative
8 routes in terms of why the north versus the south
9 side of the street, why there were so many water
10 crossings, and they requested more detailed mapping
11 of the right-of-way and information on drill pit
12 locations.

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

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

27 In addition to route information and fieldwork,
28 Six Nations also requested Enbridge Gas to commit to

1 implementing Stantec's mitigation measure
2 recommendations, and that commitment was provided on
3 June the 17th, which I am not going to take you to,
4 but can be found at Tab 8 of our compendium, line
5 item 3.128.

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

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

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

27 All of this demonstrates responsiveness and
28 genuine efforts to respond to the issues raised.

1 I want to address a couple of issues raised in
2 Six Nations' factum.

3 First, Six Nations asserts that financial
4 accommodation is required. With respect, the duty to
5 consult does not require financial accommodation.
6 Accommodation is typically focused on avoiding,
7 mitigating, or offsetting impacts to rights through
8 project design changes and environmental and
9 monitoring measures, and there is no right, as I
10 indicated earlier, to a specific form of
11 accommodation.

12 The delegation letter is also consistent with
13 this where it speaks to modifying the project to
14 avoid or minimize impacts with no mention in the
15 letter of financial accommodation.

16 In addition, it is important to note that the
17 duty to accommodate is not automatic. It doesn't
18 arise every time there is a duty to consult, and it
19 requires a more significant impacts to rights.

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

1 In the circumstance, there is no impact to
2 accommodate. Even if there was, the denial of a
3 financial accommodation request does not render the
4 consultation deficient, consistent with the OEB's
5 recent decision in *Port Colborne*, which I am not
6 going to take you to, but the reference is at Tab F,
7 page 31 of our compendium.

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

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

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

26 And I just want to take you to the *Chippewas of*
27 *the Thames* decision on this point at Tab H. No, that
28 is -- sorry, it must be an earlier -- it is Tab I.

1 Yeah. So in -- I am going to go to paragraph 41.

2 In response to specific concerns that were
3 raised by the Chippewas of the Thames about
4 cumulative impacts, the Supreme Court said the
5 following at paragraph 41:

6 "The duty to consult is not triggered by
7 historical impacts. It is not the vehicle to
8 address historical grievances. In *Carrier*
9 *Sekani* --" (as read)

10 Which is the *Rio Tinto* decision that I was
11 referring to earlier:

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

25 That said, it may be impossible to understand
26 the seriousness of the impact a project on
27 Section 35 rights without considering the
28 larger context. Cumulative effects of an

1 ongoing project, and historical context, may
2 therefore inform the scope of the duty to
3 consult. This is not an attempt to address --
4 redress -- attempt the redress of past wrongs;
5 rather, it is simply to recognize an existing
6 state of affairs and to address the
7 consequences that may result from the project."

8 (as read)

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

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

21 Enbridge Gas acknowledges that there were some
22 issues early in the process relating to timelines and
23 information sharing but submits that they were
24 addressed, and they do not render the consultation
25 inadequate.

26 With respect to the concern raised about the
27 deadline for providing comments on the environmental
28 report, this deadline did not prevent Six Nations

1 from providing comments after October 31st, and
2 Enbridge Gas encouraged comments after this deadline
3 and had several subsequent meetings with Six Nations
4 to discuss components of the report, including
5 mitigation measures.

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

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

26 These issues did not ultimately impact Six
27 Nations' ability to engage in the consultation
28 process and have their concerns considered. They

1 have raised a number of issues, and these were
2 reasonably responded to and addressed, and
3 consultation has been sufficient in the
4 circumstances.

5 I want to turn now briefly to the Haudenosaunee
6 Development Institute, which I will refer to as
7 "HDI."

8 HDI, importantly, is not a separate Indigenous
9 community. It was identified for consultation as the
10 representative of the hereditary leadership of Six
11 Nations.

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

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

27 And as of this hearing, Enbridge Gas is not
28 aware of any outstanding concerns that HDI has raised

1 about potential impacts from this project.

2 In conclusion, Enbridge Gas is committed to
3 meaningful engagement with Indigenous communities.
4 It acknowledges that there were certain challenges
5 with the delivery of certain information and comment
6 deadlines on the environmental report, but the record
7 demonstrates that Enbridge Gas took concrete steps to
8 address these issues.

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

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

22 The first two criteria for an exemption are met,
23 in our submission, and are uncontested in this
24 hearing.

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

28 Enbridge Gas respectfully submits that the OEB

1 grant the requested exemption. Those are my
2 submissions subject to your questions.

3 PRESIDING COMMISSIONER CÔTÉ: Thank you very
4 much, Mr. Gray, for those submissions. We will have
5 questions. I will begin to my left. Commissioner
6 Moran, over to you.

7 **QUESTIONS BY COMMISSIONER MORAN:**

8 COMMISSIONER MORAN: So a couple of questions by
9 way of clarification, I think, to start with, Mr.
10 Gray.

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

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

1 I don't think we can remove the notice that was
2 provided or not consider the notice that was provided
3 in 2021. The Six Nations have acknowledged in their
4 affidavit that they received those notices, and MCFN
5 specifically responded to that notice. So I do think
6 that they need to be considered, but we are not
7 basing our submissions solely on those notices. It
8 is really the subsequent notices and the further
9 reports that are key to the notice.

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

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

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

24 B. GRAY: Yes. And it was the subject of the
25 June notice as well. The footprint shrank in the
26 application itself. And so the environmental report
27 also covered the larger area.

28 COMMISSIONER MORAN: And just curious, why was

1 the project shrunk in that way between 2021 and 2025?

2 B. GRAY: I believe that there were issues with
3 costs associated with -- with the project that
4 resulted in shrink -- in order to make the project
5 feasible, that resulted in shrinking the length of
6 the right-of-way.

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

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

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

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

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

1 B. GRAY: I think there is a disagreement about
2 what is required from a duty to consult perspective
3 as between Six Nations and Enbridge. Enbridge has,
4 in our submission, gone above what is required, and
5 Six Nations takes the position that additional steps
6 are required, including a financial accommodation and
7 some level of additional consultation relating to
8 cumulative effects. But it has not provided specific
9 information that grounds a basis for any such
10 requirements.

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

21 COMMISSIONER MORAN: So in the context of the
22 communication that went out, and it turned out there
23 was a bounce back, how do things work with inside
24 Enbridge?

25 You know, you have got a letter of delegation
26 from the Ministry. These are the people you need to
27 talk to. You send something out. How do you track
28 what happens after that that would allow an

1 undetected bounce back, as you described, to occur?
2 Like, what -- how have you designed your process to
3 maintain a relationship with the Indigenous
4 communities that you encounter on a regular basis,
5 given who you are? How could something like that
6 happen?

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

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

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

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

1 B. GRAY: So I think that -- I believe that
2 Enbridge has indicated in its -- in submission that
3 it will take steps to verify and -- and reminded its
4 employees about, you know, any bounce backs to flag
5 those, but it will take steps to verify
6 communications are received.

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

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

24 And so this is a very common approach taken by
25 proponents and governments to provide written notice
26 first, which provides basic information about the
27 project, a project map, location, et cetera, with
28 follow-up communications. It also is helpful to

1 provide that written advanced communication so there
2 is something to ground the subsequent conversation.

3 COMMISSIONER MORAN: Okay. So fair enough. You
4 send out a written thing, and then the idea is to
5 follow it up with some kind of contact, which seems
6 to me to be a way to avoid the bounce back problem.
7 Because if you follow up and they say they never got
8 it, then you can address it at that point. But that
9 didn't seem to happen in this particular case.

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

18 COMMISSIONER MORAN: Okay.

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

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

1 November of 2025.

2 I think it is important to note, though, that
3 the period -- proponents are not expected or
4 governments are not expected to undertake all
5 consultation before an application is filed. That is
6 good practice in terms of early engagement to have
7 early engagement. But consultation, a large portion,
8 and I would say the most significant portion often --
9 oftentimes occurs after an application is filed
10 because then there is more details, and there is
11 further consultation.

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

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

24 I guess my related question is the issue of the
25 environmental report prepared by Stantec. To what
26 extent did Stantec -- or to what extent was Stantec
27 instructed to engage with Indigenous communities in
28 preparing the environmental report which was filed

1 with the application?

2 B. GRAY: Do you want to --

3 P. SQUIRES: Yeah, I just wanted to follow-up on
4 one of your earlier questions with respect to the
5 timing of the application. Another consideration for
6 Enbridge Gas was that this is a natural gas expansion
7 program application, and the deadline for submitting
8 those applications in order to qualify for the grant
9 funding that is associated with that program was
10 December -- the end of December of 2025.

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

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

21 P. SQUIRES: Correct.

22 COMMISSIONER MORAN: So -- so then back to my
23 next question, then. The -- Stantec was engaged to
24 propose the environmental report. To what extent
25 were they instructed to engage with Indigenous
26 communities in the preparation of that report, given
27 the reality that many of the protected rights under
28 Section 35 are -- have an environmental component to

1 them, archaeological or harvesting or what have you?
2 To what extent was Stantec instructed at all to
3 engage with the relevant communities that had been
4 identified by the Ministry?

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

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

18 COMMISSIONER MORAN: So the Stantec
19 environmental report was filed as a draft report and
20 then shared with the Indigenous communities for
21 comment?

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

25 COMMISSIONER MORAN: And was -- do you know if
26 there was any interaction between Stantec and the
27 people that it was shared with?

28 B. GRAY: Well, there wasn't -- so there was

1 interaction -- I am not sure if there was interaction
2 with MCFN, but with MCFN, there was specific
3 comments. So when they received the environmental
4 report, they read the report. They raised specific
5 questions. They sent those to Enbridge, and specific
6 questions were responded to. There was also an in-
7 person meeting where discussion about that took
8 place. I am not sure -- we could go back and look
9 whether Stantec was at that meeting or not.

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

16 So -- so Six Nations had access to Stantec at
17 least through the environmental surveys, and we can
18 confirm whether they were present at specific
19 meetings.

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

26 COMMISSIONER MORAN: Okay. Thank you.

27 Now, you indicated with respect to HDI that
28 Enbridge is considering a more structured approach as

1 part of relationship-building, I guess, so that it is
2 not done on a project-by-project basis, which seems
3 different from some of the submissions that you made
4 with respect to, well, it is usually done on a
5 project-by-project basis.

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

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

18 Some indigenous communities are fine with the
19 project-by-project engagement approach. Others want
20 a different approach. And what Enbridge does is
21 tries to tailor consultation and respond to specific
22 asks of Indigenous communities as they arise vis-à-
23 vis the consultation process.

24 I want to underscore, though, the fact that
25 Enbridge Gas is looking at a more structured approach
26 to consulting on multiple projects doesn't change
27 what the Panel is required to look at in this
28 proceeding because it is assessing the adequacy of

1 consultation for this project.

2 And so just because a proponent or a government
3 decides to, for reasons of not inundating groups with
4 too much information and, you know, helping to
5 streamline and identify projects of concern in a more
6 kind of higher-level approach involving multiple
7 projects, it doesn't change the duty to consult
8 requirements. And the duty to consult is ultimately
9 focused on impacts flowing from the specific project
10 approval at issue.

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

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

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

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

28 And we have look -- we have been looking at, you

1 know, forms of modifying that -- those consultations
2 in many respects with those discussions, and those
3 discussions are ongoing. And anything that we have,
4 you know, agreed to to date is documented in those
5 reports that have been filed with the OEB, another
6 one of which is to be filed with the upcoming filing,
7 I think, in mid-July, perhaps this month, or end of
8 July.

9 COMMISSIONER MORAN: And do your project
10 colleagues to your left know about this?

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

16 COMMISSIONER MORAN: Okay. That is fair. All
17 right.

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

24 B. GRAY: So I think as I said at the outset,
25 Enbridge looks at every consultation as an
26 opportunity to learn and improve. I think you have
27 identified in your questions some areas where there
28 could be improvement around, you know, verifying

1 communications are received, picking up the phone
2 perhaps at an earlier point in the process to try to
3 get discussions off on a better footing right at the
4 get go.

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

11 COMMISSIONER MORAN: Thank you.

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

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

1 concerns with respect to the environmental report.

2 COMMISSIONER MORAN: Thank you, Mr. Gray.

3 Mr. Chair, those are my questions.

4 PRESIDING COMMISSIONER CÔTÉ: Thank you,
5 Commissioner Moran. We will go to Commissioner
6 Sidlofski.

7 **QUESTIONS BY COMMISSIONER SIDLOFSKI:**

8 COMMISSIONER SIDLOFSKI: Thank you. Good
9 morning, Mr. Gray. I just have a couple of questions
10 for you.

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

17 B. GRAY: Yeah.

18 COMMISSIONER SIDLOFSKI: The consultation that
19 took place before -- before Enbridge filed the
20 application didn't take place very long before
21 Enbridge filed its application; correct?

22 B. GRAY: Well, I would say it did if you
23 include the notices in 2021. The Indigenous groups
24 were first informed about the project at that time.
25 One Indigenous group did respond, and there was
26 interaction and discussion about the project at that
27 point in time. And then notice again was provided in
28 June and July of 2025. And then there was

1 opportunities for further engagement prior to the
2 submission of the application.

3 Again, I just want to underscore the point that
4 Enbridge similar to -- Enbridge Gas, similar to other
5 proponents, does not look at consultation as having
6 to be fully completed before an application is filed.
7 It is really early engagement.

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

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

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

28 So I understand your comment about notice in

1 2021. You -- you, Enbridge -- didn't proceed with
2 the project until 2025, and you filed the application
3 in November of 2025 to meet the deadline for filing
4 expansion applications. So that project didn't
5 proceed for four years, almost four years after you
6 gave the initial notice.

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

15 B. GRAY: In September.

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

22 B. GRAY: Well, I think it is important to look
23 at the experience of MCFN. They received everything
24 at the same time minus, I guess, the project
25 description report, which the Six Nations didn't
26 receive. They read the report. They provided
27 comments. They indicated that they had no further
28 comments on the environmental report before it was

1 submitted. So there is an example of an Indigenous
2 group that did have -- or had sufficient time to
3 respond in advance of the application.

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

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

18 And so there has been the opportunity to
19 identify concerns about the footprint of the project,
20 and there has been no concerns identified to date
21 that would necessitate a change to the project
22 footprint and scope.

23 COMMISSIONER SIDLOFSKI: Okay. Thanks for that.

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

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

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

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

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

1 COMMISSIONER SIDLOFSKI: Thank you. Those are
2 my questions.

3 PRESIDING COMMISSIONER CÔTÉ: Thank you,
4 Commissioner Sidlofski.

5 I am looking at the clock. It is close to
6 11:00, and there is a chance I am going to be more
7 than six minutes, so I will propose that we take our
8 break now, and that we reconvene at 11:10.

9 B. GRAY: Sure. Thank you.

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

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

12 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

13 PRESIDING COMMISSIONER CÔTÉ: Welcome back.

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

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

26 And generally, there will be five themes that I
27 intend to explore with you, of course in the realm of
28 clarifications, stemming from your submissions today

1 and the written submissions previously.

2 The first area I would like to look at is -- and
3 I refer here to your argument summary, the written
4 argument summary. It would be helpful if it is
5 readily available. I would be looking at paragraph
6 3.

7 So at the bottom of that paragraph, the very
8 last sentence, I am seeking your clarification here,
9 Mr. Gray. In particular, I draw your attention to
10 the language that is the following:

11 "That no Indigenous group has identified any
12 harvesting activities occurring within the road
13 allowance." (as read)

14 And then it continues.

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

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

26 B. GRAY: Thank you.

27 In this instance, with respect to the Indigenous
28 groups that have been identified as potentially

1 affected, our submission would be that their -- the
2 rights that they have would be limited to harvesting
3 rights. There is no -- they do not have any title
4 claims to this specific area, and so any rights to
5 the extent they exist in this area would be
6 harvesting rights.

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

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

15 PRESIDING COMMISSIONER CÔTÉ: Okay. That
16 clarifies. Thank you.

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

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

27 PRESIDING COMMISSIONER CÔTÉ: Oh, I meant as
28 part of your filing of July 7th which included your

1 updated Indigenous Consultation Report at Tab 13, I
2 believe, page 501 of a 504-page document.

3 P. SQUIRES: Maybe I can just instruct our
4 colleague who is running the screens back at the
5 office. I believe we can find that in Tab 8 as well.
6 And if you can repeat the page number, we will find
7 it.

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

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

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

19 It relates to the appendix found in the
20 procedural delegation, so, in fact, you may be able
21 to find that in the current document as well.

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

25 PRESIDING COMMISSIONER CÔTÉ: Correct. In the
26 appendix.

27 B. GRAY: Okay. I found that. Yeah, that is
28 page 501 of 572.

1 PRESIDING COMMISSIONER CÔTÉ: So in the appendix
2 where there is the roles and responsibilities
3 delegated to the proponent, on the screen, I see
4 "delegated," so I think you want to scroll down. And
5 we are seeking the appendix. Okay. I think you had
6 it there. So the page below this one, please. There
7 we go. So at the very top, the first bullet there.
8 A lot of work to get to a simple bullet, but for
9 purposes of having a trace, so gathering information
10 about how the project may adversely affect Aboriginal
11 or Treaty rights, a pretty -- I assume I could have
12 read that for the record.

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

20 What I am seeking is when -- so the delegation,
21 of course, instructs you to do an assessment of those
22 impacts, the identification of those impacts, and
23 then you claim that -- that you have done that.

24 What I am seeking from you, Mr. Gray, is
25 clarification as to the timing of when it is
26 Enbridge, in your position, that you had achieved
27 that, recognizing your April 2026 and May 2026
28 meetings in which, based on your written submissions,

1 a lot of activities and a lot of topics were
2 discussed, some environmental related. You mentioned
3 trees in your earlier submissions.

4 I am trying to situate in time when you were
5 able to draw the conclusion that, in your view, the
6 duty to consult had been satisfied.

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

15 And so at that point in time, we would say that
16 consultation was sufficient and adequately
17 discharged.

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

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

27 But all of that -- that information was provided
28 both within meetings, and then to the extent not

1 provided in the meetings, it was provided through
2 follow-up -- answers to follow-up requests.

3 PRESIDING COMMISSIONER CÔTÉ: And can I take
4 from that that -- and you will have to assist me on
5 this one -- in your submissions, across the totality
6 of them, your first claim and your first assertion
7 that the duty, in fact, has been satisfied from your
8 perspective would have been submitted to us on the
9 timeline that you have just clarified, namely after
10 your May and April meetings, "spring meetings," as
11 you call them.

12 Would that be -- would your first claim of the
13 duty being satisfied be subsequent to those meetings,
14 or would we find it also elsewhere on the record on
15 an earlier timeline?

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

25 For Six Nations, I would say that the -- that
26 the remaining information -- and it is in the ICR --
27 was provided in June of 2026, you know, closing the
28 loop on -- on several issues that they had asked

1 about in the meetings.

2 PRESIDING COMMISSIONER CÔTÉ: Okay.

3 So accepting, of course, the three different
4 First Nations with three different timelines, in the
5 case of Six Nations, I am understanding the June 2026
6 filing would be the capture of your initial claim
7 that the duty in the case of Six Nations had been
8 fulfilled in your assessment?

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

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

20 B. GRAY: Yeah, yeah.

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

26 B. GRAY: Yeah.

27 PRESIDING COMMISSIONER CÔTÉ: -- for purposes
28 of, but the ultimate claim would have been in the

1 June 2026, perhaps in the filing that I was alluding
2 to earlier, the updated ICR, that is?

3 B. GRAY: Yes.

4 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.
5 Okay. I will move on.

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

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

22 B. GRAY: Yes, you do.

23 PRESIDING COMMISSIONER CÔTÉ: Okay.

24 B. GRAY: I would say in response to that as
25 well, though, that, in our submission, Enbridge went
26 well beyond that. It was not approaching this
27 consultation from a box-ticking exercise to fulfill
28 the bare minimum. It went well beyond what would be

1 required at the low to moderate level.

2 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
3 for that, Mr. Gray.

4 Where I am going with this is I heard this
5 morning -- well, let me point you first to, of
6 course, noting that there is an October 19, 2021,
7 delegation from the Crown, which I think we were
8 looking at earlier. I heard you today speak about
9 Six Nations in the context of the cumulative effects.

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

17 So what I am seeking your help with, Mr. Gray,
18 is seeing as that delegation did not contain that,
19 and in that same delegation under the rules of the
20 Crown -- and if we pull it up, it is at page 503 or
21 504, the very -- it is in the appendix, again, of
22 that delegation.

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

1 The label in that letter is "Roles and
2 Responsibilities Assumed Directly By the Crown."
3 That is the header. It is found in the appendix of,
4 I think, what we have on the screen here. Yes. And
5 if you keep scrolling down. There we go, right
6 there. Okay.

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

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

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

24 PRESIDING COMMISSIONER CÔTÉ: Okay.

25 So what I am seeking to clarify is -- or as much
26 -- I think we are acknowledging that it is listed
27 here and that in many other cases, that delegation
28 would contain the depth of consultation expected from

1 an applicant. As you noted in your submissions this
2 morning, that did not exist in your 2021 version of
3 that letter.

4 As I also heard from your submissions, perhaps
5 as a consequence for you to clarify, you then made
6 your own assessment effectively, and you determined,
7 as I quoted earlier, to be at the low and, at most,
8 moderate. I just want to understand your line of
9 reasoning in seeking to ensure that I do in seeking
10 the clarification.

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

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

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

26 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
27 for clarifying. I appreciate that. So that is it
28 for this particular topic of --

1 B. GRAY: Thank you.

2 PRESIDING COMMISSIONER CÔTÉ: I want to turn
3 next to the record of engagement. We heard a lot in
4 your submissions and your evidence about this. Here,
5 if it is helpful, again, I am on the 504-page
6 document. You are on the 572. So we struggle.

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

13 B. GRAY: Is this the Indigenous Consultation
14 Report?

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

18 B. GRAY: Oh, sorry. Okay. I can find that.

19 Yes, I have it in front of me.

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

23 B. GRAY: I am following, yes.

24 PRESIDING COMMISSIONER CÔTÉ: Okay.

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

27 "Enbridge Gas filed the application
28 considering, among other matters, the

1 engagement that had already occurred." (as
2 read)

3 Where I am seeking clarification is fairly
4 simple here, Mr. Gray, is simply just to better
5 understand what engagement indeed had occurred. You
6 may have listed some of that in your oral submissions
7 this morning, but can you help me, in that time space
8 at that moment, what indeed had occurred?

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

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

27 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
28 for the clarification and --

1 B. GRAY: And then with respect to MCFN, I would
2 note that in addition to the exchange of information,
3 there was a specific meeting that took place in
4 September where there was a presentation on the
5 project and the environmental work and an opportunity
6 to ask questions. And then there were further
7 exchanges with respect to written questions that MCFN
8 submitted.

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

12 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
13 for those clarifications, Mr. Gray.

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

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

27 So it is the top paragraph. I want to draw your
28 attention, and then ask my question about the

1 language consultation. So second line:

2 "Consultation is ongoing throughout the
3 duration of the project including project
4 development and design, consultation,
5 approvals, construction, operation, and
6 decommissioning." (as read)

7 So the emphasis, you may have noted, was project
8 development and design.

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

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

25 I will reiterate a point that I made earlier,
26 that there is -- there were no issues subsequently
27 that were raised that would necessitate a change in
28 the project design of the very short pipeline that is

1 being proposed.

2 And there is -- you know, there were questions
3 about the water courses, and those issues became moot
4 because the design changed in the interim and
5 eliminated the need to cross as many water courses,
6 and the only water course that was left was an
7 intermittent creek -- intermittent tributary to a
8 creek, and there was no in-water works.

9 So in our submission, there were no issues
10 raised subsequently that would necessitate further
11 changes in the design of the project.

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

21 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
22 for that, Mr. Gray. I am going to play some of that
23 back to make absolutely certain that I fully
24 understand.

25 So 2021 to 2025, there may have been changes to
26 the project, so I want to focus, of course, on the
27 one before us today for consideration. So that is
28 clarification one.

1 I think I heard you say there were both
2 opportunities for engagement on the now before us
3 project version, and also to the extent there were
4 anything -- any issues brought up, there was an
5 opportunity to engage on those and discuss those.
6 Does that summarize accurately what I am hearing from
7 you?

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

9 PRESIDING COMMISSIONER CÔTÉ: Okay, thank you.

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

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

22 So I am wishing to better understand your
23 position on that from both this and a version of this
24 you expressed earlier this morning.

25 To the extent the Letter of Opinion is not a
26 precondition or a basis to delay our decision, I
27 think those are your words, what would be your
28 position as to its value?

1 B. GRAY: I mean, I think that there is -- there
2 can be value in the Letter of Opinion because it
3 provides a further secondary opinion to support the
4 opinion that is ultimately reached by the Board. You
5 know it could be similar to the OEB Staff making
6 submissions with respect to their review of the
7 application, but ultimately, the Panel is empowered
8 by regulation to make a decision on the adequacy.
9 And there is nothing in the applicable section of the
10 regulation to say that that decision requires an
11 opinion of adequacy from the Ministry first and/or
12 needs to be informed by an opinion by the Ministry.

13 The Panel is empowered to make this decision,
14 and it has, in my submission, the information before
15 it needed to make that determination.

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

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

1 discharged.

2 Would it be -- I would welcome your submission,
3 Mr. Gray, as to, were a Panel to proceed absent a
4 Letter of Opinion, what that would mean for risk, for
5 lack of a better word, as to rendering a decision not
6 knowing from the Ministry its opinion on whether the
7 delegation it gave the applicants has been, in their
8 opinion, fulfilled.

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

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

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

1 B. GRAY: That would be my submission. I would
2 go further to say the letter of delegation does not
3 change the duty to consult. What ultimately matters
4 is what the duty to consult requires and what the
5 applicable legal principles require.

6 A letter from the Ministry cannot change those
7 obligations from a duty to consult perspective, and
8 what you have been empowered to determine is whether
9 the duty to consult has been adequately discharged.

10 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you,
11 Mr. Gray. Those were my questions.

12 B. GRAY: Thank you.

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

18 B. RABINOVITCH: Yes, that is great.

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

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

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

28 So I am actually planning to start by going

1 through some of the specific language in the OEB
2 regulations. And I understand that the way that we
3 are going to try and do this is that Enbridge is
4 actually going to be pulling up the documents. They
5 have asked to control the document pull ups for the
6 day. I am content to try that way, and then if we
7 have issues, we can maybe switch it up.

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

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

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

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

28 And this is reflected as well in the OEB's

1 environmental regulations for the location,
2 construction, and operation of hydrocarbon projects
3 and facilities in Ontario, that is just below there
4 on the same page. Section 3.2 deals with Indigenous
5 consultation. It has effectively the same language.
6 And it provides that in cases where the duty to
7 consult is triggered, the OEB cannot issue a final
8 decision approving an application unless it is
9 satisfied based on the evidence before it that the
10 duty to consult has been discharged.

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

15 As I know the Commissioners are all aware, these
16 regulations mirror the well-established case law and
17 duty to consult. And I will just take you to one
18 reference from the Supreme Court of Canada that deals
19 with this. We don't need to pull it up, but it is
20 from the *Chippewas of the Thames v. Enbridge* 2017 SCC
21 41 at paragraph 36, and the Court said:

22 "If the Crown's duty to consult has been
23 triggered, a decision maker may only proceed to
24 approve a project if Crown consultation is
25 adequate." (as read)

26 So, again, reiterating that there is no
27 discretion to grant approval if that duty has not
28 been discharged as of the date of the approval.

1 And the reason that I am starting with
2 emphasizing this -- and I am going to walk through
3 the Commissioners -- I am going to walk through some
4 of the factual background. And I appreciate that you
5 all have a very in-depth knowledge of the facts here,
6 and I won't emphasize things you already know. But
7 the reason I want to draw your attention to this is
8 because, as we will get to, real consultation only
9 actually started on April 21st, 2026. That was the
10 first time that there was an actual meeting about
11 this project.

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

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

27 I would like to go next, as we get into some of
28 the background of consultation and what did or didn't

1 take place with the delegation letter, and
2 appreciating that you are all familiar with this, I
3 would like to just pull up the appendix to the letter
4 and turn to a couple of the particular bullet points
5 there. And this is in our compendium at Tab 1. That
6 is one place to find it.

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

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

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

28 So the first bullet that I would like to draw

1 the Panel's attention to is the first black bullet
2 that provides that the -- that Enbridge is to provide
3 notice and information about the project to
4 Indigenous communities with sufficient detail and at
5 a stage in the process that allows the communities to
6 prepare their views on the process and, if
7 appropriate, for changes to be made to the project.

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

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

24 But Six Nations requested of Enbridge that it
25 provide a virtual walkthrough of the project at the
26 May 2026 meeting that took place. That was one of
27 the requests that it made of Enbridge. Enbridge
28 asked, do you actually want to go onsite and do a

1 walkthrough, or is virtual sufficient? Six Nations
2 said, virtual is sufficient, but we want to be able
3 to understand the details of what this project is.

4 And then at that May meeting, all that was
5 provided was one slide on a PowerPoint with a low
6 resolution -- essentially a snip of the project, and
7 it was not -- it did not provide Six Nations with
8 sufficient information on the project. There was no
9 ability to have a walkthrough.

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

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

21 So as we have -- as we have -- as we have
22 discussed and as some of the Panel members have put
23 to Enbridge, the initial notice went out in 2021.
24 And then I know there were some questions about this,
25 and Six Nations did not hear anything further until
26 2025.

27 So in response to -- I think it was Commissioner
28 Moran's question about whether Six Nations was told

1 that the project was being put on hold and was
2 provided with updates about the status of the
3 project, it was not. It -- there are e-mails in
4 Enbridge's updated consultation record from the last
5 month or two from Mr. Graham, the consultation
6 supervisor, asking Enbridge, is this project still
7 waiting until the city work is completed?

8 And Enbridge says, no, it is not, we are going
9 ahead without that. So it just illustrates that Six
10 Nations was not kept apprised of the status of the
11 project as of 2021.

12 So then skipping ahead to 2025, initial notice
13 was provided in June of 2025, as my friend Mr. Gray
14 pointed out in his submissions. And then in July of
15 2025, Enbridge attempted to deliver that e-mail that
16 didn't go through, as we know, which included the
17 project Description Report.

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

25 My friend Mr. Gray has said that that was
26 effectively an oopsies, but it doesn't affect
27 anything long-term. We disagree. Those were crucial
28 months that Six Nations could and should have had the

1 opportunity to review the substance of the project
2 that it was not -- it was not provided.

3 And, in our submission, it is also a clear
4 breach of the duties as imposed by the Ministry. One
5 of the duties imposed was to ensure delivery that was
6 not done here.

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

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

21 And we need to keep that in mind when we think
22 about what this delegated duty is and the reason that
23 those more procedural aspects are important to the
24 actual core purpose of consultation.

25 And we have heard this from the Supreme Court
26 repeatedly. Consultation is not a box-checking
27 exercise. It is not about pressing send on the e-
28 mail and saying, okay, I have done my part, now I

1 will sit back and just see if we hear anything from
2 Six Nations.

3 And in particular in this case, Enbridge and Six
4 Nations deal with each other on multiple projects at
5 a time. This was not the only project that Enbridge
6 and Six Nations were in consultation with one another
7 on. Enbridge knows Six Nations is active in
8 consultation. When it receives notice of projects,
9 it takes an active stance. So the fact that it heard
10 nothing from Six Nations for months should have been
11 a red flag for Enbridge to follow up.

12 So, regardless, this really gets Enbridge, in
13 our submission, off on the wrong foot in this project
14 with respect to the spirit, the overall spirit of
15 consultation.

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

1 our submission, it is the former in this case.

2 So skipping ahead, then, to September of
3 2016[sic], Six Nations, the next -- the next thing it
4 heard -- the first thing it heard really of substance
5 on the project was on September 16th, 2025, when it
6 received the environmental report from Enbridge.

7 And the environmental report itself emphasized
8 that extensive consultation had taken place. And the
9 environmental report also referred to the project
10 Description Report, which Six Nations to that point
11 had not received.

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

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

28 And this is, again, exactly the type of thing

1 that Courts have warned us about is these pro forma,
2 oh, yeah, there has been extensive consultation check
3 in the environmental report, and that is what appears
4 to have taken place here.

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

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

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

23 And just to orient this first paragraph, so Six
24 Nations received notice, fresh notice of the project,
25 on June 6th, 2025, and that was the first that it had
26 heard since 2021.

27 Six Nations responded saying, we have a meeting
28 already scheduled on June 10th between Enbridge and

1 Six Nations. Why don't we talk about this project as
2 part of that meeting? So Six Nations proactively
3 reached out to Enbridge to suggest that. It never
4 happened. Enbridge didn't agree to that. And as we
5 see here in Mr. Graham's e-mail, he is saying
6 Enbridge never replied, actually, to that request.

7 And then he says:

8 "I have heard nothing further until today."

9 (as read)

10 So that is June to September. That is several
11 months later.

12 And then Mr. Graham says:

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

21 Mr. Graham says:

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

28 And the reason that I wanted to highlight this

1 for you is that Mr. Graham is saying to Enbridge
2 plainly clearly, we are not happy with the way this
3 is going, let's improve things, please talk to us, we
4 want to meet with you about this -- that is what Mr.
5 Graham is saying here -- and, hey, what is going on
6 with this? It is talking about consultation that
7 hasn't happened. So Six Nations is doing its part.
8 It is reaching out and saying, what can we do here?

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

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

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

18 "There is a 45-day review period for the ER.
19 If possible, we would appreciate any comments
20 on the ER to be received by Wednesday, October
21 31st." (as read)

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

26 He says:

27 "I tried to attach the PDR and virtual
28 information session material. It came back as

1 undeliverable." (as read)

2 And for context, the virtual information
3 sessions occurred in August and had concluded by
4 September:

5 "This is the same issue that occurred when I e-
6 mailed you these reports on July 18th. I
7 missed that they came back as undeliverable."

8 (as read)

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

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

15 And then he is saying:

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

17 And we know that Six Nations ultimately got a
18 physical copy of the report the following week
19 because they weren't able to work out sending it
20 electronically.

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

26 And then I would like to go down to Tab I, which
27 is the next in the chain of correspondence. Mr.
28 Graham says:

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

5 And he is saying that in respect of sending the
6 PDR. And he says:

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

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

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

22 So this is October 16th now. There has still
23 been no meeting that has taken place. There has been
24 no additional correspondence.

25 Now Mr. Graham is saying:

26 "Good morning, Kevin. The consultation and
27 accommodation process team or CAP team has
28 discussed last week's meeting. That was a

1 meeting on a different matter, not Cedar
2 Springs. We are particularly concerned with
3 Enbridge's contention that our prior meeting
4 discussing the Mississauga and Port Colborne
5 lines does not count and that a response is not
6 forthcoming because it was verbal and not
7 written." (as read)

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

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

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

26 So to be told it didn't count because it was
27 oral and not in writing was obviously very
28 frustrating for Six Nations and was part of the

1 impetus -- the reason I am explaining this is that
2 was part of the impetus for writing this letter,
3 which requested essentially a reset to the
4 relationship for all of its consultation efforts,
5 including for the project here.

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

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

26 So Six Nations here is saying to Enbridge, let's
27 meet, let's set up on a memorandum of understanding
28 that is going to set out our baseline kind of

1 structure to what consultation will look like to
2 improve the problems that we have been having.

3 And then in the bottom paragraph, Mr. Graham
4 says:

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

8 And then the e-mail ends by saying:

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

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

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

27 And that, again, was an incredibly frustrating
28 and hurtful thing for Six Nations to learn because --

1 and it just -- it undercut any of the progress in
2 terms of relationship building that it thought had
3 taken place at that November meeting. Because it was
4 undercut by the fact that Enbridge essentially on --
5 you know, talking out of both sides of its mouth.

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

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

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

26 And the exact language from that letter -- that
27 letter says that Enbridge:

28 "Planned to file a Leave to Construct exemption

1 application with the Ontario Energy Board."

2 (as read)

3 So there is no timeline provided there. It is
4 not saying we are going to do it, you know, on this
5 particular date.

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

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

22 And so Enbridge here is taking over that duty to
23 act honourably in discharging its consultation
24 accommodation responsibilities.

25 And I would like to turn up a decision, and it
26 is referenced in Schedule A to our summary of
27 submissions. That might be the fastest link. And it
28 is *Eabametoong First Nation v. Minister of Northern*

1 *Development and Mines*, 2018 ONSC 4316. At Schedule
2 A, just up a bit. Not quite that far. Yeah. And it
3 is at number 3 there. And we are going to go to
4 paragraph 94. I wonder if the best thing might be to
5 just copy the -- just go right to CanLII and copy the
6 neutral citation. Oh, perfect.

7 So paragraph 94. Yeah. So the Court here is
8 discussing some of the content of that honour of the
9 Crown, and they say here:

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

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

25 (as read)

26 And in my submission, when we look at the
27 history of Enbridge's actions and non-actions here,
28 it is one that promotes distrust and not that spirit

1 of reconciliation.

2 So Enbridge in November brought this application
3 for its exemption. Six Nations' only recourse at
4 that point to be able to have any consultation in the
5 project was to intervene in these proceedings. It
6 was essentially given no choice but to seek leave to
7 intervene. That was the only way for it to force
8 even the most basic consultation from Enbridge, which
9 it had not been able to extract up to that point.

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

19 And then we skip ahead to April of this year
20 when this regulatory proceeding was well underway.
21 It was not until April 21st, 2026, that an initial
22 meeting took place. And I would like to turn up Tab
23 8 of Enbridge's updated compendium, and it is page
24 189 of that PDF. If we could just scroll down a bit.
25 And scroll down a bit further, please.

26 I am just going to ask my colleague to find the
27 language because there is language that I would like
28 to take the Panel to -- and apologies, I don't have

1 it highlighted here - that notes that in Enbridge's
2 notes from the meeting that day, they say "Cedar
3 Springs project introduction." I might just have the
4 wrong page, so I am just going to ask Ms. Spiegel to
5 look that up while I continue, and then I will take
6 the Panel there

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

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

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

1 And these responses are -- trickle in throughout
2 the end of May and through June, and that
3 correspondence was submitted to the Tribunal by
4 Enbridge in its updated consultation record.

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

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

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

24 And in my submission, this underscores how truly
25 preliminary consultation still is. Six Nations has
26 not yet been given the chance to be explained by
27 Enbridge what is this project, what are the details,
28 what is the proposal here. And that, in my

1 submission, is something that should be happening at
2 the very outset, not, you know, in the middle of or
3 after the regulatory hearing. This could have
4 happened, in my submission, in June if Enbridge had
5 taken Six Nations up on its request for a preliminary
6 meeting.

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

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

26 And the reason that Six Nations wants to see
27 those guidelines is, essentially, all they have at
28 this point on the vegetation guidelines is Enbridge's

1 word saying, don't worry, we have them, and they are
2 great.

3 Six Nations has historically been consulted with
4 by Metrolinx on separate projects. Metrolinx has a
5 comprehensive vegetation guideline that Six Nations
6 has had the opportunity to review and understand and
7 that Six Nations is generally content is adequately
8 protective. And the reason Six Nations would like to
9 see Enbridge's vegetation guidelines is so that it
10 can compare them to the Metrolinx guidelines and
11 satisfy itself that the Enbridge guidelines are
12 adequately protective in the way that the Metrolinx
13 guidelines are. And so that is outstanding.

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

21 And in our submission, this report should be
22 completed. Six Nations should be given the
23 opportunity to review it as part of consultation.

24 Enbridge has -- Enbridge -- excuse me -- has
25 said it does not expect any tree removal as part of
26 this project, but we don't have confirmation of that.
27 We don't have the report confirming that. Again, all
28 we have is Enbridge saying, trust us, there won't be

1 tree removal. And Six Nations at this point doesn't
2 have that level of trust without seeing that report.

3 So Six Nations would like to see the report,
4 understand from the arborist perspective whether any
5 tree removal is contemplated, and from there, may
6 have requests about tree planting and reforestation.

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

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

14 And Enbridge continued to check "yes" for that
15 box. So Enbridge itself is acknowledging in its
16 consultation record there are outstanding concerns
17 that have not yet been addressed.

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

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

28 PRESIDING COMMISSIONER CÔTÉ: Ms. Rabinovitch.

1 B. RABINOVITCH: Yeah.

2 PRESIDING COMMISSIONER CÔTÉ: Pardon the
3 interruption. Did you have a point in mind where we
4 would pause? I don't want to stop your momentum, but
5 I understood you walked through the chronology.
6 Wherever there is a natural point, I will look to you
7 to just flag that first.

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

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

13 B. RABINOVITCH: Great.

14 PRESIDING COMMISSIONER CÔTÉ: At that time we
15 will let you finish your submissions, and we will
16 follow with questions.

17 B. RABINOVITCH: Perfect. Thank you.

18 PRESIDING COMMISSIONER CÔTÉ: Okay.

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

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

21 PRESIDING COMMISSIONER CÔTÉ: All right.

22 Welcome back. I hope you had an enjoyable lunch.

23 Before we return, I just wanted to check if there is
24 anything the Panel needs to be aware of that may have
25 unfolded over lunch. I don't understand there is
26 anything, but I thought I would take a moment and
27 check. Looking around the room, I am seeing none.

28 So in that case, we will return to Six Nations

1 for the continuation of your submissions. Over to
2 you.

3 B. RABINOVITCH: Thank you. I am going to
4 start, actually, just one -- with one final
5 observation on the factual side about field monitors.

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

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

20 And so the sentence I wanted to direct your
21 attention to is towards the bottom of the monitor.
22 It says:

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

28 And if we go up to the date just to orient

1 ourselves, that is on October 28th, 2025, and this e-
2 mail was primarily in the context of those other
3 projects that we discussed that were in consultation
4 at the time. But Enbridge had included it in their
5 consultation record for this project because they
6 were all being dealt with around the same time in the
7 statement with respect to monitors, and our
8 submission applies across the board.

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

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

18 So the second sentence of that paragraph reads:

19 "Nor, respectfully, can we agree with the
20 majority of the Federal Court of Appeal in
21 *Chippewas* that an NEB decision will comply with
22 Section 35 of the *Constitution Act* so long as
23 the NEB ensures the proponents engage in a
24 'dialogue' with potentially affected Indigenous
25 groups. If the Crown's duty to consult has
26 been triggered, a decision maker may only
27 proceed to approve a project if Crown
28 consultation is adequate, although in many

1 cases the Crown will be able to rely on the
2 NEB's processes as meeting the duty because it
3 is the final decision maker. The key question
4 is whether the duty is fulfilled prior to
5 project approval." (as read)

6 And so this speaks to the question of what role
7 the regulatory process plays in the approval. And I
8 will come to this -- I will come to this a bit later.

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

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

27 And so from Six Nations' perspective, it was
28 initially given notice of the project in 2021, and

1 then it heard nothing for four years. So four --
2 Enbridge had four years, from the Six Nations'
3 perspective, in which to involve it early in the
4 project planning.

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

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

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

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

27 We are going to the block quote, and it is a
28 quote from the decision *Halfway River First Nation*.

1 And the quote reads:

2 "The fact that adequate notice of an intended
3 decision may have been given does not mean that
4 the requirement for adequate consultation has
5 also been met. The Crown's duty to consult
6 imposes on it a positive obligation to
7 reasonably ensure that Aboriginal peoples are
8 provided with all necessary information in a
9 timely way so that they have an opportunity to
10 express their interests and concerns, and to
11 ensure that their representations are seriously
12 considered, and wherever possible, demonstrably
13 integrated into the proposed plan of action."

14 (as read)

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

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

1 And on the timeline, Enbridge in its written
2 submissions has said that it is planning to start
3 construction in October of this year, so three months
4 from now. I am putting that in perspective. The
5 first meeting was in April of this year. The only
6 other meeting was in May of this year. There are
7 still outstanding matters, as we have gone through.
8 Construction is planned for three months from now.
9 That obviously means Enbridge is ready to go. If the
10 exemption is granted, in our submission, all of the
11 evidence suggests that it has no intention of
12 integrating any additional comments from Six Nations.

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

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

28 Six Nations didn't know this at the time. It

1 wasn't given any notice of this at the time. Why not
2 tell Six Nations about that at that meeting in
3 November?

4 More significantly, the law is clear that that
5 kind of deadline on the proponent's side is not a
6 reason to impact consultation. That cannot have an
7 impact on the consultation.

8 And I am going to pull that decision up. It is
9 *Eabametoong*, and we have -- I have taken you to a few
10 excerpts from this case before. And we are going to
11 paragraph 114.

12 So the Court says in Squamish -- or in *Squamish*
13 *Nation v. British Columbia*, the Court said at
14 paragraph 214:

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

1 And in our submission, that is exactly what
2 happened here. Enbridge had an external factor. It
3 needed to get its application in by the end of the
4 year for it to qualify for a government subsidy,
5 purely for its own benefit. And because of that, it
6 imposed these artificial pressures on Six Nations.

7 And when Six Nations responded that it wasn't
8 able to meet that timeline, it didn't provide it with
9 any further opportunity for comment. It forged ahead
10 with its application regardless.

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

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

24 And so the Supreme Court of Canada here has
25 said:

26 "Consultation that excludes from the outset any
27 form of accommodation would be meaningless.

28 The contemplated process is not one of simply

1 giving Mikisew an opportunity to blow off steam
2 before the Minister proceeds to do what she
3 intended to do all along. Treaty-making is an
4 important stage in the long process of
5 reconciliation, but it is only a stage." (as
6 read)

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

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

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

22 And the second decision I would like to draw
23 your attention to is *Tsleil-Waututh Nation v. Canada*,
24 2018 FCA 153. And we are going to start at paragraph
25 501. And so the Court says here:

26 "As the Supreme Court observed in *Haida Nation*
27 at paragraph 46, meaningful consultation is not
28 just a process of exchanging information.

1 Meaningful consultation 'entails testing and
2 being prepared to amend policy proposals in the
3 light of information received and providing
4 feedback'." (as read)

5 And then it goes on to say:

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

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

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

28 And my response to that is that it really

1 depends on the form of the application and what that
2 looks like. Different regulatory bodies have, you
3 know, hugely different approaches to the application
4 process.

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

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

20 So this is the notice of hearing that was sent
21 by the Board to the elected chief of the Six Nations.
22 And if we scroll down to the next page, yeah, the
23 issue in this hearing. So the Board is saying:

24 "The issue that the OEB will consider in this
25 hearing is whether the Crown's duty to consult
26 has been adequately discharged in respect of
27 the project. The OEB must grant the exemption
28 requested by Enbridge Gas if it determines that

1 the Crown's duty to consult has been adequately
2 discharged in respect of the project. In that
3 case, no further approval will be needed from
4 the OEB to allow Enbridge Gas to build the
5 project." (as read)

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

15 So in my submission, it is not an opening or an
16 invitation to make a whole bunch of changes to the
17 project proposal

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

23 And in my submission again, that is an
24 indication that, from the Board's perspective, the
25 expectation is that as part of this regulatory
26 process, consultation has been engaged in, has been
27 discharged, and that is what the Board is there to
28 determine, has that happened or not. Not is it still

1 happening, will it happen between now and when we may
2 decide to hold an oral hearing, which isn't even a
3 necessary requirement for this type of proceeding.

4 The other point I would like to make on this
5 topic is that in response to a question from the
6 Panel, my friend indicated that Enbridge's position
7 today is that the duty was discharged only after the
8 May 2026 meeting. I believe that was his submission,
9 that after that meeting took place, the duty at that
10 point was discharged.

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

19 That is not what Enbridge has done. Enbridge
20 has at all times behaved and acted and taken the
21 position in this proceeding that it would like the
22 Board to render a decision granting the exemption.

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

1 So it is in the -- Enbridge's consultation
2 record. Item 3.39. I don't know if -- I don't know
3 if Preet has access or is in the portal, but is that
4 the best way to find the letter? Apologies, I might
5 take you through some of the excerpt, I have it
6 quoted here, while my colleague orients us.

7 So I think the only place in the record for us
8 to find it is in the portal set of submission -- the
9 -- in the online portal as opposed to in any of the
10 compendiums here. On the portal, it is named
11 EGI_response to SNGL_IRRs_Cedar Springs_20260501.
12 And I realize that I am probably putting Ms. Gill on
13 the spot, and I apologize for that.

14 P. GILL: Sorry. What was the date for that
15 letter?

16 B. RABINOVITCH: Yeah, go ahead.

17 P. GILL: What was the date that that letter was
18 sent?

19 B. RABINOVITCH: I can't hear. I don't know if
20 anyone else can hear her.

21 Okay. I think Ms. Spiegel will e-mail it
22 directly to Ms. Gill so she can pull it up for
23 everyone. But I will start with reading out the key
24 section of the letter.

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

1 And Enbridge wrote:

2 "On April 21st, 2026, Enbridge Gas and SNGR
3 representatives met to discuss the project and
4 another Enbridge Gas project currently under
5 review by the OEB. Enbridge Gas
6 representatives who attended the April 21st
7 meeting understood the discussions to be
8 constructive, focused, and productive. With
9 respect to the project, Enbridge Gas
10 representatives provided information in the
11 meeting on the environmental report process and
12 timing of various studies and provided an
13 overview of certain measures that could be
14 employed to mitigate potential impacts and
15 answered any related questions. Enbridge Gas
16 representatives also explained the route design
17 process and OEB filing timelines." (as read)

18 And then they say:

19 "Enbridge Gas maintains that the consultation -
20 -" (as read)

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

28 And Enbridge says:

1 "Enbridge Gas maintains that the consultation
2 undertaken to date, including that achieved
3 through this regulatory process itself, has
4 been adequate to discharge the duty to
5 consult." (as read)

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

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

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

26 And I would like to take you to *Clyde River*
27 which speaks to this, and we are going to paragraph
28 24 at *Clyde River*. And the statement in *Clyde River*

1 is in the context of an application for judicial
2 review, but in my submission, it applies equally here
3 to this hearing which, you know, is a regulatory
4 hearing, but adversarial judicial-style hearing.

5 So paragraph 24, so the Court says:

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

1 when projects are prematurely approved only to
2 be subjected to litigation." (as read)

3 And so, again, that is in the context of an
4 application for judicial review following project
5 approval, but in my submission, the spirit of what is
6 being said there, that an adjudicated process is not
7 the right way to go about consultation, applies
8 equally here.

9 The reason I think that is important here -- I
10 will get to in one moment. I am going to pull up
11 just one more case, appreciating that I am jumping
12 around the case law a bit. But I am going to take
13 you one more time back to *Eabametoong*, to paragraph
14 124.

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

21 And so the Court said:

22 "Landore also argues that in assessing whether
23 the Ministry has fulfilled its duty, it is
24 important to take into account the meetings
25 that it had with *Eabametoong* in May, June, and
26 September of 2016, after the permit had been
27 issued. I disagree. First, the duty to
28 consult must be fulfilled before, not after,

1 the decision trigger the duty has been made.

2 Second, the meetings all occurred after the
3 judicial review application had been issued,
4 making them possible a settlement meeting."

5 (as read)

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

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

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

24 And in my submission, it is only because -- we
25 can tell from the record that it is only because Six
26 Nations has opposed this application that Enbridge
27 has now been effectively forced into properly
28 engaging in consultation. It has only been in the

1 last two months, effectively, that there have been
2 any real meetings on consultation. That has only
3 been in the lead-up to this hearing.

4 In my submission, it is not a coincidence that
5 the Board was delivered with an updated consultation
6 record, including those meetings and the
7 correspondence after, just, you know, a week, a week
8 and a half before this hearing.

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

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

23 My friend made submissions this morning that
24 Enbridge "learns from each consultation," but in this
25 case, we have no actual evidence of that. We have no
26 actual evidence of good faith improvements. We
27 thought we were on that path with the meeting from
28 November, and then the rug, from Six Nations'

1 perspective, was pulled out from under it.

2 All we have, in my submission, on the record
3 before the Panel today is evidence that Enbridge
4 needs a regulatory scrutiny to finally start to
5 engage in good faith.

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

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

24 I would like to make just two smaller points
25 before I wrap up. The first is on cumulative
26 effects.

27 So the Crown has recognized the significance of
28 cumulative effects. Cumulative effects are not to

1 compensate for historical wrongs, but they are there
2 to put the present approval into context. And the
3 Court talks about this in *Chippewas of the Thames*
4 *First Nation v. Enbridge*. And my friend took you
5 there earlier, and I won't take you back there.

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

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

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

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

1 Aboriginal and Treaty rights.

2 For each new project, new land is disrupted.
3 The natural habitat is disrupted. In the case of a
4 pipeline like this one, the landscape will now
5 include a new pipeline that wasn't previously there
6 that will be there indefinitely. And so we need to,
7 in my submission, consider this context when we are
8 looking at the impacts of this case in particular.

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

18 We can't look at it in a vacuum. We need to
19 look at it in the context of the overall
20 relationship-building between the two entities.

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

1 And in appropriate accommodations, financial
2 accommodation is appropriate, in our submission, and
3 should be required. And this is not -- you know,
4 this is not something that has never happened before.
5 This takes place all the time across industries all
6 over the country, including on pipelines.

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

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

18 Turning to the remedy that Six Nations is
19 seeking today. Six Nations' primary position is that
20 the application should be denied, that the exemption
21 should be denied because consultation has not been
22 adequately discharged.

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

28 We looked at the language of the regulations at

1 the beginning of my submission, and in my submission,
2 a directive like that would be contrary to the
3 language of the regulation, which provides that
4 consultation is to be satisfied as of the date of the
5 decision before the exemption is granted.

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

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

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

25 And subject to opening it up to questions, those
26 are my submissions.

27 PRESIDING COMMISSIONER CÔTÉ: Thank you, Ms.
28 Rabinovitch. We will proceed with questions. I

1 will, again, start to my left with Commissioner
2 Moran.

3 **QUESTIONS FROM COMMISSIONER MORAN:**

4 COMMISSIONER MORAN: So I have several questions
5 not necessarily connected to one another, but
6 primarily for some clarification and for comment.

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

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

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

27 So I think it is both, and I think it -- I think
28 the fact that Six Nations, you know, is dealing with,

1 you know, all of these requests means that it is even
2 more incumbent on Enbridge to make sure that it is
3 presenting things in a manner that actually gets
4 through to Six Nations and in a way that they can
5 deal with it.

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

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

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

27 COMMISSIONER MORAN: Enbridge also indicated
28 earlier today that in relation to HDI, which is the

1 traditional side of Six Nations, that a more
2 structured approach is being looked at. And I saw in
3 the record that a similar idea is being pursued with
4 -- by Six Nations with Enbridge.

5 What is the status of that, and how would it
6 coordinate with the HDI initiative given the obvious
7 relationship between HDI and Six Nations?

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

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

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

27 But I understood you to say that the
28 environmental report, despite saying that there was

1 extensive consultation, that there wasn't any
2 consultation. I just wanted to confirm that.

3 B. RABINOVITCH: Yeah, certainly nothing
4 whatsoever prior to Six Nations receiving the draft
5 report from Stantec. That effectively, you know,
6 came somewhat out of the blue, from Six Nations'
7 perspective. Stantec hadn't reached out ahead of
8 time, for example, to say, hey, we are preparing this
9 environmental report, what are your comments on this
10 preliminary draft? The first they had heard about it
11 was when it was delivered by Enbridge.

12 COMMISSIONER MORAN: You indicated that there is
13 a couple of outstanding items. Have you -- I assume
14 that Enbridge is aware of what those outstanding
15 items are from your perspective; is that true?

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

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

25 I mean, surely Enbridge is a very wealthy
26 company with lots of resources. I assume they could
27 have a staff person do that in a day if they were
28 sufficiently interested in responding.

1 COMMISSIONER MORAN: I didn't see anything in
2 the Indigenous consultation record that suggested
3 that Enbridge had looked at those outstanding items
4 and indicated when and how it would deliver those
5 outstanding. Is there -- am I missing anything in
6 the consultation record?

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

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

19 COMMISSIONER MORAN: Do you have a timeline in
20 which you expect to receive those outstanding items
21 from Enbridge?

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

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

26 B. RABINOVITCH: Okay.

27 COMMISSIONER MORAN: -- the timeline. Has
28 Enbridge given you a timeline in which you could

1 expect to see the outstanding --

2 B. RABINOVITCH: Understood. Understood. I had
3 misunderstood the question.

4 Again, I am not sure the details. I don't
5 believe so. I will leave it there, and I am sure my
6 friend will correct me when he makes his reply
7 submissions if there is something else to add on
8 that.

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

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

23 B. RABINOVITCH: Yeah, I think -- so their role
24 would be less information-gathering and more
25 observing.

26 So as I understand it, their role is to be on
27 the field, observe Stantec or whomever in the field -
28 - the field studies that they are doing to make sure

1 that there are no red flags from Six Nations'
2 perspective and then report back to the CAP team to
3 the extent there is anything material.

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

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

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

25 B. RABINOVITCH: Yes.

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

27 B. RABINOVITCH: Yes.

28 COMMISSIONER MORAN: -- that I understand the

1 point you are making.

2 B. RABINOVITCH: Yes, yes. Certainly. The
3 point that I was trying to make is that to the
4 extent, you know -- to the extent there is any
5 information to be conveyed from the study itself,
6 that would need to come to the CAP team for them to
7 kind of ingest it. So if Stantec has information
8 that it wants to convey, that that would need to go
9 to the CAP team, not to the field monitors.

10 COMMISSIONER MORAN: Thank you.

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

17 As I understand *Clyde River*, there an NEB
18 process at first, and it dealt with the way it dealt
19 with the issues in front of it, and then there was
20 judicial review.

21 B. RABINOVITCH: Yeah.

22 COMMISSIONER MORAN: You are not suggesting that
23 our process is kind of a judicial review after the
24 fact consideration, are you?

25 B. RABINOVITCH: No, I am not. I think the
26 distinction -- I think the overall point is that a
27 regulatory process can -- a regulatory process can
28 form part of the consultation kind of framework where

1 appropriate. But the type of process where that
2 would be appropriate is where the regulatory body is
3 vested with the powers to oversee and participate in
4 consultation, and that was the case in *Clyde River*.

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

14 The OEB is not empowered, in my submission, to
15 engage in the actual doing or oversight of the
16 discharge of that duty. So I think that is the
17 distinction there.

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

25 B. RABINOVITCH: I think -- I mean, I don't
26 disagree that the OEB is an agent of the Crown. I
27 think that the key provision for purposes of, you
28 know, scoping the OEB's job for this particular

1 hearing and for the leave to exempt is a binary
2 question of, under sub C, has the duty been
3 discharged, yes or no.

4 As part of that exercise, certainly the Board is
5 empowered to delve into questions of fact and
6 questions of law, which is what we have been here
7 discussing. But ultimately, it is being tasked with
8 asking -- with answering one particular question. It
9 is not being tasked with overseeing the process of
10 consultation itself.

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

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

26 The Board, I -- in my view, the scope of the
27 Board's authority under this decision-making power
28 here does not extend to, for example, you know,

1 holding a meeting with Six Nations to say, you know,
2 what has Enbridge done, what has the Crown done, what
3 can we do here.

4 It would be merely to say, okay, report back,
5 and we will then at that point, once the parties are
6 satisfied, make a determination on whether the duty
7 has been discharged, yes or no.

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

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

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

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

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

1 addressed there.

2 Are you in agreement with the fact that in the
3 absence of the exemption, the OEB is still in the
4 same position as the Crown actor to determine if the
5 duty to consult has been discharged in a regular
6 Leave to Construct application given we have done
7 that on a number of occasions already?

8 B. RABINOVITCH: Yes. I think that the way that
9 you have expressed it, I would agree with that
10 expression.

11 COMMISSIONER MORAN: Thank you. All right. I
12 am almost done here.

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

21 B. RABINOVITCH: So I think --

22 COMMISSIONER MORAN: From Six Nations'
23 perspective.

24 B. RABINOVITCH: Yeah. I think the starting
25 point would be the items -- the outstanding specific
26 items that I identified.

27 I think the other thing would be at least one
28 subsequent meeting, partly to do the walkthrough of

1 the site that hasn't -- the virtual walkthrough of
2 the site that hasn't happened yet, and address any
3 other outstanding concerns.

4 I think based on the kind of final versions of
5 the arborist report and any other outstanding
6 environmental reports that come in, Six Nations would
7 need to be afforded the time to, you know, review,
8 digest, and potentially make comments.

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

21 COMMISSIONER MORAN: I guess in the abeyance
22 situation, everybody would have to come back in front
23 of us and argue whether that happened or not in any
24 event.

25 B. RABINOVITCH: Or everyone agrees.

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

1 PRESIDING COMMISSIONER CÔTÉ: Thank you,
2 Commissioner Moran.

3 Commissioner Sidlofski.

4 **QUESTIONS BY COMMISSIONER SIDLOFSKI:**

5 COMMISSIONER SIDLOFSKI: Thanks for your
6 submissions, Ms. Rabinovitch. That might actually
7 have shortened the questions I have.

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

15 B. RABINOVITCH: No, I -- yes, I think that is
16 fair. Obviously, most significantly before the
17 decision is made in this case, in our submission,
18 also before the application was brought.

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

1 So you make a number of statements there. And
2 you have suggested, you have submitted today, that
3 Enbridge began consultation at a meeting that took
4 place after it applied to the Board because that was
5 consultation in the spring. Those were meetings that
6 took place this spring. And you went on to say as a
7 matter of law, Enbridge cannot consult after the fact
8 to make up for its earlier failures. And I am
9 wondering about that. I have a couple questions
10 about that.

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

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

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

1 impact the process.

2 So that is what "after the fact" means. It
3 means after the ability to actually have an impact on
4 the project, after the time had passed to have
5 genuine dialogue in a good faith manner, and just
6 because the regulatory hearing was upcoming,
7 effectively.

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

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

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

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

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

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

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

28 So there is a piece of it that is not fixable.

1 In our submission, the reason that Enbridge has now
2 started to fix things is just because it is here
3 today.

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

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

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

1 hope. That is always the end goal.

2 COMMISSIONER SIDLOFSKI: And if there were a
3 refusal or a denial of the application and another
4 application, a conventional Leave to Construct
5 application, were brought as opposed to this
6 proceeding, which is about an exemption, I am
7 assuming that the consultation that has taken place,
8 for better or worse, would still be part of that
9 record, but there would, I assume, be more
10 consultation after that.

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

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

27 COMMISSIONER SIDLOFSKI: No, I think it does.
28 Thanks.

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

4 In the -- and I know there are numerous ways to
5 get to this, but I have highlighted it for myself in
6 looking at the Enbridge updated Indigenous
7 Consultation Report. That is a 353-page PDF
8 document, and I am looking on page 352. But it is in
9 a number of places. It is in a number of versions of
10 documents.

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

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

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

28 B. RABINOVITCH: Okay.

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

4 But it was more about the assertion that the
5 engagement with Enbridge Gas has improved.

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

12 COMMISSIONER SIDLOFSKI: Okay. Thanks. Those
13 are my questions.

14 Commissioner Côté.

15 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

16 PRESIDING COMMISSIONER CÔTÉ: Thank you.

17 Ms. Rabinovitch, I have probably four things for
18 you, potentially some follow-ups. We will see how it
19 goes.

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

25 So from what I heard from your friend, the
26 Applicant, today, low end, or at most, medium, I
27 think were their words. From what I heard from you,
28 I believe -- this is what I want to check -- you

1 walked us through the bullet points in the
2 delegation, and I think you inferred from there that
3 it kind of looks like medium. I just wanted to
4 verify if I am understanding your position on the
5 depth?

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

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

19 PRESIDING COMMISSIONER CÔTÉ: Thank you.

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

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

28 I also think, you know, *Haida* tells us that it

1 is a spectrum and we can use words like "low,"
2 "medium," "high," but when it comes down to it, it is
3 really about the substance of what is required.

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

15 That is what I would characterize kind of broad
16 strokes as the kind of main foundational substance of
17 the procedural right, as we would characterize it.

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

25 B. RABINOVITCH: I think that is -- I think that
26 is generally right, although I would say that many of
27 the failing -- you know, what we are articulating as
28 failings in this case are failings regardless of

1 where it falls on the spectrum.

2 And I took -- I took the Panel to some of the
3 decisions that talk about that, but -- even at the
4 lowest level, we have the Courts telling us we need
5 to give actual proper notice, we need to make sure
6 it's understood and digested, we need to give the
7 opportunity for real, you know, dialogue and
8 engagement. Those happen even at the low, low end of
9 the spectrum.

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

16 PRESIDING COMMISSIONER CÔTÉ: Okay.

17 So if I am hearing, effectively you are saying,
18 even if I -- and you are not, but even if you did
19 assess it at low, your submission would be that it
20 fails at low as well?

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

26 And so I think that -- I think that that is a
27 helpful aid in determining whether -- you know,
28 whether that duty has been discharged is to look at

1 the articulation by the Ministry and think about how
2 that relates to the facts here.

3 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.

4 Okay. I will move on to something you and
5 Commissioner Moran talked about, your reference to
6 *Clyde River* at 24, the judicial review court
7 proceeding. I just wanted to zoom in, just -- I was
8 listening carefully, but I want to make sure I have
9 it all.

10 Well, first of all, I observe that in the
11 context of that decision at 24, it makes reference to
12 courtrooms and judicial review. I guess my first
13 question, the OEB being a tribunal, would you agree
14 there is an element of flexibility and arguably more
15 informality than you would find in a court by
16 comparison; is that a fair statement?

17 B. RABINOVITCH: Just to clarify, do you mean in
18 terms of the process or the decision rendered or in
19 what...

20 PRESIDING COMMISSIONER CÔTÉ: Generally. The
21 rules of evidence as they apply to a tribunal versus
22 a court.

23 B. RABINOVITCH: Yeah, I think -- I think, you
24 know, depending on the -- depending on the tribunal,
25 oftentimes a regulatory proceeding does have a bit
26 more -- may have a bit more flexibility than a
27 judicial review.

28 I think the real -- the real point, though, is

1 that, you know, regardless of the kind of flexibility
2 or lack of flexibility in the process or the rules of
3 evidence, when we have arrived at the point of having
4 an adversarial process in a courtroom or a room, like
5 a courtroom with a court reporter and decision
6 makers, that in and of itself is a failing of the
7 duty because the entire point is relationship-
8 building, trust-building.

9 And when -- when we get to the point of being
10 here, in our submission, Six Nations had no choice in
11 this case. It was the only way to get Enbridge to
12 the table. When we get to this point, it is already
13 a loss for everyone.

14 And that is -- that is really, I think, the
15 takeaway from *Clyde River* as it applies to the
16 proceeding today. Obviously it is different. You
17 know, judicial review is post-decision. This is pre-
18 decision. But the structure of this -- of this
19 particular regulatory mandate of the Board is styled
20 effectively as, you know, an adjudicative proceeding
21 with submissions, evidence, and a question that the
22 Board is tasked with answering, yes/no, and that
23 really defeats the underlying purpose of the judicial
24 review.

25 Obviously it happens. You know, my friend
26 mentioned we have hundreds of cases that -- you know,
27 that go to these regulatory hearings or to courtroom
28 disputes, but that is not -- that is not the goal.

1 And in our submission, we shouldn't have had to get
2 to this point. We should have had a good, you know,
3 healthy dialogue. We should have been given the
4 opportunity by Enbridge to have that without
5 resorting to this.

6 PRESIDING COMMISSIONER CÔTÉ: Okay.

7 If I may, something else you talked about in a
8 different context, but nonetheless, is the second
9 part of the duty to consult, which is the duty to
10 accommodate. Because I really want to make sure we
11 clarify this point.

12 If -- in this category, if -- if we -- we
13 mentioned various remedies, abeyance. The one that I
14 am curious about here in your submission is what does
15 the duty to accommodate mean from the final decision
16 maker on the duty to consult and duty to accommodate?
17 Could you elaborate on how you would understand that
18 in this context?

19 B. RABINOVITCH: Sure. Easy question. I think
20 the duty to accommodate is -- sorry. That was
21 sarcasm. I realize that probably didn't come through
22 -- because it is, I think, a very live and heavily
23 discussed question right now in this space.

24 But the duty to accommodate, I think, can mean a
25 variety of things. Some of the cases we talked --
26 that we looked at today talk about it in the context
27 of making a change to a project based on input from
28 an Indigenous group. That would be a form of

1 accommodation, in my submission.

2 And then another, you know, bucket, if I can
3 call it that, of accommodation is financial
4 accommodation, so some financial benefit or redress
5 to the Indigenous group in recognition of the fact
6 that a piece of their Treaty land is being used for
7 the benefit of other people, entities, not its
8 benefit, oftentimes to its detriment, with
9 historically no benefit to the community and no
10 financial compensation to the community. So that --
11 that is kind of, you know, large scale what I would
12 describe as the duty of financial accommodation.

13 The -- you know, the state of the law on
14 requiring financial accommodation is, I think,
15 nascent. And the point that I was really trying to
16 make in response to my friend's position is that it
17 is happening. Financial accommodation, you know, of
18 a variety of forms is becoming increasingly
19 commonplace, expected, understood, and a really
20 integral part of that duty to consult and
21 accommodate. So that is the kind of big-picture
22 answer.

23 PRESIDING COMMISSIONER CÔTÉ: Can I zoom in a
24 bit?

25 B. RABINOVITCH: Yes, please.

26 PRESIDING COMMISSIONER CÔTÉ: So if that is the
27 "what" in respect of the duty to accommodate in the
28 context we are in --

1 B. RABINOVITCH: Yes.

2 PRESIDING COMMISSIONER CÔTÉ: -- where we make
3 the finding --

4 B. RABINOVITCH: Yes.

5 PRESIDING COMMISSIONER CÔTÉ: -- on the duty to
6 consult, are you extending -- is it your submission
7 you'd extend that we also have a duty to accommodate
8 role here, not just specifically here, but generally?

9 B. RABINOVITCH: Yeah, so it would be my
10 submission that certainly the Board would be
11 empowered as part of its regulatory authority to
12 impose a financial accommodation. Certainly, in my
13 submission, that is entirely consistent with, you
14 know, its overall powers to make determinations on
15 the adequacy of consultation and accommodation. That
16 is a part -- that is the A in the duty to consultant
17 and accommodate.

18 And so financial accommodation, in my
19 submission, is, you know, just part of that -- part
20 of the kind of bigger bucket of accommodation and
21 would fit into the Board's overall regulatory powers.
22 In this case, Six Nations, you know, is not taking a
23 position that it is owed any specific monetary amount
24 as financial accommodation, taking into account, you
25 know, the purpose of the project, the, you know, kind
26 of public interest purpose of it. But as a general
27 matter, it is Six Nations' position certainly that it
28 is entitled to financial accommodation where there is

1 -- where there is an adverse impact on its land.

2 I think in our earlier submissions, we had taken
3 the position that financial accommodation was needed
4 in this case here. We have, you know, focused our
5 submissions on what we really view as the primary --
6 excuse me, I use my hands too much -- what we view as
7 the primary failings of Enbridge which are more
8 procedural in this case. But, you know, wholesale,
9 it is certainly Six Nations' position that financial
10 accommodation is necessary and appropriate.

11 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
12 for clarifying. I will move on to my next area.

13 I was inquiring -- well, first of all, let me
14 note that you have listed a number of outstanding
15 items, and some of my colleagues were engaging you on
16 that, so that's relevant here. The vegetation
17 guidelines, for example.

18 I asked Enbridge this morning about their
19 mention of harvesting rights, and then I was trying
20 to clarify whether it was their submission that it
21 constituted the entirety of Aboriginal Treaty rights.
22 And I don't want to put words in their mouth, but I
23 believe we ended up with the conclusion that in this
24 case, in these specific circumstances, the answer is
25 generally yes. And if I don't have that right, I
26 will stand to be corrected.

27 What I would like to understand from you is a
28 similar question. Effectively those outstanding

1 items, from a lens of Section 35 rights, how would
2 you characterize them?

3 B. RABINOVITCH: Yeah. So the Treaty land in
4 this case is the Nanfan Treaty which entitles Six
5 Nations to harvesting rights. That is why we have
6 been talking about harvesting specifically today.

7 It also, in our submission, an appropriate
8 interpretation of that Treaty entitles Six Nations to
9 economic benefits stemming from, you know,
10 historically the harvesting rights, but updated to,
11 you know, modern day economic benefits derived from
12 the land.

13 In terms of the actual specifics of harvesting
14 rights, as I mention in my submissions, Six Nations
15 Treaty territory is significantly urbanized. You
16 know, it includes a number of major cities across
17 kind of southwestern Ontario.

18 So the fact that, in this case, the pipeline is
19 across a roadway or it runs along a roadway is not
20 necessarily to say that there is no harvesting,
21 right, that applies to that area. Through, you know,
22 no fault of Six Nations' own, much of its land is
23 urban land, and so its harvesting areas have gotten
24 smaller and smaller.

25 And in our submission, the inherent harvesting
26 right attached to the Nanfan Treaty is such that Six
27 Nations as a community is entitled to make inquiries,
28 request changes to the pipeline that would

1 potentially affect potential harvesting areas.

2 So it is less about, do we have specific
3 evidence that, you know, such-and-such individual
4 person uses that exact square footage to harvest, you
5 know, X, Y, Z plant. In our submission, that is not
6 the right way -- it is not the appropriate way to
7 approach it.

8 The inquiry is, more generally, this Treaty
9 provides for harvesting rights, so what does that
10 mean for the natural habitat and what can we do to
11 ensure that the natural habitat is being disturbed as
12 little as possible, that the plant life around there
13 is being disturbed as little as possible? What can
14 we do to reforest the area or replant trees to
15 increase the potential wildness of the area and the
16 harvesting potential for the area?

17 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
18 for that.

19 My last area relates to the honour of the Crown
20 that you walked us through today. I am seeking a bit
21 of your assistance here. I may be putting two things
22 that don't belong together, but I will hear from you
23 what your thoughts are on this.

24 This morning, I think we heard from Enbridge --
25 it is also in their written submission -- about the
26 adequacy of consultation is not measured by a
27 standard of perfection -- you may recall that
28 submission -- and there can be missteps and mistakes

1 in fulfilling the duty to consult. That is a quote I
2 have, I forget from where, but I think it one of the
3 cases that Enbridge relies on.

4 In your case, you walked through the narrative
5 of the honour of the Crown and what that means.

6 Now, those two things may not perfectly overlap,
7 but they kind of have an aspect of them which kind of
8 start looking similar. I was wondering if you -- I
9 would love to hear from you as to -- maybe the
10 easiest way of asking you is how you would respond to
11 the need not be perfect aspect as you think of the
12 honour of the Crown. I would love for you to help us
13 out in your submission of linking those two things or
14 not, if you can't.

15 B. RABINOVITCH: Yeah. I agree, I think they
16 are linked. I agree the standard isn't perfection.
17 But I do think the standard is to -- for proponents
18 of the Crown, whoever has been tasked with
19 consultation, to approach it with a real spirit of
20 good faith and reconciliation.

21 And I think the, you know, "mistake" here of
22 that e-mail not going through wasn't, you know --
23 wasn't a small thing that had no knock-on effects.
24 We have to look at it in a larger context and we have
25 to look at the why. And the reason, in our
26 submission, that that was missed and that there was
27 no follow-up is because of the larger kind of
28 underlying problems with the way that Enbridge had

1 been approaching consultation and is continuing to
2 approach consultation with Six Nations.

3 Because it is not just one e-mail bounce back.
4 I mean, it is that, and that should have been caught.
5 And, you know, the Ministry specifically said make
6 sure things go through. But then months went by.
7 And so when months go by, then you -- then, you know,
8 in my submission, the good faith, you know, approach
9 on Enbridge's part would have been to say, okay, that
10 is a little strange. We usually always hear from Six
11 Nations right away. Hey, we have a meeting with them
12 coming up. Why don't I, you know, mention it here,
13 why don't I drop a note.

14 So it is less about, you know, was one mistake
15 made, was one e-mail not properly sent, and more
16 about how does that fit into the overall approach to
17 consultation which, in our submission, fell below the
18 standard of, you know, effectively honourable conduct
19 standing in the shoes of the Crown.

20 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
21 for clarifying. Those are my questions. I will look
22 at my colleagues -- I don't think we have anything
23 further for you.

24 So 2:52. I am going to suggest this might be a
25 good time for a break and then we will reconvene.
26 And we will do that for 15 minutes, which takes us
27 to, I believe, 3:07. We will reconvene with the OEB
28 Staff's submission, and we will follow with

1 Enbridge's reply.

2 --- Upon recessing at 2:52 p.m.

3 --- Upon resuming at 3:10 p.m.

4 PRESIDING COMMISSIONER CÔTÉ: Welcome back,
5 everybody. Other than slight microphone issues,
6 there are two other issues to deal with before we
7 begin.

8 The first, of course, is we omitted -- I omitted
9 to mark the compendia as exhibits as we started this
10 morning. So, Ms. Pope, I will turn it to you for the
11 numbers, please.

12 S. POPE: Thank you.

13 So we can mark Enbridge's compendium as K1.1.

14 **EXHIBIT K1.1: Enbridge compendium**

15 S. POPE: And Six Nations compendium as K1.2.

16 **EXHIBIT K1.2: Six Nations compendium**

17 S. POPE: And OEB Staff's compendium as K1.3.

18 **EXHIBIT K1.3: OEB STAFF compendium**

19 PRESIDING COMMISSIONER CÔTÉ: Thank you, Ms.
20 Pope.

21 It occurs to me that while there is a name in
22 front of me, I did not introduce myself this morning.
23 I believe the record will be clear by now, but
24 Commissioner Côté was the third member of the Panel
25 this morning. So let the transcript reflect that,
26 please

27 Okay. With that, I think we are back on track
28 to go to OEB Staff submission at this time. And, Ms.

1 Pope, I will turn it over to you.

2 **SUBMISSIONS BY S. POPE (OEB):**

3 S. POPE: Thank you.

4 So I will be relatively brief today. As the
5 parties have already set out, a central issue for the
6 OEB to consider, and the one that is being primarily
7 addressed today, is whether the Crown's duty to
8 consult has been adequately discharged.

9 OEB Staff's main submission today is that based
10 on the materials in the record of proceeding, and
11 particularly the recent updated consultation report -
12 - Indigenous Consultation Report, or ICR, submitted
13 by Enbridge Gas, the one that goes up to June 26,
14 2026, it appears that the duty to consult has been
15 adequately discharged, subject to the close of record
16 of proceeding, and particularly the Letter of Opinion
17 from the Ministry Of Energy and Mines which is
18 forthcoming.

19 In terms of what I will briefly address today,
20 our written summary includes some information about
21 the legal principles underlying the duty to consult,
22 but in my view, the parties have adequately addressed
23 the case law today, and so I will not cover that.
24 But I do refer the Panel to OEB Staff's written
25 summary should you [audio cut] further information on
26 that.

27 What my submissions will cover today is, number
28 1, first of all, the OEB's main submission which I

1 have just outlined. And in that regard, I will speak
2 about the environmental guidelines and the Ministry's
3 delegation letter and also the recent updated ICR
4 from June of 2026.

5 And then secondly, I will briefly touch on the
6 forthcoming letter of opinion and submissions on next
7 steps.

8 And three, finally, I will conclude by speaking
9 to conditions of approval should the OEB approve the
10 application.

11 So regarding the OEB's environmental guidelines
12 for the location, construction, and operation of
13 hydrocarbon projects and facilities in Ontario, or
14 "the environmental guidelines" for short, in order to
15 ensure that the OEB has all of the information it
16 requires to make a determination on the duty to
17 consult, the OEB has developed a process to ensure
18 that all relevant concerns and evidence are placed
19 before the OEB through the hearing process.

20 And one of the early steps in this process is
21 that the Ministry Of Energy and Mines determines if
22 the duty to consult is triggered by the proposed
23 project, and, if so, will expressly delegate the
24 procedural aspects of the consultation to the
25 Applicant.

26 And indeed for this matter, as we have heard
27 today, the Ministry Of Energy and Mines did delegate
28 the procedural aspects of consultation to Enbridge

1 Gas and identified specific groups to be consulted,
2 including the Mississaugas of the Credit First
3 Nation, the Haudenosaunee Confederacy Chiefs Council
4 through the Haudenosaunee Development Institute, or
5 HDI, and the elected council of Six Nations, the
6 intervenor in this proceeding.

7 And the Ministry specified in that letter the
8 responsibilities that Enbridge had. And the parties
9 have already discussed this at length, but in brief
10 summary, they include providing notice and
11 information about the project with sufficient detail
12 and at a stage that allows the communities to prepare
13 their views on the project, following up with
14 communities to ensure they receive notices and
15 information and are aware that they can comment,
16 gathering information about how the project may
17 affect Aboriginal or Treaty rights, bearing costs
18 associated with the procedural aspects of
19 consultations, considering and responding to comments
20 and concerns and answering questions and discussing
21 and implementing changes as appropriate.

22 So I am now going to turn to looking at a few
23 documents from the June 2026 ICR that speak to how
24 Enbridge Gas has been engaging in consultation
25 recently, and none of this is new. We have heard
26 from both parties on it today, but nonetheless, I am
27 going to speak to it. And I would ask that we pull
28 up OEB Staff's compendium at Tab 1. Thank you.

1 So Tab 1, if you just scroll down there to the
2 beginning of the document, please, which is the next
3 page. So this tab of OEB Staff's compendium is
4 Attachment 2 to the most recent updated ICR that
5 Enbridge Gas submitted, and these are summary tables
6 that Enbridge Gas has prepared.

7 They are essentially summaries of the
8 consultation with the three communities to be
9 consulted with, and this summary is eight pages long.
10 And I am just starting here because it is somewhat of
11 an efficient way to give some submissions on this
12 topic in a brief manner, but the parties have already
13 talked about all of the things I am going to talk
14 about.

15 The first page of this summary addresses
16 consultation with HDI. And we can see from the first
17 page here that there is a summary of project
18 information that was given to the community. It
19 includes notification, maps of the project location,
20 notice of upcoming project and the environmental
21 report, and information on Stage 1 and 2
22 archaeological assessment fieldwork. And this same
23 list appears in the summary tables for the other
24 communities as well showing the documents that they
25 received.

26 But staying with HDI for a moment, if I can
27 summarize this summary even further, it indicates
28 that Enbridge Gas and HDI have had discussions

1 regarding a proposed standard monitoring agreement,
2 which would be separate from capacity funding, which
3 has also been offered. And HDI and Enbridge have
4 also had discussions around requests by HDI aimed at
5 establishing a new broader engagement framework so
6 that their consultations in future are not based on a
7 project-by-project approach.

8 And Enbridge Gas has indicated in this table
9 that they are not aware of any specific concerns from
10 HDI related to potential impacts from the project.

11 And if we could please move down to page 2 of
12 this compendium, yeah. So on this page near the
13 bottom, the summary begins for Mississaugas of the
14 Credit First Nation, and, again, on this page, it is
15 just listing the documents that have been provided to
16 the community.

17 And then if we could keep scrolling to page 3.
18 So we have this section here at the bottom:

19 "Did the community members or representatives
20 have any questions or concerns?" (as read)

21 If I can just summarize further what it says
22 here, it is -- among other things, it states that
23 Enbridge Gas and their consultant Stantec met with
24 the Mississaugas of the Credit First Nation to
25 discuss the project, and then the Mississaugas of the
26 Credit First Nation provided written questions to
27 Enbridge Gas about the project, and Enbridge Gas
28 responded.

1 And this summary table indicates that as of June
2 26th, 2026, the Mississaugas of the Credit First
3 Nation have not identified any outstanding concerns,
4 and it also states that capacity funding has been
5 provided to the community on this same page, page 3.

6 I would ask that we scroll now to page 4. So
7 this is where the summary begins for consultation
8 with Six Nations, but I would actually ask that we
9 keep scrolling down to page 7 of this document.
10 Thank you.

11 So this is where Enbridge Gas has updated this
12 summary table since the previous ICR. On this page
13 of the summary, Enbridge Gas has included some recent
14 updates, and these are mainly regarding two meetings
15 that were held that we have heard about today, one on
16 April 21st, 2026, and the other on May 26th, 2026.

17 And I will take you to some other documents
18 about these meetings. But without reading the
19 summary to the Panel, in this summary, if you scroll
20 down a little bit, it appears from this summary --
21 for -- regarding both meetings, but especially the
22 May 26th, 2026, meeting that Six Nations asked a
23 number of questions about the project, and those
24 questions were answered by Enbridge Gas. And I will
25 take you to some other relevant documents about this
26 as well.

27 If we could keep scrolling to Tab 2, please. It
28 is at page 12 of the compendium. There it is, Tab 2.

1 Thank you. And please go to the content of Tab 2.

2 Thank you. So I thought that it would be helpful for
3 the Panel to have these references for your review.

4 So this is an e-mail from May 25th, 2026, from
5 Enbridge Gas to Six Nations. And attached to this e-
6 mail, which I will show you, are Enbridge Gas' notes
7 about the meeting that took place on April 21st,
8 2026.

9 And so if we can just scroll down slightly. So
10 this meeting was about two projects: The first being
11 the Port Colborne reinforcement project, and then
12 Cedar Springs, the project at hand, was also
13 addressed. So this first page of these notes here is
14 about Port Colborne.

15 And if you keep scrolling, please, to the next
16 page and keep going. This is the page where the
17 notes for Cedar Springs begin. We can see the
18 heading there, "Cedar Springs Project Introduction."

19 And then if you keep going to the next page,
20 please, there is continued notes here. Six Nations
21 asked some questions about the project. I won't read
22 them to you, but they are available, of course, for
23 the Panel in the file. And Enbridge answers some
24 questions about the project.

25 And then I would ask if we could go to Tab 5, if
26 we could skip ahead to Tab 5 in the compendium. It
27 is on page 25. Thank you. So this is an e-mail from
28 May -- sorry -- from June 17th, 2026, regarding the

1 May 26th, 2026, meeting. And this is an e-mail where
2 Enbridge Gas is providing Six Nations with copies of
3 their notes from the meeting, the second meeting in
4 May.

5 And before we go to the actual notes, I just
6 want to highlight this e-mail also states:

7 "In response to Action Item Number 2, namely
8 Enbridge Gas commits to implementing Stantec's
9 mitigation measure recommendations. I can
10 confirm that Enbridge followed Stantec's
11 recommendations, as noted in the mitigation
12 measures section of the filed application."

13 (as read)

14 So this is where one of the things that Six
15 Nations had requested in that meeting was a
16 commitment that Enbridge would be following Stantec's
17 recommendations, and so this is Enbridge Gas
18 responding to that.

19 And if we can scroll down, please, to the next
20 page. So this is the beginning of the notes
21 regarding this meeting. And there has been much talk
22 of this meeting today, so I wanted to make sure that
23 the Panel is aware of these notes. I am not planning
24 to go through them in any detail with the Panel, but
25 they are available for the Panel.

26 And we can see that Enbridge Gas provides a
27 project description and a tentative schedule, and
28 then there are a variety of questions that Six

1 Nations asks about the project.

2 And if you could just scroll to the next page,
3 please, you can see the meeting notes go on, and Six
4 Nations asks a variety of questions.

5 And if you could please keep going. This is
6 where the notes conclude. And these are the action
7 items that are listed by Enbridge Gas as coming out
8 of this meeting on May 26th. So there has been some
9 talk of the action items today. They are listed
10 here. One of them is the commitment to implementing
11 Stantec's mitigation measures, which was in that e-
12 mail. And there is some others here as well.

13 One of them is Enbridge Gas providing a map of
14 the proposed route overlaying a Google map. There
15 are some tabs in our compendium, Tabs 3 and 4, that
16 show Enbridge Gas' responses on that, providing that
17 map as well.

18 So these notes are fairly extensive, and they
19 show Six Nations asking a lot of questions about the
20 project and Enbridge Gas answering them.

21 And so I just wanted to take the Panel to these
22 particular documents because for OEB Staff, we are
23 focused on these most recent meetings, and we are
24 submitting that the duty to consult has been
25 adequately discharged at this point.

26 And we know from the submissions that we have
27 heard today and from the evidence on the record,
28 there were some issues in Enbridge Gas' consultation

1 with Six Nations. Six Nations has raised a number of
2 concerns including that Enbridge Gas failed to
3 deliver key documents before the draft environmental
4 report, failed to hold an introductory meeting
5 regarding the project, and generally proceeded on a
6 timeline that did not provide for meaningful
7 consultation in a context where Six Nations had
8 concerns about Enbridge Gas' consultation on other
9 projects.

10 Based on the updates that are now on the record
11 in the most recent ICR, it does appear to OEB Staff
12 that Enbridge Gas has continued the consultation.
13 They have had two meetings now about this project.
14 Six Nations has also recently attended an ecological
15 field survey as well on May 28th, 2026, which I
16 understand from Enbridge's submission today was
17 requested by Six Nations.

18 It appears that Six Nations has asked a number
19 of questions about the project and has made some
20 requests for further information and further study to
21 be done. Enbridge Gas has answered the questions and
22 has provided some follow-up information and has made
23 some commitments for -- to provide further
24 information as well that is not available yet.

25 OEB Staff submits that with these further
26 updates on the record, it appears that the duty to
27 consult has been adequately discharged. Enbridge Gas
28 noted in the written summary of their submission

1 today that Enbridge Gas acknowledges that Six Nations
2 has raised concerns regarding engagement on the
3 project, which Enbridge Gas has worked to
4 substantially address.

5 And OEB Staff agrees with that. Based on the
6 recent updates to the ICR going up to June 2026, it
7 does appear that Enbridge Gas has worked to address
8 Six Nations' earlier concerns with the consultation
9 process based on -- based on what is on the record.

10 And I would like to just turn back to the OEB
11 guidelines, which -- environmental guidelines, which
12 I raised at the beginning of my submissions. And I
13 am wondering if we could bring them up. They are not
14 actually in the compendium of OEB Staff. We just
15 provided a link to them. But they are available in
16 full in the compendium from Enbridge Gas at Tab 5, if
17 that is the easiest way to bring them up. Thank you.
18 And if you could go to page 18. Thank you.

19 So I would just like to bring the Panel's
20 attention to this paragraph at the top. So it says:

21 "The Applicant should file an Indigenous
22 Consultation Report with its application to the
23 OEB. The Indigenous Consultation Report should
24 describe the consultation activities that were
25 undertaken and timing." (as read)

26 Et cetera, et cetera. It goes on to say that:

27 "A matrix can be used to summarize the
28 consultation record." (as read)

1 And then it says:

2 "Prior to the Leave to Construct proceeding,
3 the Leave to Construct record being closed by
4 the OEB, the Ministry of Energy will provide a
5 letter to the Applicant expressing its view on
6 the adequacy of the Indigenous consultation
7 based on materials provided to the Ministry Of
8 Energy. It is noted that the consultation
9 should start in the pre-application stage and
10 is likely to continue during OEB's review of
11 the application, and in some cases, may
12 continue through the life of the project. The
13 Applicant is expected to file with the OEB the
14 letter from the Ministry Of Energy and keep the
15 summary of the consultation record up to date
16 until the OEB renders its decision." (as read)

17 So what I want to submit, first of all, in
18 relation to the OEB environmental guidelines is that
19 they specifically contemplate that consultation
20 should continue during the OEB's review of the
21 application, and in some cases, through the life of
22 the project. And the Applicant is expected to keep
23 the summary of the consultation record up to date
24 until the OEB renders its decision.

25 And OEB Staff submit that it appears that that
26 is what has occurred here in Enbridge Gas'
27 engagement, that is Enbridge has continued the
28 consultation process during OEB's review of the

1 application and has undertaken further steps since
2 some of the issues that Six Nations raised have
3 occurred.

4 And we have heard some submissions today that
5 there are some action items that are outstanding from
6 those meetings, and I have shown the Panel the
7 relevant notes to that. I am sure that Enbridge Gas
8 will also speak to those action items. But Enbridge
9 Gas has committed to continuing to engage throughout
10 the life of the project, and I submit to you that
11 that is an anticipated part of the OEB's process in
12 the environmental guidelines. It is not unusual that
13 -- necessarily that there would be outstanding items,
14 and that does not necessarily mean that the duty to
15 consult has not been adequately discharged.

16 Regarding this paragraph that I have brought up
17 for the Panel as well, I also just want to move on to
18 talking briefly about the Letter of Opinion, which is
19 also discussed in this paragraph.

20 So as part of this type of proceeding, the
21 Ministry Of Energy and Mines provides a Letter of
22 Opinion. I acknowledge that the -- this paragraph
23 actually specifically refers to Leave to Construct
24 proceedings, but this same process is used in Leave
25 to Construct exemption proceedings.

26 And as part of this type of proceeding, the
27 Ministry provides a Letter of Opinion about the
28 sufficiency of consultation, and that is not yet

1 available on the record of this proceeding, and so
2 the record is not closed yet.

3 And I just want to highlight that the Letter of
4 Opinion is a step contemplated within the guidelines,
5 and it is part of the OEB's current process. The
6 Ministry provides that letter, and Enbridge is
7 expected to file it.

8 And the reason I just want to point that out is
9 because I think we have heard today from Enbridge Gas
10 that the OEB can make a decision without that letter,
11 but I think it is important that we situate that
12 letter.

13 As part of the OEB's regular process, it is
14 expected that Enbridge will file that letter, and I
15 haven't heard a reason today to deviate from that
16 process. It doesn't mean that the Panel cannot, but
17 I haven't heard a reason to deviate today.

18 So to the extent that it becomes necessary, the
19 application could be placed in abeyance to provide
20 more time for the Letter of Opinion to be filed.

21 And finally, on the last note that I wanted to
22 address, which was conditions of approval, if the OEB
23 determines that the Crown's duty to consult has been
24 adequately discharged, and the OEB does grant the
25 exemption sought by Enbridge Gas, then OEB Staff
26 submit that it would be appropriate for the OEB to
27 impose the conditions of approval that are the same
28 as those that have been imposed in other recent

1 applications before the OEB.

2 And in our summary of written submissions, I
3 have provided links to some of the recent decisions
4 of the OEB including the most recent decision, the
5 *Port Colborne* reinforcement decision, but there are
6 some others as well in there.

7 And these conditions of approval are also the
8 same ones that are proposed by Enbridge Gas in their
9 application. And there is a copy of their proposal
10 in our compendium at Tab 7, but I won't take you
11 there in the interest of time. But it is OEB Staff's
12 submission that those conditions of approval are
13 appropriate.

14 And those are my submissions today subject to
15 your questions. Thank you.

16 PRESIDING COMMISSIONER CÔTÉ: Thank you, Ms.
17 Pope. I will look to my left to see if there are any
18 questions.

19 Commissioner Moran?

20 COMMISSIONER MORAN: Thank you. I have no
21 questions.

22 PRESIDING COMMISSIONER CÔTÉ: Okay. Then I will
23 look to my right.

24 Commissioner Sidlofski?

25 **QUESTIONS BY COMMISSIONER SIDLOFSKI:**

26 COMMISSIONER SIDLOFSKI: Just a quick question,
27 Ms. Pope. You acknowledged that there are
28 outstanding items. There were commitments made by

1 Enbridge to provide further information. Are you
2 concerned at all that without that information that
3 Enbridge has already agreed to provide, there may not
4 be an ability for Six Nations to have any influence
5 on the project without seeing those first?

6 If the Board were to determine now that the duty
7 is met, what does that -- how meaningful do those --
8 do those follow-up -- and I don't mean to belittle
9 them by referring to them as "follow-up items," but
10 to those other items that Enbridge committed to
11 provide, how meaningful are those items when -- you
12 know, if the Board has already decided that the duty
13 to consult has been met?

14 S. POPE: So if I can just clarify your
15 question. You are asking if the Board does order an
16 exemption for Enbridge Gas, what is the value of
17 continuing to provide -- to answer those outstanding
18 items?

19 COMMISSIONER SIDLOFSKI: Well, I am -- I
20 understand your point about there being an
21 expectation the consultation will continue through
22 the life of the project. But if the Board were to
23 grant the exemption here on the basis that the duty
24 to consult has been met, then does Six Nations have a
25 meaningful opportunity to influence the project as it
26 proceeds when the Board has already determined that
27 the duty is met, the exemption from Leave to
28 Construct is granted, the project goes ahead?

1 If we agree that the consultation needs to be
2 meaningful, which is a very brief summary of the Six
3 Nations' position, then how meaningful do you see the
4 consultation -- that ongoing consultation being when
5 the material -- when material that Six Nations may
6 need to determine whether there should be changes to
7 the project, or whether in its view there should be
8 changes to the project, don't come until the project
9 has already been approved?

10 S. POPE: I think that -- I guess I will say a
11 couple of things.

12 One is I do think that it is normal and typical
13 that there would be continuing consultation and there
14 would be documents that would continue to be provided
15 after an approval by the OEB. I think it is quite
16 typical that Enbridge would commit to engagement
17 throughout the life of the project, and things can
18 come up at any time. And so, you know -- and
19 Enbridge Gas has a responsibility to go back to the
20 Ministry if anything arises that could change the
21 depth of consultation that is required.

22 That being said, if the Panel looks at the
23 outstanding items and, you know, is of the view that
24 any of them are significant enough that these two
25 meetings that have happened to date have not given
26 Six Nations the true opportunity to identify impacts
27 on their rights and, you know, identify those --
28 those impacts so that they can be addressed, then it

1 would be necessary for those outstanding items to be
2 fulfilled before the project could go forward.

3 COMMISSIONER SIDLOFSKI: Just one other
4 question: In your -- very early on in your comments,
5 you said that given the updated consultation report,
6 in Staff's view, the duty has been met subject to
7 receipt of the letter.

8 S. POPE: That is right.

9 COMMISSIONER SIDLOFSKI: So the Board should --
10 in your view, in Staff's view, the Board shouldn't be
11 making a determination yet until that letter is
12 received?

13 S. POPE: That is correct. And the reason for
14 that is because it is part of the OEB's process.
15 This is, you know -- the OEB has an extensive process
16 set out in the environmental guidelines to ensure it
17 has the information before it.

18 The Crown coordinates -- or the Ministry
19 specifically coordinates the duty to consult
20 obligations that are delegated and they have insights
21 into that process that can be valuable, and I would
22 submit to you that that is why it is a typical part
23 of the OEB's process to have that Letter of Opinion
24 on the record. And, you know, I haven't heard any
25 reason why the OEB should deviate from its typical
26 process.

27 COMMISSIONER SIDLOFSKI: So let me just try to
28 tie your two thoughts together here, then -- or what

1 I see as two thoughts.

2 One is the Board's standard process is to
3 require the letter or to wait for the letter, so the
4 Board should be doing that here?

5 S. POPE: Yes.

6 COMMISSIONER SIDLOFSKI: But the fact that Six
7 Nations is waiting for material from Enbridge that is
8 directly related to the project, that is not what --
9 that is not a reason to delay approval of the
10 application?

11 S. POPE: I mean, I acknowledge that they are
12 related, obviously, because if the Board puts this
13 into abeyance in order to wait for the Letter of
14 Opinion, more of these action items might be
15 fulfilled during that time, and Enbridge Gas can
16 provide an update to the Board on that.

17 Whether there will -- I mean, I have no sense of
18 when that Letter of Opinion will be provided, so I
19 don't know how long that period of time would be and
20 whether it would be enough for Enbridge to satisfy
21 all of the action items that they have committed to
22 and just generally continue, you know, to have an
23 another meeting, for example, if that is what the
24 Board is looking for. I don't know if there would be
25 enough of a timeline for that because I don't know
26 when the Letter of Opinion will be provided.

27 But I do acknowledge that if the OEB puts this
28 matter into abeyance to wait for the Letter of

1 Opinion, that is going to provide more time as well
2 for consultation to continue. And it should continue
3 during that period because Enbridge has committed to
4 continuing throughout the life of the project to
5 consult, and they have committed to certain specific
6 actions.

7 COMMISSIONER SIDLOFSKI: Thank you, Ms. Pope.

8 Commissioner Côté, that is -- those are my
9 questions.

10 PRESIDING COMMISSIONER CÔTÉ: Thank you. I will
11 be returning to Commissioner Moran.

12 **QUESTIONS BY COMMISSIONER MORAN:**

13 COMMISSIONER MORAN: I just want to follow-up on
14 this question of the Letter of Opinion and how it
15 helps us. I mean, we have a regulation that says
16 that we, the OEB, are supposed to determine if the
17 duty to consult has been adequately discharged.

18 What, in your view, in the Letter of Opinion
19 that we might get from the Ministry will be helpful
20 given that the Indigenous consultation record is in
21 front of us, given that we have had public
22 submissions from Enbridge about the sufficiency of
23 the process, and public submissions from Six Nations
24 about the sufficiency of the process, and public
25 submissions from Staff about the sufficiency?

26 A separate process that isn't public, how will
27 that assist us when all we see is a summary of --
28 with a conclusion that we have talked to a few

1 people, we don't necessarily say who they are? How
2 does that help us? Like, and why is it necessary?

3 I mean, I get that there is a reference to it in
4 our process, but our process description isn't a law.
5 I mean, it is just a general statement about how we
6 generally would do things. But in this particular
7 case, for the exemption request that Enbridge has
8 made, how does a Letter of Opinion assist us?

9 S. POPE: When I say that OEB Staff submissions
10 are subject to the Letter of Opinion, I only mean
11 that, you know, if there was something in the Letter
12 of Opinion that, you know, changed, you know, OEB
13 Staff's view, that, you know, they would respond to
14 that accordingly.

15 That being said, I think that that occurs
16 rarely. I think for the most part, they are not very
17 detailed letters.

18 So in terms of how it will assist the Panel, it
19 may not assist in the sense of changing anything
20 dramatically in terms of the outcome of this
21 proceeding. And I guess when I suggest that when --
22 when I suggest that the Panel should wait for it, it
23 is more because I am suggesting that the OEB should
24 uphold its own procedure and follow its own procedure
25 that it set out.

26 And as I mentioned, the Ministry does coordinate
27 duty to consult obligations of Enbridge Gas, and they
28 do have insights that are -- that we are not privy to

1 necessarily until they provide that assessment.

2 So I think it can -- it can provide some
3 information that is helpful. But I am not suggesting
4 to you that it is, you know, going to be necessarily
5 accorded a lot of weight in your ultimate
6 conclusions.

7 COMMISSIONER MORAN: So how does it work, for
8 example, in a scenario where we agree with Enbridge
9 to say, you know, the Panel is going to decide if the
10 duty to consult has been discharged, and we get a
11 letter while we are deliberating from the Ministry
12 that says, well, the procedural aspects look okay to
13 me and -- but we are going the other way on the
14 ultimate duty to -- like, again, I am just trying to
15 understand what that letter would have anything to do
16 with what we have to decide and how it would help us
17 in any particular way.

18 S. POPE: So you are saying if you received a
19 letter that suggested that there were outstanding
20 issues, how would the Panel approach that?

21 COMMISSIONER MORAN: Or a letter that says there
22 aren't any outstanding issues from the Ministry's
23 perspective --

24 S. POPE: Yeah.

25 COMMISSIONER MORAN: -- but in the meantime, we
26 have got all the submissions we have received in this
27 process, and we are dealing with what is on our
28 record. How do you deal with that potential

1 dissonance?

2 S. POPE: I think it would be really context
3 dependent on, you know, what it specifically says. I
4 mean, it would be open to the Panel to make a
5 decision, you know, to go forward, to take that
6 letter into account, and go forward, and make their
7 decision in any way that they see fit. But of
8 course, the Panel can seek more information if
9 necessary as well. More submissions from the
10 parties, for example.

11 COMMISSIONER MORAN: Okay. Thank you.

12 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

13 PRESIDING COMMISSIONER CÔTÉ: Just one from me,
14 Ms. Pope, if I could clarify.

15 So I heard the position of OEB Staff in terms of
16 the duty to consult. I also heard in some of the
17 exchange that some activities can continue throughout
18 the lifecycle. I am not sure if that the word you
19 used but...

20 What I am trying to clarify is that it obviously
21 can't be both. The duty to consult at some point is
22 fulfilled or it is not. I accept that relationships
23 can continue, but where I struggle is how we can have
24 it both ways of making a finding yea or nay. If I
25 heard correctly some of the exchange, the implication
26 that the continuation is in fulfillment of the duty
27 to consult still.

28 Did I misunderstand that? Could you help me

1 clarify? Perhaps I missed something.

2 S. POPE: Yeah. So I think that Six Nations's
3 position, you know -- and obviously I am paraphrasing
4 -- but, you know, there is a bright line where the
5 duty to consult is completed, and that is when it is
6 discharged, and then it is finished. And that whole
7 process needs to be completed before the OEB can
8 approve the application.

9 And what I submit is that you have to determine
10 that the duty to consult has been adequately
11 discharged in order for the project to go forward,
12 but there is still an ongoing obligation of Enbridge
13 Gas to continue throughout the life of the project to
14 consult. I recognize that, you know, it is quite a
15 complex idea, but that would be how I would put it.

16 PRESIDING COMMISSIONER CÔTÉ: Perhaps, may I
17 suggest, to test, once the duty to consult has been
18 fulfilled, perhaps what you mean is that post that,
19 there can be further engagement and relationship
20 building and so on and so forth. But at that point,
21 a determination has been on the fulfillment of the
22 duty to consult.

23 S. POPE: Yeah, I would just note that the
24 language in the regulation is "adequately
25 discharged," not "fulfilled." I -- you know, I just
26 think that is a little bit of a different tone. So I
27 would just point that out, that it is "adequately
28 discharged." But that the OEB is determining if the

1 duty to consult has been adequately discharged for
2 the project to go forward, but that doesn't mean
3 there is no obligation to continue consultation.

4 And indeed in many of the OEB's decisions -- I
5 don't have any offhand to point you to, so I
6 apologize -- but, you know, the OEB will actually
7 indicate that the Applicant has an obligation to
8 continue engagement. So that is, you know, part of
9 the conditions of approval in a sense.

10 PRESIDING COMMISSIONER CÔTÉ: Yeah, I would say,
11 from my experience, that is fairly normal. I think
12 your point about perhaps the language that does exist
13 indeed, but we are the final decision maker. If not
14 us making a determination on the duty to consult,
15 there is arguably no one else. So whatever the
16 language is, I guess I am interpreting it as we as
17 the final, at least in this context.

18 But I think you have clarified the area I wanted
19 to check, so thank you for that.

20 Okay. I believe I am looking to my right to
21 Enbridge. As a courtesy, having heard all the
22 submissions, are you prepared right away to provide
23 your reply?

24 B. GRAY: Yes.

25 PRESIDING COMMISSIONER CÔTÉ: Okay. Then in
26 that case, we will do so. We will turn it over to
27 you, Mr. Gray.

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

1 B. GRAY: Thank you, Commissioner. We have
2 several points that we do want to respond to, but
3 before we do, we just want to acknowledge that there
4 are certain aspects of consultation here that
5 obviously could have been handled better,
6 particularly in terms of the follow up on the July
7 notice, and we agree that it would have been better
8 to provide additional notice of the intention to file
9 an OEB application before it was submitted.

10 We appreciate how this would have been received
11 and appreciate Six Nations sharing its perspective on
12 this and the consultation process. Enbridge Gas is
13 continually looking to improve relationships, listen
14 to feedback, and this process has been helpful in
15 identifying ways in which Enbridge can continue to
16 improve its communications in future consultation.

17 This does not, however, change our submission
18 that the duty to consult has been adequate for this
19 project. Missteps can be made, and missteps here
20 don't render consultation inadequate or suggest that
21 consultation was not undertaken in good faith.

22 If you take a step back and look at the entire
23 process and the full engagement record, including the
24 meetings that took place this spring, it is clear
25 that it was conducted in good faith and consultation
26 was meaningful.

27 Consultation continued after the application was
28 filed, and the duty to consult only has to be

1 discharged once the decision by the OEB is made. I
2 differ from my friend here on this point: It does
3 not have to be discharged when the application is
4 filed.

5 The duty to consult is only formally triggered
6 as a legal matter when the application for a
7 government authorization is filed because it is the
8 Crown decision that triggers the duty, not the
9 project.

10 There are no cases I am aware of where a Court
11 has determined that consultation needs to be
12 completed before an application for a government
13 authorization is filed. And as I made submissions
14 this morning, consultation routinely continues after
15 authorizations, applications, and studies have been
16 filed.

17 The determination that is required by the
18 regulation that governs this decision is not whether
19 the duty to consult was met when the application was
20 made. It is whether it has been met when the OEB
21 makes its determination, which is now.

22 I want to respond very briefly to the point
23 about the checked box on the Indigenous consultation
24 summary at Tab 6 of our compendium where Enbridge Gas
25 acknowledged that there were outstanding concerns
26 from Six Nations.

27 This was not an acknowledgement that
28 consultation was inadequate or had not yet been

1 fulfilled. It was a recognition that Six Nations
2 were participating in this proceeding, raising
3 concerns, and were going to -- going to be
4 participating in an oral hearing that was scheduled.

5 And so given that, and we knew that there were
6 outstanding concerns, Enbridge Gas recognized that
7 there were. But those outstanding concerns are not,
8 in our submission, issues that render consultation
9 inadequate nor is the information that my friend says
10 is outstanding. That also doesn't render the
11 consultation inadequate, and I will return to that.

12 My friend made the submission that real
13 consultation only started in April 2026 or was really
14 -- or kind of was the beginning of consultation. In
15 our submission, this is incorrect.

16 In addition to the written notices and the
17 sharing of the environmental report, there was a
18 meeting to discuss the project in November, and the
19 case law does not say that written communication and
20 information sharing isn't consultation. In fact,
21 sharing information in writing is a fundamental part
22 of consultation because think about project
23 approvals. They are often accompanied by detailed
24 environmental studies and other supporting studies.

25 All of that information is shared in writing for
26 Indigenous groups to review, and that is all part of
27 the consultation record. It is not just verbal
28 meetings that count for the purposes of consultation.

1 And I just want to take you to the *Ktunaxa*
2 decision at paragraph 80, which is at Tab D of our
3 compendium. And this is the fourth bullet down under
4 paragraph 80 where it talks about the content of the
5 duty to consult and accommodate varying.

6 Second sentence:

7 "Cases with a weak claim, a limited Aboriginal
8 right, or minor intrusion may only require
9 notice, information, and response to queries."

10 (as read)

11 There is nothing in this passage or in the case
12 law that is before you that would say that --
13 particularly at a low level of consultation, that
14 there needs to be -- there can only be consultation
15 through in-person meetings. In fact, all of these
16 things can be provided in writing.

17 The cases do speak to a two-way dialogue, but
18 two-way dialogue can occur in writing. And that --
19 there is evidence before you about that. MCFN raised
20 questions in writing on two different occasions, and
21 those questions were answered. And on the last
22 occasion, MCFN indicated that they had no other
23 concerns.

24 And so it is not the case that consultation can
25 only take place through meetings and doesn't start
26 until there are meetings. And I would say it would
27 have significant implications for the resources and
28 time of Indigenous groups' proponents and governments

1 if the hundreds to thousands of notices that are
2 received by Indigenous groups each year mean that
3 there has to be in-person meetings for consultation
4 to be sufficient.

5 Suggesting that real consultation only started
6 in April also doesn't consider reciprocal
7 obligations. Consultation, as the Court has made
8 clear on many occasions, and I have referred you to
9 case law in our written submission -- consultation is
10 a two-way street, and Six Nations have reciprocal
11 obligations to engage and raise concerns early and
12 with specificity.

13 And just so that there is no misunderstanding,
14 it is not the case that Enbridge didn't try to meet
15 before April. I would like to take you to the ICR
16 for Six Nations, which is Tab 8, beginning at Item
17 3.49 on November the 28th. So this was after the
18 November meeting and after the OEB application was
19 filed.

20 So 3.49, you can see at the bottom of that
21 entry, Enbridge Gas is looking -- so this is an e-
22 mail to Six Nations, and at the bottom:

23 "Enbridge Gas is looking for an opportunity to
24 discuss the documents and will work to set up a
25 meeting shortly." (as read)

26 December 18th, Item 3.52, there is an e-mail
27 from Enbridge Gas to an SNGR representative to
28 request availability to meet to discuss the project.

1 December 19th, there is an e-mail to follow up
2 on meeting dates. That is Item 3.53.

3 If you go over to the next page, Item 3.55,
4 January 19th, an Enbridge Gas representative e-mailed
5 to, again, request availability to meet to discuss
6 the project and welcomed any comments on the draft ER
7 that had been sent in September.

8 3.56, again, on January 23rd, there was a
9 follow-up for dates for a meeting.

10 3.57, February the 2nd, there was also a follow-
11 up to set a meeting.

12 And then on February 2nd, a Six Nations
13 representative e-mailed Enbridge to advise that Six
14 Nations was retaining a lawyer and would be in touch
15 shortly to -- when -- when Six Nations had discussed
16 with their counsel.

17 Then if you turn over, Item 3.67. There is
18 another request from Enbridge for a meeting on
19 February 18th.

20 February 24th, Item 3.69. Again, Enbridge Gas
21 expressed interest in scheduling a meeting with
22 respect to the project.

23 And then you can see on Item 3.78, March 2nd,
24 the meeting is ultimately set by that time, and it is
25 set then for April 21st to accommodate Six Nations'
26 schedule.

27 So there was repeated offers and attempts to
28 arrange meetings to discuss this application earlier,

1 and Six Nations had the detailed environmental
2 report, which I encourage you to look at and look at
3 the appendices to see all of the existing images of
4 the right-of-way and all of the information that is
5 provided on potential environmental effects and
6 mitigation measures, all of which Six Nations had and
7 could review and provide comments on.

8 With respect to the submission that the letter
9 of delegation outlines incidents of engagement that
10 would be consistent with a moderate level of
11 consultation and, therefore, the government is
12 expecting a moderate level of consultation, in our
13 submission, the duty has been met at a moderate level
14 for the same reasons we have already outlined in our
15 submissions this morning.

16 There has been substantial information
17 exchanged, in-person meetings, and things have been
18 done in response to the concerns raised by Six
19 Nations.

20 With respect to the -- the submission by my
21 friend that the adjudicative approach is not a way to
22 go about consultation, in our submission, this is
23 only applicable to court proceedings, and it does not
24 apply to regulatory proceedings.

25 The Supreme Court was clear in *Clyde River* and
26 *Chippewas of the Thames* that the Crown can rely on
27 regulatory processes to fulfill the duty to consult.
28 And in my submission, these were with respect to the

1 National Energy Board, and in my submission, the
2 National Energy Board process is not sufficiently
3 distinguishable from the OEB process to suggest that
4 the OEB process cannot be relied upon, in part, to
5 fulfill the duty to consult.

6 We are not saying, to be clear, that -- that
7 consultation should -- you know, has only been
8 undertaken through the OEB process. We are saying
9 that it afforded additional consultation over and
10 above the consultation that has been undertaken by
11 Enbridge.

12 I want to deal now with the item about the
13 submission that there are multiple outstanding items
14 flowing out of the spring meetings.

15 In our submission, the only outstanding item is
16 the arborist report and is the only outstanding item
17 we were aware of until we heard the submissions of my
18 friend, and we don't agree, respectfully, that those
19 other items are outstanding.

20 So with respect to the arborist report, the
21 arborist report is being finalized, and I understand
22 it will confirm that there is still no trees being
23 removed. And I understand that this will be shared
24 early next week.

25 I want to take you -- just in terms of the point
26 about action -- you know, outstanding items, I would
27 like to go to the minutes for the May 26th meeting,
28 which -- just one second. OEB Staff compendium, Tab

1 2. That is actually better to go -- yeah, I am going
2 to do that. Okay. I actually would like to --
3 sorry.

4 I would like to pull up our compendium because
5 there is a subsequent piece of correspondence that I
6 wanted to refer to. So this is page 486 of our 572-
7 page compendium. It is the second page -- or sorry -
8 - the third page of the minutes from the May 26th,
9 2026, meeting.

10 So if you can look -- if you look at the action
11 items, Enbridge Gas to provide meeting presentation
12 slides; Enbridge Gas to share documents stating that
13 Enbridge Gas commits to implementing Stantec's
14 mitigation measure recommendations; three, Enbridge
15 Gas to share arborist report once available; four,
16 Enbridge Gas to provide a map of the proposed route
17 overlaying a Google map showing vegetation and will
18 not include streets that are no longer in the project
19 scope.

20 And then if you go to the next page, this is an
21 e-mail on June the 26th following up on the meeting
22 and setting out various items that were -- more
23 information on the various follow-up items.

24 You will see from those action items in the
25 meeting, those action items do not include providing
26 Enbridge's vegetation guidelines, and they do not
27 include providing a virtual tour of the project site.
28 And I will come back to that point. But before I do,

1 I want to go up to the minutes from the April
2 meeting, which the end action items are at page 475
3 of our compendium.

4 So the first three items -- because this was a
5 meeting that was discussing both Port Colborne and
6 Cedar Springs, the first three items deal with Port
7 Colborne, as does, actually, the vegetation
8 guideline. But it does -- I do want to address that
9 because it references the vegetation guideline.

10 So the action item from this meeting was
11 Enbridge Gas request Metrolinx's vegetation guideline
12 and review it. So the action -- the request that was
13 documented and sent and not -- there was no follow up
14 to say, no, that is not the action item. The request
15 was to look at Metrolinx's vegetation guidelines.

16 And you can see in the minutes that the request
17 to look at it was a result of their ten -- their
18 approach of having a 10-to-1 replacement for tree
19 removals.

20 In our submission, that is not relevant for this
21 project because Enbridge Gas has confirmed that there
22 will be no tree removals as a result of this project,
23 and we will be sharing an arborist report early next
24 week to confirm that.

25 The next item was dealing with contracting
26 opportunities from Port Colborne.

27 Next item was dealing with the name of the
28 proposed Burlington project that paused Cedar

1 Springs.

2 Second-last item was inviting Six Nations to
3 attend an additional field survey as required, and
4 that happened, and they did participate in the field
5 survey at the end of May.

6 And then the final item was to connect Enbridge
7 Gas with Six Nations' tourism not related to this
8 specific project.

9 So you will see in those two minutes, there is
10 nothing in those action items saying there is still a
11 virtual tour outstanding or that Enbridge Gas needs
12 to provide its vegetation guidelines.

13 I want to address, though, the virtual
14 walkthrough. My understanding based on discussions
15 with individuals that were in the meeting is that
16 Enbridge did provide a virtual walkthrough in the
17 meeting on May the 26th.

18 They showed an initial image of the right-of-
19 way, and then they went to Appendix F and went
20 through the environmental -- sorry -- Appendix F of
21 the environmental report. And they went through the
22 environmental alignment sheets, which shows various
23 images of the right-of-way.

24 And that was Enbridge Gas's understanding of the
25 virtual walkthrough and that it was completed in the
26 meeting.

27 In addition, Enbridge Gas subsequently provided
28 detailed aerial images and design drawings showing

1 all of the specific drill location sites, which are
2 at Tab 3B of our compendium. This provides far more
3 information about the right-of-way than any virtual
4 presentation would provide.

5 We encourage you to look at the images again to
6 see the level of information provided on the route,
7 the specific areas of impact from drilling, and the
8 very small footprint of those drill locations.

9 No concerns have been raised since that data has
10 been sent. There has been no request to change drill
11 site locations or concerns about specific vegetation
12 at those drill site locations. And it is important
13 to note there also was this vegetation survey where
14 Six Nations was taken to the drill site location so
15 they could see the vegetation that was at those drill
16 site locations.

17 And, again, no concerns following that meeting
18 were raised by Six Nations to say these drill --
19 these drill site locations need to be changed because
20 of some specific sensitivity around vegetation at
21 that particular site.

22 And it is only -- because of the construction
23 method, it is only the drill site locations where
24 vegetation will be disturbed. And it will be
25 restored to pre-construction condition.

26 I just want to very briefly speak to the Nanfan
27 deed because, Commissioner Côté, this came up in
28 response to a question that you raised about the

1 rights that could be impacted. I just want to
2 underscore that the Nanfan deed speaks only to
3 hunting rights in the text of the Nanfan deed. It
4 does not speak to broader harvesting rights or
5 economic benefit rights. And it would be only
6 hunting put -- hunting on land that is not put to an
7 incompatible use.

8 There is also a dispute between Ontario, Canada,
9 and Six Nations as to whether the Nanfan deed is a
10 treaty, and this is a matter that is currently at
11 issue in litigation between Six Nations, Ontario, and
12 Canada.

13 With respect to the points raised about
14 financial accommodation, the fact that proponents
15 negotiate these arrangements typically for much
16 larger projects that have significant impacts does
17 not mean that it is legally required. And my friend
18 acknowledged the law is nascent on this. There is no
19 cases before you saying it is required because they
20 do not exist.

21 Financial accommodation is not common for small-
22 scale projects of this nature where no specific
23 impacts to rights have been identified.

24 My friend has suggested that this was a box-
25 ticking exercise and blowing off steam. I encourage
26 you to look at the entire record in considering that,
27 and I would submit that it is far from it.
28 Comprehensive information was shared. And a box-

1 ticking exercise is just sending out information and
2 doing nothing in response to concerns and not
3 listening in meetings when concerns are raise raised
4 and not really responding. That is not what happened
5 here.

6 There has been significant dialogue. There has
7 been further information provided, invitations to
8 participate things, vegetation surveys arranged that
9 didn't previously exist. And there hasn't been any
10 request to amend the route since the project resumed
11 in 2025.

12 And I, again, commend the environmental report
13 to you, which they have had since September 2025,
14 that shows detailed images of the route alignment at
15 that time, which was a larger alignment.

16 Given that the only matter left is an arborist
17 report, and the arborist report is going to confirm
18 information already provided, in our submission,
19 there is no reason to put this into abeyance. The
20 Letter of Opinion is also not necessary.

21 As noted, you have received detailed written and
22 oral submissions and have a large record before you.
23 Typical practice of the OEB is not a legal
24 requirement, and you do not need a letter to make a
25 determination. Requiring a letter creates
26 unnecessary duplication as the OEB is in a position
27 to comprehensively determine whether the duty to
28 consult has been met.

1 In our submission, looking at all the entire
2 consultation process, the duty to consult has been
3 met, and the Panel should grant the application given
4 that Enbridge has met the respective requirements.

5 Those are my submissions. Thank you.

6 PRESIDING COMMISSIONER CÔTÉ: Thank you, Mr.
7 Gray, for those submissions. I will turn to my
8 colleagues yet again.

9 Commissioner Moran? Commissioner Sidlofski? I
10 will have --

11 B. GRAY: Sorry.

12 PRESIDING COMMISSIONER CÔTÉ: I will have some
13 questions for you, Mr. Gray, if you are ready.

14 B. GRAY: Yes, yes.

15 **QUESTIONS BY PRESIDING COMMISSIONER CÔTÉ:**

16 PRESIDING COMMISSIONER CÔTÉ: Mr. Gray, you
17 walked us through the December-January timeline just
18 now, moments ago. You were pointing out the
19 difficulty setting up a meeting. We heard earlier
20 what was going on around that same time period. I
21 heard the word, I think, "trust," "frustration" a few
22 times from your friend opposite. Are you -- and you
23 started your reply by acknowledging some of the
24 difficulties. I don't want to put words in your
25 mouth.

26 Can you help me reconcile all of the above? It
27 seems from this record and from today's submission,
28 quite clear what was occurring in the December-

1 January timeline, which would then in turn explain
2 why the repeated attempts on Enbridge's part were
3 failing.

4 Do you want to comment on maybe squaring that
5 circle a little? Because on the face of it, it seems
6 pretty clear the reasoning as to why the attempts of
7 Enbridge were not succeeding. So I would like to
8 reconcile that with your opening acknowledgement, if
9 you can.

10 B. GRAY: Yeah. Sure. I can't really speculate
11 on why Six Nations wasn't able to meet or didn't wish
12 to meet. That could be a possible explanation.

13 What I can say is from a duty to consult
14 perspective, even if there is frustration, that is
15 not a basis to deny meeting. The duty to consult is
16 clear that there are reciprocal obligations. And in
17 our respectful submission, it is unreasonable to
18 refuse to meet, and that request for meetings -- if
19 there are genuine concerns about a project, requests
20 for meetings should be responded to, and meetings
21 should be arranged in a timely manner so that
22 consultation could be undertaken.

23 PRESIDING COMMISSIONER CÔTÉ: Thank you for
24 clarifying.

25 You also spoke about and pointed to the other
26 two Nations that are not here today a few times, both
27 in your earlier submissions and now. You did so in
28 this context in terms of how the process can unfold

1 in writing. I want to make sure that I am
2 understanding you properly here.

3 You are not in so doing at -- looking at the
4 other two and what unfolded there, implying that you
5 expect exactly the same across all peoples; that is
6 not what you are implying?

7 B. GRAY: No.

8 PRESIDING COMMISSIONER CÔTÉ: Okay. What you --
9 are you demonstrating how, in one case, such
10 methodologies achieved a particular end, and in other
11 cases, the same methodologies did not? Can you
12 elaborate on your purpose in that contrasting, if,
13 indeed, it is not your intent to imply and equate
14 that each people will attract the same treatment or
15 may have the same impacts or the same rights and so
16 on and so forth.

17 Because I just want to clarify -- I just want to
18 clarify my understanding as to what you mean in those
19 contrasting elaborations, please.

20 B. GRAY: Sure. My comment was in response to
21 the suggestion that consultation didn't begin
22 effectively until April.

23 And so I first was explaining that the law is
24 very clear that written communications can form part
25 -- do form part of consultation, and then I used the
26 MCFN example as an example of how consultation can be
27 still meaningful through written communications.

28 That is not to suggest that other Indigenous

1 groups don't have a different view as to how they
2 want to be consulted. And Enbridge Gas does attempt
3 to tailor, and I think you see examples of that and
4 discussions of that in the record where it is trying
5 to change its approach to engagement in response to
6 specific concerns that are raised.

7 And so that -- and that is the, I think,
8 helpfulness of the flexibility of the duty to consult
9 in that there is not a single way to discharge it,
10 and different Nations have different approaches as to
11 how they want to be consulted. But that doesn't --
12 just because a First Nation wants to be consulted in
13 person and in a meeting doesn't mean that the written
14 communications shared and all of the reports shared
15 don't constitute consultation and don't give rise to
16 obligations to share their views on any concerns that
17 they have with respect to those documents. And there
18 were meetings in this case subsequently in which the
19 project was discussed.

20 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
21 for those clarifications.

22 I have two more for you. One relates to the
23 action items or the outstanding items. You walked us
24 through the two meetings that have unfolded in April,
25 May, or the recent ones.

26 B. GRAY: Yes.

27 PRESIDING COMMISSIONER CÔTÉ: You pointed to
28 certain action items. Now, I would like to confirm I

1 understand that these minutes are documented and
2 captured by Enbridge; do I have that correct?

3 B. GRAY: Yes, they are. And sent to Six
4 Nations.

5 PRESIDING COMMISSIONER CÔTÉ: Is that process of
6 sending to a validation process?

7 B. GRAY: I can't speak to the specific purpose
8 myself, but I believe it likely is. It is very
9 common for proponents to send minutes of meetings to
10 First Nations after engagements have occurred, and
11 then the First Nation can provide comments as to
12 whether or not any revisions to those minutes or
13 action items need to be made.

14 PRESIDING COMMISSIONER CÔTÉ: Okay. Because you
15 will appreciate that the record as we have it after
16 today will have you point to those minutes and what
17 was recorded, hence why I want to clarify.

18 B. GRAY: Yeah, no, absolutely.

19 PRESIDING COMMISSIONER CÔTÉ: And the
20 submissions received which are not completely
21 converging with -- so we are left with a bit of a
22 difference of opinion there. Would that be your
23 understanding as well?

24 B. GRAY: Yeah, yes, I think we are left with a
25 difference of opinion.

26 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you
27 for that clarification.

28 Mr. Gray, the last thing I have for you is we --

1 when we are talking to your friend, Six Nations, we
2 talked about the what now. And there were various
3 scenarios and the category of remedies that were
4 advanced. I didn't hear anything in your reply in
5 respect of those.

6 Do you care to leave us with something on the
7 record or -- if so, I would welcome the position of
8 Enbridge on any of the above unless, of course, you
9 tell us that there is one position from your
10 perspective, that is, the one you hold. But you
11 didn't provide any response to what was said
12 opposite, and I was curious about that.

13 B. GRAY: Sure. So our submission remains that
14 the requirements have been met and thus the exemption
15 should be granted. We are of the view that an
16 abeyance is not justified here given that the
17 arborist report is the only item outstanding, and
18 there are no tree removals that are going to be
19 undertaken. So the sharing of the arborist report is
20 not going to change the design of the project or the
21 construction of the project because no construction
22 is contemplated.

23 Similarly, the virtual walkthrough, as I have
24 said, did happen and more detailed information than
25 what would be provided in a virtual walkthrough was
26 subsequently shared. And there was no response to
27 that information to suggest, again, that there would
28 be -- you know, necessitate request for changes to

1 the route. And so, from our submission, there does
2 not need to be further consultation with respect to
3 the virtual walkthrough.

4 And with respect to the vegetation guidelines,
5 there has been detailed information already shared
6 with respect to Enbridge's approach to vegetation
7 management. It is relating to a -- and that isn't
8 going to change the design of the project to the
9 extent that there are further comments with respect
10 to vegetation management. It is really more targeted
11 to restoration. And so those comments can be
12 received and considered after an exemption has been
13 granted.

14 And Enbridge Gas has already indicated that it
15 is open to discussing additional approaches to
16 restoration with Six Nations and involving a Six
17 Nations company in restoration activities.

18 PRESIDING COMMISSIONER CÔTÉ: Okay. Thank you.
19 Those were my questions. Give me a minute to consult
20 my colleagues here, and then we might be nearing the
21 end.

22 Always good to check out of an abundance of
23 caution. You never know. I forgot to introduce
24 myself earlier, so I don't want to make that same
25 mistake twice. With that, I believe that brings us
26 to a close.

27 I'd like to thank all those who participated
28 today for quite substantial discussions and

1 submissions, and we are grateful for that. It will
2 assist us in doing what lies ahead, as you might
3 appreciate, but we are grateful for your time and
4 good participation today.

5 So with that, I will call the case EB-2025-0313
6 Enbridge-Cedar Springs Community Expansion Project
7 oral argument portion of the proceeding closed, and
8 we will adjourn at this time. Thank you. Have a
9 good rest of your day.

10 --- Whereupon the proceeding concluded at 4:24
11 p.m.