

**Review Panel
Public Hearing**

**Commission d'examen
Audience publique**

**Milton Logistics Hub
Project**

**Projet de pôle logistique
de Milton**

Review Panel

Ms. Lesley Griffiths
Dr. Isobel Heathcote
Mr. William McMurray

Commission d'examen

M^{me} Lesley Griffiths
M^{me} Isobel Heathcote
M. William McMurray

Holiday Inn Express & Suites
2750 High Point Drive
Milton, Ontario

July 11, 2019

Holiday Inn Express & Suites
2750 High Point Drive
Milton (Ontario)

Le 11 juillet 2019

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1 Milton, Ontario / Milton (Ontario)
2 --- Upon commencing on Thursday, July 11, 2019
3 at 1:00 p.m. / L'audience débute le jeudi
4 11 juillet 2019 à 13 h 00

5 MR. RONZIO: Good afternoon, everyone.
6 Welcome back to the Milton Logistics Hub Project
7 Review Panel. We're starting -- obviously, we have an
8 afternoon and evening session tonight.

9 But just before we begin, I'm going to
10 go through, as usual, a few health and safety matters
11 to make sure everyone in the room is acquainted with
12 the emergency procedures.

13 So in the event of an emergency, you
14 will hear an audible alarm, and the exits for this
15 room are the doors at the back and the front of the
16 room, the clear glass doors. I've mentioned before
17 but it's worth reminding that at the back door, it is
18 a little bit stuck. So, please, if you're the one
19 going out on that door, kick it on the bottom right
20 and encourage it to open.

21 If either of those two doors are
22 blocked, we can go out the front door here through the
23 left and the double set of doors. Either way, the
24 gathering point in the event of an emergency is the
25 far end of the parking lot behind the audience and

1 we'll meet there.

2 If someone from your party is not
3 there at the time we gather, please let a member of
4 the Secretariat know and we'll proceed to figure out
5 where they are and ensure that they are safe.

6 If you are the one who discovers the
7 emergency, there's red pull stations, the fire alarms
8 in the room at four points. They are also at each end
9 of the hallway here and there's a fire extinguisher
10 out the door and to the left.

11 In the event of minor medical issues,
12 there's a first aid kit at the front desk. The hotel
13 staff are able to provide first aid for minor issues.
14 For major medical emergencies, there's not a
15 defibrillator on site, so we do ask if you discover
16 the emergency, you call 911 and we'll get the
17 emergency medical services here as quickly as
18 possible.

19 In addition, it's usually me who is
20 tripping on them, but there are lots of wires running
21 around the room, people who have laptops plugged into
22 the wall, so as you're moving about on the room,
23 especially on the sides, please keep an eye out for
24 wires. Today if you are the one with the laptop, just
25 make sure that the wires are as flat as possible.

1 I remind everybody to turn off their
2 cell phones or put it onto vibrate, please, so it's
3 not disturbing the proceedings. And the washrooms are
4 out the door to the right, about halfway down the hall
5 on the right-hand side.

6 If you have any other questions
7 related to health and safety at the facility, please
8 come up to a member of the Secretariat and we'll talk
9 to you about your concerns and figure out what we can
10 do.

11 Thank you very much, and the Panel
12 will be here in a moment.

13 --- Pause.

14 THE CHAIRPERSON: Well, good
15 afternoon, everybody. Welcome to day 11 of the
16 hearing. My name is Lesley Griffiths. I Chair the
17 Review Panel. My colleagues are Dr. Isobel Heathcote
18 and Mr. William McMurray.

19 So today we have two sessions, so we -
20 - well, it's a general session. We are beginning with
21 a general session on matters of importance to
22 indigenous groups, and then we will proceed to an open
23 general session.

24 This afternoon we have a number of
25 presentations. CN, the Huron-Wendat Nation, and the

1 Six Nations of the Grand River. We were originally
2 going to present in the opposite order, but they have
3 made that change, so Huron-Wendat Nation will go
4 first, then the Six Nations of the Grand River,
5 followed by the Mississaugas of the Credit First
6 Nation.

7 The presentation that will likely
8 complete the afternoon is a new one, and I will just
9 explain that.

10 Because the Panel heard that there's
11 been a fair amount of discussion and interest and
12 questions regarding the enforceability under federal
13 legislation of mitigation measures associated with the
14 project, the Panel decided that it would be helpful to
15 have somebody from the Canadian Environmental
16 Assessment Agency come to speak to that. This is in a
17 way an extension, something that might ordinarily --
18 could have happened during the orientation session,
19 but we have decided it would probably be useful.

20 I just want to explain that it's a
21 slightly different presentation than the other ones
22 you have been hearing inasmuch as that there will just
23 be questions from the Panel in this regard.

24 So we have a few housekeeping issues
25 to deal with. First of all, I'll ask the Panel

1 manager, Mr. Ronzio, he has a number of items.

2 MR. RONZIO: Thank you, Madam Chair.
3 I have two quick updates in terms of exhibits and
4 documents filed.

5 First is with regard to Exhibit Number
6 12. There was a little bit of confusion yesterday.
7 CN had submitted a document on June 26th entitled
8 "Britannia Road widening from Tremaine Road to Highway
9 407", and we had had a technical issue with the inbox
10 at that time. Although they had sent the information,
11 we hadn't received it. So yesterday we received it.
12 We posted that document on the registry, and it's now
13 Exhibit Number 12, although it was from June 26th. So
14 the numbering is a little bit out of wack.

15 Also, Halton Municipalities has
16 submitted two response letters in relation to
17 information that came in the closing remarks, after
18 their experts had left the room in the first week of
19 technical sessions, and I just want to connect two of
20 those presentations. The first is a response from Dr.
21 Hadayeghi to the Panel questions on traffic modelling,
22 and that's now CEAR Number 935, and we have a response
23 from Dr. Bercha to CN's comments regarding accidents
24 and malfunctions and that is document number 942.
25 Thank you.

1 THE CHAIRPERSON: Thank you. Two more
2 items from me.

3 Yes. I just want to remind you all
4 that written closing remarks are due on Wednesday at
5 noon. If you wish to make oral closing remarks, you
6 need to notify the Secretariat by noon tomorrow. So
7 noon on Friday.

8 We also -- the Panel has a follow-up
9 question from yesterday, which we would just like to
10 deal with now, it's a matter of asking for a couple of
11 references. So I will ask Mr. McMurray.

12 MEMBER McMURRAY: Thank you, Madam
13 Chair. Good morning, Mr. Reynolds.

14 Yesterday there was a discussion of
15 the grade separation at Lower Base Line, and that led
16 me to some questions about the existing level crossing
17 on Tremaine Road. And you mentioned to me, or at
18 least what I understood what you mentioned to me, is
19 that two of the four intermodal trains would approach
20 the project from the north and then go back up north;
21 they wouldn't therefore continue across the existing
22 level crossing at Tremaine.

23 I asked if that was new. You said no.
24 Is that correct?

25 MR. REYNOLDS: Yeah, I said I didn't

1 believe so, no.

2 MEMBER McMURRAY: So I've reached the
3 stage of my career, Mr. Reynolds, where I'm not going
4 to spend 10 hours in my hotel room going through the
5 record trying to find that. I'd be happier if the CN
6 team were to do that.

7 So I would like a reference to where
8 on the record we find information that suggests the
9 two intermodal trains will not continue south of the
10 project.

11 MR. REYNOLDS: Okay, sure. We can
12 provide that.

13 MEMBER McMURRAY: Thank you.

14 THE CHAIRPERSON: You will be able to
15 provide that today, will you, Mr. Reynolds? We won't
16 give that an undertaking number --

17 MR. REYNOLDS: No, we should be able
18 to provide it today.

19 THE CHAIRPERSON: Okay. That sounds
20 good. Thank you. So that concludes our housekeeping
21 matters.

22 So, first of all, CN, do you have
23 housekeeping matters?

24 MR. LERNER: Madam Chair, we do not
25 have any housekeeping matters today.

1 THE CHAIRPERSON: Anybody else have a
2 housekeeping matter? No. Great.

3 We will begin with our presentations
4 this morning, and on matters of importance to
5 indigenous groups, and we begin with a presentation by
6 CN.

7 Mr. Lerner?

8 **PRESENTATION**

9 MR. LERNER: Thank you, Madam Chair.
10 So this morning, Mr. Doug Devlin to my left, here,
11 will be doing a presentation on Aboriginal Engagement
12 and Consultation for CN. Thank you.

13 Doug?

14 MR. DEVLIN: Good afternoon, Madam
15 Chair.

16 Just as a matter of a quick overview,
17 CN's philosophy is one of mutually beneficial
18 engagement. We will talk today about CN's original
19 vision, that it's based on respectful and mutually
20 beneficial relationships. CN has a long history with
21 Aboriginal communities through normal day-to-day base,
22 but also specific to this project. We will talk about
23 the extensive project consultation throughout and then
24 continuing and ongoing.

25 We will talk about field studies

1 undertaken in conjunction with our First Nation
2 partners, traditional knowledge that has been
3 gathered, incorporated into assessments, and we will
4 also talk a little bit about archaeology and the
5 cultural heritage involvement of First Nation
6 communities.

7 I'll begin first, Madam Chair, with
8 CN's Aboriginal vision. To expand a bit more on it -
9 I did mention it yesterday. CN in 2013 sought to
10 develop a respectful and mutually beneficial
11 relationship with all Aboriginal People, while
12 ensuring service to our customers. We sought to be
13 recognized by all stakeholders, including customers
14 and governments, as having a sound approach to
15 engaging with Aboriginal communities and having
16 respectful and sustainable relationships with all
17 Aboriginal People across CN's network.

18 And when we established that vision,
19 we supported that with five pillars, and the first of
20 those five pillars is engaging respectfully. This is
21 the most important pillar to CN and certainly to
22 myself. This is meaningful dialogue, face-to-face,
23 with an emphasis on face-to-face communication,
24 listening, taking into account, acting upon things
25 that should be acted upon, good ideas are good ideas.

1 And having that back and forth communication and that
2 face-to-face communication is crucial to understanding
3 positions, each other's position. So this is very
4 much a core value at CN and one that we apply not only
5 to the project here in Milton, but right across our
6 system.

7 The next is promoting employment
8 opportunities. This involves job fairs, certainly
9 interaction between our human resources department and
10 the individual communities' HR departments, third
11 party groups that do recruiting, associations -- the
12 indigenous associations that do recruiting, and really
13 trying to build the opportunities for First Nations
14 people to be employed with CN, and we've been very
15 successful in that.

16 The next is the increasing employee
17 engagement. This involves exposing employees to
18 cultural activities, the Indigenous Peoples Day of
19 Canada -- National Indigenous Peoples Day of Canada,
20 holding events and gatherings at major terminals of CN
21 where employees participate. It also involves things
22 like an awareness training program that we created
23 that is now mandatory for both management, staff and
24 new hires.

25 We also encourage our employees -- for

1 example, our engineering employees, are physically
2 present in many of these territories and communities
3 and we encourage them to visit with the communities
4 and understand the day-to-day needs.

5 The next is identifying and fostering
6 business opportunities, and this is certainly matters
7 of contracting and procurement, but in some cases it
8 may involve a community that's looking to become
9 involved in a certain aspect of business and comes to
10 CN and asks its advice.

11 We may or may not be directly involved
12 in the business at hand, but we have those
13 conversations. We think it's very important.

14 We're also very proud to be a member
15 of the Canadian Council of Aboriginal Business as a
16 bronze level member of the Progressive Aboriginal
17 Relations program. We also sit on the Committee of
18 the Champions for Procurement for the Canadian Council
19 of Aboriginal Business, and we're very proud of that.

20 Increasing smart stakeholder
21 engagement is -- as I mentioned yesterday, is about
22 geography, understanding where communities are and
23 where their interests are, but it also involves CN
24 communicating with governments and with industry and
25 investors so that they understand what CN is doing and

1 where they are doing it. Many people do want to know
2 this, and we make sure that we have that information
3 available for them.

4 Next I'll talk just for a moment about
5 building respectful relationships. On this slide, in
6 the upper left-hand corner, this is, for example,
7 National Indigenous Peoples Day celebrated at CN's
8 headquarters, which is hugely popular with our
9 employees, the opportunity for them to meet people
10 from communities that CN is present in.

11 The bottom left slide is an image from
12 the Pulling Together canoe journey that's held on the
13 west coast. CN has been involved and sponsored this
14 for the last eight years. I have just returned from
15 there.

16 It's a wonderful journey involving 350
17 people, most of them young people, I'd say between the
18 ages of 14 and 17, and it's a reintroduction of
19 canoeing to those young people. Most had never
20 experienced it. And we're very proud to participate.
21 We take a CN team and we spend the time canoeing along
22 the coast of British Columbia.

23 At top centre, this is our
24 locomotives, our new locomotive fleet as they're being
25 commissioned and produced, we are placing our CN

1 Aboriginal and Tribal Relations symbol on them. We're
2 very proud of that. We have many people that send us
3 photos as they see our locomotives coming through, and
4 -- which is doubly proud for me that, as people see
5 them, they do take photos and they send them to us.

6 The bottom centre, the North American
7 Indigenous Games, we've been a proud sponsor of that
8 and participant in that. We did participate in the
9 most recent North American Indigenous Games here in
10 Toronto, but we've also participated in Regina and in
11 Québec City.

12 The next games is in 2020 in the
13 Maritimes, and we intend to participate in that as
14 well.

15 We also supported a bid in southern
16 Ontario. It was another attempt to try and bring them
17 back here, and we supported that. Unfortunately, they
18 lost out to the Maritimes.

19 In general, events, things like,
20 again, National Indigenous Day, flag-raising events in
21 Toronto or community and cultural events, even in our
22 own yards, we invite communities to come in to visit
23 the yards, to meet with employees, to celebrate, and
24 it's a great experience for them.

25 We are also very proud to sponsor with

1 CN's unions together in funding good causes in the
2 First Nation indigenous communities in Canada. In
3 this particular photograph, this is an Inspire
4 sponsorship that involved scholarships for young
5 people.

6 So CN's specific project engagements.
7 Prior to the announcement of the project, we
8 recognized that there would be Aboriginal interest in
9 the project and there would be specific First Nations
10 that would be involved according to territory, and we
11 began to have general conversations, non-specific to
12 the project, but just general conversations to get to
13 know one another.

14 Once the project was announced, CEAA
15 identified four groups that would likely have an
16 interest in the project or could potentially be
17 affected by the project, and they were the
18 Mississaugas of the Credit First Nation, the Six
19 Nations of the Grand River, the Huron-Wendat Nation,
20 and the Métis Nation of Ontario.

21 After the project announcement, CN
22 began its specific engagement related to the project
23 by providing information and also meeting with those
24 communities to arrange for things like fieldwork with
25 their field liaison representatives for archaeology or

1 environmental matters, as it would be.

2 Each group had its own specific
3 interest that it expressed to CN for this project.
4 The Mississaugas of the Credit First Nation were
5 interested in the project generally on matters of
6 environment and archaeology, potential future business
7 opportunities, things like employment.

8 The Six Nations of the Grand River
9 were interested in participating in the archaeology
10 component, and they specifically expressed an interest
11 in matters that related more directly to their
12 reserve, things like tree planting, procurement
13 opportunities, employment opportunities.

14 The Huron-Wendat Nation expressed an
15 interest in the project related to archaeology, and
16 it's also expressed an interest in procurement and
17 contracting opportunities.

18 The Métis Nation of Ontario did not
19 express any specific interest, but we continue to
20 provide them information and do continue throughout
21 the process.

22 So specific Aboriginal engagement
23 involved First Nation communities participating in
24 fieldwork on site, things like water sampling or
25 habitat assessment, natural heritage, and then, of

1 course, the archeological assessment where all three
2 of the First Nations had teams present during the
3 archeological program and did a tireless job of
4 participating in, I believe, somewhere in the vicinity
5 of 200 days of actual fieldwork where those teams were
6 present in the rain and the heat. And I appreciate
7 the work that they've done and CN thanks them so much
8 for helping to ensure that that was done properly.

9 There was also a traditional land use
10 and knowledge study that was done in collaboration
11 with the Mississaugas of the Credit First Nation, and
12 this was assisted by Stantec.

13 CN invited the three First Nations to
14 attend a tour of the CN Calgary logistics park, and
15 the reason we did that is we felt that the Calgary
16 logistics park was most similar to what the Milton
17 facility would eventually look like.

18 In this case, the Mississaugas of the
19 Credit First Nation and the Six Nations did attend.
20 The Huron-Wendat did not attend at that time.
21 However, it is scheduled to attend in August for a
22 similar tour.

23 And the tours were just amazing. It
24 was an opportunity for the communities to see not only
25 how a intermodal facility works but the components of

1 it, not just the trains and the container portion, but
2 the contracting aspects and how the trucks arrive, how
3 the facility sits in the community where it is.

4 They met with employees. They talked
5 quite a bit with employees to try and grasp what their
6 roles were, how they felt about their jobs. And it
7 was just a really very beneficial tour for all
8 concerned, in both tours.

9 Both the Mississaugas and the Six
10 Nations also participated in CN's open houses, which
11 were held here in Milton, Oakville, Burlington, Halton
12 Hills, and they set up tables, handing out information
13 about their particular territories and engaging with
14 people as they came in and answering their questions.
15 It was really quite wonderful, and again, just a huge
16 benefit to the experience.

17 CN has also participated in open
18 houses at both the Mississaugas of the Credit First
19 Nation and the Six Nations to provide information to
20 community members, answer questions. Beyond this, we
21 have also participated in powwows at various times and
22 answered people's questions and given them an
23 opportunity to actually -- for CN employees to meet
24 people in those communities.

25 So in conclusion, Madam Chair, CN's

1 core value is its Aboriginal vision. This project has
2 had extensive and meaningful engagement with an
3 emphasis on face-to-face communication.

4 We believe that the First Nation
5 component of this project are our partners.
6 Archeological and heritage resources have been
7 assessed and mitigated with the help of First Nation
8 communities, and we have provided an updated
9 Aboriginal engagement report that was submitted on May
10 29th of 2019.

11 Thank you.

12 THE CHAIRPERSON: Thank you very much,
13 Mr. Devlin.

14 Now, what we normally do is we ask for
15 questions and we normally ask for questions first from
16 registered presenters. I think what I'm going to do
17 this morning is simply ask, before the Panel -- the
18 Panel will have a few questions, I think. I'll just
19 ask if there's anybody in the room who has a question
20 for CN on their presentation.

21 I don't see any, so I think we'll turn
22 to Panel questions.

23 MEMBER HEATHCOTE: Thank you for your
24 presentation.

25 You mentioned how the various Nations

1 were involved in the archeological work and other
2 surveys. I'm curious about how you hope to involve
3 the indigenous groups in future monitoring or follow-
4 up programs.

5 MR. DEVLIN: Thank you for the
6 question.

7 Absolutely, CN is looking forward to
8 the First Nation communities being part of the
9 monitoring during construction of archeological
10 matters. We will continue to engage with the
11 communities with regards to all environmental matters
12 relating to the project, and really in any way that
13 it's possible for us to engage to have them involved
14 in the project.

15 MEMBER HEATHCOTE: So you mentioned
16 archeological work. Do you also mean water sampling,
17 natural history?

18 MR. DEVLIN: Yes, I do.

19 MEMBER HEATHCOTE: All right. Thank
20 you very much.

21 MEMBER McMURRAY: Thank you and good
22 morning, Mr. Devlin.

23 Slide 7. You mentioned the specific
24 interests of the various First Nations. I wondered if
25 you could expand a little bit on the current status of

1 future business opportunities or possible employment
2 with the Mississaugas of the Credit First Nation.

3 MR. DEVLIN: Certainly, and thank you
4 for the question.

5 As the project has progressed, we've
6 looked with all the First Nation communities for what
7 could potentially be opportunities, whether those are
8 in contracting and procurement. We have ongoing
9 employment recruiting now, not just for the project,
10 with all three of those communities. We're very much
11 open to that.

12 And we're really looking and seeking
13 for opportunities, ones that fit for the communities.
14 That's the type of conversation we're having, what
15 would best suit, what they would be interested in,
16 beyond just bidding on contract, for example, what
17 type of businesses do they see to the future that they
18 would like to be involved with or they see themselves
19 being involved with.

20 MEMBER McMURRAY: That sounds good and
21 it's at a certain high level.

22 Any more granular details, examples?

23 MR. DEVLIN: We are in specific
24 discussion with each of the groups, certainly on
25 contracting matters and on broader procurement and

1 opportunity matters, in some cases, with regards to
2 their reserves as opposed to just the project itself.

3 MEMBER McMURRAY: On slide 5, you have
4 a nice collage of photos. The one that caught my
5 attention, you're just back from a canoeing trip on
6 the west coast?

7 MR. DEVLIN: Yes, I am, thank you.

8 MEMBER McMURRAY: So is that an annual
9 endeavour?

10 MR. DEVLIN: Yes, it is, each year.

11 MEMBER McMURRAY: And is it always the
12 west coast, or does it move around?

13 MR. DEVLIN: That particular journey
14 is always on the west coast. They tried previously --
15 I think they did try to start something in Ontario and
16 it didn't really pick up. We'd love to participate in
17 Ontario, if there's an opportunity to do so, but it is
18 the west coast, yes.

19 MEMBER McMURRAY: Thank you. Those
20 are my questions.

21 THE CHAIRPERSON: Mr. Devlin, I'd just
22 be interested if you could talk a little bit more
23 about just generally right across the CN network in
24 Canada about Aboriginal employment, what initiatives
25 have been undertaken, what partnerships, and what have

1 been the results.

2 MR. DEVLIN: Yes, I will.

3 So CN, of course, in Canada, we're
4 present in -- we're physically present inside or in
5 proximity to more than 200 First Nations in Canada,
6 countless traditional territories, some Métis
7 settlements, and then of course, you know, in general,
8 we have a very significant footprint.

9 So we have, for quite a number of
10 years, taken an initiative with regards to employment,
11 and that is done through a series of job fairs that
12 are held across the country. In the community is our
13 preference; we come to the community and we set up
14 with our HR department.

15 We also participate in larger
16 organizations that do recruiting, sometimes on behalf
17 of CN. And we have been successful.

18 If I could have just a moment, please.
19 I have a figure that I'd like to share.

20 --- Pause

21 MR. DEVLIN: Thank you. I just wanted
22 to check my figures.

23 So we have a 4.6 self-identification
24 over the last five years of when people -- 4.6 percent
25 identification as being of indigenous heritage of CN's

1 workforce over the last five years, and we're quite
2 proud of that. That has grown in the last five years.
3 And that's as a result of the institution of the
4 vision and really bringing that into the DNA of CN,
5 that we seek opportunities for employment with
6 indigenous people.

7 And quite frankly, when we talk about
8 mutually beneficial relationships, it really doesn't
9 get any better than that. The communities are located
10 in places where we require staff, they are resident in
11 those areas. This is a very good fit for us. So we
12 take great efforts to try and do this.

13 THE CHAIRPERSON: I'm just curious.
14 Are any of the new locomotives with the wonderful new
15 emblem that you're showing there, are any of them
16 being staffed, being driven by members of Aboriginal
17 communities?

18 MR. DEVLIN: There are. There are
19 staff in the yards and on the main lines that are
20 indigenous, yes.

21 THE CHAIRPERSON: Great. Okay.
22 Thanks. I think that's my questions.

23 We're good. I think that's good for
24 the Panel questions.

25 So thank you very much for your

1 presentation.

2 So now I would invite the Huron-Wendat
3 Nation to come forward for their presentation.

4 **PRESENTATION**

5 MS. BROWN: Good afternoon, panel
6 members. My name is Julia Brown, and I'm a colleague
7 of Renee Pelletier, who you heard from yesterday.

8 With me again is Maxime Picard, who is
9 the Huron-Wendat Nation's project coordinator in
10 Ontario.

11 I'm making this presentation on behalf
12 of the Huron-Wendat Nation today, but Mr. Picard is
13 available to answer any of the Panel's questions or
14 questions that others may have.

15 Our presentation today concerns the
16 mitigation measures that the Huron-Wendat Nations
17 believe to be necessary to address the project's
18 potential impacts on archeological and burial sites.

19 As we outlined yesterday, and you saw
20 this map, CN's proposed logistics hub is on the Huron-
21 Wendat Nation's ancestral territory and it's close to
22 some of the more than 800 archeological sites that
23 have been documented to date in Wendake South. The
24 Huron-Wendat Nation has both treaty and inherent
25 rights, which include the right to the integrity of

1 the Nation's archeological and burial sites, and the
2 image here is of the Treaty of 1760.

3 Where a Nation's rights may be
4 impacted, the Crown has a duty to consult and
5 accommodate with that First Nation. This duty to
6 consult and accommodate is very well established in
7 the case law.

8 While this Panel will not be
9 determining whether the duty has been met, the
10 information that the Panel gathers will be assisting
11 the Crown in making that assessment. So for that
12 reason, I'll speak at a high level about the duty to
13 consult and accommodate before turning more
14 specifically to the determinations that this Panel
15 will make pursuant to *CEAA 2012* and the Panel's terms
16 of reference.

17 In its recent *Tsleil-Waututh* decision,
18 the Federal Court of Appeal held that the duty to
19 consult and accommodate reflects the need to avoid the
20 impairment of asserted or recognized rights caused by
21 the implementation of a specific project. In this
22 case, the right that we've been speaking about, that
23 the Huron-Wendat Nation -- that will be impacted is
24 the integrity of the archeological and burial sites of
25 the Huron-Wendat Nation.

1 The Supreme Court of Canada has
2 explained that this duty, the duty to consult and
3 accommodate, is part of a process of fair dealing and
4 reconciliation.

5 This Panel is empowered under *CEAA*
6 *2012* to conduct an environmental assessment of the
7 project as, of course, the Panel is well aware. And
8 with respect to Aboriginal peoples this assessment
9 includes taking into account environmental effects
10 relating to physical and cultural heritage, so
11 archaeology would fall under that umbrella.

12 The Panel's terms of reference also
13 state that the Panel will hear information presented
14 that relates to potential adverse impacts of the
15 project on potential or established Aboriginal or
16 treaty rights, including any potential effects on
17 heritage and archeological resources in the project
18 area that are of importance or concern to indigenous
19 communities.

20 The Huron-Wendat Nation provided that
21 information to the Panel yesterday. The Panel heard
22 from us about the importance of non-disturbance of
23 archeological and burial sites to the Huron-Wendat
24 Nation.

25 Given the nature of this project,

1 there is a chance that sites that have not been
2 identified to date may be disturbed during
3 construction. This is something that CN's
4 archeological consultant spoke to yesterday.

5 Huron-Wendat Nation ossuaries, in
6 particular, are difficult to locate because they are
7 so far beneath the subsoil, and so it wouldn't be
8 surprising if there may be an ossuary that hasn't been
9 identified to date that may exist on the site that no
10 one has any idea of at this point.

11 The Huron-Wendat Nation believes that
12 the measures outlined on this slide will assist in
13 mitigating the project's impacts on its right to the
14 integrity of its archeological and burial sites. And
15 so these measures include avoiding impacts on
16 archeological and heritage resources and having that
17 as something that the project bears in mind
18 throughout, continued presence and funding of a Huron-
19 Wendat Nation monitor on site during construction,
20 ongoing consultation and reporting regarding the
21 project, and economic opportunities to mitigate
22 impacts on the Huron-Wendat Nation's cultural
23 heritage.

24 The terms of reference state that the
25 Panel may use the information presented to it to make

1 recommendations to avoid or mitigate impacts on
2 potential or established Aboriginal and treaty rights,
3 and we intend to propose specific conditions in our
4 written closing submissions that we would encourage
5 the Panel to consider including in its recommendations
6 on the project. And they will relate directly to
7 these four points that you see -- well, the three top
8 points specifically, will be included in those
9 conditions. And we also anticipate that those
10 suggestions will be made on consent with CN.

11 CN has committed to working with the
12 Huron-Wendat Nation to ensure that these measures are
13 implemented, and that relationship will continue going
14 forward.

15 And that's our presentation. Thank
16 you.

17 THE CHAIRPERSON: Thank you very much,
18 Ms. Brown, for your presentation.

19 CN, do you have any questions for
20 Huron-Wendat Nation?

21 MR. LERNER: Yes, Madam Chair, we just
22 have a few comments. Mr. Devlin will discuss them.

23 MR. DEVLIN: Thank you, Madam Chair.

24 We'd like to thank the Huron-Wendat
25 Nation for being here to share their views, input, and

1 knowledge with us. As discussed, following
2 yesterday's presentation, we are committed to ongoing
3 collaboration with the Huron-Wendat Nation on this
4 project, including monitors during construction.
5 Beyond the project, we value our relationship with the
6 Huron-Wendat Nation, and we look forward to continuing
7 to work closely with you.

8 Thank you.

9 THE CHAIRPERSON: Thank you, Mr.
10 Devlin.

11 I'll just ask if there's anybody else
12 here who have any questions of clarification for the
13 Huron-Wendat Nation that might assist the Panel. No.

14 So we'll turn to some questions from
15 the Panel.

16 MEMBER HEATHCOTE: Thank you for your
17 presentation.

18 You mention on your last slide the
19 importance of your role in ongoing consultation and
20 reporting regarding the project, and the continued
21 presence and funding of a monitor during the
22 construction phase. I'm curious whether you expect to
23 be, or whether you would like to be, involved post-
24 construction, through the operations stage, and if so,
25 in what capacity?

1 MR. PICARD: You know, during
2 construction, our concerns are mainly during the soil
3 disturbance phases.

4 MEMBER HEATCOTE: Yes.

5 MR. PICARD: So those phases may have
6 potential impacts on the site that we have not
7 discovered yet.

8 Post-construction, our interests are
9 in economic development, economic opportunities,
10 procurement, and employment. So those are the post-
11 construction phases that we are interested, that we
12 want to be involved in.

13 MEMBER HEATHCOTE: Thank you. So just
14 to be clear, CN is proposing a variety of follow-up
15 programs relating to air and water quality monitoring
16 and so on. Would your Nation expect to be involved in
17 those, or your interests are more in the areas that
18 you've described?

19 MR. PICARD: As our Nation is based in
20 Wendake, Québec, our concerns are mainly focused on
21 our cultural and archeological heritage here in
22 Ontario, but also on economic and business
23 opportunities. Regarding environmental, you know,
24 aspects of the project, there is local First Nations
25 that we have full trust in, will take care of those

1 aspects. And we thank them for, you know, taking care
2 and respecting our ancestral territory. But for our
3 Nation, it's really, you know, the history, cultural,
4 archeological, and as well, you know as the project
5 had some impacts on our archeological sites, so we
6 want to be, like I said, involved in the economical
7 aspect of the project.

8 MEMBER HEATHCOTE: Thank you. That's
9 my question.

10 MEMBER McMURRAY: I was going to ask a
11 question about the last bullet on that slide that
12 speaks to economic opportunities. You have addressed
13 that, Mr. Picard, and Ms. Brown said, just wait until
14 we read the written comments. They're going to be
15 really good.

16 --- Laughter / Rires

17 So I will content myself to wait until
18 the novel comes out. Thank you.

19 THE CHAIRPERSON: I just have one
20 question. I hope it truly applies to this
21 presentation and not to your presentation before, but
22 forgive me if I'm muddling it.

23 With respect to the mitigation of
24 impacts on archeological and heritage resources, I am
25 interested to know about the materials that have

1 already been excavated on the site, and do you have --
2 and we understand that they're in a climate-controlled
3 facility somewhere and can be accessed by appropriate
4 people.

5 But I just wonder if -- what are your
6 views about that, the existence of those, that they
7 have now been removed from their site and whether
8 there's anything now, anything more that can be done
9 that would help to mitigate that impact? I mean, the
10 fact that they've been removed, I would assume is an
11 impact from your perspective, but please speak to
12 that. And then -- they're sitting there somewhere.
13 What's your relationship to them?

14 MR. PICARD: Thanks for this question.
15 It's a really good question, and it's a challenge of
16 all our First Nations in Canada of, you know,
17 repatriating our own heritage. The project
18 developments, archeological surveys have happened all
19 over Canada since hundreds of years, and our heritage
20 and all other First Nations' heritage are stuck in
21 boxes, you know, in basements of Ministries,
22 archeological firms, whatever, and we cannot have
23 access. We can, but it's difficult, you know. We're
24 working hard in order to do so.

25 But when we -- what I want to point

1 out by saying this is that, one way to mitigate the
2 fact that there has been artefacts dug out of the
3 ground, you know, is to give them back to the related
4 First Nations. And there's some possibilities --
5 there's processes in place in order to do so. For
6 example, talking for our Nation, you know, we have a
7 museum back home -- and I'm sure CN is truly open to
8 collaborate with us and have those discussions, you
9 know, to repatriate those artefacts back at home so we
10 can showcase them in our museum. So this is an
11 example of a way to mitigate, you know, the impacts on
12 archaeology.

13 THE CHAIRPERSON: Now, if you don't
14 mind, I'll just ask CN.

15 So, Mr. Lerner, some response to that.
16 I think yesterday I was a little curious, when the
17 Panel asked where the artefacts were, that they were
18 in Stantec's possession or care. I mean, is it clear
19 that those artefacts are not owned by Stantec, not
20 owned by CN, is that correct? If you could confirm
21 that, and if you have any response to what Mr. Picard
22 was saying?

23 MR. LERNER: Sure. Thank you for the
24 question. Mr. Devlin will be able to respond to that.

25 MR. DEVLIN: CN of course would be

1 completely open to discuss how that would be framed,
2 the return, proper, respectful return to facilities
3 that could house those artefacts. Without question.

4 THE CHAIRPERSON: Well thank you, Mr.
5 Devlin. Thank you, Mr. Devlin.

6 Any other questions?

7 I think that concludes the questions.
8 I want to thank you, Ms. Brown and Mr. Picard for
9 being present two days running and making two
10 presentations to the Panel. We really appreciate
11 that. And thank you for your contribution.

12 MR. PICARD: It's been a pleasure.

13 THE CHAIRPERSON: I would like to
14 invite the Six Nations of the Grand River to come to
15 the table.

16 MR. BOMBERRY: Are we ready?

17 THE CHAIRPERSON: We're ready, yes.

18 **PRESENTATION**

19 MR. BOMBERRY: I'm Lonny Bomberry, the
20 Director of Land and Resources Department for the Six
21 Nations elected council. I've brought some of my
22 people in our consultation unit here today. To my
23 immediate left is Matt Jocko, who is in our
24 consultation unit. We have Phil Montare to the left
25 of him who is our Lands Rights Consultant, has been

1 involved in the land rights, the land claims issues
2 since 1975; and Robin Linn, to his left who is our --
3 is also part of our consultation unit.

4 With respect to the comments that were
5 made by the Huron-Wendat in respect to consultation,
6 accommodation, of course, I don't -- you know, we take
7 the same position. We don't dispute what the law is.
8 That's the law of Canada as it has developed in that
9 area. And we're here to detail a little bit about our
10 discussions to date with CN. We have been talking to
11 CN, in particular Doug Devlin now, for, I don't know,
12 four or five years, in various matters including on
13 the Milton Hub.

14 You know, what we find -- you know,
15 there's a lot of people living in Ontario now, and
16 what we find is people don't know anything about Six
17 Nations of the Grand River. You know, we've had
18 comments and people say, "Geez, we didn't even know
19 there were any First Nations in Ontario," or they come
20 down to the reserve and territory and say, "Geez, we
21 thought you guys would be living in tepees instead of
22 seeing all these modern houses and all these different
23 institutions you have." So, you know, we're always --
24 we're always willing to present, give them some
25 updated knowledge on who we are and where we come from

1 and how we got here.

2 So a lot of this opportunity here -- I
3 understand we have a great amount of time to talk this
4 afternoon, right? We can talk as long as we want, the
5 whole afternoon is scheduled for indigenous Nations
6 doing presentations. So we like to talk. So we'll be
7 doing that.

8 --- Laughter / Rires

9 And educating people on just who Six
10 Nations of the Grand River are. You know, it starts -
11 - the PowerPoint presentation up there gives a little
12 bit of our history. We just briefly put it down in
13 written form.

14 But, you know, we originally, as you
15 see on the first page, we originally come from -- our
16 Aboriginal homelands was in what is now the United
17 States, and our Aboriginal territory there consisted
18 all the way from the Hudson River on the east and all
19 the way to the Susquehanna River in Pennsylvania on
20 the west. And we consist of six Nations. Originally
21 we were five, but in 1722, the Tuscarora, who come
22 from the Carolinas, moved up to where we were and
23 where our ancestors were, and asked to become members
24 of the Six Nations, and they were accepted.

25 So I know the Hurons talked earlier,

1 and they're also Iroquoian Peoples. We're what we
2 call Iroquoian Peoples. Iroquoian Peoples have a
3 common Iroquoian language and culture beliefs, and so
4 the Hurons were -- are Iroquoian people, as well as
5 the other people that were in Southern Ontario before
6 the coming of the Europeans; the Neutrals Indians, the
7 Erie Indians -- what other ones are there? Tobacco.
8 So -- Mutuels. So all of these First Nations were
9 here before the Europeans came, and we were
10 principally in New York State.

11 Slide 2. And, you know, when the --
12 you know, I've always, I've read a lot on the history
13 of Six Nations and, you know, these are many centuries
14 ago that all these events happened. But Six Nations
15 became involved principally in diplomacy, military
16 battles and so forth, after the Europeans came and
17 more or less, disrupted everything that was running
18 along smoothly. And in addition too, a lot of people
19 don't know that -- they all say, you know, they say
20 now about -- "We didn't know you guys even had a
21 reserve here in southern Ontario, or we didn't know
22 that there were others."

23 But at one time when Europeans first
24 came here, it was estimated that within North America
25 itself, there were approximately 60 to 80 million

1 indigenous people, and the Five Nations, the Six
2 Nations were huge in numbers. But what devastated our
3 population was the introduction of European diseases,
4 which it's estimated killed at least 60 to 80 percent
5 of our people. And so we were in the habit then after
6 the loss of particularly the elderly and young people
7 of having to adopt other First Nations People into our
8 confederacy.

9 So a lot of that was done in that time
10 period from the 1600s and 1700s, because we had to
11 become -- because we had to become involved now
12 because of the European influence in diplomacy, and
13 treaties, and trade, and so forth, but it also
14 involved replenishing our population.

15 So we did engage in a lot of wars, not
16 only with different aspects -- different portions of
17 the European people, but also with other First
18 Nations, and that was more or less, I suppose, to look
19 at additional territories where we could benefit
20 economically and also to adopt those people into the
21 Confederacy.

22 Our relations with the Europeans goes
23 back to the original treaty that we had, and we have
24 it up here on the screen, which is the Two Row Wampum
25 Treaty. And the Two Row Wampum Treaty is, as stated

1 in there, we would -- whether they were the Dutch, the
2 English, the French, we would live in harmony with
3 you. You know, the Europeans were coming over all the
4 time and the populations were increasing, so we had to
5 make some treaties to co-exist.

6 So that's what the Two Row Wampum
7 Treaty is. Saying that we will go in life with you
8 down the river. We will travel in our own canoe, with
9 our own laws, and our own customs, and our own
10 languages. You will travel in your canoe down that
11 river with your customs, and languages, and
12 traditions, and you won't interfere with us. That was
13 the original concept behind the Two Row Wampum Treaty.
14 We still rely on it today.

15 I know it's hard to state that it's
16 effective the way it was back centuries ago, but we
17 still rely upon it. We still base our history on it.
18 So you see it there in the overhead the original Two
19 Row Wampum Treaty. The two lines down it signify the
20 Six Nations and whatever particular European Nation
21 that we were dealing with also there on the -- in the
22 Treaty. And that Treaty -- that Treaty still -- I
23 know I've seen replicas of it. I'm pretty sure the
24 original Treaty is around some place, although I don't
25 know actually where it is. But we still refer to it.

1 We know what it means. And it's in a lot of our
2 logos, so to speak.

3 So the Two Row Wampum Treaty made with
4 the Dutch became the basis for all future
5 Haudenosaunee relationships with European powers. The
6 principles of the Two Row are consistently restated by
7 the Haudenosaunees People and were extended to
8 relationships with the French, British, and Americans
9 under the framework of the Silver Covenant Chain
10 Agreement.

11 So we also made many agreements with
12 those other groups, and it's signified by the Silver
13 Covenant Chain. And that Silver Covenant Chain was
14 particularly applicable to the British. I know
15 whenever we used to meet with them in the past in
16 treaty meetings, we'd always say, "Let's polish the
17 silver so we can renew our friendship" And as stated
18 that the Haudenosaunee believed that the Two Row
19 Wampum Agreement would last forever, and stay there as
20 long as the grass is green, as long as the water flows
21 downhill, and the sun rises in the east, sets in the
22 west, you know? We've heard all these phrases before
23 in various treaties with other indigenous groups.

24 I know there was -- when Jacques
25 Cartier first came to what is now Québec City, I think

1 it was called Hochelaga at that time, he met with
2 people there who were Iroquoian people. And that's
3 actually -- Hochelaga is an Iroquoian term. But that
4 was in 1534, as I recall, and so not only the
5 Iroquoian people, but all the other Nations in the
6 east, Canada, and the United States, you know, taught
7 those people who came from Europe how to survive in
8 the harsh climate that is North America, you know.

9 Even today, it seems to be becoming a
10 harsher and harsher climate with climate change, but
11 back then it was no different. And so, you know, we
12 helped them to survive here in North America, and when
13 we refer to North America, I'm not just talking about
14 Canada and the United States, but we're talking about
15 what we call Turtle Island, which is the whole North
16 America. Turtle Island, in our understanding.

17 I mentioned that we were involved --
18 in the colonial times we were involved in much
19 diplomacy, both in the 1600s and in pretty much all
20 the 1700s. There's been more historical research,
21 writings, investigations done on the Six Nations, on
22 the Iroquois people, than any other indigenous group
23 in all of North America, and the libraries are just
24 full of material that has been written on our
25 ancestors.

1 So it is a vast wealth of knowledge
2 that is available to the public, you know, if they
3 want to learn about our history, and I guess the
4 history of all indigenous people. But particularly,
5 as I said, the Six Nations, the Iroquois have more
6 written about them historically than any other First
7 Nations in North America.

8 So how did we come here? How did we
9 end up in southern Ontario?

10 That has to do with the American War
11 of Independence in 1776. Previous to this, as I
12 indicated, we had been involved with much diplomacy.

13 Now, as I indicated, the Six Nations
14 were predominantly in Pennsylvania and all the way up
15 to New York State. On the eastern side, in the Mohawk
16 River, the Hudson Valley, that was the traditional
17 home of the Mohawks, and they were the first ones to
18 encounter contact with the Europeans.

19 They were the first ones to have
20 contact with the British, and they became staunch
21 allies of the British. And the British depended a lot
22 upon them in the wars against the French and in wars
23 against other hostile First Nations in northeastern
24 United States, North America.

25 So they had always been allies of the

1 Crown. They had been -- by the time the war --
2 American War of independence in 1776, they had been
3 allies of the Crown for over 100 years.

4 And so when the war was about to break
5 out with the Americans who, in 1776, the British
6 exerted great influence and trust in making sure that
7 the Six Nations were allies in that war against the
8 Americans, and particularly the Mohawks.

9 One of our great leaders at the time
10 was Captain Joseph Brant, a Mohawk from the Mohawk
11 Valley in New York, and he became a great figure in
12 Canadian history -- not only history in the United
13 States, but in Canada's history.

14 Of course, we know that the city of
15 Brantford is named after him. That's Brantford.
16 Brant County is named after him. And also the City of
17 Burlington. He was the founder of the City of
18 Burlington. So he had a lot to do with the founding
19 of this country, you know, what we now call Canada,
20 our country.

21 So he was instrumental in getting the
22 Mohawks to ally with the British in the war against
23 the Americans, as well as he influenced some others of
24 the Six Nations -- not all of them, but the Onondagas,
25 the Cayugas and the Senecas to also ally with the

1 British in the conflict.

2 And that conflict lasted from, as I
3 said, 1776 to 1783. Seventeen eighty-three (1783) it
4 ended with the Treaty of Paris.

5 And here's the strange thing about
6 this now. We were allies with the British in the war,
7 but we operated on our own. We didn't, you know, go
8 into battle with the British. Like the common idea of
9 how Europeans fought conflicts at the time was they'd
10 get as many people as they could get, square off on
11 each side, and charge into battle.

12 That wasn't the way that the
13 indigenous people conducted war. It was more, in
14 those times, on the basis of like a guerrilla warfare.

15 So the parties of the Mohawks, you
16 know, Cayugas, Senecas, Onondaga, war parties
17 conducted forays into their -- principally back into
18 their own homeland where it had been taken over by the
19 Americans and where a lot of the conflicts occurred.
20 And so they operated independently.

21 And what surprises me when I read
22 about the Treaty of Paris in 1783, like the word
23 didn't get back that there was a treaty made in Paris
24 until about six months, five months after the treaty
25 had been signed, so during that time, the Six Nations

1 had been fighting the Americans constantly. And then
2 finally one day the Americans finally said, "Why are
3 you guys fighting with us any more? Your allies made
4 peace on you".

5 And that was really a surprise. Our
6 ancestors didn't know that at the time, so eventually
7 I guess we had to accept the peace. We knew that our
8 homelands now were in danger of being taken over. And
9 one of the promises that were made by the British to
10 Joseph Brant and the Mohawks was that this coming
11 conflict, you will be no worse off than if you had not
12 fought as allies against us.

13 So that was the promise that was made
14 and that was the promise we held them to after the
15 war, that they had to make good on their promises
16 because we knew we were going to lose our territories
17 in the United States.

18 So as you can see there, that the
19 British bought land in southern Ontario here, the
20 Haldimand Proclamation lands, 950,000 acres. They
21 bought it, strangely enough, from the Mississaugas of
22 the Credit -- Mississauga Indians -- not Mississaugas
23 of the Credit, but Mississauga Indians who were here
24 at the time and moved to southern Ontario.

25 As I indicated previously, the

1 Iroquois had engaged in wars for economic interests in
2 the 1600s, and also to adopt those people into their
3 Nations. So the wars did occur with the Huron-
4 Wendats, with the Neutrals and so forth, so we had
5 conquered that territory in the mid-1600s, but because
6 of the decreases in our population from disease, we
7 weren't able to police the territory and so a lot of
8 the nations from the north, the Anishinaabe people,
9 the Ojibway people from the north, moved into this
10 area.

11 That's why at that time, in 1784,
12 Governor Haldimand bought that Haldimand Tract from
13 the Mississaugas and created the Haldimand Tract,
14 Haldimand Deed, 950,000 acres, as I said, from the
15 mouth of the Grand River at Lake Erie all the way to
16 its source up near Dundalk, Ontario.

17 And I mentioned also about those wars
18 in the 1600s, in 1701, the Five Nations made a treaty
19 with Great Britain because, as I said, they couldn't
20 police their territory, but they wanted to have some
21 assurance that they would be able to hunt in the area
22 that is now southern Ontario, and a great portion in
23 the United States as well, as you can see there, that
24 formerly was the territories of the Hurons and the
25 Neutrals and so forth.

1 They made the Nanfan Treaty or Fort
2 Albany Treaty of 1701, which guaranteed the Five
3 Nations then their right continue to hunt and to have
4 economic interests in those lands.

5 So as you can see, that's the area
6 that we call the Nanfan Treaty area, and it includes a
7 good portion of southern Ontario where we presently
8 enjoy hunting and fishing rights, rights that have
9 been litigated in the Courts and found to be valid and
10 rights which are now protected under Canada's
11 *Constitution*, section 35 of the *Constitution*.

12 So we talk about this area, Milton,
13 that we're particularly involved with. That is within
14 the Haldimand Nanfan Treaty area. As well, the whole
15 Haldimand Proclamation lands that were given in 1784
16 are also within the Nanfan Treaty area.

17 It's not an area, you know, that it
18 can be said that, oh, well, you guys don't have any
19 interest in these properties. Yes, we do. We do have
20 treaty interests in a great portion of southern
21 Ontario, including the land where you are right now.

22 So as I already indicated, our rights
23 are enumerated in many different areas. And I know in
24 this slide here you can see instances where we're
25 involved in archeological work, and it's already been

1 referred to in Doug Devlin's presentation and in
2 Huron-Wendat's presentation that we were involved in
3 the archeological work that occurred at Milton. And I
4 believe it's all finished now.

5 Archaeology isn't much of my field
6 other than we have a person who is our archaeologist
7 within our consultation unit who handles all that.
8 But we are involved in a lot of archeological
9 monitoring throughout our area of southern Ontario,
10 which is principally in the Niagara area and Brant
11 County, and all the way up to Toronto, north of
12 Toronto, and all along, you know, the Golden
13 Horseshoe, where we're involved in a lot of
14 archeological investigations.

15 We have presently 20 archeological
16 monitors that are working right now. We send them out
17 all over the area here every day to work in the field
18 on the investigations of these sites that have to be
19 done before construction can occur.

20 So as I indicated, we once had all of
21 this land, the Haldimand Proclamation lands. Over the
22 years, much chicanery had occurred in having us
23 dispossessed of those lands.

24 So you can say that by 1845, all of
25 that 950,000 acres that we were supposed to get -- and

1 I want to mention, too, that we only ever got three-
2 quarters of it that it was actually surveyed out and
3 transferred to us because after Haldimand, the next
4 governor was Simcoe, Governor Simcoe, and he
5 determined that -- I don't know how he came to this
6 conclusion -- that it was never intended that we were
7 to receive all of the lands along the Grand River from
8 its source to its mouth.

9 He cut off the surveying at the Nichol
10 Township, so we have a claim for one-quarter of that
11 land yet, and that claim was with Canada for the
12 northern section of the Haldimand Tract.

13 The three-quarters that I referenced
14 that was actually surveyed out and given to us over
15 the years, as I indicated, that was taken from us. By
16 1845 we were reduced to the 46,000 acres where we
17 presently are today, principally in Tuscarora
18 Township, Brant County and in Haldimand County. We
19 have portions in each. And also, we have land in
20 Brantford as well.

21 So I wanted to indicate that we have
22 claims against Canada and Ontario in a Court action
23 that we started in 1996 -- 1995, sorry, for the
24 unlawful taking of our lands and of our money.

25 I know Phil has brought -- we probably

1 could file with you is our global solution booklet
2 that we rely on a lot to educate the people about Six
3 Nations and about our claims, about our history, but
4 that does set in there that a lot of instances under
5 the so-called surrenders of our land, we contest a lot
6 of -- we contest most of their validities.

7 But monies were paid, although not all
8 the monies that were owing to us, and that money was
9 not controlled by us and, in fact, it was
10 misappropriated by the governments of the day to build
11 a lot of what we know as Canada then. A lot of that
12 money was spent in Upper Canada and Lower Canada to
13 make -- to build the country without our approval,
14 without our consent. So it's all documented, it's all
15 there.

16 So today we have a present registered
17 population at Six Nations of over 28,000 people.
18 Approximately 13,000, or approximately half of those
19 people, actually live on the territory, and the rest
20 are -- live -- because we don't have enough land to
21 accommodate everybody, live around the territory or
22 all across North America. Europe, wherever you go,
23 you'll run into people from Six Nations. So they're
24 all over the place because we have such a large
25 population. We're the largest First Nations in

1 Canada.

2 Our territory is principally located
3 between Brantford and Caledonia along the Grand River
4 and, as I indicated, we only have 46,000 acres of the
5 original 275,000 acres that were surveyed. But we are
6 a community that, as I indicated earlier, is thriving.

7 Every day, you can't believe how bad
8 the traffic gets on Six Nations, you know, people
9 coming in to do business or to visit and to exit and
10 enter the reserve, and you wouldn't notice that it was
11 any different from any of the areas surrounding us.
12 So it is a vibrant community.

13 We have a lot of issues within our
14 community, you sometimes hear in the news, but I think
15 that's reflective of any large community, and
16 particularly the large First Nations community that we
17 are.

18 But we're trying to bring services and
19 upgrade our community all the time, and that is one of
20 the things that we are speaking to CN about, is -- CN,
21 you know, the law of the duty to consult and
22 accommodate, that there is that duty that we talk
23 about lands in our treaty area, which is the Milton
24 Hub lands, how can we work together so that Six
25 Nations can benefit from the activities of CN. We are

1 working on that.

2 And as I indicated, we still have our
3 Court case against Canada and Ontario, which is moving
4 along slowly, but it is showing promise. I always
5 hoped that some day the court Case can be resolved
6 before I pass on.

7 I know it's been in litigation since
8 1995, but hopefully I might see some benefit of it in
9 my lifetime, but it will be -- when it is resolved, it
10 will be a great benefit to Six Nations.

11 And I did mention that we had been
12 meeting with Doug Devlin for about four or five years.
13 He's their indigenous consultant -- whatever his title
14 is -- but we know Doug quite well. And we have been
15 working on coming to some arrangement where we can
16 benefit from what's occurring at the Milton Hub.

17 Yes, Phil and Matt and I in November
18 2017, it's been referenced -- Doug referenced it, we
19 did go to see the Calgary hub then, and it was quite
20 an impressive operation. The first time I've seen how
21 a hub operation works and how it, you know, is the
22 centre of a distribution of goods and services all
23 across Canada.

24 I understand that the Milton Hub is
25 not going to be as big as the Calgary hub, but it will

1 serve the same purpose. So all in all, you know,
2 we're in favour of that, you know, subject to getting
3 a little something from CN.

4 We have been working with CN on a
5 Memorandum of Understanding, an MOU. You know,
6 usually, in law, MOUs are not usually binding
7 agreements. They're just agreements where the parties
8 acknowledge that they have common interests and they
9 want to work towards a resolution and they will do
10 something down the road to address those common
11 interests. We have things that we want from CN, and I
12 don't know what they want from us other than peace and
13 goodwill, which we're, you know, offering to give.

14 But I just want to mention, too, that
15 in our history, one of the things that was attempted
16 to be done by the Upper Canada Legislature back in the
17 1820s was to make the Grand River a hub for economic
18 trade all the way up to Brantford. So the government
19 of the day created this company called the Grand River
20 Navigation Company. And in order to finance that
21 undertaking, they took the money from the Six Nations
22 trust account, for the most part, to finance the
23 formation and operation of that company in spite of
24 the fact that the Six Nations said, "No, we don't want
25 our money to go into that company". But they did it

1 anyway.

2 And eventually, that navigation
3 company failed in the 1850s because of the invention
4 of the railways.

5 And you know, before that, there were
6 no railways, in the 1820s, 1830s, but they were
7 discovered or formed in Britain and then the concept
8 of railways were initiated here in North America, and
9 so it also became part around our territory. So we do
10 have the CN railways right on the edge of the Six
11 Nations territory.

12 Now there's two railways that are --
13 well, one is actually within our present-day reserve,
14 and then the other one runs along the boundary on the
15 east-west section along No. 6 Highway, so we have been
16 involved with CN for a long time. Those railways that
17 are there now were constructed in the 1860s.

18 So we do have that -- you know, that
19 history with CN going back that far in the 1800s.

20 But we have -- as I indicated, we have
21 got a draft MOU that we've been putting together with
22 Doug. Eventually, you know, according to our
23 consultation and accommodation policy, MOUs or similar
24 arrangements -- what else do we call those -- term
25 sheets are the preliminary non-binding agreements that

1 we enter into. Not only with companies like CN, but
2 we also have been doing this in regards to green
3 energy projects.

4 When the *Green Energy Act* came out in
5 2009, there was a requirement in that *Green Energy Act*
6 that those proponents, those wind and solar companies,
7 had to consult with First Nations who are affected in
8 those areas. So where we are, we had a lot of
9 windmills that were constructed.

10 Probably our biggest financial
11 operation was with Samsung in a 100-megawatt wind farm
12 along Lake Erie, and also the -- no, 150-megawatt --
13 so a wind farm and also the 100-megawatt solar farm
14 that has been built in the Haldimand Tract near Lake
15 Erie. So we are equity partners in that and also in -
16 - equity partners or royalty partners in other
17 developments with other companies in the area.

18 So we have been involved in a lot of
19 these kind of arrangements, wind, with the green
20 energy developments and also with residential
21 development within the Haldimand Tract. We do receive
22 benefits from proponents who are proposing to build,
23 you know, huge subdivisions where we say they have to
24 be -- you have to talk to us and you have to come to
25 some arrangements because these developments are all

1 being made in lands that are under claim by the Six
2 Nations in our 1995 litigation.

3 So under our policy, an MOU or a term
4 sheet is our first step, and our idea with CN is
5 eventually work towards what we call and under our
6 policy a definitive agreement, a legally binding
7 agreement that sets out the rights of the parties and
8 the benefits that the parties are to enjoy, the
9 benefits that Six Nations are to achieve under a
10 definitive agreement.

11 And I just wanted to maybe -- maybe
12 file with the Panel just the first page of our draft
13 Memorandum of Understanding. It doesn't have any of
14 the conditions on it, but it does show that, you know,
15 we are engaging with them and we eventually hope to
16 come to some very beneficial agreement like we have in
17 other instances that will benefit the Six Nations of
18 the Grand River.

19 So we can file that with you.

20 And also I know Phil has brought a
21 number of our global solution booklets, and we can
22 also leave that with you for anybody who is
23 interested, and the Panel.

24 That's all I have to say. I don't
25 know, Phil, whether you have anything to add?

1 MR. MONTARE: Yes. Maybe I will speak
2 about -- oh, sorry.

3 Maybe I will speak about some of the
4 issues in particular to the Milton Hub.

5 We have worked with Doug, as Lonny
6 pointed out, you know, that we've been to Calgary and
7 have seen that. We've worked with him on many other
8 issues, for that matter. But in particular, I think
9 there're concerns that we have always had with the
10 archeological and we've been active participants at
11 the site, as Doug pointed out, as well as our
12 brothers, the Huron-Wendat.

13 We've worked throughout that. But
14 there'se other items that are of concern to us, you
15 know.

16 When we're talking about this, Lonny
17 pointed about many of the legal issues we're facing
18 with Canada and Ontario, so we've got to be very
19 careful as we walk through this without prejudicing
20 our legal positions in the Courts, and it involves
21 both the 1784 Haldimand Treaty lands and the 1701 Fort
22 Albany lands. So we're trying to work our -- through
23 this as -- in peace, friendship and respect, as our
24 treaties tell us to do.

25 Traditional land use studies, you

1 know, we partnered with CN. We'll work with them on
2 that, cultural advisory, working with -- educating CN
3 employees and anyone associated with CN about our
4 rights and our interests and our culture.

5 I know Doug mentioned before about
6 employment with CN. He's been active in trying to
7 pursue and work with our own training sessions at home
8 to be actively involved with employing of people from
9 Six Nations.

10 Community participation, he's been
11 very -- you know, CN has been very active with -- I
12 guess he gave you some examples up there, as well as
13 with our community.

14 And engagement with CN employees for
15 safety and getting this railway safety factor into our
16 schools is also a key thing he's worked on. And the
17 general safety features of Six Nations.

18 And business development. Much like
19 our brothers, the Huron-Wendat, had mentioned, that
20 they likewise want to do it. But along these lines,
21 our community is large and we have to do without so
22 many, many things. But we are talking with
23 scholarships to provide education because every year
24 it's been -- we lose over 400 students every year
25 because of lack of funding to send qualified people

1 off to further their education. So that will be very
2 helpful to us.

3 But I think one of the issues we want
4 to do, and particularly I'd like to highlight -- I'm
5 really speaking out of sorts here. But one of the
6 issues is the environmental and air quality offsets.

7 You know, Lonny gave you -- we have a
8 powerful history, and to compress it in such a format,
9 it probably gets to be too much to absorb. But one of
10 the issues is, we do have an obligation to take
11 protection in our 1701 Treaty lands, and it's for
12 hunting and trade and our economics.

13 But one of the issues that has
14 happened through development of Toronto and Milton all
15 around us is -- and you're facing it now, climate
16 change, people. It's caught up to you.

17 Six Nations is sitting on the largest
18 Carolinian forest in Canada. You know, before we were
19 just a bunch of lazy Indians sitting on a lot of
20 trees. Well, now with climate change, we're kind of
21 vogue, so let's expand on that, people, and grab it.

22 And what we are -- you know, we're
23 going to work very diligently with CN on because we --
24 Six Nations had made a commitment for environmental
25 enhancements on everything we do, whoever we talk

1 with.

2 And we want to work with Health Canada
3 and everyone associated with on doing the air quality
4 monitoring around this area. You know, one of the big
5 proponents we were dealing with was the *Green Energy*
6 *Act* because right next to the Six Nations was the
7 Ontario Hydro coal-fired plant, which was spewing
8 their smoke over our territory.

9 Well, that's why we got into that.
10 It's a positive step. But we want to be able to do
11 whatever it takes to offset -- actually, I'd like to
12 be able to do whatever offsets Milton and Toronto and
13 all of that to plant green elsewhere. I don't know.
14 We can't get that far. But here's a start.

15 And that's one of the issues we want
16 to bring up with CN. Whatever they do to the air
17 quality, we want to be able to improve it times two.

18 Are we going to get there? I say yes
19 because, if not, we're going to have to oppose what's
20 going on here. I think we should all grasp this.

21 And we want that to be able to set up
22 near the Six Nations to help expand our land base to
23 benefit the wildlife that we have there now and to
24 make sure we're going to continue to be caretakers of
25 the largest Carolinian forest in Canada.

1 Now, this is a real positive role that
2 I think CN can step up to the plate and be an example
3 for other corporations to do. I know that's one of
4 the issues we're facing with developments.

5 I can't see us putting us in this --
6 our initiative anywhere into the Toronto area. We've
7 done it elsewhere. After 10 or 15 years, along comes
8 a developer and there goes all of our treaties. All
9 that initiative is done. So we want to be able to do
10 this as a joint partner with CN so it's taken care of
11 for as long as that hub is there anyways, but it
12 should not be limited to that. So those are the kinds
13 of initiatives we want to do.

14 Of course, I said the environment, the
15 archeological. That work is under way because that's
16 been required by statute. But this one, we've got to
17 start to walk the talk and start taking care of our
18 environment.

19 So that's my only comments on that
20 without getting into the agreement, Doug. There's
21 still a lot of arm-twisting to do, but we're going to
22 get there.

23 --- Laughter / Rires

24 MR. MONTARE: So those are my
25 comments. Anyone else?

1 MS. LINN: No, you two have said it
2 all.

3 MR. MONTARE: Thank you, Chair.

4 THE CHAIRPERSON: Mr. Bomberry, Mr.
5 Montare, thank you so much for your presentation and
6 thank you for sharing the history of the Six Nations
7 with us. I know you could have gone on much longer,
8 and as you say, our brains probably wouldn't have
9 taken in a whole lot more, but that was very
10 interesting.

11 We really appreciate you telling us
12 about your history and about your treaties and your
13 rights, and Mr. Montare, about these ideas that you
14 have and Six Nations have. It's very interesting.

15 A bit of business. Can I do a bit of
16 business?

17 You've mentioned two things, and I
18 have to get them put on the record as exhibits.

19 So the Global Solutions Book, is that
20 what it's -- that's its title?

21 MR. MONTARE: Yeah.

22 THE CHAIRPERSON: Great. That's
23 Exhibit 13. You don't need to worry about this. This
24 is for the record.

25 And then the first page of the --

1 MR. BOMBERRY: Draft MOU.

2 THE CHAIRPERSON: The draft MOU. That
3 will be Exhibit 14. Thank you very much for both of
4 those.

5 Great. Well, I'll just ask CN -- I
6 imagine they may want to make a response to your
7 presentation, and then there will be some questions
8 from the Panel.

9 MR. BOMBERRY: Sure.

10 MR. DEVLIN: Thank you, Madam Chair, I
11 do have a response.

12 I just wanted to say thank you to the
13 Six Nations of the Grand River for their presentation
14 and their continuing engagement with CN on the
15 project, and more generally.

16 We are committed to meaningful ongoing
17 dialogue and consideration, as well as your direct
18 participation as monitors during the construction of
19 this project, if it's been approved. We look forward
20 to continuing to work closely with you on the project
21 and the other issues of mutual interest as we move
22 forward, and we're pleased to continue to answer any
23 questions or discuss the project with you.

24 And I would say one final comment to
25 Madam Chair is we have had just wonderful discussions

1 on the issue of environment and treaty and offsets,
2 and we're looking forward to having that discussion.
3 CN is a leader in tree planting in Canada, and we will
4 continue that tradition in our relationships with all
5 the First Nations related to this project.

6 Thank you.

7 THE CHAIRPERSON: I'm going to slip in
8 a follow-up question, if you don't mind, since you
9 said that.

10 Is there going to be a lot of tree
11 planting on the actual Milton site, if the project
12 goes ahead? Have you identified opportunities for
13 foresting the sites you're not using for containers
14 and trains?

15 MR. REYNOLDS: Certainly the bermed
16 areas. So there's been discussion -- we haven't
17 finalized the details since that will come through
18 consultation with a variety of groups, including the
19 different Aboriginal communities, in terms of what
20 vegetation would go on the berms, but certainly around
21 the bermed area. And you've heard of the enhancements
22 around Indian Creek, Tributary A and these areas, so
23 there will be planting in these areas as well. There
24 is the opportunities for that to occur and is part of
25 the plan.

1 THE CHAIRPERSON: Okay. Thank you
2 very much.

3 So questions from the Panel.

4 MEMBER HEATHCOTE: Thank you very much
5 for your presentation. It was, indeed, very
6 interesting, and I learned a lot.

7 I have two questions for you, and the
8 first is about one of your slides. You showed a slide
9 of an archeological excavation, and at the bottom of
10 that slide there was a photograph of, I think, an
11 artefact. I'm just curious what that item was, if you
12 could tell me.

13 MS. LINN: It was a piece of pottery.

14 MEMBER HEATHCOTE: A piece of pottery.
15 All right. Thank you very much. I couldn't tell from
16 the photograph.

17 MS. LINN: Yes.

18 MEMBER HEATHCOTE: So my more general
19 question relates to the project. And I'd like to hear
20 more about how the Six Nations have used those lands
21 over the years, over the many years, and how you think
22 the project might change those uses.

23 MR. MONTARE: Our use of that land has
24 been very limited because, you know, the hunting and
25 fishing and trapping and trade that our treaties

1 promised us we could use, they've been through years
2 and years of development and progress. Progress out
3 there has pretty well eliminated most of that on us.
4 There is hunting up in that area for deer where
5 applicable, but then safety is a factor, of course,
6 with a booming population.

7 MEMBER HEATHCOTE: Yes, of course.

8 MR. MONTARE: So indirectly, by
9 development after development after development, our
10 treaty rights are being squashed with no consultation
11 or without our consent. That's the way it's going
12 across Canada, unfortunately.

13 MEMBER HEATHCOTE: Thank you for that.
14 Thank you.

15 MEMBER McMURRAY: Thank you, and good
16 afternoon. You were present today when CN made its
17 presentation. And at CN slide 7, they enumerated some
18 of your specific interest in the project, and one of
19 those topics was tree planting.

20 I was going to ask you about tree
21 planting, but your presentation, Mr. Montare, answered
22 all of my questions. So thank you.

23 THE CHAIRPERSON: And I guess my
24 question would be, you told us about the Two Row
25 Wampum and about the principles of the Two Row Wampum,

1 peace, friendship and respect. Is there anything else
2 you want to tell us, the Panel, about how you think --
3 if the Milton Hub project were to go ahead, how the
4 relationship with CN and how the project should
5 proceed so that it would really respect the spirits of
6 the Two Row Wampum?

7 MR. BOMBERRY: Yeah. Madam Chair, I
8 know the -- when the treaty, that treaty was made,
9 things were a lot different in North America then.
10 You know, the indigenous nations, the First Nations
11 were powerful entities and could more fully protect
12 our interests and achieve what they wanted in a
13 relationship with the other side, so it becomes harder
14 -- and we mentioned in regard just to the hunting and
15 fishing rights, you know, it becomes harder and harder
16 now to enjoy those rights in southern Ontario because
17 a lot of the land is taken up.

18 And of course, we always have our
19 right to hunt and fish on our territory, but we also
20 have that expanded right to go off of the reserve.
21 You know, a lot of our hunters do, and they do have to
22 seek permission from those landowners before they can
23 exercise those rights in a lot of cases.

24 It's always a tough -- it's always a
25 hardship to try to enforce your rights under the Two

1 Row Wampum Treaty. And with respect to CN's Milton
2 Hub, just zeroing in on that, as I said, we can't
3 really go back to those times 400 years ago, 500 years
4 any more, but we can still extract some of those
5 principles from the Two Row.

6 So what we're looking for, obviously,
7 in any discussion with a company or proponent is, how
8 can you benefit in your boat and how can we benefit in
9 our boat.

10 So you know, we mentioned tree
11 planting. It could involve, too, more land for Six
12 Nations because we definitely need more land.

13 So there are many different things
14 that we look in our boat that we want to achieve.

15 I know that CN is just one company,
16 but it's a national company. You know, they only have
17 limited -- they're not an unlimited resource company,
18 so we have to always keep that in mind. But there are
19 some things, though, that I think we can -- we can
20 achieve that will stay within the spirit of the Two
21 Row Wampum Treaty.

22 MS. LINN: Can I just add a little bit
23 to that?

24 When we made the Two Row Wampum
25 Treaty, it was for the Haudenosaunee a sacred

1 covenant. It was not made just with the Dutch and
2 Haudenosaunee, it was also made with our Creator. And
3 for that, that made it sacred.

4 And so we have believed in the Two Row
5 covenant, the Two Tow Wampum Treaty, since we made
6 that covenant and we have tried to live our lives that
7 way. So those tenets of peace, friendship and respect
8 are the basis for our talks with CN. That's how we
9 intend to move that Two Row Wampum Treaty forward, is
10 to keep those tenets alive.

11 MR. MONTARE: Yeah.

12 THE CHAIRPERSON: Yes, thank you very
13 much.

14 And I realized I did want to ask one
15 more question, if I may, so I'm absolutely clear the
16 principle of offsets that you're talking about, which
17 I guess could probably take a number of forms, is that
18 right, but more specifically you were mentioning -- so
19 the idea would be that the offsets would be that Six
20 Nations would protect -- be able to protect a larger
21 area of forest --

22 MR. MONTARE: Yes.

23 THE CHAIRPERSON: -- than you can
24 currently protect. Have I got it right? In order to
25 offset air quality -- greenhouse gas emissions or

1 other changes in air quality, but you'd be looking for
2 a larger area -- to protect a larger area of forest
3 than you are currently able to look after. Is that
4 right?

5 MR. MONTARE: Yes, that is correct.
6 That is correct. We are actually taking to the United
7 Nations some climate change initiatives and this is
8 all part of our big overall scope.

9 We've got to do something about the
10 climate change, so this is one of the initiatives that
11 we had going on. And we've done very similar things
12 with Union Gas and other proponents who we deal with.

13 So it's been our practice, very much
14 like it's our obligation to take care of this for the
15 next generation that's coming. So we've got to start
16 doing something.

17 This is an opportunity and it's a
18 positive opportunity, and it's not just for us. It's
19 going to help everyone. So that's what our ultimate
20 goal is to do, and it's our practice. We're going to
21 do it.

22 THE CHAIRPERSON: That's great.

23 So I'd like to thank you all, Mr.
24 Bomberry, Mr. Jocko, Mr. Montare and Ms. Linn. Thank
25 you for coming and making these presentations. It's

1 very helpful.

2 I think we all need a break. So it's
3 10 to 3:00, and we'll come back at five minutes past
4 3:00.

5 --- Upon recessing at 2:50 p.m. /

6 Suspension à 14 h 50

7 --- Upon resuming at 3:09 p.m. /

8 Reprise à 15 h 09

9 THE CHAIRPERSON: I'd like to invite
10 the presenters from the Mississaugas of the Credit
11 First Nation forward, please.

12 **PRESENTATION**

13 MR. LaFORME: Good afternoon, Madam
14 Chair, esteemed members of the Panel. My name is Mark
15 LaForme. Mark with a K, L-a-F-o-r-m-e.

16 I am a status Indian. I'm a Band
17 member of the Mississaugas of the Credit First Nation
18 in southern Ontario. I'm also the director of the
19 Department of Consultation and Accommodation for the
20 Mississaugas of the Credit.

21 Firstly, I would point out that the
22 proposed project is within, and indeed, these hearing
23 Panel proceedings are being conducted on Mississauga
24 of the Credit Treaty lands, specifically, the pre-
25 Confederation Ajetance Treaty of 1818. So I welcome

1 you to our Treaty lands. Thank you.

2 While we do not dispute the fact that
3 other indigenous groups and First Nations throughout
4 history have used these lands, I must point out that
5 no other First Nation has land session treaties in
6 this area.

7 The Mississaugas of the Credit is the
8 only First Nation with land session treaties, and we
9 have eight of them, all of which were signed between
10 the Mississaugas and the British Crown prior to
11 Confederation. This is a proven and undeniable fact.

12 While we have submitted a written
13 presentation, I would like to take this opportunity to
14 share with the Panel background on the Mississauga of
15 the Credit First Nations' rights and claims in this
16 area.

17 The Mississaugas of the Credit are the
18 descendants of the River Credit Mississaugas. At all
19 times from the conquest of the French in 1759, from
20 the first Treaty taken with the Mississaugas in 1764
21 at Niagara through to the land surrenders of the 19th
22 century, the British Crown recognized the Mississaugas
23 as the Indians with title to what is now most of
24 southern Ontario.

25 Based on descriptions from the

1 Reverend Peter Jones, a River Credit member, from 1845
2 and 1855, and from the paper talk sent to the
3 Governor-General by Chief Joseph Sawyer and Chief John
4 Jones in 1844, the Mississauga of the Credit territory
5 spans from Long Point on Lake Erie to the Niagara
6 River, along the Niagara River to Lake Ontario,
7 northward along the shore of the lake to the Rouge --
8 to the River Rouge east of Toronto, then up the river
9 to the dividing ridges to the headwater of the River
10 Thames and then southward back to Long Point, the
11 place of the beginning.

12 This territory encompasses some four
13 million acres and the lands and waters that were used
14 and occupied by my ancestors. We have relied and
15 continue to rely on these lands, waters and ecosystems
16 for a variety of livelihood, harvesting, ceremonial
17 and spiritual purposes.

18 At no time have we or our ancestors
19 surrendered our Aboriginal title to the water of these
20 lands. Most of the treaties that were signed with the
21 British Crown are silent on water, but our water was
22 discussed with representatives of the Crown. Our
23 ancestors were told that the Crown was not interested
24 in our water and that the treaties dealt only with our
25 land.

1 We currently have legal claims with
2 respect to the waters within our territory of which we
3 formally gave notice to the Crown in 2016, on the
4 basis that we have never agreed to share our waters
5 through the treaty.

6 The Mississaugas of the Credit also
7 possess, asserts and exercises constitutionally
8 protected Aboriginal and treaty rights over the lands,
9 waters and resources within its territory. We have a
10 stewardship responsibility over it, and thus a duty to
11 protect the integrity of the territory.

12 The Mississauga of the Credits
13 territory is perhaps the highly-urbanized land in
14 Canada. However, the majority of the urbanization and
15 development occurred prior to the Supreme Court of
16 Canada having articulated the Crown's duty to consult
17 and accommodate indigenous communities.

18 The Mississaugas of the Credit was
19 therefore not consulted prior to a substantial amount
20 of this development taking place in our treaty lands,
21 with the result being that a great deal of our land
22 and our resources having been adversely affected.

23 The cumulative effects of this intense
24 development has contributed to significant
25 environmental degradation and, as a result, the

1 Mississaugas of the Credit has experienced severe
2 impacts on our ability to exercise our Aboriginal and
3 treaty rights. In addition, much of our
4 archaeological resources, including human burials and
5 cultural materials, have been destroyed or were
6 irretrievably lost.

7 It is within this historical context
8 that the Mississaugas of the Credit makes these
9 following submissions and underlines the importance of
10 the need to take into account the Mississauga of the
11 Credits' concerns regarding the proposed project.

12 Firstly, let's talk about archaeology.
13 As mentioned above, the Mississaugas of the Credit
14 have the duty to protect the integrity of its
15 territory. This, in particular, includes protecting
16 the archaeological resources that lie within it,
17 including cultural materials and human burials.

18 This stewardship right is not only
19 constitutionally protected, but it is also recognized
20 explicitly in the United Nations Declaration on the
21 Rights of Indigenous Peoples. For example, Article
22 11.1 provides for the rights of indigenous peoples to
23 maintain, protect and develop the past, present and
24 future manifestations of their cultures such as
25 archaeological and historical sites and artefacts.

1 Similarly, Article 12.1 recognizes the
2 rights of indigenous peoples to the use and control of
3 their ceremonial objects and the right to the
4 repatriation of their human remains.

5 In the exercise of this stewardship
6 responsibility, the Mississaugas of the Credit First
7 Nation, through my office, the Department of
8 Consultation, has worked together with the project
9 proponent, CN Rail, and their consultants to ensure
10 that archaeological work was done in a respectful way
11 and that any archaeological resources found through an
12 investigation were dealt with appropriately.

13 For cultural materials and human
14 remains this included ceremonies required by
15 Anishinaabe law. To this end, the Mississaugas of the
16 Credit, through my office, deployed field liaison
17 representatives or monitors to be boots on the ground
18 so that the fieldwork by the proponent and their
19 consultants was carried out with appropriate care,
20 thoroughness and respect.

21 In the context of the Mississauga of
22 the Credit First Nations territory where so much
23 archaeological material has already been destroyed or
24 lost, having the Mississaugas of the Credit monitor
25 any and all the fieldwork was of utmost importance to

1 us.

2 Although consultation with CN in
3 respect of the Mississauga of the Credit rights,
4 concerns regarding archaeological impacts has been
5 thorough and positive, we wanted to take this
6 opportunity to communicate to the Panel the
7 significance of our archaeological resources and our
8 interest in protecting those resources.

9 With regards to wetlands, the project
10 is proposed to be constructed and operated adjacent to
11 sensitive wetlands that lie at the headwaters of two
12 waterways that are of great historic and cultural
13 importance to the Mississaugas of the Credit, Bronte
14 Creek and Sixteen Mile Creek.

15 The surrounding wetland areas and
16 their relationship with the biophysical integrity of
17 these watersheds are tied to ongoing and current land
18 use by the Mississauga of the Credit members
19 downstream, where we made our homes in the past.

20 By extension and in addition to being
21 historically and culturally significant, these wetland
22 areas continue to contribute to the health and socio-
23 economic conditions of the Mississauga of the Credit
24 members through activities such as fishing, the
25 gathering of plant materials, the gathering of

1 medicines, and hunting.

2 In light of the cultural and historic
3 importance of the wetlands to the Mississaugas of the
4 Credit First Nation and their current use by the
5 Mississaugas of the Credit members, the project's
6 effects on the role of the wetlands and the
7 biophysical integrity of the region and the impacts
8 that the project may have on wetlands and, by
9 extension, the Mississauga of the Credit's rights,
10 must be considered. Again, consultation and
11 engagement with CN Rail in respect of these rights and
12 concerns regarding the impacts have been thorough and
13 positive, and continue to be.

14 Cumulative effects. The Mississaugas
15 of the Credit is concerned about the cumulative
16 effects that the project may have in the region and in
17 the Mississauga of the Credit territory as a result of
18 changes to the flow of goods and traffic by road and
19 by rail.

20 Again, the Mississauga territory is
21 highly urbanized, with much of this development taking
22 place prior to the existence of any obligation to
23 consult and engage with First Nations. This intense
24 development has, therefore, significantly --
25 significantly impacted the extent to which the

1 Mississaugas can exercise its Aboriginal and treaty
2 rights within its territory, which include, again,
3 among other things, hunting, fishing, trapping,
4 gathering of plants for food, social and ceremonial
5 purposes.

6 As such, the potential impacts of any
7 new projects, including the one proposed here, need to
8 be examined, as the cumulative effects of such a
9 project on our ability to exercise our rights can be
10 significant.

11 Case law has made it clear that the
12 historical context is essential to the proper
13 understanding of the seriousness of the potential
14 impacts of any development. Given the magnitude of
15 the project, there will undoubtedly be some cumulative
16 effects that result. These need to be observed and
17 analyzed and potential mitigation efforts in
18 consultation with the Mississaugas of the Credit need
19 to be considered and, wherever possible, implemented.

20 Monitoring. Because of the severe
21 impacts that the Mississaugas of the Credit has
22 already experienced due to the intense historical and
23 present-day development within our territory and given
24 the potential for there to be cumulative impacts on
25 our rights and resources as a result of this project,

1 it is critical that the Mississaugas of the Credit be
2 aware of what is occurring within its territory
3 throughout the project's lifetime.

4 As such, the Mississaugas of the
5 Credit is of the view that significant monitoring
6 efforts need to be put in place and that the
7 Mississaugas of the Credit needs to be directly
8 involved in that monitoring. While the Mississaugas
9 of the Credit contemplates working with CN Rail to
10 this end, the Mississaugas request that consideration
11 by this Panel be given to conditions for the project
12 that include a requirement for the Mississauga
13 involvement in and review of any and all long-term
14 monitoring of the project that occurs in the above-
15 noted areas and others where appropriate by the
16 Mississaugas of the Credit.

17 Such involvement should include the
18 Mississaugas of the Credit monitoring presence when
19 fieldwork occurs, as well as review of any draft
20 monitoring plans so that the Mississaugas has
21 appropriate time to review and receive technical
22 advice regarding the proposed scoping of the
23 monitoring.

24 The Mississaugas of the Credit should
25 be provided with biannual written updates which gives

1 specific details of all proposed upcoming monitoring
2 work, as well as a report of the results of monitoring
3 activity in the prior six months.

4 The Mississaugas of the Credit should
5 be involved in the development of any mitigation
6 measures that arise out of ongoing monitoring.

7 This should encompass, but not be
8 limited to, noise monitoring, air quality monitoring
9 due to the expected increase in air emissions as a
10 result of increased road and rail activity, fish and
11 fish habitat monitoring due to the proposed creek
12 realignment and project footprint, surface water
13 quality and quantity monitoring, stormwater and
14 effluent monitoring, and monitoring of species at
15 risk.

16 The Mississaugas of the Credit First
17 Nation and its ancestors have occupied this territory
18 since time immemorial and the Mississaugas of the
19 Credit has a stewardship responsibility and right to
20 protect the lands and resources that lie within it.

21 It is therefore important that,
22 firstly, monitoring of the project and its impact be
23 mandatory and, secondly, that the Mississaugas of the
24 Credit directly participate in that monitoring.

25 As explained earlier, historically,

1 this has not been done on other projects and the MNCFN
2 has experienced significant impacts to its territory
3 and its ability to exercise its rights on its
4 territory as a result.

5 In closing, I would simply point out
6 that First Nation consultation and engagement
7 undertaken by CN Rail and the Canadian Environmental
8 Assessment Agency since the very beginning of this
9 project, and throughout, has been exemplary. However,
10 the same cannot be said for the Region of Halton and
11 the massive development occurring within their
12 jurisdictional boundaries within our treaty lands.

13 Those are the concerns of the
14 Mississaugas of the Credit First Nation, and I thank
15 you for the opportunity to make this oral
16 presentation. Miigwech.

17 THE CHAIRPERSON: Mr. LaForme, thank
18 you for your presentation.

19 I will just ask CN, do you have
20 questions or a response for Mr. LaForme?

21 MR. DEVLIN: We do have a response,
22 Madam Chair.

23 We'd like to thank the Mississauga of
24 the Credit for your presentation and continued
25 engagement as part of this environmental review

1 process. We appreciate the ongoing and meaningful
2 dialogue that CN has had with your Nation regarding
3 the project as well as other issues of interest.

4 We are committed to continuing to work
5 together, including monitoring, during construction of
6 this project if the project is approved. And we thank
7 you for taking the time to participate today and we
8 are happy to continue to discuss any issues that may
9 be of interest.

10 And I would say on a personal note I
11 would thank you and your staff and the Chief and Chief
12 LaForme for all of the work together that we have done
13 to this stage.

14 MR. LaFORME: Thank you.

15 THE CHAIRPERSON: So now we'll turn to
16 some questions from the Panel.

17 I would like to begin with a question
18 about monitoring. And without going into specific
19 details, many of CN's commitments regarding monitoring
20 to date have been primarily directed at gathering the
21 information to verify the predictions that were made
22 during the preparation of the Environmental Impact
23 Statement, so the monitoring is quite often limited by
24 certain amount of time.

25 They have suggested that this amount

1 of time, two years, three years, something like that,
2 so I'm not getting into the details, is sufficient to
3 do that.

4 I am wondering whether the kind of
5 monitoring you are talking about and that Mississaugas
6 of the Credit would consider necessary. Are you
7 looking in some instances as a much longer-term
8 monitoring, for the life of the project, for example,
9 or in some instances?

10 MR. LaFORME: Yes, Madam Chair, that's
11 correct. We are looking at engagement for monitoring
12 purposes through the life of the project. When there
13 are specific environmental monitoring activities that
14 need to occur by regulation or through whatever method
15 that's imposed, then it is our expectation that the
16 Mississaugas of the Credit would have people
17 participating in the monitoring of those activities.

18 THE CHAIRPERSON: So just to follow
19 up, so I understand that you wish to be involved in
20 any monitoring that is taking place. You're not
21 necessarily requiring, for your own purposes, to get
22 the monitoring information to see longer-term
23 monitoring. You wish to be involved in the monitoring
24 that would normally take place. Is that right?

25 MR. LaFORME: Correct.

1 THE CHAIRPERSON: Okay.

2 MR. LaFORME: Correct. And there may
3 be some monitoring that we see that needs to occur
4 that hasn't been accounted for, and we expect to have
5 the opportunity to sit with CN to discuss a process to
6 ensure that monitoring occurs in conjunction with the
7 Mississaugas.

8 THE CHAIRPERSON: I understand. And I
9 assume that you have quite a number of people who've
10 been trained in monitoring. This has been an
11 important priority for you.

12 MR. LaFORME: We certainly do, Madam
13 Chair, yes.

14 THE CHAIRPERSON: All right. Thank
15 you.

16 MEMBER HEATHCOTE: Thank you for your
17 presentation. It was very interesting.

18 Our Chair has just asked a part of the
19 question I wanted to ask, so let me move on to a
20 different topic. You've had a chance, I think, to
21 talk to CN about the proposed mitigation measures
22 across a range of aspects of the project.

23 Are you satisfied that those measures
24 will address the concerns of your Nation, or do you
25 have any residual concerns that the Panel should know

1 about?

2 MR. LaFORME: No, we don't have any
3 residual concerns. We were involved very deeply in
4 the impact -- excuse me, the Environmental Impact
5 Statement. We had significant concerns at that time.

6 Those concerns were raised with CN
7 Rail, and CN Rail immediately sat down with us and
8 their consultant and we were able to mitigate our
9 concerns through a series of meetings and different --
10 different strategies moving forward.

11 MEMBER HEATHCOTE: Very good. I'm
12 glad to hear that. Thank you.

13 MEMBER McMURRAY: Good afternoon, Mr.
14 LaForme. I thought your presentation was very well
15 organized and succinct.

16 You got to a section on cumulative
17 effects and you mentioned that part of the project
18 involves changes to the flow of goods by road and rail
19 in a highly-urbanized environment. I appreciate how
20 well organized and succinct you were.

21 Do you wish to take this opportunity
22 to provide the Review Panel with any further
23 information on the historic use of these lands? You
24 mentioned hunting and fishing and the gathering of
25 food.

1 MR. LaFORME: Thank you for the
2 question.

3 I think we would be looking at more
4 specifically impacts that noise may have on species,
5 species at risk, wildlife in the area as well as any
6 emissions that may be caused by the increase in
7 traffic. We would be looking at, you know, monitoring
8 of emissions activity and any impacts that the
9 emissions may have on the environment as well as any
10 wildlife or species at risk.

11 MEMBER McMURRAY: Thank you. Those
12 are my questions.

13 THE CHAIRPERSON: Just one more.
14 Cumulative effects again.

15 So I wonder if you could say a little
16 bit more about the cumulative effects as you see them,
17 in general, of -- that are arising from the rapid
18 growth, urbanization of this area to the west of
19 Toronto, of the GTA because this has been emphasized
20 to us that there is just tremendous growth taking
21 place. Could you reflect on that?

22 MR. LaFORME: That's not something
23 that we wanted to raise as a technical point for this
24 particular project because this is one element of a
25 bigger picture that we have to contend with and that

1 we have to look at.

2 It's our intention to sit down with CN
3 Rail and looking at them to provide us with assistance
4 to develop a more thorough, cumulative impact study
5 certainly not across our whole treaty -- our treaty
6 lands, but specifically within the Ajetance Treaty
7 that we spoke of in my presentation. That whole
8 general area, the Ajetance Treaty, is basically the
9 Region of Halton and the municipalities under the
10 Region of Halton, and as you can see driving around
11 here, the development is massive.

12 And we would just like to ensure that
13 the cumulative impacts are studied very carefully so
14 that we can determine what impacts they are going to
15 have on the environment and ultimately, our Aboriginal
16 and Treaty rights.

17 THE CHAIRPERSON: I understand. So
18 this study is a future study.

19 MR. LaFORME: Correct.

20 THE CHAIRPERSON: So obviously,
21 outside the time frame.

22 MR. LaFORME: Correct.

23 THE CHAIRPERSON: Yes, I understand,
24 okay. Thank you.

25 Any others? I think that is all the

1 questions from the Panel. Thank you very much for
2 your presentation.

3 MR. LaFORME: Thank you.

4 THE CHAIRPERSON: So, as I mentioned
5 during housekeeping remarks this morning, we do have
6 an additional presentation which is changing gears,
7 because this morning we were hearing presentations on
8 matters of importance to indigenous groups, and this
9 is a different topic, and I'll explain again how it
10 came about.

11 We have been hearing questions and
12 concerns about the enforceability of mitigation
13 measures. And so we thought that it would be -- could
14 be helpful to the Panel and maybe to other
15 participants, if we heard more about this. And to
16 that end, we sent a letter to -- the Panel sent a
17 letter, it's on the registry, asking the Canadian
18 Environmental Assessment Agency if they could provide
19 some information about how they are involved in
20 enforcing terms and conditions that are applied as
21 part of a decision statement under the *CEAA 2012* or
22 the relevant Environmental Assessment legislation.

23 So, we -- Steve Chapman of CEAA has
24 agreed to come and make a short presentation. Mr.
25 Chapman is the Chief science and knowledge officer

1 with CEAA. This morning, I also kind of misspoke
2 myself because I said that they -- there would only be
3 questions from the Panel to Mr. Chapman, but we're not
4 going to do that. But I think we will have questions
5 from the Panel first and then I will invite questions
6 from other participants.

7 So, Mr. Chapman.

8 **PRESENTATION**

9 MR. CHAPMAN: Madam Chair, Members of
10 the panel. My name is Steve Chapman. I am the -- as
11 you mentioned Chief of Science and Knowledge for the
12 Canadian Environmental Assessment Agency. I'm
13 responsible for the National Programs Division at the
14 agency. Part of my responsibilities include the
15 Compliance and Enforcement unit at the Agency, as well
16 as the unit that drafts decisions statements.

17 Today I will speak to you a little bit
18 about the interplay between both the drafting of
19 decision statements and those enforceable conditions
20 and then in practice, how those conditions are
21 enforced.

22 In particular today I'm going to speak
23 to you about the development of conditions pursuant to
24 the *Canadian Environmental Assessment Act, 2012*. And
25 how your role as a Review Panel, regarding the

1 collection of that information and ultimately the
2 provision report to the Minister of environment and
3 climate change, will be used by the agency to develop
4 those conditions.

5 With respect to the parameters, or the
6 framework for how conditions are developed, the very
7 first thing we need to look at from the agency
8 standpoint in providing a recommendation to the
9 Minister of Environment and Climate Change, is around
10 whether or not those environmental effects can be
11 linked to section 5(1). So the slide you see before
12 you lays out a little bit with respect to the
13 decisions the Minister would make with respect to the
14 environmental effects, under section 5(1) and 5(2).
15 The Minister must make a decision under section 5(2)
16 and that decision is with respect to whether or not a
17 project would or would not result in significant
18 adverse environmental effects.

19 In making that decision, the Minister
20 also must consider mitigation measures that had come
21 forward and the Minister considered during the conduct
22 of the Environmental Assessment. The Minister also
23 has two subsequent decisions to make, a decision to
24 establish conditions under section 53, if she is of
25 the view or the Governor and Council is of the view

1 that the project could proceed. And then finally, in
2 the event that she has established conditions, the
3 issuance of a decision statement pursuant to section
4 54 of *CEAA 2012*.

5 So there is a positive obligation on
6 the Minister of Environment and Climate Change to take
7 into account the mitigation measures that have been
8 brought through the Environmental Assessment process
9 and also, the formation of the follow up program as
10 well.

11 As I mentioned previously, the
12 framework are bounding with respect to the types of
13 conditions that the Minister can set first have to be
14 bound by section 5(1) or 5(2) of *CEAA 2012*. The slide
15 you have before you in fairly generic terms, walks you
16 through both section 5(1) and 5(2). First with
17 respect to section 5(1), the effects on fish and fish
18 habitat, marine plants, migratory birds, federal
19 lands, trans-boundary effects, and then effects and
20 changes to the environment on indigenous peoples.

21 Now, with respect to 5(2) these are
22 environmental effects not covered off in section 5(1).
23 Those environmental effects that are related to the
24 federal government making a decision and the
25 environmental effects of that decision. So that's the

1 bounding for conditions. And so, the previous
2 presentations given on this topic, I have used
3 wetlands as an example, because it's illustrative for
4 the understanding about the interplay between section
5 5(1) and 5(2).

6 So the agency has been asked in the
7 past about whether or not you can establish conditions
8 for wetlands. And our response has been, yes, in some
9 cases we can. Wetlands in and of themselves are not
10 described in section 5(1) or 5(2). But wetlands can
11 come into play in various provisions of both section
12 5(1) or 5(2). With respect to 5(1), wetlands can
13 serve as fish habitat, and so that would be an avenue
14 for the agency to look at establishing conditions, or
15 recommending conditions to the Minister in those
16 situations.

17 They can also serve as a place for
18 indigenous people to practice current use of lands.
19 And so, with respect, for instance, to wild rice
20 harvesting that may take place in wetlands, that would
21 be another avenue where we would look at that.

22 And then finally, if there is a
23 federal decision, provision of funding, a permit where
24 the project itself taking place is in part on federal
25 lands that had wetlands, that would also be an avenue

1 for us to look at wetlands. And so many cases when is
2 we're looking at components of the environment and how
3 those components interrelate to section 5(1) or 5(2),
4 we would -- we always have to take a look at the
5 linkages between 5(1) and 5(2) those particular
6 components of the environment. In terms of whether or
7 not we would recommend that the Minister condition
8 those things.

9 *CEAA 2012* indicates that at the
10 minimum, the Minister must establish conditions
11 related to mitigation measures he or she has taken
12 into account, that mitigate signature effects down to
13 nonsignificant effects. It's the bare minimum.

14 So one of the things we would be
15 looking for and what we term to be key mitigation
16 measures are those mitigation measures that, without
17 their implementation, the project would likely result
18 in significant adverse environmental effects. In
19 those situations, the Minister is bound by *CEAA 2012*
20 to establish conditions related to those mitigation
21 measures.

22 I apologize for the complexity of the
23 chart here before you. I'll just walk you through a
24 little bit in terms of -- this is a bit of the
25 decision-making framework that the agency uses in

1 making a determines whether or not we would recommend
2 the Minister establish a condition for a particular
3 component of the environment.

4 So the very first thing we need to
5 look at as I mentioned is, is the proposed condition
6 linked into section 5 of *CEAA 2012*? If it's not, the
7 only other question that we would ask is, is it
8 related to the Minister's obligations under the
9 *Species at Risk Act*, and in particular, under section
10 79 of the *Species at Risk Act*. If the condition is
11 linked to that condition then we would carry it
12 forward potentially, for consideration.

13 So in the event that we do have a
14 situation where a proposed condition is linked to
15 section 5, we would also have to make the
16 determination, is it mitigating a significant effect?
17 And if it is, it would be included for recommendation
18 to the Minister.

19 One of the other questions we would
20 need to ask ourselves is whether or not the mitigation
21 measure is in the care and control of the proponent.
22 And that's an important point, because the decision
23 statement is only issued to the proponent. We cannot
24 bind any other party through the decision statement,
25 and so the conditions that are established in the

1 decision statement are those for the proponent to
2 comply with and not other parties.

3 So if there is a mitigation measure
4 identified by the Panel that another party might be
5 implicated in, a Panel could provide a recommendation
6 to the government with respect to the importance or
7 urgency of that. And the government could look at
8 exist being programs or mechanisms to see how that
9 would be implemented. But, if it's not in the care
10 and control of the proponent we would not be able to
11 entrench that into the decision statement as a
12 condition.

13 And finally, it becomes a question of
14 writing. Can you actually write a condition that's
15 out-come based and enforceable and have it go into a
16 decision statement? Those are some of the things the
17 decision statement team would be looking at. That
18 basically, is a walk-through of that process diagram
19 in front of you.

20 So some of the things we look at when
21 we establish conditions first, because mitigation
22 measures have to be technically and economically
23 feasible, we want to make sure that a proponent is
24 able to comply with those conditions from the outset.
25 That means that we haven't built in a poison pill into

1 a decision statement that would essentially make it
2 impossible for the project to proceed because a
3 proponent is unable to comply with it.

4 We also want to make sure that the
5 proponent is aware, based on plain language or reading
6 of the condition, or set of conditions, in terms of
7 what they are expected to do and how they would know
8 that they are actually in compliance with that
9 particular condition or set of conditions.

10 And then, one of the other things we
11 would look at is what potentially other jurisdictions
12 are doing or other fellow departments are doing, to
13 see if we can either reduce overlap or duplication, or
14 at least co-ordinate with those other bodies that
15 might have decision making with respect to the
16 project. And this could come into play with respect
17 to things like the timing or frequency of reporting
18 that we would have a proponent do, and if that
19 reporting would align or could align with the
20 reporting of another jurisdiction, or another
21 regulatory authority. Those are some of the things we
22 would look at in terms of the establishment of
23 conditions.

24 One of the things that other
25 jurisdictions have used -- jurisdictions have used and

1 occasionally do show up in our decision statements are
2 use of plans. And so a plan is a forward-looking
3 approach that would detail the action that a proponent
4 would take in particular subject matter areas. The
5 agency does not rely on plans in a fulsome way in our
6 decision statements, because the plans themselves
7 cannot serve as a mitigation measure. It's the detail
8 in the plan that the agency would point to and the
9 condition that would serve partially as a mitigation
10 measure.

11 And so, when we've had our staff craft
12 decision statements and go through conditions,
13 typically if there is elements of a plan that have
14 been identified as being important, we would actually
15 take those elements and actually create specific
16 conditions for them.

17 One of the challenges that we've had
18 from an enforceability perspective is that, if you
19 make general reference to a plan in a decision
20 statement, wording counts. So, if the wording is left
21 to another party, like a proponent in terms of
22 developing that plan, from an enforcement standpoint,
23 it becomes challenging with respect to the wording
24 that might be in the plan and how enforcement officers
25 ultimately would interpret that.

1 So typically, we tend to shy away from
2 plans in our decision statement. It's only for those
3 areas where truly a plan is required, like a plan for
4 communicating out that an accident has occurred, or a
5 protocol for advising certain parties. But typically,
6 in terms of core mitigation measures, the agency would
7 shy away from recommending to the Minister that these
8 plans be used.

9 One of the other things that we take a
10 look at when we establish or recommend conditions to
11 the Minister, has to do with longevity of those
12 conditions. Especially for projects that are going to
13 have a long lifespan. How can we anticipate changes
14 that might occur to the environment, or to technology,
15 that wouldn't render a particular condition to be
16 obsolete?

17 So, one of the ways that we try to
18 overcome that challenge is to use outcome-based
19 conditions where we're not prescriptive of the
20 methodology necessarily that a proponent would use,
21 but the outcome that we're expecting the proponent to
22 achieve.

23 An example of that would be with
24 respect -- and I'll use a mine as an example, with a
25 tailings impoundment area. A concern that

1 contaminants might migrate through ground water from
2 the tailings management facility. And, what we want
3 is the proponent to prevent the migration of
4 containments. Whether they choose to use a geo
5 textile membrane, a natural clay layer, or some other
6 method, we leave that up to the proponent. What we
7 want the proponent to do is demonstrate they prevented
8 the my gracious of contaminants. And so that's one of
9 the key things that we'd also look at as well, is to
10 make sure to the extent that we can, we bound the
11 conditions to those things that are outcome based.

12 So with this Review Panel, or any
13 other Review Panel that we have had established under
14 *CEAA 2012*, the agency anticipates the release of your
15 report. And one of the things that we will do upon
16 receipt of your report is, go through it and identify
17 both those measures from a mitigation standpoint the
18 Panel has identified, and also the follow-up program
19 requirements, and start drafting potential conditions.

20 We would go out and consult on those
21 potential conditions, both with proponents and all
22 other stakeholders, with a view that we would need to
23 align the language that our drafters have come up
24 with, to what the Panel has identified, and ultimately
25 what we would recommend to the Minister for

1 entrenchment of the decision statement, should the
2 project proceed.

3 Based on comments that we received
4 through that consultation process, we would look at
5 finalizing. In some cases we would reach out to
6 particular parties, if we had questions based on the
7 comments they provided. We would also reach out to
8 the proponent as well, if we had concerns or
9 questions, whether or not we properly characterized
10 something that could fundamentally alter or change the
11 project or, we had a question around the technical or
12 economic feasibility around the proponent's ability to
13 comply with one of these conditions.

14 Then ultimately, we bring forward a
15 recommendation package to the Minister that would
16 include a recommendation regarding section 52, which
17 is that determination of significance, and also,
18 potentially recommendations around the establishment
19 of conditions should the project proceed.

20 So I mentioned at the beginning, one
21 of the things we look at is can conditions be bounded
22 by section 5(1) and 5(2), and I mentioned the bare
23 minimum is those conditions that mitigate a
24 significant down to a nonsignificant effect and also,
25 those conditions within the care and control of the

1 proponent.

2 When it comes to accommodation, the
3 decision statement can be a very effective tool to
4 serve as an accommodation method and so, we have
5 recommended in many cases, the establishment of
6 conditions that don't necessarily mitigate from a
7 significant down to a nonsignificant effect. But, can
8 go some way or all the way to serve as an
9 accommodation measure for or potentially impact on a
10 right. So we would also advise the Minister, in the
11 establishment of those conditions, regarding
12 accommodation measures that in turn, could show up as
13 conditions on the decision statement.

14 MEMBER McMURRAY: Mr. Chapman, I
15 missed the first part of that. Could I please ask you
16 to repeat what you just said?

17 MR. CHAPMAN: Sure. So, conditions
18 must be bound by section 51 and 52. They also have to
19 be within the care and the control of the proponent.
20 And at the minimum, they have to identify those
21 mitigation measures that will mitigate from a
22 significant down to a nonsignificant effect.

23 MEMBER McMURRAY: That's the sentence
24 I didn't hear.

25 MR. CHAPMAN: Once we get to that

1 point, there is open territory in that decision
2 statement for the Minister to establish conditions on
3 any other matter, as long as it's linked to section 51
4 and 52 and within the care and control of the
5 proponent. And so some situations -- or many
6 situations, if there is an accommodation that's been
7 identified regarding a potential impact on a right,
8 that although it may not be seen as significant, but
9 nonetheless, could accommodate an impact, we could
10 recommend that to the Minister to have established in
11 the decision statement.

12 And I believe, Madam Chair, that's the
13 end of my formal presentation.

14 THE CHAIRPERSON: Thank you very much,
15 Mr. Chapman. I think we will begin with questions
16 from the Panel.

17 This may take a bit of digesting which
18 we haven't had a chance to do.

19 But I just want to make it absolutely
20 clear, get you to confirm, that the enforceability of
21 conditions is not a decision the Panel is involved in,
22 this is -- this will be outside our mandate. We make
23 our recommendations to the best of our ability and
24 then it comes to CEAA, and then you go through this
25 process and you determine whether enforceability is

1 possible.

2 And then -- and you have to do that in
3 order to determine whether, in fact, the mitigation
4 measure can prevent a significant adverse
5 environmental effect. Have I got that right?

6 MR. CHAPMAN: If we establish a
7 condition, we're obligated to verify compliance on it
8 and take enforcement measures if we determine there is
9 a proponent that's out of compliance. And so the
10 enforceability of the condition, when we write the
11 condition we want to make sure that it's enforceable.
12 That it's not open to misunderstanding by the
13 proponent or any other party, or that we created a
14 situation where it's impossible for the proponent to
15 maintain compliance, because of the way the condition
16 is written.

17 THE CHAIRPERSON: And what is -- what
18 are the mechanisms that you have? What is the person
19 power that you have to actually do this work on the
20 ground --

21 MR. CHAPMAN: I mention we have a
22 compliance and enforcement unit, and *CEAA 2012* lays
23 out a scheme for infractions and penalties.
24 Essentially, the tools that we have to in part compel
25 a proponent to come back into compliance. Practical

1 terms, I'll lay out some of the things that the agency
2 would look at. We have a compliance and enforcement
3 policy that's on the agency's website that will
4 probably be a little more articulate than what I will
5 be before you here today.

6 But the agency would look at, a
7 variety of measures in order to bring back a proponent
8 into compliance. And those measures will depend on
9 the situation that we would see before us when we're
10 doing a site inspection, for instance. And so it
11 could be a very small thing that we have identified
12 that we might give a verbal warning to a proponent.
13 And so a verbal warning is a form of enforcement. We
14 are giving notice to the proponent that we have
15 identified something and that they should look into
16 it. That's the bare minimum that we would do in a
17 situation.

18 One step up from that is a written
19 warning. Written warnings are where we document in
20 writing what we have seen, normally through either the
21 review of materials provided to us in writing, so an
22 offsite inspection or through an onsite inspection.

23 All written warnings that we provide
24 to proponents are actually published on the agency's
25 web site. We have this transparency in place for

1 these sort of measures to inform all stakeholders and
2 to serve as a bit of a deterrence to future
3 proponents, if they know that the agency will take
4 these measures and make them public.

5 We also have powers to issue orders,
6 and so an order would be that we have determined a
7 proponent is out of compliance and we've prescribed
8 for the proponent, measures by which they need to take
9 to come back into compliance, and also a time frame
10 for them to come back into compliance.

11 We also have measures to recommend to
12 the Minister to seek an injunction. And so the
13 Minister could seek an injunction through the courts
14 to stop work at the site, or compel the proponent to
15 also take certain measures as well.

16 And finally, there is prosecutions.
17 So the maximum fine levied for certain types of
18 infractions is laid out in CEAA 2012 is 400,000
19 canadainam

20 THE CHAIRPERSON: And just one other
21 question. Do you ever reach a collaborative agreement
22 with an agency in another jurisdiction that may be
23 engaged in making sure that their own laws and Bylaws
24 are being upheld. Do you ever work with -- so the you
25 would officially formally delegate the inspection and

1 enforcement to any other body?

2 MR. CHAPMAN: So there's no authority
3 within *CEAA 2012* to delegate responsibilities to other
4 parties. What *CEAA 2012* does provide is the ability
5 of the Minister to designate persons for the purposes
6 of verifying compliance with *CEAA 2012*. And that
7 doesn't necesssarily need agency personnel.

8 In fact, the Minster has designated
9 three people in the Newfoundland and Labrador Offshore
10 Petroleum Board to verify compliance under *CEAA 2012*
11 in certain offshore projects. And so that the
12 mechanism by which we can implicate or involve another
13 jurisdiction, but it's not delegation. Those
14 individuals actually would become enforcement officers
15 under *CEAA 2012* and there would be a standard for them
16 to meet before designation would occur.

17 I'll just add on that, Madam Chair,
18 that we do coordinate in almost all circumstances with
19 other jurisdctions. Most of these projects that we
20 regulate will involve other regulatoy authorities,
21 either at the federal level or at the provincial
22 levek, or sometimes municipal level. And so for
23 things like site inspections, we would make contact
24 with some of the primary regulators for the project,
25 notify them that we're considering a site inspection,

1 if it's a planned site inspection, and seek interest
2 whether or not those other regulatory authorities may
3 want to join the agency on that site inspection.

4 On the event, even if they don't, if
5 we've identified something during that site inspection
6 that although may not be an issue for *CEAA 2012*, but
7 might be of interest to another regulatory authority,
8 that we would be in contact with those other
9 regulatory authorities as well.

10 THE CHAIRPERSON: But if you -- there
11 is not other regulatory authority that has any
12 jurisdiction?

13 MR. CHAPMAN: Then it's the agency.

14 THE CHAIRPERSON: Then it's the agency
15 or these people, these individuals that you might have
16 identified or made part of the process, is that right?

17 MR. CHAPMAN: You know the proponent -
18 - I mean, the way we structure a decision statement, I
19 mean, it's the proponent's responsibility to be in
20 compliance with the conditions, and the agency
21 verifies compliance.

22 And so we found sophisticated
23 proponents that will notify the agency, even outside
24 of any requirements of the decision statement, of
25 things that might be happening to the site that they

1 want to let us know about, simply for us to plan or to
2 be aware. And that's helpful for us in making
3 decisions whether or not we're going to be doing snap
4 site inspections or planned site inspections.

5 We've also defined in many decision
6 statements, fairly rigorous follow up program
7 requirements that includes specific requirements for
8 monitoring and how monitoring would be done, and the
9 results -- and how the results of that monitoring
10 would be shared. Not only with the agency, but with
11 other parties as well.

12 THE CHAIRPERSON: Thank you.

13 MEMBER McMURRAY: Mr. Chapman, I used
14 to be a lawyer and I'm kind of a legal nerd, so I was
15 intrigued by your reference to the power to delegate.
16 I don't want to put you on the spot, but do you know
17 where that's found in the statute?

18 MR. CHAPMAN: I'll -- what we're
19 talking -- so it's in the back end of *CEAA 2012*, the
20 delegation authority can only rest for those decisions
21 taken by the Minister, can only be transferred to
22 agency personnel. But there's no provision explicit
23 authority, for the Minister or the agency to delegate
24 powers from an enforcement standpoint or compliance
25 verification standpoint to other parties. But section

1 89 of *CEAA 2012* --

2 MEMBER McMURRAY: But you've very
3 clearly, to me at least, outlined the difference
4 between delegation and designation.

5 MR. CHAPMAN: That's right. If you
6 look at subsection 89(1) of *CEAA 2012*, "The Minister
7 may designate persons, or classes of persons for the
8 administration and enforcement of this Act." And that
9 gives the authority to -- from another province, for
10 another federal regulatory body, as long as they meet
11 the standards that the agency put in place for, what
12 it means to become an enforcement officer, then we can
13 make that recommendation that designation occur.

14 MEMBER McMURRAY: Okay. Could we go
15 to the slide. I believe it's slide 9 on process
16 steps. Yes. I found this slide very informative,
17 because even though I'm only one person on a three-
18 member Panel, I thought I had a lot more power than I
19 did, based on this slide.

20 Point 3 talks to consultation. What -
21 - what shape, form, time length does that consultation
22 typically involve?

23 MR. CHAPMAN: When we make decisions
24 on length of time and consultation, and the form it
25 will take, it's usually project specific and time of

1 year specific as well. So it could be that for
2 instance, a 30-day common period would be sufficient,
3 September to October, doing that from mid-December to
4 mid-January is probably not the best idea. So that's
5 one consideration for us.

6 The consultation in this case, will be
7 a general public consultation on potential conditions.
8 And so that would take the form of a posting on the
9 agency's web site and notification to participants
10 that a draft -- or potential conditions are available
11 for public comment.

12 MEMBER McMURRAY: I see. And, are --
13 our Panel manager is very good about reminding me of
14 the various time limits that were incorporated into
15 the 2012 version of CEAA.

16 MR. CHAPMAN: Yes.

17 MEMBER McMURRAY: Are there any
18 statutory time limits on this process or are they
19 contained within something else?

20 MR. CHAPMAN: In the Joint Panel
21 Agreement established between the agency and the
22 Canadian Transportation Agency, is identified, I
23 believe, 150 days from receipt of the Panel report to
24 you, the Minister, issuing a decision statement.

25 MEMBER McMURRAY: I see. So that

1 happens within -- that does happen with the --

2 MR. CHAPMAN: It's a separate
3 provision of *CEAA 2012* where the Minister needs to
4 establish three separate time frames for a Review
5 Panel, and one of those time frames has to do with the
6 decision-making time frame. And so that decision-
7 making time frame has been identified in the Joint
8 Panel agreement.

9 MEMBER McMURRAY: Thank you.

10 MR. CHAPMAN: Okay.

11 MEMBER HEATHCOTE: I think you have
12 answered most of my questions. I did just want to
13 clarify or confirm one point. Because I think there
14 has been some confusion in the discussion earlier in
15 this process.

16 So, to begin with, *CEAA* has its own
17 enforcement staff.

18 MR. CHAPMAN: We do.

19 MEMBER HEATHCOTE: Correct? And any
20 enforcement of conditions or whatever would be
21 conducted by *CEAA*, either directly or through
22 designation of a second party?

23 MR. CHAPMAN: I mean, the -- with the
24 exception of three individuals in the offshore
25 petroleum board, all the other individuals that have

1 been designated right now are agency staff. And so, I
2 can't speak to you know, the future. But it would be
3 a legal obligation to verify compliance would be --
4 would rest with those individuals that are designated
5 to verify compliance with the Act.

6 MEMBER HEATHCOTE: Thank you. That
7 was what I had understood. I think there may have
8 been a perception in some people's minds that CEAA
9 relies on other agencies to do enforcement but that is
10 not the way it works.

11 MR. CHAPMAN: No. I think -- we work
12 with other jurisdictions, but we have an enforcement
13 unit of several enforcement officers and analysts that
14 do nothing but read reports and do field visits.

15 MEMBER HEATHCOTE: And I imagine the
16 frequency of your inspections and so on, would depend
17 on the project and the circumstances, or is there a
18 set frequency?

19 MR. CHAPMAN: I'm not going to go into
20 detail just because I wouldn't want to sort of, give
21 anybody here the impression in terms of what we're
22 going to do in the future. The factors we would take
23 into consideration would be, first, proponent's
24 compliance record.

25 So we -- if we had a proponent that

1 has been out of compliance or we've had to take
2 measures on a fairly frequent basis for an issue, that
3 is a type of proponent that could expect to see agency
4 personnel or designated persons there more frequently.

5 MEMBER HEATHCOTE: I understand.

6 MR. CHAPMAN: The phase of the project
7 is also an important consideration for the agency and
8 the types of effects and/or the complexity of the
9 mitigation measures that might be associated with a
10 phase of the project.

11 So for instance, construction from,
12 say, a sediment entrainment standpoint might be a big
13 issue for a project, and so we would not only focus in
14 on the construction phase for a particular project,
15 but we would also time inspections to look at
16 something like the spring freshet where you would
17 likely have some of the biggest issues associated with
18 sediment entrainment.

19 MEMBER HEATHCOTE: Thank you. That's
20 my only question. Thank you.

21 THE CHAIRPERSON: Mr. Lerner, do you
22 have some questions for Mr. Chapman?

23 MR. LERNER: Madam Chair, no, we do
24 not have any questions.

25 THE CHAIRPERSON: Is there any other

1 participant who would like to ask questions of Mr.
2 Chapman?

3 Yes, Mr. Northey.

4 MR. NORTHEY: Good afternoon, Madam
5 Chair, thank you for the invitation. For the Halton
6 Municipalities, Rod Northey.

7 I think there are a few things I will
8 ask through you, Madam Chair. And I think the first
9 to start with is of Mr. Chapman.

10 My understanding, sir, is that the
11 ability of the agency to enforce depends very much on
12 whether the issue is a section 5(1) effect or a
13 section 5(2) effect. And I think the Panel may be
14 under the impression that anything under section 5 can
15 be enforced by the agency. Could you clarify that?

16 MR. CHAPMAN: Yeah, you're correct.

17 So upon the issuance of the decision
18 statement, a designated person can enforce those
19 conditions that pertain to section 5(1). The agency
20 would be limited to enforcing of those conditions
21 under 5(2) until such time that power, duty or
22 function has been exercised by that federal department
23 or agency.

24 And so an example of that would be
25 conditions that might relate to a *Fisheries Act*

1 authorization and the potential effects associated
2 with the issuance of that *Fisheries Act* authorization.
3 With the establishment of those conditions, the agency
4 would not be able to enforce on those conditions until
5 such time that *Fisheries Act* authorization has been
6 issued.

7 MR. NORTHEY: All right. Thank you
8 very much.

9 So trying to work back, and I think
10 the issue I was going to just follow up on a couple of
11 questions from the various Panel members.

12 On the issue of delegation, you went
13 forward into section 89, but I think there's also a
14 relevant delegation limit in section 27 which I don't
15 think you referenced. Would you care to comment on
16 that?

17 MR. CHAPMAN: Section 27?

18 MR. NORTHEY: Yes. It prohibits
19 delegation during the environmental assessment. Maybe
20 you're not able to speak to that.

21 MR. CHAPMAN: That is specific to the
22 -- I believe the conduct --

23 MR. NORTHEY: Yes.

24 MR. CHAPMAN: -- of the environmental
25 assessment. Delegation I'm referring to specifically,

1 and my understanding of questions from Madam Chair had
2 to do with the agency to delegate enforcement
3 authority to other parties.

4 MR. NORTHEY: Oh, okay.

5 THE CHAIRPERSON: I think that is
6 what, in fact, I was asking, yes.

7 MR. NORTHEY: Yes. So what I was
8 going to then bring this back to where we are, Madam
9 Chair, here is, is it possible to delegate certain
10 things like a study requirement or an aspect of an
11 assessment using section 27 to a time following a
12 decision statement?

13 MR. CHAPMAN: In my view, no, because
14 at the time a decision statement is issued, the
15 conduct of the environmental assessment is complete
16 and those provisions regarding delegation only pertain
17 to situations where there's ongoing environmental
18 assessment.

19 MR. NORTHEY: Okay. Thank you.

20 And so Madam Chair, you asked a
21 question about other jurisdictions. I'm just going to
22 try and understand a bit more.

23 I think the answer I understood was
24 fairly clear. But in the past, Mr. Chapman, were you
25 at the agency or part of the process of dealing with

1 enforcement of conditions or decision statements
2 before *CEAA 2012*? So you're familiar with what some
3 people call former --

4 MR. CHAPMAN: So under the former Act,
5 the Minister did issue a decision statement, but that
6 decision statement in the former Act didn't provide
7 powers to the agency directly. And so with the
8 issuance of that decision statement under the former
9 Act, it was up to the responsibility -- the
10 responsible authorities at the time to ensure that the
11 mitigation measures and the follow-up program
12 requirements were implemented.

13 MR. NORTHEY: That's a fair -- that's
14 one aspect of it.

15 One of the other questions I just want
16 to ask if I might, Madam Chair, is in the former Act,
17 where -- was there a power, sir, to deal with
18 assigning certain conditions to provincial or other
19 authorities under that and having the federal decision
20 statement recognize that?

21 MR. CHAPMAN: No. That would be, in
22 my view, impossible because there was no authority to
23 establish conditions in the first place under the
24 former Act and so, by virtue of that, there wouldn't
25 be the delegation of authority for that either.

1 MR. NORTHEY: All right. And dealing
2 with the question, then, of panels that are joint
3 federal/provincial as opposed to this Panel, which is
4 solely federal, what happens where there might be an
5 effect, sir, that is within provincial or some other
6 jurisdiction that the Panel is looking at but can't --
7 there's no federal body to enforce it? How does *CEAA*
8 *2012* deal with that?

9 And I can give you more specifics --

10 THE CHAIRPERSON: Can I just ask, Mr.
11 Northey, do you bring this around to the fact that
12 this is, as you say, a federal --

13 MR. NORTHEY: Yes. Let me -- I can
14 frame it better, Madam Chair, to put it right in
15 context.

16 THE CHAIRPERSON: Yes, please.

17 MR. NORTHEY: Okay. So under section
18 5(2) of *CEAA*, an environmental effect includes
19 something that a federal regulator can consider. So
20 for example, to be very specific, a railway line, the
21 Canadian Transportation Agency could look at what can
22 happen to lands within the area of a railway line to
23 be changed. But that doesn't necessarily mean if they
24 consider it, that they can regulate all the things or
25 effects that they may have considered. So there's a

1 disjunction between what you can consider, or at least
2 that's my hypothesis. I'm going to ask Mr. Chapman.

3 What you can consider is broader than
4 what can be regulated federally. And my question is,
5 do you agree with that, and if you do, what happens?

6 MR. CHAPMAN: That's a long question.

7 MR. NORTHEY: It is. I apologize.

8 MR. CHAPMAN: I'm not sure -- I'm
9 going to perhaps, Madam Chair, perhaps paraphrase the
10 question and see if that would bring some clarity.

11 My understanding is, with the
12 parameters of that framework, the boxing effect I
13 spoke to earlier around section 5 and the
14 establishment of conditions under section 5, if the
15 Minister has been persuaded to establish conditions
16 flowing out of section 5, then all of those conditions
17 are enforceable. Whether or not there's another
18 jurisdiction involved in those matters doesn't come
19 into play with respect to the establishment of those
20 conditions.

21 And an example of that would be air
22 quality, which is a matter, certainly, of provincial
23 interest and a federal interest in some cases. If
24 there has been a link between poor air quality and a
25 significant effect that can be demonstrated under

1 5(1), the Minister must establish a condition related
2 to mitigation measure, and that condition would become
3 enforceable.

4 So whether or not another jurisdiction
5 is implicated in air quality is not a factor in
6 decision-making. It simply comes down to section 5,
7 and the framework that I spoke to earlier.

8 MR. NORTHEY: I am going to just try
9 and take one part of that, if I might, Madam Chair,
10 just to follow up.

11 Mr. Chapman started with a broad
12 statement and then moved to the reference to section
13 5(1) for the air quality.

14 MR. CHAPMAN: Yes.

15 MR. NORTHEY: So my question is, sir,
16 what if something can't be addressed under 5(1)
17 because it's an effect that arises under 5(2)?

18 MR. CHAPMAN: And so similar to 5(2),
19 if it's, again, an effect that's likely to be
20 significant and there's been the identification of a
21 mitigation measure that would mitigate that
22 significant effect, the Minister again is obligated to
23 establish a condition for that. And once that
24 condition is established, it becomes an enforceable
25 condition.

1 Again, provided that the federal
2 decision-maker exercises power, duty or function in
3 relation to that, that's when it becomes enforceable.

4 MR. NORTHEY: Well, I'm not going to -
5 - this isn't a legal discussion. I do appreciate the
6 fullness of that answer, Madam Chair.

7 So it's a difficult in the
8 hypothetical, but what -- and there was a slide, sir,
9 you were looking at, so this slide, item 3, dealing
10 with agency consults.

11 How does the involvement here of the
12 CTA work out in relation to the environmental effects?
13 And the reason I'm going to ask it this way is the CTA
14 has an authority to make a decision under -- which is
15 relevant to 5(2).

16 And how do -- does the agency, your
17 agency, manage to work out what that federal
18 authority, such as in this case, the CTA, what is
19 within its authority to regulate? How does it deal
20 with that? Is that by consulting the CTA?

21 MR. CHAPMAN: As I mentioned, there is
22 no decision to make regarding a decision for the
23 agency to say you have that -- you, federal authority,
24 you have that covered off under your legislation so
25 therefore, we won't recommend that to the Minister.

1 That's not the type of decision-making or discussions
2 that would take place.

3 If we're having discussions with
4 another federal authority, it's -- and there is shared
5 interest or jurisdiction on a particular mitigation
6 measure or a particular condition, the types of
7 conversations that we would typically have with that
8 authority would be around reporting requirements,
9 making sure that we were not sending a proponent in
10 different directions or potentially creating a
11 situation of double jeopardy where we may want to
12 identify a certain threshold and the other regulatory
13 authority might want to identify another threshold.
14 So those are the types of discussions we would have.

15 But it certainly wouldn't come down to
16 a presence or absence of a condition.

17 MR. NORTHEY: Okay. Sorry, Madam
18 Chair, I'm just -- there is a lot of law going on in
19 this discussion. I apologize.

20 THE CHAIRPERSON: Yes. And for the
21 Panel's purposes, that may be beyond our -- my ability
22 to understand and usefully use. Maybe my legal nerd
23 colleague is enjoying himself, but we can't let him
24 overindulge himself, so --

25 MR. NORTHEY: I am being careful.

1 THE CHAIRPERSON: Yes. I understand
2 your interest in this area. We're interested in it,
3 too.

4 MR. NORTHEY: Well, it has an enormous
5 impact, Madam Chair, on what's to happen next week
6 because one of the issues we're trying to determine is
7 what is the scope of section 5(2) as an environmental
8 effect here, which prior to this discussion I thought
9 was something that the CTA would have a role in saying
10 something about, but what I'm hearing is something
11 different. And that's what's concerning me.

12 THE CHAIRPERSON: And when you say
13 "what happens next week", you're referring to the
14 written --

15 MR. NORTHEY: Closing remarks.

16 THE CHAIRPERSON: -- or closing
17 remarks.

18 Yes, I understand.

19 You still have questions you would
20 like to ask?

21 MR. NORTHEY: I'm trying to be
22 careful, so I'm going to go back to one example just
23 to see where.

24 So Mr. Chapman, again, trying to be
25 respecting you're not a lawyer and you're not here to

1 be a lawyer. You gave the example of air quality
2 being something where the Minister can impose a
3 condition, and I just wondered. I had asked a
4 question, as may recall, Madam Chair, earlier in the
5 week of Environment Canada of a similar effect.

6 My question is, is there an example in
7 an EA where that's been done?

8 MR. CHAPMAN: Yes. So I'll just list
9 off the top of my head.

10 If you look at the decision statement
11 that was issued for the Whabouchi Mine in Québec you
12 will find in there specific conditions around
13 monitoring of air at locations that had been
14 identified of being particularly important to
15 indigenous communities. And so -- well, that was one
16 of the requirements through the decision statement.

17 MR. NORTHEY: Can I just confirm, is
18 that a federal only assessment or federal/provincial?

19 MR. CHAPMAN: That, you're testing my
20 -- the sort of limits of knowledge. I can't recall at
21 that point.

22 MR. NORTHEY: Okay. Sorry. Can I get
23 the spelling of that, Madam Chair, just to try and
24 understand if --

25 MR. CHAPMAN: You'll also probably

1 test my limits of spelling. Starts with a W. I think
2 it's W-H-A-B-O-U-C-H-I-E.

3 Yes? Thank you.

4 MR. NORTHEY: Okay. All right. Thank
5 you. That's helpful.

6 I am near the end, Madam Chair. I do
7 apologize for pushing this, but this is very relevant
8 to Halton Municipalities.

9 I think, Madam Chair, I have gone as
10 far as I can in this process. So thank you very much
11 for the opportunity to participate this afternoon.

12 THE CHAIRPERSON: Thank you very much,
13 Mr. Northey, for your questions.

14 That's it for questions.

15 MR. CHAPMAN: Perhaps, Madam Chair, I
16 would just comment on something Mr. Northey had
17 indicated regarding the role of the Canadian
18 Transportation Agency in that section 5(2) analysis in
19 terms of -- from my understanding, the role of a
20 review panel versus the regulatory authority.

21 And my understanding is that, as a
22 Review Panel, you need to look at the environmental
23 effects of the project including those environmental
24 effects that may emanate from a federal decision being
25 taken under 5(2). And the wording under 5(2) is such

1 that you need to look at those effects other than the
2 ones in 5(1).

3 And so I guess for you to understand
4 that as a Review Panel is when you need to get a good
5 understanding of the nature of the authorization at
6 hand and how broad it is and what the implications
7 are.

8 Our experience in writing decision
9 statements in terms of how those conditions are
10 crafted sometimes that 5(2) effect in terms of the
11 reach into a condition can be quite limited based on
12 perhaps a small piece of federal land that might be
13 implicated in the project or, in some cases, quite
14 large because the federal government is a major
15 funding contributor to the project as well. And so
16 the nature of the fellow decision sort of is either
17 small in scope, large with respect to the effects
18 assessment and potentially how we would look at the
19 establishment of conditions.

20 THE CHAIRPERSON: Well, thank you very
21 much, and thank you very much for coming to give us
22 this information and taking questions. We very much
23 appreciate it.

24 So that brings us to the end of --
25 brings us to the end of this afternoon's session. It

1 is half past 4:00. We are resuming at 7 o'clock with
2 the general session. We have a number of presenters.
3 So thank you all very much.

4 Yes, Mr. Lerner.

5 MR. REYNOLDS: Yes. Just to follow up
6 with Mr. McMurray's question earlier as to where he
7 could find the information with respect to the trains
8 moving only north of the facility, that's captured in
9 IR-4.17. And the area of the incremental change of
10 trains is shown on 4.171.

11 MEMBER McMURRAY: Thank you, Mr.
12 Reynolds.

13 MR. REYNOLDS: You're welcome.

14 THE CHAIRPERSON: Thank you.

15 We will resume again at 7 o'clock.

16 --- Upon recessing at 4:30 p.m. /

17 Suspension à 16 h 30

18 --- Upon resuming at 7:01 p.m. /

19 Reprise à 19 h 01

20 THE CHAIRPERSON: Well, good evening,
21 everybody. It's -- very happy to see you here this
22 evening. This is a general session and we have a
23 number of presentations.

24 I'd like to start off with, first of
25 all, I just want to give you notice -- I did this this

1 morning, but I think it's important to do it again
2 because there are definitely new people here. I just
3 wanted to let you know that there is -- the Panel is
4 providing some guidance with respect to the written
5 and oral closing remarks, what those are meant to
6 accomplish, which would help us. And so that written
7 guidance will be on the registry tomorrow morning.

8 And if you want to make oral closing
9 remarks, you need -- which will be Friday the 19th,
10 you need to register with the secretariat by noon
11 tomorrow. If you are making written closing remarks,
12 they are due noon on Wednesday.

13 I just want to say, whether or not you
14 make closing remarks, your input is equally valuable
15 and we will be reading and re-reading all the
16 submissions and the transcripts that we have received.

17 So before we begin with this evening's
18 presentations, some of you may remember that on the
19 second week of hearing we ran into a very long day and
20 so we had some questions for CN on socio-economic
21 matters. This was June the 25th and the day was very
22 long. So we still had some questions for CN and we
23 had some questions for Milton Says No. CN is always
24 with us, so we can ask those questions of them, but
25 Milton Says No very kindly agreed to come back this

1 evening, and the Panel has just a few questions for
2 them.

3 So I think that's where we will start.
4 This won't take long, and then we can proceed to the
5 presentations that are on the schedule.

6 So I think -- so all this is, is Panel
7 questions to CN, Panel questions to Milton Says No.
8 So it should be a short procedure.

9 I think we will start with CN and --
10 are you ready, CN, for these questions that have been
11 brewing for days? No, no, it's all right. Okay.

12 MR. LERNER: Sorry, Madam Chair, I
13 thought we would be doing this at the end, but we do
14 have some of our socio-economic people that were here.
15 Depending on the nature of your questions, they could
16 just sit back here in case we need to confer. I don't
17 know if you'll --

18 THE CHAIRPERSON: Let's ask the
19 question and you decide. If you need to move forward
20 that's fine, too.

21 MR. LERNER: That's fine. Thank you.

22 THE CHAIRPERSON: Sorry. Before you
23 start, Dr. Heathcote, I apologize. I was told this
24 and I got myself confused.

25 The questions for Milton Says No, it's

1 both Panel questions and it's Halton's questions.

2 Halton, you go first. So I apologize
3 for that. All right, go ahead.

4 MEMBER HEATHCOTE: I have two
5 questions for CN, and they are not related.

6 The first is a difference in what I'm
7 reading in the EIS as compared to the recently
8 submitted updated commitments tables. So -- and it's
9 about mitigation for the loss of agricultural
10 activities.

11 In the EIS, you say that mitigation
12 measures may include rehabilitation or improvement of
13 adjacent lands or providing a contribution to
14 agricultural research in the area. But in the updated
15 commitments table, CN says that they will work -- you
16 will work with local farmers for agricultural lease
17 opportunities where they may exist to mitigate the
18 loss of agricultural land as a result of terminal
19 activities.

20 So my question is, could you comment
21 on the mitigation measures that you are proposing for
22 the loss of agricultural activities and land, and
23 comment on whether the measures you proposed in the
24 EIS are still an option?

25 MR. REYNOLDS: Yes. It's basically a

1 combination of those two mitigations. I think the
2 updated table was to reflect the new concept of the
3 mitigation, so to include the continued leasing of
4 agricultural land. But the mitigation that's also
5 presented in the EIS would still be applicable and
6 still be valuable. We would look for those
7 opportunities for rehabilitation and research into the
8 --

9 MEMBER HEATHCOTE: Those would still
10 be an option.

11 MR. REYNOLDS: Yes, they're still an
12 option.

13 MEMBER HEATHCOTE: Very good. Thank
14 you.

15 And my second question. We've heard
16 over the last few weeks about the possibility -- the
17 commitment, I think, to establish a community liaison
18 or community advisory committee. I'd like to hear a
19 little bit more about that and maybe some examples of
20 how you've used those committees elsewhere, like what
21 structure they have and so on. Just a bit more about
22 that.

23 MS. PATTERSON: So in terms of the
24 community working group, we have -- we have definitely
25 put some thought into how that group might function.

1 So many of the components of it would include an
2 opportunity for local residents to participate in
3 that.

4 We would be looking at sort of a
5 multi-faceted range of residents that may want to
6 attend. There would be CN representatives on that
7 site -- sorry, on that committee. We would have a
8 facilitator to sort of essentially run those committee
9 meetings, as well as an administrative assistant to
10 take notes and help make sure that information is
11 provided to all those committee members.

12 In terms of experience in the past, I
13 can say that we have, with my knowledge, formed a
14 couple different types of community groups that are
15 set up much like that. And they have proven to be
16 quite an effective mechanism for the public to hear
17 from CN and for CN to hear from the public and to work
18 together on resolving issues or concerns that mutual
19 parties may have, either concerns or issues that CN
20 may have that want to discuss with residents or vice
21 versa.

22 MEMBER HEATHCOTE: Thank you.

23 And I know you have mentioned this in
24 a previous session, and I'm not remembering clearly.
25 How frequently would these committees meet?

1 MS. PATTERSON: I think that's
2 something that we would like to further discuss, sort
3 of during -- during detailed design and when we are
4 sort of formulating it. And you know, I can say that
5 we have talked about in the initial stages probably
6 doing quarterly sessions set up prior to construction,
7 during construction, and then as we move into
8 operations.

9 And I think the intent would be that
10 as part of participation in that group that we would
11 discuss the frequency of the meetings and that, you
12 know, generally, in my experience, with time, those
13 tend to spread out. So it may move from quarterly to,
14 you know, two times a year or something like that.
15 But that would be part of the discussions that the
16 group would hold together with all the members.

17 MEMBER HEATHCOTE: Thank you.

18 And one other just follow-up. I know
19 again you've spoken about this in a previous meeting,
20 but it would be good to recap it in this discussion,
21 how those members would be chosen.

22 MS. PATTERSON: Yeah. I don't think
23 that I can really speak to the specifics of it other
24 than we want to make sure that we have a cross-section
25 of the community. Certainly, it would be open for

1 local residents sort of immediately around the project
2 site so that we would have representatives of the
3 residents most closely related to terminal operations
4 and the construction phase, obviously. An opportunity
5 for the business community could be included in that
6 as well as First Nations participants if they're
7 interested in participating in that group. So we
8 would be trying to get a wide range of different types
9 of participants.

10 MEMBER HEATHCOTE: So people would
11 have an opportunity to express their interest in
12 participating.

13 MS. PATTERSON: Exactly, yes.

14 MEMBER HEATHCOTE: And then there
15 would be some process to select membership.

16 MS. PATTERSON: Yes. And I think what
17 we would do is let local residents and the public know
18 that we are sort of open for receiving applicants, in
19 a way, to join the committee and that there would be,
20 you know, sort of a review and selection process to
21 make sure that we are able to gather a representative
22 number of residents or interested parties into that
23 group.

24 MEMBER HEATHCOTE: Thank you. That's
25 all my questions.

1 THE CHAIRPERSON: I have a couple of
2 questions about the effects of the project on cycling.

3 Milton Says No was speaking to us
4 about this. And I would just like to read something
5 that's in the EIS on page 245.

6 You mention that -- CN mentions that
7 the quality of cycling will be affected due to the
8 interaction between existing trails and traffic.
9 Trails -- well, we can get back to that. Trails and
10 traffic associated with the project.

11 "This interaction can be managed
12 through consultation with
13 cyclists and other road users.
14 Many resource users, including
15 cyclists, co-exist in urban
16 environments." (as read)

17 My first clarification would be the
18 quality of cycling "due to the interaction between
19 existing trails and traffic". Do you mean by this
20 cycling routes?

21 MR. REYNOLDS: Yeah, cycling --

22 THE CHAIRPERSON: Not off-road trails?

23 MR. REYNOLDS: Well, not necessarily,
24 but there are some multi-use trails and cycling routes
25 through the community that would interact.

1 THE CHAIRPERSON: All right. Okay.

2 So can you elaborate on what steps you
3 would take to consult with cyclists and then what do
4 you think would emerge from those consultations or
5 might emerge from those consultations that would, in
6 fact, mitigate those effects?

7 MR. REYNOLDS: So we -- through the
8 process, we did consult with Share the Road to get
9 their opinion on the existing state, the proposed
10 mitigation at the intersections as well as we had at
11 the time a concept to try to connect some of the
12 existing trails using part of CN's property, so we got
13 their opinion on that as well.

14 We had inquired through the public
15 consultation and, through the various means of public
16 consultation, we heard some elements of concern with
17 respect to cycling. I think a lot of the mitigation
18 and the area of conflict that we would see most is at
19 the gate intersection, so we ensured that the cycling
20 paths that are proposed along Britannia had the
21 appropriate cycling facilities to allow the safe
22 movement through that intersection.

23 And in addition to that, we reached
24 out to Halton, Milton and the Province of Ontario for
25 information on existing cycling in the region and we

1 received feedback from Ontario on that, I believe. So
2 that helped inform the traffic study and safety
3 analysis completed by the experts.

4 THE CHAIRPERSON: So the -- but the
5 only actual physical mitigation you're proposing would
6 take place at the truck entrance and that
7 intersection. So --

8 MR. REYNOLDS: Yeah, because there
9 will be cycling facilities that are proposed along
10 Britannia and Tremaine already so there's bike paths
11 that are proposed. So where we would be inserting the
12 intersection, we would make sure that there was the
13 proper facilities to traverse the gate entrance
14 driveway.

15 THE CHAIRPERSON: So, so far there's
16 been no -- would it be your position that no
17 mitigation is required on truck routes because the
18 project will be adding 800 trucks to those routes
19 where -- which are also used by cyclists?

20 MR. REYNOLDS: Along -- so for
21 example, along Britannia Road -- and we had gone
22 through it in the traffic session. Those roads are
23 designed to handle various types of modes, so bikes,
24 trucks, cars, buses. That's the intent of those major
25 arterial roads. And the major arterial roads that the

1 trucks are expected to use will have facilities for
2 trucks and for cyclists, and the intent is that both
3 the on-road cycling path and the multi-use path are
4 there to allow the safe passage of cyclists at the
5 same time as trucks.

6 THE CHAIRPERSON: And will this apply
7 to the other routes that are going north of 401?

8 MR. REYNOLDS: Along Tremaine Road it
9 has a similar cross-section to Britannia Road. James
10 Snow Parkway, I believe the ultimate design does as
11 well. I don't know that at this exact point that
12 there is the cycling facilities on James Snow.

13 THE CHAIRPERSON: Okay. Thank you.
14 Questions?

15 MEMBER McMURRAY: I do. Good evening.

16 The Chair took you to a quotation on
17 page 245 of the EIS, and I've also been provided with
18 a quotation that also appears on page 245 of the EIS.
19 The Chair's quotation had to deal with the interaction
20 between the project and cyclists. This one states:

21 "The overall presence of the
22 project will be managed to an
23 acceptable level through the
24 application of standard
25 mitigation for acoustic and

1 atmospheric emissions."

2 (as read)

3 So:

4 "The overall presence of the
5 project will be managed to an
6 acceptable level through the
7 application of standard
8 mitigation for acoustic and
9 atmospheric emissions."

10 Part of what we were discussing way
11 back on day 4 on the socio-economic general topic
12 involved cycling and, as I recall, other outdoor
13 activities. On day 9, we heard about a number of
14 different guidelines and standards that addressed the
15 topic of standard mitigation for acoustic emissions.

16 I'm just wondering, are there any
17 standards for noise in outdoor activity areas like a
18 soccer field or a baseball diamond? Is that something
19 that they address?

20 MR. REYNOLDS: I wouldn't be the best
21 person to speak on the standards of, you know, noise
22 criteria that would -- our noise expert would be able
23 to speak better to that.

24 My understanding is that the
25 mitigation that's proposed is protective of that as

1 well.

2 MEMBER McMURRAY: My question is a
3 little bit more specific to noise environments at
4 outdoor recreation areas. Could you perhaps do a
5 follow-up with that with the noise people?

6 MR. REYNOLDS: Sure, yeah. Is it in
7 particular with any planned or existing recreational
8 pieces around the facility?

9 MEMBER McMURRAY: It is -- granted, it
10 is somewhat hypothetical, but I'm just curious to see
11 what the ranges would be because if there are ranges,
12 and there may not be, that may also be relevant to
13 cycling and other outdoor activities.

14 MR. REYNOLDS: Sure. We can endeavour
15 to get you something on that.

16 MEMBER McMURRAY: Okay.

17 THE CHAIRPERSON: And by tomorrow?

18 MR. REYNOLDS: It will have to be by
19 tomorrow, yes.

20 THE CHAIRPERSON: And so that would be
21 undertaking number? Thirty-five (35)

22 All right. Thank you.

23 **UNDERTAKING**

24 MR. REYNOLDS: Thank you.

25 MEMBER McMURRAY: And those are my

1 questions. Thank you.

2 THE CHAIRPERSON: Thank you, CN, for
3 that.

4 So now, if -- Milton Says No, would
5 you mind coming forward?

6 Thank you very much for coming back.
7 You might have been here anyway, I realize, but I
8 really appreciate this.

9 MS. NEWMAN: Thank you.

10 THE CHAIRPERSON: So there were
11 questions from Halton and questions from the Panel.

12 Mr. Northey.

13 MR. NORTHEY: Thank you, Madam Chair,
14 yes. We were all rushed at that time and they
15 provided a lot of material so I'll move quickly
16 through my questions.

17 The first is a general question about
18 just the -- I'll call it the geography of the group.
19 And so what I would be interested -- it may not be
20 possible to answer immediately, but by tomorrow,
21 maybe. We'll see.

22 But where, basically, are the members
23 located in relation to CN? And my related questions
24 on that are, generally, what's the range of time
25 people have been in Milton and what's the age of the

1 membership of the group?

2 In other words, what is Milton Says
3 No? Where are you? Where do you live? How long have
4 you been here?

5 Because at this point, we heard some
6 very important statements and I'd just like to have
7 some context.

8 MS. NEWMAN: Okay. Thank you.

9 Well, you know, we've evolved over the
10 last four years. When we first came into existence,
11 it was because a group of us had heard about the
12 resurrected plans for the intermodal, and we contacted
13 our local -- our ward councilors and we contacted one
14 another.

15 We have a number of very active online
16 community forums where people were discussing this
17 issue.

18 So a number of us came together as
19 citizens and determined that we wanted to -- we
20 started looking at the process and looking at the
21 history. We were in touch with Milton R.A.I.L., which
22 was the existing group before when the intermodal was
23 first proposed many years ago.

24 And then from there, our group grew as
25 we took on new members. So we started doing our

1 advocacy very grass roots. We determined early on
2 that we wanted to be a citizen-run group and what we
3 wanted to do was facilitate mostly the public
4 commentary periods because we found them quite
5 difficult.

6 And we wanted to stay on top of the
7 project and then be able to communicate to other
8 Miltonians and Haltonens how they could also
9 participate.

10 So from there, as membership grew, we
11 had presence. We were given stations at most local
12 festivals in the community, street festivals, fairs.
13 We have a number that take place throughout the year.
14 And then our residents and other members of the
15 community would come and speak to us, we would answer
16 questions.

17 And as you know, in 2015, it was also
18 a federal election year, and it was an election issue.
19 So we played a role in terms of answering questions
20 around the politics.

21 So as a result, we did a number of
22 talks in Burlington, in Oakville. We were connected
23 with representatives in Halton Hills, with all of the
24 neighbouring municipalities, and the City of
25 Mississauga was quite vocal in 2015 as well. And we

1 were in touch with them.

2 And then our membership just continued
3 to grow. So we have a web site. We have a Facebook
4 group that is very active. And then we have a mailing
5 list where members have been able to sign up.

6 And then members with varying levels
7 of expertise have come to us, which is how our Board
8 of Directors was formed in 2016.

9 And we're all citizens from varying
10 backgrounds. We just bring that to the process as
11 well.

12 MR. NORTHEY: Can you -- age and time
13 in Milton, can you speak to that?

14 MS. NEWMAN: Well, did you have an
15 answer?

16 MS. MEYER: I'll just -- for myself,
17 I'll just say I personally live just off of Tremaine
18 in the Dimont area, so for myself, I would be roughly
19 a few minutes away from the facility.

20 I've lived here off and on, obviously,
21 my whole life but I've lived here steady since 1999
22 when I was 18, with my parents. My parents still live
23 here. I was born in Georgetown, so I've been in this
24 area for most of my life, and I'm 38 currently today.

25 MR. NORTHEY: That might be called too

1 much information, Madam Chair.

2 --- Laughter / Rires

3 THE CHAIRPERSON: Well, is it today?

4 MS. MEYER: No, not today. But as of
5 right now I'm 38.

6 THE CHAIRPERSON: I was just going to
7 lead a chorus of happy birthday. You're lucky you
8 didn't have to hear that.

9 MR. NORTHEY: Thanks. My -- does a
10 third member want to speak? Nope, okay.

11 MS. NEWMAN: If I could just -- I'll
12 add for you, Mr. Northey, if you like for the age
13 groups. It's actually a very broad range because the
14 population has changed in Milton quite a great deal.
15 We have been here for close to 20 years and we have
16 seen a lot of what local residents refer to as "old
17 Milton" merging with the influx of younger families
18 and people that are coming into the area, people who
19 used to live in the city. So there is a pretty broad
20 mix of members in the community. I would say the
21 average age is probably about 35ish.

22 MR. NORTHEY: Great. Thank you.

23 My last question is a bit illusory, in
24 that there are a few parts, but I want to give you a
25 sequence. It's one question and it's to deal with the

1 issues of concern. When you started, then you did
2 some research and then where we are now, following the
3 hearing. So I'm just going to start with the first
4 question.

5 So when you started which you actually
6 referenced, what were the three issues, if I can put
7 it that way, of concern to you back then? And I'm
8 just interested how this might have evolved through
9 your research and your attendance at this hearing or
10 what you have read?

11 MS. NEWMAN: When we first began, the
12 major concerns immediately was the amount of truck
13 traffic anticipated. The other major concern was the
14 idea of a facility of this nature being located in
15 this location.

16
17 From the beginning, of course, we determined what our
18 own position was. We needed to learn a lot about the
19 situation to formulate that position. And for us, it
20 was never that we were feeling contrary to intermodal
21 or even to CN. I mean, Milton -- we have CN on our
22 bridges, they have been a part of Milton as the
23 mainline runs through our town and has for many years.

24 But, the big concern was this idea
25 that CN, which is now a private corporation, no longer

1 a Crown corporation, could come in and put something
2 here. And all of us that moved here for the reasons
3 that we did, had done our due diligence and had
4 understood from the developers, from the planners,
5 from the -- anything you look up on the region, that
6 this facility was no longer under consideration.

7 So, we thought we knew what the future
8 looked like and then suddenly that future changed very
9 drastically. So I would say those two main concerns.
10 The location for a facility of this nature, and then
11 the addition of the trucks on the road.

12 MR. NORTHEY: All right. Thanks. So
13 then my next is, you've provided the Panel and all of
14 us, with a number of attachments on June 25 and July
15 8. So you did a lot of research. And so my next
16 question is this, you did a lot of research, what are
17 -- did that help you with or provide you by way of
18 sorting out or prioritizing your concerns?

19 MS. NEWMAN: I think the health, the
20 long-term health impacts really came to the surface
21 for us. We were very focused initially on the
22 addition of the trucks and the congestion and
23 pollution from the trucks. As we learned more and
24 more about intermodal facilities when we went and
25 spent time around one, as we saw the type of

1 peripheral industry that builds up around these types
2 of facilities, and when we started to really delve
3 into the planning and understand all of the long-term
4 plans for our community. We started seeing the long-
5 term economic ramifications, how different our
6 economic culture would be, if this were to be located
7 at this location, and the long term health concerns.

8 You know, one of our biggest
9 challenges in researching has been finding information
10 about the impact of intermodal on residential. So we
11 had to -- that was a multi-fold process where we had
12 to study Intermodal terminals across the country,
13 compare them to Milton, and then we also had to delve
14 into research already done and studies, mostly in the
15 European Union and the U.S., where they have done
16 these major studies. And that's when the long-term
17 health concerns really -- and the lack of regulation
18 and consistency in the regulation, that became a
19 primary concern for us, too. Because it's -- that's
20 pretty frightening.

21 We have heard a lot about the
22 particulate matter and the various sizing of
23 particulate matter, and the very small pieces of
24 particulate matter for which there is no safe
25 benchmark, you know, or threshold. That was very

1 frightening for us and those are the kind of things
2 that are not evident until decades down the road.

3 MR. NORTHEY: Thank you very much.

4 So, I'm not sure -- I realize, Madam
5 Chair, this has gone a little longer, but I'm going to
6 just be a couple minutes.

7 So the question for that is on the
8 health issue you raise two things, health and
9 economics. Of this stuff there are by my count, ten
10 things you provided to the Panel in those two things.
11 What would be the top publication or reference you
12 would have for the health question and then the
13 economics question, just to provide us with your
14 priorities? If you have that?

15 And maybe you want to give yourselves
16 some time to think about it. I would just like to
17 hear that from you because we haven't heard -- we
18 heard so much from you initially, but you then put all
19 these attachments in without much comment and I would
20 be interested, on behalf of Halton Municipalities,
21 knowing what you want us to take from these.

22 MS. NEWMAN: For sure. I think that's
23 something I would probably want it speak to our group
24 about and come back with an answer in writing, if you
25 like, for that.

1 MR. NORTHEY: Perfect. Now my last
2 question, Madam Chair, if --

3 THE CHAIRPERSON: Can I just log that
4 in as an undertaking?

5 MR. NORTHEY: Sorry, correct.

6 THE CHAIRPERSON: Unfortunately, as
7 you know --

8 MR. NORTHWEY: It's tomorrow.

9 THE CHAIRPERSON: It's tomorrow is our
10 deadline for undertakings.

11 MS. NEWMAN: Okay.

12 THE CHAIRPERSON: Are you all right
13 with that?

14 MS. NEWMAN: Mm'hmm.

15 THE CHAIRPERSON: And I very foolishly
16 -- 34, is that correct? Thirty-six (36). Okay. So
17 it's -- Undertaking 36. So thank you very much.

18 **UNDERTAKING**

19 MS. NEWMAN: Mm'hmm.

20 THE CHAIRPERSON: For taking that on.

21 MR. NORTHEY: Yes, thank you. And so
22 the last question, Madam Chair, is just what you --
23 many of your members have been attending and we have
24 been hearing from them. What have your members
25 learned, if anything, from this hearing? What have --

1 have any of your concerns been changed or altered by
2 this attendance?

3 MR. CANZONA: I would like to address
4 that. This relates to an earlier question you had
5 with regards to how things have changed over the four
6 years of our existence or many more years for some of
7 us.

8 As we -- as Stacey mentioned, earlier,
9 some of the earliest concerns were around truck
10 traffic and what not, and then we started getting into
11 the health -- some of the health effects. As we were
12 getting into it, we started to think about -- started
13 to learn about the EA process and we were hoping, I
14 guess, maybe not understanding the process, we were
15 hoping there would be some avenues of input there
16 where we -- where we could get our concerns on the
17 table and shall we say, common sense would rule the
18 day, so to speak.

19 One of our biggest concerns at this
20 point is the fact that CN seems to be taking a stance
21 of -- of this is the way they see the world, in terms
22 of the intermodal and it's up to the rest of us,
23 including the Panel and the citizens and some of the
24 experts you heard, to prove them wrong based on the
25 EIS. And this whole issue of significant adverse

1 environmental effects is kind of daunting, because who
2 exactly defines significant? Who exactly defiance an
3 adverse effect? And as I think one of the questions I
4 asked earlier in the week, who -- what's the
5 significance of cumulative effects?

6 So, it's a fine line where we're
7 bolstered by the fact that we have the process and we
8 can bring our issues to bear. But we're very
9 concerned that not having the legal background, the
10 technical background, and basically, the experience
11 and schooling that most of the people in this room
12 have to basically -- to take everything in, and to
13 understand what the impact will be across the
14 community. So that's one thing.

15 The other thing that really hit us
16 hard is you can always -- you know, this is a federal
17 environmental assessment and again, it's a very formal
18 and clear process. But you could always lean on or
19 be, again, supported by the fact that we still have
20 provincial governments, municipal governments,
21 regional governments, we have entities such as
22 Conservation Halton and they all have our back. We
23 pay taxes and we're all voters and they are here to
24 support us as well.

25 Lo and behold, it was a great

1 surprise, for me -- maybe speaking for myself -- but
2 CN claims that none of those entities apply, none of
3 their rules or Bylaws apply, and as a federally
4 regulated, I guess, 100-year-old railroad, they don't
5 have to follow any of those rules. And that,
6 personally -- that keeps me up at night. I don't know
7 if you want to add anything?

8 MS. NEWMAN: No. I think that about
9 sums it up.

10 MR. NORTHEY: Madam Chair, thank you
11 very much for the opportunity.

12 THE CHAIRPERSON: Thank you, Mr.
13 Northey.

14 THE CHAIRPERSON: So the Panel has a
15 couple of questions for you too and I will begin. So
16 I will pick up on the effects to cycling. I would
17 like to talk more to you about effects to cycling.

18 So, you get a quote, too. So, on page
19 26 of your written submission, you note that:

20 "The road safety -- road safety
21 for cyclists and pedestrians is a
22 significant concern and increased
23 heavy truck traffic may adversely
24 affect both human health and
25 Canada's national competitiveness

1 in the cycling field." (as read)

2 I wonder if you could speak more about
3 that, and could you also -- well, I have a couple of
4 other things. But, can you explain, first of all, why
5 you believe that the project could affect Canada's
6 national competitiveness, in terms of, I presume you
7 are referring -- I recall that you talked about the
8 effects on the cycling on the access to the cycling --
9 safety of the cycling to the -- safety of access to
10 the cycling centre.

11 MS. NEWMAN: Mm'hmm.

12 THE CHAIRPERSON: I think we got that.
13 But, can you talk about how the project might affect
14 road cycling and how that connects to the
15 competitiveness? So that would be the first question.

16 MS. NEWMAN: Sure. Thank you. I
17 actually think that's a really important question,
18 because unless you are involved in the cycling
19 community, you don't readily understand the overlap
20 between road riding, track cycling and mountain
21 biking, which are -- this area is renowned for all
22 three.

23 Our concern is again, multipart in the
24 sense that we have reviewed all of the materials. We
25 read the registry regularly, we see the documentation

1 being provided, and we see a marked lack of
2 understanding as to how integral this region is for
3 cyclists across Ontario.

4 I'm a cyclist, so I know this. I know
5 the clubs that use this. I was just meeting with a
6 Toronto club today, and they're out here every single
7 weekend cycling in Halton, this area is renowned for
8 its cycling. And when we see the results of the
9 traffic studies done, quite honestly, the numbers were
10 just astoundingly low and clearly biased.

11 And, you know -- as far as the
12 competitiveness, so, of course, we have the Velodrome
13 which is only the second of its kind in North America.
14 The Pan Am Games were hosted there. My husband and I
15 regularly billet cyclists from around the world who
16 come into Milton and they spend weeks here training.
17 And they don't train only on the track, they bring
18 road bikes and they cycle all throughout the
19 community.

20 So they -- they are stationed at the
21 Velodrome. They usually billet. If you know any
22 elite athletes they are often underfunded and they are
23 looking for a free place to stay. So they come, they
24 bring their gear. They bring road bikes and track
25 bikes and they go out and cycle on the roads in

1 between events.

2 So if you were here during the pan am
3 games or any world cycling events, you will see a
4 constant stream of elite cyclists streaming out from
5 the Velodrome, down Britannia, up and down Tremaine,
6 and across the community.

7 And they use, as a resource, there are
8 things called heat maps in the cycling community which
9 show you the routes that all of the cyclists use.
10 They are also published cycling routes either at the
11 regional website, or the various municipal websites,
12 or various clubs.

13 The Velodrome is also home to Cycling
14 Canada, the Ontario Cycling Association and that's
15 where their headquarters are and they also give these
16 routes and information to cyclists.

17 So, our concern in terms of the
18 cycling community is that A, there is a lack of
19 understanding of how busy a cycling community it is in
20 Halton. It's why many of us live here, at least my
21 husband and I, that's why we live here. How much it
22 is used by neighbouring municipalities, and how much
23 it is used by competitive cyclists, the world over.

24 And, in addition to speaking to all of
25 you and listening to the studies that have been coming

1 out of this process, we have now reached out to those
2 major cycling organizations to get their feedback on
3 some of what's been said during the hearings and on
4 the transcripts. And we have some responses that are
5 coming in and they are too, going to be signing a
6 letter from us to explain to you just how -- how much
7 of a cycling community this is and how dangerous this
8 facility, they feel it is going to be. And the
9 signatories including Cycling Canada and some -- and
10 the national cycling team, and other elite athletes
11 that use this region.

12 THE CHAIRPERSON: Okay. So then let
13 me follow on from that. So, I presume the concern is
14 where the routes that would be used by the trucks for
15 the projects intersect with the routes used by the
16 cyclists, I guess.

17 MS. NEWMAN: Mm'hmm.

18 THE CHAIRPERSON: Otherwise there
19 isn't a problem.

20 On those routes now, of course,
21 Britannia is not yet improved. There are planned
22 improvements. So as it is right now, today, are there
23 safety concerns with the existing traffic on Britannia
24 in the form it's in right now? Let's say and Tremaine
25 as well, both of those.

1 MS. NEWMAN: Certainly. I mean, any
2 time you are a cyclist, safety -- safety first.

3 I want to add that you know, road
4 safety is a primary concern, but the pollution is also
5 a big concern. That's a long-term effect. And you
6 know, you put trucks like that and a facility like
7 this immediately adjacent to where our people are
8 using cycling routes, I cycle all the way down to
9 Lower Base Line which is where the project would be
10 located and the main operations would be happening.
11 So it's twofold. It's not just the truck traffic but
12 also the pollution.

13 But yes, today, cyclists tend to
14 choose times of day where the roads are less busy.
15 And that means that we can anticipate rush hour, which
16 is obvious, more obvious, and in areas where trucks
17 come and go. We tend to communicate with one another
18 and let one another know where construction is
19 happening. Sometimes when a new development is going
20 in you have a lot of construction traffic. That's a
21 dangerous situation, not only because of the trucks
22 but because of the wear and tear on the road. Road
23 cycles have very fine tires. They have very little
24 give and if you hit any piece of gravel, pothole, mark
25 in the road, you can be very seriously injured.

1 Trucks are even more dangerous in that
2 they are massive, they don't have -- they can't see
3 their blind spots. They don't have an awareness of
4 vehicle a around them. The onus is entirely on the
5 cyclist to avoid a truck. Also, when the truck passes
6 you there is a wash and that wash can pull you under
7 the truck. You see that a lot in urban situations
8 where there are cycling fatalities, that's usually
9 what's happened.

10 And in Milton, of course, we have so
11 many roundabouts that entering a roundabout, you know,
12 it will either be a traffic jam or a cyclist could
13 very easily not be seen in a roundabout and that's
14 assuming that everybody is following the rules which
15 they don't always.

16 THE CHAIRPERSON: I have one more
17 question. And that is, I know you -- I remember you
18 telling us that multi-use pathways are of no -- are
19 fine for certain recreational cyclists and maybe less
20 experienced cyclists, but they are not of interest to
21 a serious road cyclist, especially not someone who is
22 training.

23 MS. NEWMAN: Mm'hmm.

24 THE CHAIRPERSON: Got that.

25 But what about bike lanes on arterial

1 roads? Such as the bike lanes that Halton is
2 proposing to incorporate into the -- into Britannia
3 when it's increased to six lanes. Can you tell me
4 about how much those are used by serious training road
5 cyclists, or just road cyclists in general, how would
6 they -- how useful are they?

7 MS. NEWMAN: I think they are very
8 useful. Where I can incorporate a path -- a road into
9 one of my cycling routes, I do. Again, it still
10 presumes the drivers on the road are also following
11 the rules of the road. There seems to be a natural,
12 sort of, dislike for cyclists in drivers, period.

13 But, on the bike path roads, the path
14 areas are not really a problem. Where it becomes a
15 serious issue is even on a bike pathed road, for road
16 cyclists, as soon as you enter a roundabout, an
17 experienced cyclist, there are two options. You can
18 exit up onto the multiuse path and then reenter the
19 bike path on the other side of the roundabout, which
20 is not safe if you are a serious road cyclist. You
21 are going at least 30 kilometres an hour. It's too
22 fast for you to be on the multiuse. So we typically
23 have to merge -- remerge into traffic, go through the
24 roundabout like any vehicle, and then reenter the bike
25 path on the other side. So there is a big potential

1 for conflict at roundabouts.

2 And I think if you look at cycling
3 statistics -- we've looked at a number of different
4 sources and I would be happy to send them to you, but
5 CAA and a number of other organizations, it's at
6 intersections where cycling accidents and, you know,
7 really devastating situations occur primarily.

8 So, the biggest concern on a bike path
9 road, so let's presume all of Britannia has bike
10 paths, the biggest issue would be if there is
11 congestion from trucks, or if there is a constant
12 stream of trucks, even though you are on a bike path,
13 those trucks create this wash. And the wash is really
14 dangerous, even if you are on a bike path. It can
15 really destabilize you. It can provide almost a
16 suction effect, almost like a ship sinking. As an
17 experienced cyclist, you usually anticipate a truck is
18 coming behind you, you constantly are shoulder
19 checking and we usually pull over as far as we can and
20 wait for the truck to pass, because we know they can't
21 see us and we know that it could be dangerous.

22 THE CHAIRPERSON: Thank you very much.

23 MEMBER McMURRAY: Good evening, Ms.
24 Newman, how are you?

25 MS. NEWMAN: Good, thank you. How are

1 you?

2 MEMBER McMURRAY: Good. I may have
3 forgotten a little bit about what you said when you
4 were here on day four -- what Milton Says No, said on
5 day four. But I do know that you are opposed to the
6 number of terminal generated trucks. You have
7 expressed that very clearly.

8 One of the things the review panel has
9 to wrestle with is the current number of trucks on the
10 roads in Halton. So this is not a cycling-related
11 question, it's just a general question to Milton Says
12 No, about your perception of the current level of
13 truck traffic in Milton today. Can you tell us
14 something about that?

15 MS. NEWMAN: I certainly and I will
16 have my colleagues comment on that as well. We live
17 on the west end of town and I -- I think I spoke a
18 little bit in the last session about in some ways,
19 watching the traffic change, while there has been an
20 increase in the number of vehicles, including trucks
21 there has also been improvement to some of the roads.
22 There have been overpasses created so that we're no
23 longer stuck at train tracks waiting for trains to go
24 through. So those improvements might have given a
25 false sense of improvement.

1 If you go to any of the shopping
2 areas, so if you travel along Steeles Road, you will
3 certainly encounter a lot of truck traffic. The same
4 goes for Martin Street which is Highway 25. And if
5 you go northbound or if you are exiting on to the 401
6 at any of those locations, you are certainly going to
7 have the perspective that there has been an increase
8 in truck traffic.

9 If you live where we live, with
10 Tremaine being widened, there are certainly trucks
11 that travel down Tremaine, but we also tend to use
12 that road at times of day where we don't anticipate
13 that being a big issue.

14 But sure, I would say there is
15 definitely more movement in the north of the town.

16 MEMBER McMURRAY: So what time of day
17 do you travel on Tremaine or what time of day do you
18 seek to not travel on Tremaine Road?

19 MS. NEWMAN: Well, we don't have 9:00
20 to 5:00 schedules. We're fortunate in that sense. We
21 don't use it at rush hour.

22 We do hear trucks travelling at night
23 on Tremaine Road now that we did not hear maybe seven
24 or eight years ago to the same -- at the same
25 frequency. They usually travel along Tremaine all

1 times of night. If there's an issue on Tremaine, we
2 sometimes will see trucks come down Derry or using
3 other arteries.

4 My sister lives on James Snow Parkway.
5 And she actually notices more so if there's an
6 accident on the 401, which unfortunately happens, it
7 seems, all too frequently at Highway 25 exit, and the
8 whole 401 is backed up. Trucks will exit and come
9 through town so they'll use James Snow to do that.
10 And I know that road ends up quite backed up with
11 trucks and other traffic.

12 Yes, go ahead.

13 MS. MEYER: I'll just add is,
14 unfortunately, apparently I gave too much information
15 earlier about where I lived in that I thought he was
16 asking personally live, but I'll just say that
17 whereabouts I live there's very little on a day-to-day
18 basis that I see trucks per se. Most of the trucks
19 I'll see in our area typically end up being your
20 aggregate haulers because there is the quarry. So
21 you'll see some of those.

22 On occasion, yeah, you might see like
23 a bigger truck, but for the most part, right off of
24 Tremaine like you'll see the odd truck here or there,
25 but it's definitely not a steady stream.

1 Yes, as you get closer to the 401,
2 when you get into more of the industrial zoned areas
3 and you have a lot of the warehouses and things like
4 that, then you do start seeing a more increase of
5 trucks.

6 But on my day-to-day life, I would see
7 --most of the time if I'm seeing any trucks it's, like
8 I said, your aggregate. It could be construction
9 vehicles because Milton a never-ending construction
10 zone of building houses, all that kind of stuff.

11 But it's -- I don't see too, too many
12 trucks. Like it's a handful here and there for the
13 most part when you're in more of the community centre,
14 for the most part.

15 MR. CANZONA: If I can add, I think
16 asking you know, for the anecdotal stories is one way
17 to attack this. But at the end of the day, on any
18 given minute, any given hour, any given street,
19 everyone will have a different experience.

20 So I think that's why we need more
21 empirical evidence, maybe more models from the
22 experts. I don't know. There seems to be a lot of
23 contention there.

24 While we're on the subject of truck
25 traffic, though, I don't think I've heard in the last

1 three weeks anyone talk about engine brakes, if you
2 know what that is, the very loud sound.

3 So on top of everything else we've
4 said about trucks and the fact that they not only
5 share the roads with the bikes, the bicyclists, they
6 share the air, there is that additional noise. I
7 guess it should have come up in the noise session in
8 terms of truckers using their engine brakes. I'm not
9 an expert in that, either.

10 I know I've seen signs saying please
11 don't use your engine brakes but, as we know, 80
12 percent of the trucks are contractors and they're left
13 to do as they wish.

14 Thank you.

15 MEMBER McMURRAY: So that gets us to
16 the changes in the upgrades that are planned for the
17 arterial network -- arterial road network in Halton,
18 regardless of the project.

19 There's a debate over timeframes and
20 contingencies and funding, but there does seem to be a
21 consensus that, sooner rather than later, the arterial
22 roads will be expanded to at least four lanes and many
23 of them six.

24 From your perspective, do those
25 upgrades address your current concerns about the

1 current level of traffic or do they make your concerns
2 worse?

3 MS. MEYER: So I just wanted to ask
4 because I actually had the privilege a few years ago,
5 after one of the elections, where the region reaches
6 out to a bunch of citizens and randomly selects people
7 and they're able to come in and they actually listen.
8 You get a presentation on how each of the various
9 different departments and what their priorities were
10 and then, as citizens throughout the region, we get to
11 then present what our main concerns are, what we would
12 like to see happen in the region in that next four
13 years during that tenure of that particular
14 government.

15 And one of the biggest -- and during
16 that particular process, as the different departments
17 were presenting, you then, as citizens, got to pick
18 what area you kind of wanted to focus on that was a
19 bigger concern for you.

20 And the biggest group in there was
21 talking about infrastructure because the biggest thing
22 that people were complaining about back then was the
23 inability of people being able to get from point A to
24 point B throughout the region in a timely manner. The
25 roads were congested. You know, we -- it just wasn't

1 -- you weren't able to get a -- where you needed to go
2 just because of the sheer number of people that were
3 moving into this area.

4 So for me, when I hear about the roads
5 being improved upon and all that, it's not because we
6 have 1,600 trucks coming in; it's because we have a
7 valid concern today about trying to get through our
8 area with just the people we have, let alone start
9 adding on all these additional trucks.

10 So for me, the improvements are to
11 deal with the current issue we have today, not with
12 the potential of an additional 1,600 trucks in the
13 future.

14 MEMBER McMURRAY: My question is
15 intended to be very much about today.

16 MS. MEYER: Yeah.

17 MEMBER McMURRAY: I tried to frame the
18 question. Do you support the expansion of the
19 arterial roads, the increase in the number of lanes?
20 Do you see it as a good thing or a bad thing?

21 MS. MEYER: To deal with the situation
22 we have today, yes, we need to expand our roads. But
23 that's again dealing with the situation currently with
24 the traffic we have today. Like -- and with the
25 expected growth.

1 Like I'll just -- just a very, again,
2 quick anecdotal thing. With the traffic we have
3 today, and if I have to drive in to work and let's say
4 I'm driving down Derry and I'm starting from one end
5 of the town, so from the Tremaine side, and I need to
6 get all the way to Trafalgar. If it's not rush hour
7 time, that drive can take you 10, 15 minutes. If it's
8 rush hour, it can take -- it's -- the longest I've had
9 it take me was 50 minutes, just to get from one end of
10 town to the other. And again, that's just with cars.

11 So -- and again, I talked a little bit
12 briefly about -- when we were here last time about
13 stepping up to a traffic light and watching all these
14 cars trying to bypass the truck that happened to be
15 there. I'm just, again -- as soon as you throw a
16 truck in the mix, even today, it gets backed up even
17 more.

18 MEMBER McMURRAY: Okay. So I am going
19 to ask you now about the future. And you just
20 mentioned that there can be congestion on the arterial
21 roads at rush hour.

22 Now don't shoot me, I'm just the
23 messenger, okay. But what the Review Panel is being
24 asked to consider is a different scenario where the
25 project lands would generate 1,500 jobs instead of

1 130. And a lot of those 1,500 people would be going
2 to work in their own vehicle.

3 And I know some of them are going to
4 cycle and some of them are going to jog and some of
5 them are going to take the bus, but those people would
6 all be driving to work on Britannia during the morning
7 rush hour and presumably leaving during the evening
8 rush hour. So how do we deal with that scenario?

9 MS. MEYER: Well, I think to compare
10 1,500 cars to 1,500 trucks is not comparable, right.

11 MEMBER McMURRAY: Fifteen hundred
12 (1,500) trucks -- or sorry, 800 trucks in and 800
13 trucks out is 1,600 trucks.

14 MS. MEYER: Yes.

15 MEMBER McMURRAY: And again, don't
16 shoot me. We're just -- we're taking all the evidence
17 in front of us and we're being asked to consider that
18 those 1,600 trucks are distributed over a 24-hour
19 period.

20 So by the same logic, 1,500 cars in
21 and 1,500 cars out makes 3,000 cars, and presumably
22 they would not be distributed over a 24-hour period.
23 They would be focused on the morning -- they call it
24 the peak hour and the evening peak hour or hours.

25 So how does Milton and Halton -- how

1 would they deal with that influx of vehicles?

2 MS. NEWMAN: Well, I think -- with
3 absolute respect, I think you're asking us to compare
4 apples and oranges.

5 MEMBER McMURRAY: No, no. I'm
6 interested in any answer that you have.

7 MS. NEWMAN: So if I can -- say, for
8 example, if you go to a shopping area or shopping mall
9 or what have you, you probably have a very large
10 number of cars that go in and out of that shopping
11 area daily from all over the place.

12 And when a place is designed to be
13 able to manage that kind of traffic and that kind of
14 movement, yes, there are going to end up being some
15 issues, but the cars move in and out and everybody
16 does their thing and that's how it goes.

17 This -- you're asking us to compare it
18 to a facility being placed in an area that we know
19 from historical information is not an ideal location,
20 and then you're asking how we would compare the
21 movement of industrial vehicles to everyday vehicles.
22 I mean, it's completely different.

23 The cars in and out of the facility,
24 if in there is an accident, that doesn't necessarily
25 mean five, six-hour delay on that road and the

1 ramifications of an accident are far less dire if it's
2 a smaller vehicle. It's more easily removed from the
3 road, for example.

4 If you've spent any time up at the
5 Brampton intermodal terminal, and we've spent a lot of
6 time up there, we've also spoken to people that live
7 nearby, Symington and the Calgary terminal and the St-
8 Laurent terminal. You know, these are all terminal
9 that have a major road that comes nearby. They don't
10 have to deal with the same idea of traffic that we
11 would have to deal with.

12 If these trucks -- when you go up to
13 Brampton, they have similar issues except that the
14 residential was not -- that was - the yard was there
15 first in terms of the residential.

16 So if you go up there and see the
17 lineup of trucks waiting to get in there, all the way
18 back to a major artery -- you know, a lineup of trucks
19 just does not move like a lineup of cars does. It's
20 common sense, I suppose.

21 MEMBER McMURRAY: So I think you gave
22 me a very detailed comprehensive answer. To simplify,
23 you would prefer the 1,500 cars to the 800 trucks.

24 MS. NEWMAN: You're asking me to state
25 a preference based on a hypothetical. I don't really

1 have -- I don't know that I can give you a really
2 solid answer on that.

3 But yes, if you're going to put it
4 both in front of me today.

5 MS. MEYER: I think for me to say --
6 yes, I would prefer the 1,500 cars because I also feel
7 that there's more benefit in that you're also now
8 having 1,500 jobs, whereas today you have a facility
9 that's going to be bringing in that many -- like the
10 800 trucks in, 800 trucks out, but there's not --
11 we're not really getting any benefit out of that.

12 We're not getting the jobs in our
13 area. We're not getting the development that would
14 actually then bring in potentially better industries,
15 like -- so we were talking about the tech industry.

16 We're not getting any benefit out of
17 this facility other than the fact that it's going to
18 be putting all these trucks on our road, we're going
19 to have a facility that's extremely close to
20 residential zones and even though we've been talking
21 exhausted amount of different mitigations of how we're
22 going to do this and how we're -- the end of the day
23 is, I think it's pretty obvious that there are risks
24 involved in having a facility like this near a
25 residential zoned area and we're not getting any

1 benefit from it.

2 MR. CANZONA: I'd like to add as well,
3 it's -- expanding on what my colleagues are saying, I
4 think it's simplistic to say do you want 1,600 trucks
5 or 1,500 cars or even 10,000 cars.

6 I think, again, this needs a better
7 analysis. There's too many limiting assumptions, too
8 many simplifying assumptions here.

9 When you say would you rather have
10 1,500 trucks, are they all going through that same
11 Britannia exit? I assume if this is going to be an
12 industrial park there's going to be at least three,
13 four, maybe more entrances so the cars will be more
14 dispersed.

15 There's flexible work hours. I mean,
16 you can make arguments on either side in terms of
17 what's preferred, what's not preferred.

18 We have so many experts, why don't we
19 bring the experts to bear to tell us what -- you know,
20 not only to not make simplifying assumptions but look
21 at the whole systemic situation as cars, trucks,
22 employment, some of the things my colleagues mentioned
23 and then bubble it all up and come up with, I guess,
24 the preferred solution.

25 MEMBER McMURRAY: Thank you.

1 MR. CANZONA: Thank you.

2 MEMBER McMURRAY: All of that will
3 assist us in the job we have to do. So thank you for
4 your comments. Those are my questions.

5 MS. NEWMAN: Thank you.

6 THE CHAIRPERSON: Milton Says No, Ms.
7 Newman, Ms. Meyers Mr. Canzona, thank you very much
8 for coming back for those questions. We kept you here
9 longer than I thought, but thank you for that
10 information. Very helpful.

11 So this evening before we go to our
12 next presenter, we're not -- usually we break up our
13 sessions with 15-minute breaks and we won't be doing
14 that this evening, but I'm going to suggest we take a
15 two-minute break so everyone can stand up, stretch,
16 and then we'll resume. We're not leaving the room,
17 but I think a short break is in order.

18 MS. NEWMAN: Thank you.

19 --- Recessed at 8:03 / Suspendue à 2003

20 --- Resumeed at 8:06 / Reprise à 2006

21 THE CHAIRPERSON: If you would like to
22 take your seats, we could start the session again.

23 So our first presentation is by Ms.
24 Vogel Post. So while Ms. Vogel Post is getting seated
25 here -- so according to the procedures for the general

1 session, the people who've indicated they'd like to
2 give presentation, we are asking you to keep your
3 presentation to 10 minutes and the secretariat will
4 help you know when 10 minutes is coming to a close.
5 But Ms. Vogel Post made a special request if she could
6 have 15 minutes, so there will be a difference there.

7 So our presenters are Ms. Vogel Post,
8 Mr. Derrick Snowdy. Then we have Pony Pines
9 Development, Stevenson Land Development and Shadybrook
10 Development. That's one presentation.

11 And then we also have some names of
12 people who would like to speak if time allows, and I'm
13 sure the time will allow.

14 So Ms. Vogel Post, hello.

15 **PRESENTATION**

16 MS. VOGEL POST: Okay. So it's Rita
17 Vogel Post, and I do have someone joining me in a
18 minute. They just went for a smoke break.

19 Okay. So Milton Residents Affected by
20 Intermodal Lines has been researching intermodal sites
21 and transport since 2001. We recognize we are not
22 intermodal or transportation experts; however, we have
23 learned much about the industry.

24 Through research and common sense, we
25 realize the tremendous impact this project would have

1 throughout Milton and all of Halton Region, and that
2 has always been our focus, community impact, and
3 making sure that no community faces these same issues.

4 We believe the *Canadian Transportation*
5 *Act* is flawed and, as the railway industry grows, we
6 see how this power given to the railways needs to
7 evolve and change to protect our environment and
8 Canadian citizens better.

9 It is vital that greater consideration
10 be made for community impacts. Stronger regulations
11 need to be set to ensure an intermodal facility be
12 built in an industrial area with the existing or
13 municipally planned infrastructure to support it.

14 Greater independent monitoring must
15 also be enforced to prevent -- to protect the
16 environment and communities involved.

17 If built, the intermodal facility will
18 significantly impact all of Halton. Effects will
19 dramatically increase for those along truck routes and
20 continue to rise for those closer to the proposed site
21 adjacent to and within the project site. We are
22 certain CN, the Panel and all involved in this process
23 would agree with that statement.

24 To simplify, R.A.I.L has much concern
25 for health impacts, air, noise and light, dust and

1 particulates, increased truck traffic, safety
2 concerns, impact on property values and our quality of
3 life, just to name a few.

4 We acknowledge CN's statement they are
5 committed to mitigating issues with residents.
6 However, because we have had no contact from CN, we
7 lack confidence in their proposed process and feel
8 justified in our serious concern. We are now
9 apprehensive with the mitigation process for today and
10 the future.

11 We are asking that CN provide Milton
12 R.A.I.L. and the Panel Review a detailed list of
13 issues, correspondence from residents, businesses and
14 communities across North America where CN operates
15 intermodal facilities and railyards, the problems,
16 concerns and questions, as well as mitigation measures
17 made to satisfy all parties.

18 We are not in the business of trains
19 and intermodal and realize there are issues we have
20 not considered.

21 The industry is ever changing and even
22 CN will not fully disclose their future plans,
23 particularly the undesignated land use just -- thus
24 challenging us to consider future issues and impacts
25 to our community.

1 We also request details of issues not
2 mitigated to the satisfaction of all parties. With CN
3 yards across North America, we expect there are many
4 unresolved and ongoing problems.

5 Through this process, information will
6 be public and all parties involved can review the
7 material. CN, as experts in transportation, will have
8 addressed issues not examined through this process.

9 We do not want to be blindsided by
10 problems we have not considered. If CN, indeed, wants
11 to be a good neighbour, then this request should not
12 be an issue.

13 We are requesting reliable life-long,
14 independent monitoring for all environmental and
15 community impacts, not simply a one or three-year
16 commitment.

17 To identify concerns for -- can't even
18 speak, sorry. To identify concerns for cumulative
19 effects and long-term impacts, we request independent
20 analysis of soil samples, plant life, water, and air
21 testing for multiple existing CN yards. We require
22 the exact locations and timing of samples to be
23 determined by the independent tester. We request this
24 information be provided to the Panel for public
25 record. Results should then be reviewed and

1 considered before the final decision is made for the
2 Milton Intermodal Terminal.

3 Yesterday, July 10th, the Minister of
4 Tourism, Culture and Sport spoke to the panel
5 regarding heritage protection. We understand CN is
6 expected to protect heritage properties. We have a
7 concern as 5501 Tremaine Road owned by CN has been
8 vacant for many years. Neighbours have called CN --
9 sorry pardon me. Neighbours called the police when
10 vandalism occurred. Over the past year, mothballing,
11 placing of boards on windows and doors was done. The
12 incredible delay in effort fails to instill faith that
13 CN will protect properties or mitigation measures with
14 residents.

15 CN mentioned a community group should
16 be a sounding board for relating issues. We feel this
17 will put an arms length between CN and the residents,
18 increasing the time to resolve issues and open the
19 door for miscommunication. It would work best if we
20 worked directly with CN and we invite them to provide
21 a specific contact at their office to address issues
22 as they arise.

23 Federal legislation limits railway
24 responsibility. We feel an additional independent
25 contact person is required to oversee CN when we have

1 issues that are not addressed, or not addressed in a
2 timely fashion. All expenses would be CN's full
3 responsibility.

4 If this facility is approved, we
5 request that CN establish and fund in advance to pay
6 for issues that arise throughout the life of the
7 facility with funds being replaced as money is used
8 for mitigation.

9 Decisions and procedures for this
10 project are critical. Independent and extensive
11 monitoring and testing for the lifetime of this
12 project is essential. If this project goes through,
13 CN must be held accountable for all the impacts it
14 brings to the community and must not be allowed it
15 hide behind the *Canadian Transportation Act* and be
16 exempt from scrutiny.

17 It's one thing to plan and oversee the
18 development, it's another to live with this and the
19 ongoing impacts this hub -- sorry, the ongoing
20 impacts. This hub is for CN's private, for profit
21 business, yet this is our lives, our health, our
22 safety and our future.

23 Thank you. And now I would like to
24 introduce Milton R.A.I.L.'s friend, Greg Gormick, from
25 On Track Strategies to address the Panel.

1 MR. GORMICK: Thank you, I'm sorry,
2 I'm a little tardy, sort of like a CN freight train.
3 Four points. Revisionism, safety, failed
4 transportation policy, thorough alternatives analysis.

5 This is the wrong yard and the wrong
6 place at the wrong time. It suits their needs because
7 it's flat, it's relatively narrow. It's on the
8 mainline. That doesn't mean it's the right location
9 strategically, geographically. The yard they have
10 now, that wasn't the right yard in the right place.

11 Time? They need this yard because
12 they are so overwhelmed with traffic. That's fine.
13 Their president the other day said he is struggling to
14 get enough traffic on to the eastern end of the system
15 to keep it going. I'm hearing two different stories
16 here.

17 The sign out front. Milton Logistics
18 Hub, oh please. That is spin, spin, spin. In fact,
19 that's the start of my next editorial about Bombardier
20 for the Toronto Sunday, spin, spin, spin. And I know
21 about spin, because I worked for these people in PR.
22 I also worked for Canadian Pacific in PR and corporate
23 affairs. It's rhetoric, it's spinning, it's going
24 back on history.

25 None of these people were involved in

1 those earlier projects. I was. I was CN's Assistant
2 Manager of Modal Competitive Research from 1989 to
3 1991. In 1986 a CN Vice-President I loved, turned me
4 into a consultant. He took me from a railway
5 background, from journalism, from advocacy and he
6 said, "If you'll come and work for me on intermodal,
7 I've got a contract for you." That started my career
8 in 1986. Brampton Intermodal Terminal.

9 I was there before it was opened
10 because my uncle was the Coordinator of Service Design
11 for CN's Great Lakes Region and he said at the time,
12 "This yard is not going to last. It's the wrong shape
13 in the wrong place." This is what we are going to do
14 again? That yard is a redevelopment opportunity.
15 That's also what's not being discussed here. That
16 property has incredible redevelopment potential.

17 The laser, I remember riding the prime
18 intermodal train many times between Montreal and
19 Toronto, going into Brampton. Well, I saw a perfect
20 yard in Montreal, which was long, flat, lean, double
21 ended, at Turcotte. We would go in -- we would have
22 congestion going into the Brampton yard it was so bad.
23 And it's still bad. They need to get out of that
24 yard. There is no question about that. I'm not at
25 logger heads with them over that. The yard is bad.

1 This is not the right place for it.

2 In 1998, to 2001 I was on a contract
3 with CN. I actually was the speech writer for the man
4 who set the whole tone for this. The late, legendary,
5 E. Hunter Harrison. And Hunter? Hunter? Hunter?
6 His spirit is around here. Because he had a take no
7 prisoners approach. "They don't like it out in
8 Milton, too bad. What can we do to schmooz them? I
9 know, let's paint the bridges blue. That will make
10 them like us." I watched all of this. I participated
11 in it. The files are sitting back at my office.

12 This is wrong. Now I also worked on
13 other Intermodal projects, because I also worked for
14 Canadian Pacific. I was thrilled to see a Canadian
15 Pacific car sitting out there, because between the two
16 railways I'll take them. Because when we had to do
17 Vaughn, we went through it twice. I went through it
18 once from the journalism side and dealing with CP,
19 with a man -- another vice-president I loved very much
20 who left us a year or so ago.

21 And he said, "We have got to satisfy
22 these people up in Vaughn and they have good points."
23 And they went back, and by the time they came back a
24 second time I was with them and Vaughn was my PR
25 project. And we did what those people wanted.

1 Now, did everybody want it up in
2 Vaughn? No. It's controversial. Air coming in with
3 an industrial repurposing of agricultural land. You
4 are never going to be loved. And let's cut right to
5 the chase. It's not a logistics hub. It's not an
6 Intermodal hub. It's a railway and truck yard.
7 Freight trains, passenger trains, commuter trains,
8 I've dealt with them all. People love passenger
9 trains. They sort of like commuter trains. They hate
10 freight trains. They are big, dirty, noisy, they tie
11 up the grade crossings, they can be unsafe if the
12 owner is not running them properly.

13 Revisionism. We're not getting the
14 full sorry here about what's going on. We're just
15 going to build a little yard, but we need a big
16 buffer. No, no, no. CN was so jealous of CP because
17 they did Vaughn correctly. They bought all the land
18 and then they got a trucking company, Consolidated
19 Fast Freight, and they got Sears and they came in and
20 they developed all that land. And if you go up to
21 Vaughn and you see it, it's the ideal situation. They
22 planned it so that those trucks don't have to come out
23 of the Vaughn Intermodal Terminal to go to Fast
24 Freight or to go to Sears SLH.

25 They have their own roads. They put

1 it right at a spot where there is immediate access to
2 main highways. And CP monitored that, the truckers.
3 "Hey, don't start going through Bolten, that will get
4 us into trouble. You go down 50 and on to the 427.
5 That's your route. Stick to it." And the trucking
6 issue is a big one here and that brings us to safety.

7 And I'm sorry to have to say this
8 because I never thought -- my family stretches back a
9 ways with this company. In fact, back to when it was
10 the Canadian Northern and the Grand Trunk. My great-
11 grandfather and his brother went to work for the Grand
12 Trunk in 1882. Another great, great uncle went to
13 work for Canadian Pacific at the same time. I'm
14 beginning to wonder who were the smarter railroaders?

15 Risk. There is risk in
16 transportation, there is risk in everything. Now,
17 they'll tell you that this is really safe. It's not
18 safe. It's not safe. They reconditioned their Paul
19 Tellier Tunnel the other day with sulphuric acid, down
20 in Sarnia. It happens. Safety costs. Safety pays.
21 You're opening up all kinds of safety issues here at a
22 time when the industry is in turmoil and CN is in
23 turmoil. They have changed executives and presidents
24 more often than most people change their underwear
25 these days. This is not a stable company.

1 And they need to be asked some serious
2 questions that relate to, since I don't have enough
3 time too, thorough alternatives analysis. Which is a
4 key aspect of the American process. I was just
5 dealing with it the other day on a project in Oregon.
6 It needs to be done. A lot of questions remain to be
7 answered, and it's unfortunate that my friends from
8 Milton R.A.I.L. and Milton Says No, that they have to
9 do all this work. They have to. They haven't done
10 their work. They need to be made to do that.

11 I hope you can hold them to account
12 because they were once called the people's railway
13 when we owned them. Well they should take a cue from
14 another man who owns a railway completely, he's one of
15 their largest shareholders and that's Warren Buffet.
16 And he says, "I bought the Burlington Northern Santa
17 Fe outright because it's a great investment, but it's
18 my compact with America. I get to make money, our
19 investors make money, but it's a compact with
20 Americans. We have to run safe, efficiently and in a
21 way that does not disturb these communities."

22 Thank you.

23 --- Applause

24 THE CHAIRPERSON: I'm going to ask you
25 all please to refrain from clapping. This happened at

1 another general session and you were very good about
2 that. There is a good reason for this, because we
3 don't want anybody who is coming forward to speak to
4 the Panel to feel in any way intimidated, to feel that
5 maybe the room is full of supporters for another view.
6 So from now on, I would ask if you would refrain from
7 applause.

8 So, thank you Ms. Vogel Post and I'm
9 sorry, I didn't hear your name properly.

10 MR. GORMICK: Greg Gormick. You saw
11 my work because the other group gave it to you the
12 other day.

13 THE CHAIRPERSON: Greg Gormick, yes.
14 Thank you for your presentation.

15 So I have a question, Ms. Vogel post,
16 for you. Now, you have listed a number of things that
17 you request, demand, I'm not sure. Recommendations?

18 MS. VOGEL POST: Polite request, yes.

19 THE CHAIRPERSON: And I just want to
20 be clear, you -- at first, I thought that you were
21 asking for some things that you felt that CN should do
22 after this process.

23 MS. VOGEL POST: Right.

24 THE CHAIRPERSON: And then I began to
25 Wonder, are you actually suggesting these are things

1 you want from CN to be included in this process,
2 because I think that's probably going to be very
3 difficult. I can't exactly ask for -- since most of
4 the things you were listing would involve a great deal
5 of work, I imagine, even if it were possible.

6 And as you probably know
7 unfortunately, we're coming to the end of the hearing
8 and we are asking for all undertakings and any extra
9 work -- or extra information to be brought into us by
10 Friday, tomorrow. And there is good reason for this
11 because people need to be able to see it before they
12 do their closing remarks.

13 So I just wanted to clarify what you
14 in fact were asking for.

15 MS. VOGEL POST: I understand what you
16 are saying and I understand the time -- the schedule
17 is short. But be, I feel it's critical that we look
18 at that information. People are always talking about
19 the long-term effects, the compound effects, and I
20 think nothing would show that more than looking at
21 soil samples, water samples, air and different
22 environmental systems at existing yards.

23 Because I think it would really speak
24 volumes to how the rail yards are run, and what is
25 actually left behind. Because I know all the issues

1 that are being raised are very important. But, I
2 think something that people are missing is what is
3 actually going on in the yard and we need to consider
4 that.

5 Because the long-term impacts -- the
6 reason I say that is because of the concern with the
7 *Canadian Transportation Act*, I feel -- and from what -
8 - I can't share this information because I don't have
9 documents of this. But people that we have spoken to
10 over the years, and we're going back to 2001, have
11 expressed in great detail situations and problems that
12 have occurred in yards. These are people that either
13 work in the yards or drive the trucks, and it's a
14 great concern, because a lot of these things, in their
15 opinion, were overlooked or not reported.

16 THE CHAIRPERSON: Okay, I understand.
17 I regret to say that I can't -- there is just no way
18 that the Panel could turn to CN and say "Please, can
19 you provide the Panel with this information?" Because
20 there just is no time. So, I'm sorry about that. But
21 I understand what you are saying and I understand your
22 concern about this.

23 MS. VOGEL POST: Is there a way that
24 that information could be gathered and used for
25 mitigation later, to make sure things are done

1 properly if this project does go through?

2 THE CHAIRPERSON: Let me turn and ask
3 a question of CN in that regard. So Mr. Lerner, you
4 heard Ms. Vogel Post's concerns and her request for
5 additional information about your operations
6 elsewhere. I was wondering, do you want to make some
7 response? I'm not -- you heard me say the Panel can't
8 ask you to do this during this process.

9 MR. LERNER: I appreciate that. First
10 of all, I didn't write down all the requests. I know
11 there was quite a few, so off the top of my head I
12 can't say what we have.

13 All I can say though is that a lot of
14 the analysis and design that went into this terminal,
15 was based on what we have learned from the other
16 terminals. I know it doesn't answer your question
17 directly in terms of getting the measurements. But
18 it's kind of -- we learned from what we have done at
19 other terminals, and that's why Calgary is designed in
20 a certain way, and that's why we're having Milton
21 designed in a certain way.

22 But again, I know there is a long list
23 there and I can't -- can I ask.

24 THE CHAIRPERSON: Can I ask if CN
25 would be willing to have discussions with Ms. Vogel

1 Post about her concerns and see whether there is
2 information -- I'm not talking about before tomorrow.
3 I'm talking outside of this process. Is that
4 something that CN would be able to do.

5 MR. LERNER: Yes. We have tried. I
6 am not saying necessarily with you. There has been
7 conversations and like we say, we want to continue and
8 we're not there yet. If we are to go there. So yes.

9 THE CHAIRPERSON: Thank you.

10 I thank you both for your presentation
11 and sorry, we are unable to deliver on what you were
12 asking for, but I hope that there will be future
13 conversations. I'm sure you will stay very much
14 involved in this process.

15 MS. VOGEL POST: Can I make one more
16 comment? I just think it's critical that if this
17 project goes forward that there is someone outside of
18 CN that will also hold them accountable so that they
19 can't, you know, stand behind the *Canadian*
20 *Transportation Act* and say they don't need to address
21 these issues, because I have great concern and frankly
22 no disrespect, although it definitely sounds
23 disrespectful, I have no faith in what will come and
24 how we will be treated.

25 THE CHAIRPERSON: Thank you very much.

1 MS. VOGEL POST: Thank you.

2 THE CHAIRPERSON: Thank you very much,
3 Mr. Gormick.

4 So our next presenter is Mr. Derrick
5 Snowdy.

6 **PRESENTATION**

7 MR. SNOWDY: Good evening. My name is
8 Derrick Snowdy. I've lived in Halton Municipalities
9 with my family since 2004. I'm raising my children
10 here. Until last summer, I spent the last five years
11 living here in Milton and within whistle distance of
12 the CN rail tracks. I'm very familiar with the
13 location proposed CN intermodal terminal.

14 My comments to you today are personal
15 and they reflect my opinions and experiences in
16 dealing with CN Rail and its business practices.

17 The intermodal proposal has deeply
18 affected this community. When it comes to the
19 environmental impact on the land and the community, it
20 is not enough to consider the immediate risks, but the
21 ongoing dangers. CN is not simply a business trying
22 to locate here in Milton; they are asking the people
23 of Milton and Halton to trust them with the future
24 health and safety of their families. At its heart is
25 that very issue of trust.

1 CN Rail's operations and
2 accountability is the very crux of the trust they're
3 asking to be placed in this community and help to
4 protect the environment for families. CN is not just
5 another company. They're arguably a Canadian
6 institution with history and roots. They count
7 amongst their largest shareholders Members of the
8 Parliament's pension fund, the Québec pension fund,
9 and the RCMP's pension fund.

10 I have a unique perspective on this
11 proposal and its potential to impact the town of
12 Milton and all of Halton Region. The past 28 years I
13 worked as a Private Investigator and my practice is
14 focused on corporate security, finance, due diligence,
15 and industrial auditing. I've worked throughout North
16 and South America, Africa, and the Middle East. It
17 is my job to sort through what companies say publicly,
18 and reconcile the incongruence of their statement with
19 the actions.

20 For two years I was a contractor to CN
21 Police, the private police force operated by CN Rail
22 in the *Railway Act*, and during that time period I had
23 access to the Brampton Intermodal Terminal.

24 Before I get much further, you should
25 be aware that CN rail has obtained a Restraining Order

1 that I not disclose specific details of my knowledge
2 of their business activities. CN told the courts that
3 the disclosure of the information known to me would
4 cause irreparable damage to CN's business. This
5 information pertains to their engineering business
6 practices and other operations. And knowing what I
7 know about their business, I completely understand
8 their fears. With that in mind, I will cautiously
9 make this presentation respecting the Order of the
10 Court.

11 While many people have spoken about
12 the environmental cost and construction of the
13 facility, it is the future costs that give me the most
14 concern. In the past, and as you've all heard before,
15 rail freight that moves through the Halton sub is
16 quite large. There is a dangerous cargo that moves
17 through the corridor every day. Slow-travelling
18 trains that crawl through the community are doing so
19 under speed restrictions, known as slow orders. These
20 are applied when trains are carrying extremely
21 dangerous goods. This makes every slow-rolling train
22 already moving through Milton on a daily basis a
23 potential weapon of mass destruction.

24 The trains currently travelling
25 throughout the Halton sub we most associate with

1 danger are those rail cars, loaded with liquids or
2 gases. They represent a rolling danger. Now with an
3 intermodal terminal and transportation, we are
4 concerned what is the resident danger?

5 Intermodal facilities are handling
6 facilities for a wide range of goods. Some of these
7 are dangerous goods shipped in solid and barrel
8 states. It is one thing to have a dangerous cargo
9 unit transit your community on a rail line; it's
10 another to take it off the train, pass it around.

11 It is not a matter whether these
12 products and goods are necessary to the business of
13 CN, or even the economy of Canada, quite simplify they
14 are a necessity. They are a must for business, and
15 this country, as I've said, has a long and storied
16 history with the railroads. I would not be
17 overstating it if I said the railroads built this
18 country from coast to coast.

19 The history that is rooted is so deep
20 that in fact the outside lawyer used by CN to obtain
21 the restraining order against me is the grandson of
22 one of the founders of CN Rail.

23 It is not a matter if accidents or
24 contamination to land will occur, it's a matter of
25 when, how, and what the responses will be. Now, let

1 me explain, and I'm sure you've heard the talk about
2 particulate and other matters. These are all sort of,
3 well, before your consideration.

4 Any railyard accidents occur, spills,
5 contamination, a variety of ways, including
6 derailments, handling errors, or even faulty
7 equipment, such as worn rolling stock. The process of
8 cleaning up and washing down the pads pushes
9 contaminants in the soil, chemical lubricants, fuels
10 for engines, and others leach into the soil yard.

11 A few years ago we obtained soil
12 samples from three CN rail yards here in Southern
13 Ontario. They were sent for analysis of hydrocarbon
14 spectrum in the United States. The conversation then
15 revolved around the fact that they were contaminated
16 to the point where transmitting them across a border
17 became an issue, because environmental paperwork
18 hadn't been done. They were that much of an issue.
19 We know there will be problems and we know there will
20 be spills. We know there will be accidents. It's not
21 how CN will respond that will be -- excuse me. It is
22 how CN will respond that is of public interest to this
23 community.

24 In 2013, I worked with reporters from
25 the CBC to obtain evidence proving that CN rail had

1 underreported 1,800 derailments over the past six-year
2 period. CN denied that they had had any unreported
3 derailments. When confronted, the Transportation
4 Safety Board, with photographs of derailed trains and
5 work orders for which preparers were done where they
6 had no derailment reports filed, the Transportation
7 Safety Board was compelled to seek CN's disclosure
8 related to their safety records, as they would not
9 willingly do so.

10 When confronted with the evidence, CN
11 Rail blamed their understanding of what was considered
12 reportable for this discrepancy. The Transportation
13 Safety Board defines a derailment as any time a train
14 leaves the tracks. CN had its own description.

15 I'm somewhat simplifying the statement
16 as I'm prohibited from going much further, but it was
17 actions that were completely questionable. At the
18 time, CN spokesman Mark Hallman was quoted:

19 "Following a series of
20 discussions, CN and TSB reached
21 agreement on an interpretation
22 for reportable equipment and
23 track damage." (as read)

24 I'd like that just to marinate with
25 you for a second or two, if you would.

1 Essentially, it appeared that Hallman
2 was acknowledging the statement was that CN applies
3 its own interpretation to the law of the land and only
4 when confronted by authorities do they change their
5 business practices.

6 Even today, we see the efforts of CN
7 to conceal their business operations.

8 In 2017, I was asked by the Auditor-
9 General of Ontario to provide information on CN's
10 business practices for a confidential investigation.
11 CN Rail obtained a further restraining order to
12 prevent me from disclosing my knowledge of CN to the
13 Auditor-General.

14 The Auditor-General would, in 2017,
15 publish a scathing report on Crown agency's contract
16 with CN. The Crown agency defended itself publicly by
17 citing CN's refusal to cooperate in its audit of
18 public money spending.

19 There are towns and cities all across
20 Canada, fire departments, constantly trying to obtain
21 information about trains passing through their
22 communities. CN has long stated that security was an
23 issue in divulging the contents of these trains.

24 Every train has a manifest known as a
25 train journal carried in the cab by the engineer.

1 These journals show the order in which railcars are
2 assembled in a train and their contents.

3 These are produced when a train is
4 constructed in the railyards in a process known as
5 humping. Railcars are pushed over a hump into a chute
6 of line to assemble the trains. It's a simple process
7 to copy emergency services of these communities about
8 the trains travelling through them.

9 I had hoped to show you a train
10 journal moving through the Halton sub this week, but
11 due to the derailment of dangerous chemicals in the
12 Tellier Tunnel last week, rail traffic through the
13 corridor was stopped for a while and resumed
14 yesterday, I believe.

15 As referenced, these are train
16 journals from CN rail trains that pass through here in
17 the Halton sub and they're noted and categorized in
18 very special ways: dangerous; special dangerous;
19 residue; bad cars, all sorts of travel. So they're
20 very easy to list.

21 From my examination of these journals,
22 I believe that CN does not provide these to
23 communities because of any actual security concern,
24 but for a more troubling reason. In my examination of
25 hundreds of these documents, I discovered what's known

1 as a marshalling area in the assembly of trains.
2 Essentially, these documents become evidence that CN
3 is not complying with the Transport Safety Board
4 regulations or Transport Canada rules.

5 A simple example, and we'll scale this
6 down, is to place moveable cargo like pipes directly
7 behind dangerous tanker cars, explosive gases or
8 fuels.

9 I met with fire officials here in
10 Milton a couple of years ago. When they reviewed
11 these train journals they were more than shocked.

12 The fire chief was about to retire.
13 He disclosed to me that the Milton Fire Department
14 does not have the manpower or the equipment or
15 resources to deal with a hazardous train derailment
16 and in the event of a disaster, despite the assistance
17 from Burlington and Oakville Fire Department, the City
18 of Milton or the Town of Milton's plan for a
19 derailment or chemical incident is to evacuate this
20 town.

21 Two very key things to note about this
22 are the Milton Hospital falls within the evacuation
23 zone for the proposed intermodal facility and for
24 trains hauling dangerous cargo, also known as DCs,
25 they travel within 60 feet of the Maplehurst Vanier

1 Correctional Facility located along the rail line. In
2 the event that a derailment occurs, there's no way to
3 evacuate that facility. It houses 2,000 inmates and
4 staff, which have no way of escaping a tragedy.

5 Once the CN intermodal facility is
6 constructed, there is no way to turn back the clock.
7 There is no way to expect or to undo what has been
8 done, and the people of the Town of Milton need to
9 have the confidence that the -- and transparency from
10 CN Rail of forthcoming information that's accurate,
11 real, and is not skewed by the agenda of the company
12 itself.

13 With a limited amount of time left, I
14 think I can conclude. I think we have to ask
15 ourselves, if you look carefully at the history of the
16 business model and conduct of CN Rail when it wasn't
17 to their benefit, how did they act in the past, and
18 can they be expected to reasonably act in the future
19 when it comes to the life, safety and security of the
20 people who live here in Milton?

21 THE CHAIRPERSON: Thank you very much,
22 Mr. Snowdy, for your presentation.

23 I think it would probably be
24 appropriate -- first, I will ask CN if you wish to
25 make any response about any of the points that Mr.

1 Snowdy has made before we ask questions?

2 MR. LERNER: Madam Chair --

3 THE CHAIRPERSON: I'm sorry. I'm
4 ready.

5 MR. LERNER: No problem

6 Madam Chair, we do not have any
7 comments. Thank you.

8 THE CHAIRPERSON: Thank you.

9 MEMBER McMURRAY: Mr. Snowdy, you
10 spoke to the issue about what is a reportable accident
11 and you mentioned someone who I gather was a CN
12 spokesman about reaching an acceptable interpretation.
13 I don't want to get into the merits of that. Do we
14 know approximately what year that was?

15 MR. SNOWDY: Two thousand thirteen
16 (2013), going back the previous six years. There's
17 been some change in the definition. There is still a
18 very interesting gray area dynamic that remains.

19 MEMBER McMURRAY: Thank you.

20 THE CHAIRPERSON: And I will just ask
21 -- you've raised the issues about what might happen,
22 what's being carried by various trains, and then you
23 spoke with the fire department in Milton.

24 Can I ask you if your concerns are
25 specific to intermodal trains and the type of things

1 that they're carrying, which would be quite different
2 from general freight trains?

3 MR. SNOWDY: The concerns around an
4 intermodal yard, and I've worked inside one, I've been
5 inside, and I understand what some of the cargo is and
6 can be and how trains are marshalled. As cargo is
7 stored -- there are other types of dangerous and
8 hazardous cargo that are shipped not in what we
9 normally see passing through Milton every day in, say,
10 a tanker car, et cetera, dry chemicals, other types of
11 hazardous material.

12 They can be waylaid because they're
13 being assembled for delivery. There could be a backup
14 in delivery schedules or moved in from another train
15 that had to be shunted from an area.

16 When those cars are damaged or when
17 accidents occur -- and they do occur, and that's just
18 normal. It's not that we can't expect that to happen.
19 That's a normal part of operating any type of
20 industrial facility.

21 I think an industrial facility in the
22 middle of a residential community, it's kind of a bad
23 plan for a lot of the obvious reasons. But the cargo
24 there isn't excluded from dangerous or toxic materials
25 and, in fact, depending on the needs of the shipper or

1 the needs of the transporter, it could remain there,
2 it could be stationary for whatever reason.

3 It's a matter of what we do with it
4 once it's there or what they do with it once it's
5 there and how things are handled if it's damaged, if
6 it's leaked. Plus, you have the actual addition of
7 rail traffic.

8 You're talking about a large amount of
9 tracks, railcars in the hundreds, thousands, engines.
10 Everything is carrying lubricants, fuels. The rain
11 simply washing down a train washes all of these things
12 into the soil.

13 The land there is very flat. There's
14 runoff on the farms, the community around it. It's
15 not simply like parking a car and hoping that the rain
16 doesn't wash the toxins off.

17 These are industrial trains. This is
18 how it happens. This is what it does.

19 THE CHAIRPERSON: Okay. Thank you
20 very much, Mr. Snowdy. Thank you for your
21 presentation.

22 MR. SNOWDY: Thank you.

23 The next presentation is by -- we have
24 Pony Pines Developments, Stevenson Land Development,
25 Shadybrook Development.

1 Good evening. If you'd like to give
2 your names for the record since I don't have them and
3 spell them, please.

4 **PRESENTATION**

5 MS. SCHOFIELD: Is this on? My name
6 is Kathleen Schofield with Great Gulf.

7 MR. DeGASPERIS: My name is Adrian
8 DeGasperis with Great Gulf.

9 THE CHAIRPERSON: Do you mind spelling
10 that for the record?

11 MR. DeGASPERIS: D-e-G-a-s-p-e-r-i-s.

12 MS. SCHOFIELD: Sorry. It's not going
13 up on the screen -- great. Thanks.

14 Good evening, Panel members, and thank
15 you very much for allowing me to speak this evening.
16 My name is Kathleen Schofield. I'm the Executive
17 Vice-President of land development at Great Gulf, a
18 developer and builder of residential and mixed-use
19 communities.

20 Affiliates of Great Gulf own and are
21 in the process of developing approximately 3,700 homes
22 on 318 acres within the Boyne secondary planning area.
23 These designated residential lands were acquired
24 approximately 15 years ago, and since that time I've
25 been involved in obtaining land use approvals to build

1 residential communities, including our lands
2 immediately north of the proposed intermodal site and
3 west and east of CN's principal rail line north of
4 Britannia, as shown on these plans. This is just a
5 plan showing the extension of our holdings.

6 My comments today, however, will be
7 just on behalf of the entitlement interest we have in
8 our two communities, Pony Pines and our Shadybrook
9 Stevenson properties, and the environmental impact of
10 the proposed CN intermodal on the residents of these
11 communities.

12 Upon buildout, these communities will
13 include 1,900 homes in addition to related community
14 spaces such as parks, greenways, elementary and
15 secondary schools over approximately 1,900 acres.

16 The communities and the community uses
17 have been planned and integrated within the larger
18 planned and approved Boyne community and anticipated
19 to have a total population of approximately 50,000 at
20 full buildout. This is a -- sorry.

21 That's a copy of a plan that I believe
22 Curt Benson presented in some of his documents, so
23 we're just showing the relationship of our lands to
24 the adjacent proposed facility.

25 The planning approvals for our lands

1 and other lands within the Boyne community are very
2 advanced, as you've heard from both the town and the
3 region. Great Gulf is currently building and selling
4 homes in our first community within Boyne on Regional
5 Road 25 and Louis St-Laurent. A total of
6 approximately 1,800 homes and 500 apartments will be
7 built in that location.

8 On the Pony Pine Lands immediately
9 north of Britannia at Tremaine, we are currently
10 conducting earth works and a channel realignment
11 project. We anticipate commencing underground
12 servicing in the spring of 2020 and house construction
13 in the fall of 2020.

14 The lands on the east side of the CN
15 tracks immediately north of Britannia, Shadybrook
16 Stevenson subdivision, will proceed sequentially as we
17 build out the Pony Pines subdivision.

18 The Halton Catholic School Board has
19 already purchased the high school on the Shadybrook
20 lands east of the CN tracks and is in the process of
21 site development.

22 As you've heard from Curt Benson from
23 the region and Barb Koopmans from the town, the land
24 use approval process for residential development on
25 our lands in conjunction with the entire Boyne

1 secondary plan have been subject to an extensive
2 public process as required under the *Ontario Planning*
3 *Act* over the past decade involving the province, the
4 Region of Halton, the Town of Milton, Halton
5 Conservation, provincial and federal agencies and
6 including CN, neighbouring properties and other
7 municipal stakeholders.

8 The Boyne lands were identified for
9 urban development in accordance with the provincial
10 *Planning Act* by the Region of Halton and the town of
11 Milton over 20 years ago. The local official plan,
12 the Boyne survey secondary plan, was adopted by Milton
13 in 2010 and approved by the region in 2013.

14 In order for development to proceed, a
15 number of extensive studies had to be completed to the
16 satisfaction of the region, the town, and the
17 Conservation Authority to implement the secondary
18 plan, such as the subwatershed study update in 2015,
19 functional servicing and environmental management plan
20 in 2015, and a conceptual fisheries compensation plan.
21 Those studies were subject to public consultation and
22 agency review.

23 The water, wastewater and road
24 projects required environmental assessment approvals
25 under the provincial class environmental assessment

1 process. A further tertiary plan for the block one
2 bound by Tremaine, Bronte, Britannia and Louis St.
3 Laurent being a more detailed land use plan based on
4 the technical details informed by the subwatershed
5 study was also required and finally approved in 2017.

6 A copy of the tertiary plan is on the
7 screen in front of you with, again, our land holdings
8 outlined.

9 Finally, we had submitted individual
10 plans of subdivision and the required supporting
11 studies and technical reports for the Pony Pines and
12 Stevenson and Shadybrook lands. The draft plans were
13 submitted in 2014, with resubmissions in 2018.

14 These plans have been circulated and
15 have received comments from approval authorities and
16 commenting agencies.

17 The draft plan that's in front of you
18 there is our Pony Pines plan of subdivision. The
19 Phase 1 lands have had the zoning by-law enacted and
20 the plan of subdivision has been finalized to the
21 satisfaction of the approval authorities and
22 commenting agencies, including CN, with final
23 conditions of approval that have been settled. This
24 plan will yield approximately 1,100 homes.

25 In short, there's been extensive

1 study, review and coordination for residential uses,
2 and the investment and preparation for development has
3 been significantly advanced.

4 THE CHAIRPERSON: Ms. Schofield, can I
5 interrupt for a second while the plan is on the
6 screen?

7 MS. SCHOFIELD: Yes.

8 THE CHAIRPERSON: Can you just -- I
9 can see all the residential lots, obviously. Can you
10 explain what the blue is, close to Britannia Road?

11 MS. SCHOFIELD: Those are -- that's
12 the stormwater management plan, or pond. So there's
13 three ponds on Britannia and there's one to the north
14 as well.

15 THE CHAIRPERSON: Okay. And the green
16 --

17 MS. SCHOFIELD: The green is a
18 channel. It's realigned so there's currently a
19 drainage channel that runs through those lands, so
20 that's an urbanized channel relocation. That's
21 actually -- we're building that right now.

22 THE CHAIRPERSON: Do you happen to
23 know what the name of that waterway is?

24 MS. SCHOFIELD: It's a tertiary of
25 Indian Creek. I believe it's Indian Creek.

1 THE CHAIRPERSON: If I said Tributary
2 A, would that mean anything to you?

3 It's further that way. Okay.

4 MS. SCHOFIELD: That's a good --

5 MR. REYNOLDS: Madam Chair, I believe
6 it's Tributary D.

7 THE CHAIRPERSON: E?

8 MR. REYNOLDS: D.

9 THE CHAIRPERSON: Thank you.

10 Sorry. What are you saying, Mr.
11 Reynolds?

12 MR. REYNOLDS: It's Tributary D, as in
13 "Darren".

14 --- Laughter / Rires

15 THE CHAIRPERSON: Thank you.

16 I'm sorry, Ms. Schofield. Please
17 carry on.

18 MS. SCHOFIELD: No, that's okay. No,
19 by all means.

20 The next slide is the Shadybrook draft
21 plan. This draft plan is directly across the street
22 from the entrance to the facility, so the north-south
23 road that you see on that track. That will share the
24 intersection with the entrance to the intermodal.
25 This plan will yield approximately 700 homes.

1 THE CHAIRPERSON: And in this case,
2 what is the yellow?

3 MS. SCHOFIELD: The yellow? It's a
4 mixed-use designation, so it'll be mid-rise with some
5 retail/commercial.

6 MEMBER McMURRAY: Sorry. Could I --
7 just before we leave that, you've been peeling the
8 layers of the onion and they've been getting
9 progressively more detailed, but in one of the earlier
10 slides, this section, or at least a part of this
11 section, as I recall it, was in red. And I thought it
12 said something -- one before that, please. There.
13 What does the red mean?

14 MS. SCHOFIELD: In the official plan,
15 in the secondary plan, it's a residential office --

16 MEMBER McMURRAY: Oh, this is not your
17 plan. This is Milton's, or the region's plan.

18 MS. SCHOFIELD: Well -- yeah. It's
19 the land use plan that's in place, so it's a
20 residential office designation. Within that area,
21 there's certain uses that you can do.

22 If you flip to the actual draft plan,
23 the problem with that plan is that doesn't accommodate
24 the relocation of the channel. So there was --
25 there's actually a watercourse that runs through --

1 MEMBER McMURRAY: Which is -- I'm
2 going to go out on a limb and say it's Tributary A.
3 Is that correct?

4 MS. SCHOFIELD: I'm not -- if I had my
5 subwatershed committee here, I would let you know.

6 UNIDENTIFIED SPEAKERS: That's
7 correct.

8 MEMBER McMURRAY: My question is -- I
9 don't mean to cut you off. In fact, please go ahead.
10 Please go ahead.

11 MS. SCHOFIELD: Just on that, our
12 acoustical -- now I'm getting to the noise issues.

13 Our acoustical consultant has reviewed
14 the report prepared in support of CN's proposed
15 logistic hub. I understand that CN has asserted that
16 it need not implement any noise mitigation on its
17 lands to protect the future residents living north of
18 Britannia.

19 We submitted an acoustical report in
20 support of our subdivision plans in accordance with
21 the standard terms of reference required by the town,
22 the Ministry of the Environment, the region and CN.
23 Our acoustical experts recommended noise barriers to
24 protect residents from the noise generated by the CN
25 principal main line.

1 This is a standard requirement which
2 provides effective mitigation, and completion of
3 mitigation by us is required as a condition of
4 approval by the town.

5 CN retained an acoustic consultant to
6 provide comments on our report. Their consultant has
7 advised that our study must be updated to include the
8 projected noise from CN's proposed facility and that
9 we must mitigate the noise impacts from the proposed
10 facility.

11 It's our submission to you that in the
12 event that the logistics hub be approved by the
13 Minister, CN should be responsible for its own site to
14 mitigate its own noise impacts through such
15 mitigation, potentially as a continuous noise berm
16 and/or appropriate setbacks to the approved
17 residential community.

18 Figure 6 of CN's noise report proposed
19 individual berms, I believe, backing onto some of the
20 homes on Tremaine. As a precautionary measure, we
21 would suggest a continuous berm would be logical to
22 contain the noise at the source more efficiently and
23 effectively.

24 CN should not be permitted to
25 externalize the mitigation of the environmental

1 effects from its recently proposed intermodal hub onto
2 a residential community that's been meticulously
3 planned and approved for the past two decades through
4 an extensive public process.

5 We ask this Panel to be responsible in
6 its report and indicate that the following principles
7 and conditions should be implemented.

8 The proponent shall be responsible on
9 its own lands to mitigate its own noise impacts in
10 order to prevent adverse environmental effects on the
11 approved residential community and that the approved
12 residential community to the north shall not be
13 responsible for mitigating noise impacts from the
14 proposed facility.

15 CN has frequently indicated that it
16 will review matters at the time of detailed design and
17 consider further mitigation. This is problematic for
18 a few reasons.

19 Detailed design occurs after the
20 approval. CN's commitment is only to consider future
21 mitigation.

22 CN has already indicated that it is
23 not required to mitigate noise impacts on the adjacent
24 residential community to the north and that we are
25 responsible for such mitigation. As a result, we're

1 seeking the implementation of our suggested principle
2 through the Panel's report.

3 In our final written submissions,
4 which I understand are due next week, we may provide
5 more detailed specific suggestions to the Panel about
6 a condition of approval that it might recommend in
7 connection with the approval of CN's facility as a
8 result of our expert noise consultant's review and the
9 assessment of CN's acoustic report.

10 That's our submission. Thank you.

11 THE CHAIRPERSON: Thank you very much,
12 Ms. Schofield.

13 Before I -- I will turn to CN. First
14 of all, I'll ask -- I think Mr. McMurray may have
15 another question.

16 MEMBER McMURRAY: Yes. Sorry. I go
17 back to the red square which was on the town document.
18 We don't need to go there. We need to stay here.

19 You were telling us what the -- I'll
20 call the bright lime green is, not the creek
21 realignment, the bright lime green. And I think you
22 were telling me it's mixed use. And I think before I
23 interrupted you, and I apologize, you were going to
24 explain why it wasn't feasible for office use or
25 something like that?

1 MS. SCHOFIELD: No, no, I wasn't
2 saying it wasn't feasible. I'm saying that the range
3 of uses that are permitted in the residential office
4 are consistent with the draft plan.

5 MEMBER McMURRAY: So there's no office
6 space there.

7 MS. SCHOFIELD: There's no office
8 space. There could be potentially ground floor office
9 or retail at the base of the yellow, the mixed.

10 MEMBER McMURRAY: And is any of that
11 planned -- is any part of that bright yellow/lime
12 green planned to be noise mitigation for the rest of
13 the development?

14 MS. SCHOFIELD: No, it's not required.

15 MEMBER McMURRAY: It may or may not be
16 required, but is it put there --

17 MS. SCHOFIELD: No, not at all. It's
18 put there because the region and the town would like
19 to see high intensity uses along Britannia. It's a
20 transit corridor. It's a future transit corridor, as
21 I think you've heard quite extensive comments from --

22 MEMBER McMURRAY: Yes, we have. We've
23 also heard a lot about Tributary A and realigning it.
24 So what did Tributary -- what does Tributary A look
25 like on the site today? Where is it found and what

1 changes are you making to it --

2 MS. SCHOFIELD: If we go back to --
3 either. Yeah, the secondary plan. That is the
4 general location of the existing tributary.

5 MEMBER McMURRAY: So it used to be the
6 hypotenuse of a triangle, and now it's going to be the
7 base and -- you're making it from a 45-degree angle to
8 a 90-degree angle; is that fair?

9 MS. SCHOFIELD: We're straightening it
10 out. I mean, the -- yes. That's an improved
11 subwatershed study document that's been approved by
12 the region, and the conservation authority, and the
13 town. Those are documents the town actually initiates
14 and drives.

15 MEMBER McMURRAY: Okay. And it runs
16 essentially parallel now to the line of railway, is
17 that it --

18 MS. SCHOFIELD: It is.

19 MEMBER McMURRAY: Or is the plan is it
20 will run essentially parallel?

21 MS. SCHOFIELD: It will. Correct,
22 correct.

23 MEMBER McMURRAY: Thank you.

24 THE CHAIRPERSON: Just very quickly.
25 When you explained what was going to happen along

1 Britannia Road, did you choose the -- make the
2 decisions about what would go along with the Britannia
3 Road in terms of -- we saw quite a few stormwater
4 ponds. Was that done with any consideration of the
5 potential CN development to the south?

6 MS. SCHOFIELD: Not at all. It all
7 has to do with water running downhill.

8 THE CHAIRPERSON: Yes.

9 MS. SCHOFIELD: And then it has to get
10 into the creek, which is the green channel, yeah.

11 THE CHAIRPERSON: All right. Thank
12 you. Mr. Lerner, any comments?

13 MR. LERNER: Madam Chair, we don't
14 have any comments.

15 THE CHAIRPERSON: All right. Thank
16 you.

17 MS. SCHOFIELD: Thank you.

18 THE CHAIRPERSON: Ms. Schofield, thank
19 you very much for the presentation. Thank you.

20 MS. SCHOFIELD: Thank you.

21 THE CHAIRPERSON: I have two other
22 people have asked to make brief presentations, so Mr.
23 Branko Radisic.

24 **PRESENTATION**

25 DR. RADISIC: Up here?

1 THE CHAIRPERSON: Yes, please.

2 DR. RADISIC: Thank you very much.

3 Thank you.

4 I'm the neighbour of the -- in that
5 area. I'm just half a kilometre west of the project.
6 I just want to comment on congestion. I've been there
7 for 26 years and initially there was 25,000 people in
8 Milton. Now it's 120,000. So now coming out of my
9 driveway, I have to -- during morning rush, watch how
10 I'm exiting because there's so much traffic going on.
11 And Britannia was the same -- and Britannia was the
12 same width and two lanes in the last 40 years, and the
13 traffic has increased to such a level where when I'm
14 going to Mississauga in the morning, if I'm third car
15 from the light at James Snow or at Third Line, I
16 cannot cross because the cars coming down have already
17 blocked and filled the intersection.

18 So I don't know where those trucks are
19 going to go because right now -- and then on top of
20 that, if you see the cyclists, which is a very popular
21 area for them, all I see is they're being scraped off
22 the pavement as they're being knocked down, especially
23 starting from Appleby on, there's always accidents
24 everywhere with these cyclists. And then if you see
25 them riding, with all the cars and trucks, I don't

1 know where it's going to go.

2 Also, considering CN being a good
3 neighbour. I'm not so sure. I was checking -- there
4 was a truck for sale on Tremaine last year. The guy
5 said he had to leave the house that he was renting
6 from CN, because they decided to get all the heritage
7 houses pickled. So I said, well, the plan is to have
8 them boarded, so eventually they'll just have to be
9 demolished after they deteriorate.

10 And also, on a personal level, I'm a
11 neighbour of CN at the Halton Condominium Corporation
12 190 on 342-348 Bronte Street. CN we've been
13 negotiating and litigating with them for 15 years to
14 prevent water from coming onto our property, and we
15 spend about \$10,000 a year on salt just to make it
16 safe. And they've been dragging their feet all these
17 years, and I guess they are waiting for us to go broke
18 or die before they do something.

19 So when they say they'll mitigate
20 this, they'll mitigate that, I'm not so sure about
21 their intentions. And I hope that this is not another
22 pony and poodle show, but that you'll make the right
23 decisions regarding this.

24 Thank you very much.

25 THE CHAIRPERSON: Thank you very much,

1 Mr. Radisic.

2 Mr. Khurshid Ali Khan?

3 **PRESENTATION**

4 MR. KHAN: Good evening, everybody.

5 My name is Khurshid Ali Khan and I live in that

6 vicinity, like very close to the proposed area.

7 Documentation-wise, I'm not ready to give evidences

8 and all those, but I want to present the feelings of

9 my area residents. I live in that area near Sobeys,

10 near Boyne Public School, and last year as ran as a

11 councilor. I was a candidate and during the election

12 campaign I asked everybody, what is your approach,

13 what you want?

14 Honestly, I can communicate to you, to

15 everybody, like almost 98 percent of people, they

16 don't want this project in that area. And on Dymott

17 and Tremaine which is very close to that facility,

18 they are very much afraid of it.

19 So that being said, I'm a Professional

20 Engineer and I worked in Sault Ste. Marie and Timmins,

21 in Thompson, Manitoba, in Winnipeg, in Ottawa, all

22 over the area. Safety is a concern, definitely, 1,600

23 trucks. I heard 1,600 trucks. But during this

24 presentation, during this two-hour presentation, I

25 heard like 800 trucks coming in, going out, and I saw

1 Tomken area, in Brampton. Whenever I drive in that
2 area, like I tried to change the road.

3 And the same thing, because I lived in
4 Milton for the last seven years, I moved here in 2012,
5 May 2012. Regional Road 25, which is very close, it
6 goes to the velodrome which is 3.3 kilometres away
7 from my home, just exactly 3.3 kilometres. And in the
8 morning, like you can observe -- you were asked few
9 questions to the other residents like, how you feel
10 about the trucks. So congestion wise and
11 infrastructure-wise, this city is not ready at all for
12 this kind of facility.

13 I thought very honestly like what
14 would be the right approach. This location is not
15 suitable, in my personal opinion. This is not
16 suitable for this kind of beautiful community.

17 So there are three, four roads,
18 Regional Road 25, Tremaine in parallel, James Snow
19 Road. If you drive in the morning, let's say Regional
20 Road 25 in Ontario, just three trucks in a morning, it
21 takes a while. And entrance to the 401, 401 East
22 going to Toronto, I drive daily. Like, it takes eight
23 to ten minutes from my home to here. And if I see any
24 truck, it takes a while. Like, it's very, very, like,
25 inconvenient.

1 So I want to convey the feelings of my
2 residents, my neighbourhood, everybody. They are
3 afraid of this project. And 1,600 trucks coming on
4 the road, like in 24 hours -- do we have that
5 infrastructure here? No. There is -- like, Britannia
6 Road, if you go in the morning, if you drive in the
7 morning on Derry, it's busy all the way. Steeles'
8 busy all the way. Britannia is single road in both
9 lanes, which is going to be, I hope three lanes, as
10 per your plan or something. But that's not
11 sufficient.

12 Just eight kilometres from there, I
13 see Oakville. So these all -- if you analyze
14 locality, the location of that project, noise-wise,
15 safety-wise, velodrome, neighbourhood area, people
16 concerned, this is not suitable.

17 So I wanted to convey the feelings of
18 my neighbourhood. They feel like very scared. Their
19 property will be gone like zero. So these are just
20 the non-technical -- in a non-technical way I wanted
21 to present what I heard from the community.

22 Any question, if I can answer, I'm
23 here.

24 THE CHAIRPERSON: Mr. Khan, thank you
25 very much. Any questions?

1 MEMBER McMURRAY: Thank you for
2 coming.

3 MR. KHAN: Thank you very much.

4 THE CHAIRPERSON: Ms. Piegsa?

5 **PRESENTATION**

6 MS. PIEGSA: I'm going to ask Élyse to
7 please stand with me, because this is very daunting
8 for me, but again, I feel that I have to speak. So
9 she will give me the courage to speak. Thank you.

10 THE CHAIRPERSON: Ms. Piegsa, you have
11 spoken to us twice before and we've appreciated your
12 input greatly. So take your time.

13 MS. PIEGSA: Excuse me. Namaste.
14 Christina Piegsa.

15 Through you, Madam Chair, I'm stating
16 my comment, my philosophical question and my challenge
17 with deep respect to all those people who have taken
18 part in this environmental assessment -- excuse me.

19 Please note these points are my
20 personal opinion. I have decided not to address
21 almost everyone except with the exception of Madam
22 Chair and a few others, by their job titles or by
23 their myriad of credentials, which they have presented
24 to the Panel to indicate that they are experts in
25 their fields of specialized knowledge.

1 I simply say, the light within me
2 speaks directly to the light within you, within each
3 of you. I ask that you hear my comment, question, and
4 challenge with compassion and sincerity. The only
5 comment I wish to make at this time is that I am more
6 fearful now for the health and safety of my family, my
7 residential neighbourhood, the Town of Milton, and the
8 Region of Halton than before I attended some of these
9 hearings.

10 Through you, Madam Chair, I wish to
11 ask my question specifically of CN's employees and
12 their representatives, both in this room and not,
13 their technical specialists, independent advisors, to
14 Mr. Robert Price, and to the 11 members of CN's board
15 of directors, to the executives of CN, some of whom
16 are Mr. Jean-Jacques Ruest, Mr. Mike Cory, Mr.
17 Ghislain Houle, and Mr. Stephen Covey; and lastly but
18 most importantly, your largest American single
19 shareholder of CN stock.

20 I ask that you contemplate in the
21 context of the golden rule, which if some of you are
22 not familiar with it says, do unto others as you would
23 have them do unto you. Matthew 7:12. Another way of
24 saying it is treat others the way you would want to be
25 treated yourself. Or, in another way of looking at

1 the golden rule, don't do to others that which you
2 don't want done to yourself.

3 My question, which I don't need or
4 expect an answer to, but which I expect the light
5 within each of you will want you to address within
6 yourselves is, do any of you live next to a 400-acre
7 CN intermodal rail terminal? Would you recommend to
8 your children, sisters, brothers, parents, other
9 relatives, or friends to move into a home in a
10 residential community next to a 400-acre CN
11 intermodal?

12 If the answer is no to both, how can
13 you ethically ask this of the people in our
14 residential neighbourhoods?

15 My challenge through you, Madam Chair,
16 is to CN employees, representatives, Board of
17 Directors, executives, and to your largest single
18 American shareholder, and if I may dare to say, to the
19 Panel if they have not already done so, please take a
20 walk through our quiet, peaceful, safe residential
21 neighbourhoods. Take a leisurely meander through
22 Rattlesnake Point and watch the raptors soar far
23 overhead. Take a stroll on the boardwalk of Crawford
24 Lake and listen to the highly knowledgeable
25 presentations and teachings by the leaders there.

1 Finally, take a wonderful hike along
2 the Bruce Trail and the beautiful Niagara Escarpment.
3 When you experience these beautiful natural areas, you
4 may begin to understand why many of us are so
5 passionate and desperate to protect our residential
6 neighbourhoods and our unique natural environment.

7 Thank you for hearing me. Namaste.

8 THE CHAIRPERSON: Ms. Piegsa, thank
9 you very much for coming back to speak to us.
10 Namaste.

11 I think finally, Mr. Canzona.

12 **PRESENTATION**

13 MR. CANZONA: Thank you, Madam Chair.

14 This is an issue that I've been
15 hanging onto for a couple of days and I was asked by
16 the Secretariat to hold it until the end, so thank you
17 for hearing me out.

18 With regards to CN and their so-called
19 surveys that they've mentioned over the last -- we've
20 been together -- what? Eleven (11), 12 days now with
21 regard to their surveys and resident engagement. I
22 want to address that topic and I'll even frame it as a
23 question, if that helps.

24 So CN has claimed numerous times over
25 these hearings that they have undertaken extensive

1 community consultation. CN claims that they conducted
2 polling that resulted in, their words, "statistically
3 significant survey results, indicating support for the
4 intermodal hub". And they've provided documentation
5 to this effect. This claim can be found in repository
6 document 820 -- sorry, 620, titled "CN company to the
7 Review Panel results of additional consultation fall
8 2017," and it's dated February 9th, 2018.

9 CN polling results should be
10 considered flawed and need to be rejected for the
11 following reasons. CN surveys include -- CN surveys
12 include polling conducted during CN-led public
13 consultation meetings. A sample of only 655 people
14 were polled across a captive audience of invitation
15 only participants. Significant -- sorry,
16 statistically significant polling assumes one has a
17 truly random sample which was not the case here. In
18 the sample -- if the sample is not truly random,
19 accuracy of results may be overstated because if other
20 -- because if only -- it only considers random error
21 and not biases resulting from non-random errors.

22 Instead of polling on topics related
23 to impacts to local residents, CN used generic
24 questions such as the following, "Rate your level of
25 agreement with the following statement. Moving goods

1 in and out of the western GTHA by rail is preferable
2 to moving goods in and out of the region by long-haul
3 trucks."

4 Finally, statistical significance does
5 not necessarily mean that the results are practically
6 significant; that is to say, important or meaningful.
7 There is a common misconception in the general public
8 that survey results can be statistically significant,
9 and obviously CN has made this mistake. The field of
10 statistics and profession statisticians have proven
11 that a survey cannot be statistically significant,
12 only a test statistic, such as a calculated
13 statistical quantity, can be statistically
14 significant.

15 Therefore, I ask CN to retract their
16 claim that the survey is statistically significant,
17 and I ask the Review Panel to reject CN's survey
18 results.

19 My question for CN this evening is
20 this, would CN be willing to repeat the survey by
21 including a proper sample of the impacted Milton
22 residents and run in a way that only a single-entry
23 response are possible? The survey would be preceded
24 by a brief education that ensures an informed survey
25 audience and that includes material from both

1 positions in order to avoid bias. The survey should
2 also have clear questions that directly relate to the
3 issue being surveyed, rather than generic questions
4 that are biased in anyone's favour.

5 To CN, are you willing to complete a
6 proper survey which is valid and reliable?

7 THE CHAIRPERSON: Mr. Lerner?

8 MR. REYNOLDS: Thank you for the
9 question.

10 I think what I would like to touch on
11 is the process and the community consultation that we
12 went through.

13 I was, you know, personally involved
14 in a fair amount of it, and we did go around through
15 the community, and as you mention, we did have a
16 number of community groups that came and participated.
17 I believe you were at one of them, --

18 MR. CANZONA: I was there.

19 MR. REYNOLDS: -- several of them, and
20 I know we've spoken many times, and I've spoken
21 personally with many of the people who have come here
22 today as well. And I want to assure you that we are
23 listening and we have taken into consideration, as
24 best as we can, all of this information that's come
25 in, and that has fed many of those reports as well.

1 To supplement the information that
2 we've received through that process which is, again,
3 very valuable information to us, we had a professional
4 firm, an independent firm perform that survey, that
5 randomized survey, for us. And it was really to
6 validate the information that we were receiving and
7 getting from -- getting from the community through our
8 direct consultation.

9 I believe over the course of the years
10 I was at about 10 or 12 open houses, meeting with the
11 community and gaining lots of great insight and
12 feedback, and that's what's formed those -- informed
13 those summary reports, and so I believe it's valuable
14 information. We've included the input we've received
15 from the community, and I think it is important to
16 include it on the record.

17 So I think that's -- I believe that
18 the time that's gone into that consultation is
19 valuable and it should be on the record.

20 MR. CANZONA: Would you consider doing
21 a region-wide survey?

22 MR. REYNOLDS: Well, the surveys that
23 were done were region-wide. The open houses that we
24 put out were region-wide. We held open houses in each
25 community, and so that is truly -- I believe we have

1 done a very significant effort to do that.

2 MR. CANZONA: I'll take that as a no.
3 Thank you.

4 THE CHAIRPERSON: Thank you very much,
5 Mr. Canzona.

6 So that brings us to the end of our
7 presentations and our questions, and there's just one
8 more thing which we do at the end of each day, is that
9 we do turn to the proponent for a very brief response
10 to what they've heard today.

11 Mr. Lerner?

12 **CLOSING REMARKS**

13 MR. LERNER: Thank you, Madam Chair.

14 I would like to start by thanking the
15 individuals from the Mississaugas of the Credit, Six
16 Nations of the Grand River, and Huron-Wendat for being
17 here today and their presentations earlier this
18 afternoon. The knowledge that was shared was deeply
19 appreciated. We are honoured by their participation
20 in this process, and we are committed to maintaining
21 the positive, productive, and meaningful relationship
22 with CN that each described for the Panel this
23 afternoon.

24 We heard that the Nations have an
25 interest in the project's archeological impacts during

1 construction, as well as on the monitoring and follow-
2 up programs that we have proposed. We are, without
3 question, committed to their ongoing involvement in
4 the project and the proposed monitoring. If any
5 concerns are raised in that process, we are committed
6 to listening to the Nations and meaningfully
7 considering their input on how to address them.

8 Tonight, we heard from representatives
9 of Milton R.A.I.L, Milton Says No, and other
10 interested parties about various interests related to
11 the proposed projects. I want to personally thank Ms.
12 Vogel Post, Ms. Newman and her colleagues, Ms. Meyers,
13 and Mr. Canzona, and Ms. Piegsa, and others for their
14 participation and for being advocates for their
15 community. We will continue to strive to answer your
16 questions, listen to your input, and address concerns
17 that you raise.

18 With respect to the concerns expressed
19 by the developers, we note that the noise assessment
20 considered their proposed plan, including the
21 mitigation they proposed, as well as the mitigation
22 that CN has proposed for the terminal, and we have --
23 and as we have described previously, the relevant
24 criteria will be met.

25 Madam Chair, thank you for the

1 opportunity to make these closing remarks and we look
2 forward to resuming this process tomorrow.

3 Thank you.

4 THE CHAIRPERSON: Thank you, Mr.
5 Lerner. And to all of you who came out this evening
6 and those of you who spoke in particular, thank you
7 very much. The Panel values your input and your
8 views.

9 So we will -- some of us anyway --
10 will meet again tomorrow in, well, exactly 12 hours.
11 Anyway -- tomorrow is another general session, so if
12 some of you are able to attend, we would appreciate
13 that.

14 So thank you all very much, and we
15 will start again tomorrow at 9:30.

16 --- Whereupon the hearing adjourned at 9:29 p.m., to
17 resume on Friday, July 12, 2019 at 9:30 a.m. /
18 L'audience est ajournée à 21 h 29 pour reprendre
19 le vendredi 12 juillet 2019 à 9 h 30

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CERTIFICATION

WE HEREBY CERTIFY that the foregoing has been reported
and transcribed to the best of our skill and ability

Kristin Johansson Jackie Clark

Brian Denton Deana Johansson