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Physical Mitigation of Muskrat Falls Reservoir Wetlands: Report of the Auditor General

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Honourable Derek Bennett, MHA

## **PUBLIC ACCOUNTS COMMITTEE**

### Physical Mitigation of Muskrat Falls Reservoir Wetlands: Report of the Auditor General

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Jordan Brown, MHA

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Appearing:

#### **Department of Municipal and Provincial Affairs**

Jamie Chippett, Deputy Minister, 2015-2019  
Erin Shea, Director of Communications, 2017-2019

#### **Department of Environment and Climate Change**

Martin Goebel, Senior Advisor on Methylmercury

#### **Office of Indigenous Affairs and Reconciliation**

Aubrey Gover, Deputy Minister, 2017-2022

#### **Office of the Auditor General**

Sandra Russell, Deputy Auditor General  
Trena Keats, Assistant Auditor General  
Adam Martin, Audit Senior

#### **House of Assembly Service**

Bobbi Russell, Policy and Communications Officer  
Mark Jerrett, Policy, Planning and Research Analyst  
Evan Beazley, Committee Clerk (A)

The Committee met at 9 a.m. in the House of Assembly Chamber.

**CHAIR (Wakeham):** Good morning, everyone, and welcome to our public hearing on the physical mitigation of Muskrat Falls reservoir wetlands and the report by the Auditor General.

I welcome everybody here today. My name is Tony Wakeham. I'm the Member of the House of Assembly for Stephenville - Port au Port. Before I get started, I'd like to go around and have people introduce themselves.

Welcome to Deputy Minister Chippett who is here this morning. So now I will start on my immediate left and ask Members of the Committee to introduce themselves and then go to the representatives who are here from the Auditor General's department.

**J. BROWN:** Thank you.

I'm Jordan Brown. I'm the Member for Labrador West.

**L. STOYLES:** I'm Lucy Stoyles. I'm the Member for Mount Pearl North.

**S. REID:** Scott Reid, MHA for St. George's - Humber.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, MHA for the District of Harbour Main.

**S. GAMBIN-WALSH:** Sherry Gambin-Walsh, MHA for the District of Placentia - St. Mary's.

**CHAIR:** Now if I could ask the members of the Auditor General's staff.

**S. RUSSELL:** Sandra Russell, Deputy Auditor General.

**T. KEATS:** Trena Keats, Assistant Auditor General.

**A. MARTIN:** Adam Martin, Audit Principal.

**CHAIR:** Thank you, everyone, and I'd also like to acknowledge the most important people here in the room are the staff who help us out all the time, members of the House of Assembly staff. So we're glad that they're all here again this morning. Again, Mr. Chippett, thank you for your appearance at the hearing today.

The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to achieve consensus in its decisions whenever possible and Members take a non-partisan approach to their work on this Committee.

Some housekeeping remarks – I again remind participants that this is a public meeting and their testimony will be part of the public record. Live audio will be streamed on the House of Assembly website at [assembly.nl.ca](http://assembly.nl.ca) and an archive will be available following the meeting. *Hansard* will also be available on the House of Assembly website once it's finalized.

Witnesses appearing before a Standing Committee of the House of Assembly are entitled to the same rights granted to Members of the House of Assembly respecting parliamentary privilege. Witnesses may speak freely and what you say in this parliamentary proceeding may not be used against you in civil proceedings.

So how this will work today, the Chair – myself – will ask the Clerk to administer an oath or an affirmation to witnesses. Witnesses will be invited to make an opening statement, about two to three minutes, if they wish to do so. Committee Members will pose questions to witnesses in turn for 10-minute periods.

We'll get started again. Welcome, Mr. Chippett, if you would like to have any opening remarks before we get started – we'll take care of the oath or the affirmation first.

### **Swearing of Witnesses**

Mr. Jamie Chippett

**CHAIR:** Over to you, Mr. Chippett.

**J. CHIPPETT:** I will just briefly introduce myself. I'm currently the deputy minister in Fisheries, Forestry and Agriculture. I was the deputy minister of Environment and Conservation from May 1, 2013 to October 12, 2015. I was the deputy minister of Municipal Affairs when Municipal Affairs and Environment was formed. So I would have become the deputy over the Environment Branch again in February 22, 2017. I was appointed to Service NL on September 6, 2019.

I look forward to answering any questions that the Committee has about the Auditor General's report.

**CHAIR:** Thank you, Mr. Chippett.

Now I'll turn to my colleague.

**J. BROWN:** Thank you.

Thank you, Deputy Minister Chippett, for joining us today and answering these questions.

My first question I'd like to ask is on August 29, 2018, the permit amendment request is placed on hold by yourself in the department, pending a Cabinet decision on the IEAC recommendations. Can you give us an account of the events and timelines on that day, on what led to this and what was the expectations timeline-wise on when it was placed on hold and the timelines on that day that led it to be placed on hold? What were the expectations on when you

would receive something back from Cabinet?

**J. CHIPPETT:** I assume the August 29 date was the last date, I think, that it had been raised as continuing to be on hold with me. I think it was put on hold sometime earlier in August. The decision, really, was because I had linked the decision on the permit to the overall decision on what actions government would take with respect to physical mitigation.

Certainly we were working throughout the fall and throughout the summer on data that was regularly gathered from the Churchill River. So I don't know that there was a specific timeline in terms of when we would reconsider the permit. But the notion was until we had a decision on the mitigation measure, that government might choose that we would not issue the permit.

**J. BROWN:** I know, like you said, there's evidence that a lot of parties were reaching out to the department looking for timeline, looking for answers on this. Obviously, we know that the decision didn't come until the following January.

Internally, what was the timeline that was expected within the department? What was your internal timeline that you were hoping to have answers back to the numerous groups and Nalcor, looking for when they could start work and this permit would actually be issued? Was it January of 2019, or was there an actual internal date that you were hoping for?

**J. CHIPPETT:** Obviously, as I said, we had been monitoring the data from the Churchill River on a continuous basis. I forget how frequently that would come in, but in October was when I would have asked for a letter to be drafted to Nalcor on proceeding with the permit and proceeding with wetland capping. That was a discussion that I had with Minister Parsons at the time.

The AG report speaks to the meeting that we would've had with Mr. Samms from the Premier's office. Then I think it was the following week that Minister Parsons was moved from our department to a different department and Minister Letto became our minister.

We started again then to prepare Minister Letto and so on, which ultimately ended up in the meeting with Premier Ball where he indicated he was accepting of capping but wanted to go to full Cabinet with that information for that decision.

But really the goal of the letter in October was to try to find a resolution earlier to see if my minister and the Premier's office was comfortable at that time with proceeding with advising Nalcor about using capping.

**J. BROWN:** Yeah.

In October, like you said, you had these meetings and there was indication that you were trying to get a decision, but the decision didn't come until January. Did you feel that late decision was not typical of normal decisions of similar magnitude? Do you think from that time, did you agree that delay in the decision would actually lead to what happened after and that the capping wouldn't get done? Was that expressed to the premier or the staff at the time that such a delay was going to actually basically cause what happened?

**J. CHIPPETT:** In November, when the meeting occurred with Premier Ball and with the new minister, Minister Letto as well, the premier indicated that was the scenario that he wanted, that he agreed with the capping mitigation rather than soil removal. Then he asked to go to the next Cabinet and we advised Cabinet Secretariat that this was an issue that we would like addressed. We were advised that the next date we could get to Cabinet was January.

**J. BROWN:** So in your advisory role, you gave the advice that this should be done

more expeditiously, but it seemed that the seriousness of the decision wasn't taken; they would just wait until the next regular meeting instead of convening earlier to make this final decision.

**J. CHIPPETT:** I would not control Cabinet agenda. All I know is that we'd had that direction. We had documentation that could be used for a meeting and we advised Cabinet Secretariat of the premier's direction, both in terms of being willing to proceed with capping and in terms of the premier wishing to have it on the Cabinet agenda. We ended up in January rather than earlier.

**J. BROWN:** Now, the senior advisor on methylmercury in the department strongly agreed that wet capping could be done after flooding, even those contravene to the IEAC's report. Did you believe that this had any contribution to why the decision was delayed so much?

**J. CHIPPETT:** I think in the beginning, I'm not sure anybody envisioned the decision taking as long as it did, but I recall the senior advisor briefing me early in the discussions about discussions he had had with Nalcor and Nalcor officials on the committee, or Nalcor officials supporting the committee – I can't remember which it was – talking about how one of the easiest ways to do this may be after with a barge or what have you.

So that was a part of the thinking. I think that it had been in reports as having a possibility. I don't dispute the Auditor General's report that the consultant report did not focus as strongly on doing it after, but based on some of those discussions with the senior advisor and discussions he had, I thought it was an option.

**J. BROWN:** Between the time in August and up until the decision was made in January, how many meetings or calls did you have with the people at the Muskrat Falls Project on the delay? How many times

had you ever reached out or they reached out to you, that you can remember, about this discussion and about the delays?

**J. CHIPPETT:** The discussions that I remember were the ones where the senior advisor or the director of Water Resources brought it to me in the context of the permit. I did not have discussions at senior levels with Nalcor on kind of a deadline.

I think the Auditor General's report points out that there were numerous meetings over a certain time period with the coordinating committee, the Lower Churchill coordinating committee. In November, we had also informed that committee that the Premier had given that direction and we were going to take this to Cabinet. As the Auditor General's report points out, Nalcor, who was a regular member of that committee, was not at that meeting. I think in drilling down, Nalcor had not been on the invite list for that particular meeting.

But in terms of calls from Nalcor at senior levels, I was not reached out to. As I said, the people that were dealing with Nalcor kind of directly below me would have been the folks that were on the IEAC with Nalcor or the folks in Water Resources that would meet quarterly with Nalcor. There's a reference to one of those meetings in the Auditor General's report as well. But at no time did I have any direct communication or reach out from Nalcor to say do you realize that after this date we can't do it anymore.

I would say that was uncommon, because normally if Nalcor wanted a permit or anything that they needed advice or approvals on, they would be in touch and they would be in touch at multiple levels within government, as well as within individual departments that might hold authority over those approvals.

**J. BROWN:** Thank you, Mr. Chippett.

**CHAIR:** Thank you.

**L. STOYLES:** Thank you, Mr. Chippett, for attending the hearings today.

Jordan had asked some of the questions on the permit. So did Cabinet ever direct you on giving the permit? You just indicated that Nalcor, if they wanted a permit they could have gone and got a permit themselves. So am I of the understanding, or we of the understanding, that Cabinet never ever gave you direction to get the permits?

**J. CHIPPETT:** So just to speak to the preamble a little bit. Nalcor could not get the permit on their own but they certainly could come to the department and request it and specify if there were particular time frames they were operating under, deadlines, that would – those contacts or those reach outs to a department would occur more to push, if you will, approvals of permits and so on, but the permits would normally be issued through the normal process.

There's a policy in Environment that is referenced in the Auditor General's report that sometimes permits will be taken out of the regular stream of permits, based on direction from senior officials in the department, and that's what was done in this instance.

The piece around Cabinet was primarily choosing between – not choosing between, choosing which recommendations of the IEAC that they would endorse. And so as people would know from the AG report and other public attention to the issue, there were a number of recommendations. One that had two parts was associated with physical mitigation. There were other recommendations around data and work around health, around compensation and so on, but, for me, the primary linkage was between the decision on physical mitigation, which was the one that most people talked about internally and were concerned about internally, because it did have a part where we would remove a bunch of soil as well.

So the Cabinet – you know, the desire was to have a decision on capping, if that was the preferred way of proceeding and then, as a matter of course, the permit would have been issued. Obviously when we informed Nalcor that we wanted to proceed with the permit and with the capping, they told us it was too late.

**L. STOYLES:** So other than Nalcor having their expertise, did government ever avail of experts to look in to see are we doing it right?

**J. CHIPPETT:** I would look at the committee, the IEAC, as having some expertise in that area. For people who may not know all the background, the start of a lot of these discussions was based on a scientific article by a Dr. Calder. I believe he was in Harvard, and that showed a very rapid proliferation of methylmercury in the ecosystem based on a modelling exercise. A lot of these discussions, based on that work in particular, led to the September meeting and the commitment from Premier Ball to form the IEAC.

The IEAC had Dr. Reimer, as people know, as the chair and then they were to avail of other expertise through a budget that was provided for the IEAC.

**L. STOYLES:** So we're assuming that methylmercury was being monitored on a regular basis and they were keeping, I guess, an eye on what was happening down there on a daily basis or an hourly basis – however they operated.

Missed opportunities – the deadline was missed and the capping did not get done. So I am just wondering, in your opinion, about the missed opportunities because we are looking at moving forward and what we can do to make sure something like this doesn't happen again. I am just wondering about the missed opportunities and if you can speak to that.

**J. CHIPPETT:** One of the things I would like to address in responding to that question is the notion of a deadline. If you look at the initial permit amendment that was submitted by Nalcor, it was dated for a finish in December. At the end of the day, I think – and this was something that I found out about, I believe, through the Auditor General's process – the deadline ended up being the 1st of November.

I answered questions, I think, during the AG process and at the inquiry into Muskrat Falls on this about the December deadline because having been in numerous departments where construction projects were either being led by contractors on behalf of the departments I was in, or where I was in a department where we were regulatory in nature, it is very difficult to predict that far in advance exactly when the deadline would be.

I think you have a general idea and you would obviously put that date in a permit to say somewhere around that time. But to your point of whether it's missed opportunities or trying to think about how communication could work better, there was no time in real time going through that when somebody said to me the permit is going to be done on that day.

I've obviously talked about the fact that the senior advisor raised with me at some point in October, the permit is still there; what are we going to do with that? That's when we wrote the letter to try to move things forward.

So obviously, you can always work harder to communicate and maybe some kind of a structure from a communication's perspective. Maybe we could've met more as a Lower Churchill coordinating committee, or there could have been other mechanisms established for regular contact at senior levels.

**L. STOYLES:** So common practices, in your opinion, were certainly met on a regular

basis. You had meetings, and timelines and communications were probably off a bit. Is that –?

**J. CHIPPETT:** Yeah, I mean the Lower Churchill coordinating committee was established to allow for exchange of information between all of the relevant parties representing Nalcor, a number of different government departments and agencies, and usually chaired by somebody in Cabinet Secretariat. So that forum was kind of having everybody there at the one place, but obviously in the November meeting we did not have everybody there.

I know the Auditor General raised, or went through the frequency of the meetings and perhaps we could have had more meetings, but that mechanism was certainly there to allow for communication. But, on occasion, not everybody was there.

**L. STOYLES:** All right, thank you.

**S. REID:** You've answered some of the questions I have already, but I'm going to sort of start with some broad, general questions that will give you an opportunity to sort of outline some of the issues involved here. Then I'll get into some more specific things as we go along.

The overall question of this report and the purpose of it really is to understand what happened here. When government accepted the recommendations, we had a clear indication or a clear commitment that they wanted to do that. Now, granted, there were things that had to happen along the way to make that an eventuality.

I'm just wondering, would you be able to give us an overview of your thoughts on what happened here? What went wrong, I guess? It is fair to say something went wrong. Also, what lessons can we learn from this in terms of looking at other situations in the future? Just that broad, general question.

**J. CHIPPETT:** I guess I'll give some overall context to the first part, with respect to how we ended up with the grouping established and so on. As I alluded to it earlier, the Nunatsiavut Government, in particular, was concerned that methylmercury could end up being higher than what had been determined through the environmental assessment on the Lower Churchill generation project environmental assessment. That issue had been studied, but as I said this piece of Harvard research had come about and Premier Ball wanted additional examination of this. I guess the method that was chosen was this Independent Expert Advisory Committee to give advice on methylmercury.

Of course, that was talked about at that September meeting and then it took a while to get that into place. When I got there in February, the committee had not been formed. The membership was more or less known. There was not a finalized terms of reference. There was no chair. So, in fact, it was, I think, August by the time a terms of reference was agreed to all groups and a chair was agreed to by the groups.

We lost some time then, but I think there's always – I talked about some of the communication pieces in terms of things that could've been done differently in response to MHA Stoyles's questions. There was a lot of change in the public service at the time and in our department. I did raise at the inquiry and during the AG report that we had three ministers in the span of six months, I guess it was. So you're moving between three different people and sometimes starting over on issues but still trying to keep government's agenda moving.

I think the communication piece is the biggest lesson learned. In issues that involve multiple departments, which this one did, and involved multiple outside entities and experts, you need to work that much harder to communicate. I think the



communication needs to be a two-way street.

So I know a lot of the folks of the AG report is on the department I was in at the time and, obviously, if something government wanted to do did not get delivered, then I take responsibility for that for the part of it that rests with Municipal Affairs and Environment. But there were opportunities as well for people to communicate back to us on the need for permits by certain dates and so on.

So from a systemic perspective, better communication I think would have helped mitigate where this ended up.

**S. REID:** Okay.

There have been some accusations that the wetland capping was deliberately delayed. I think the Nunatsiavut Government has said that. I'm just wondering, there seemed to be also, as you've mentioned, some confusion about the deadline. There seems to be three deadlines, and Nalcor wanted it to be done before the contractors had moved out. Others were saying the real deadline is before the flooding and then others were saying that we can even do this after the flooding occurs.

So I'm just wondering, in your discussions with the various groups, this concept or this idea that there was deliberate delay, was there any evidence of that or was there any resistance from Nalcor in terms of doing this or was that – is there any truth to that accusation I guess I'm wondering.

**J. CHIPPETT:** I'm not aware of any plan to delay this issue or that particular component of the recommendations.

I will say that Nalcor did question, from the beginning, the value of doing capping. Early on there were discussions about are we not better off considering, for example, an investment into the communities that would assist them in more tangible ways, kind of

immediately, rather than proceeding with an operation that would ultimately result in – I think the first estimates were upwards of \$20 million. I know they revised those estimates and that's referenced in the Auditor General's report. But there were discussions very early on about what the committee had come up with in terms of the benefits of capping, in terms of reduction of methylmercury.

So there was talk about is that cold storage in communities? Is that – obviously, one of the big issues here was if methylmercury accumulated to a certain level and it made certain types of food unsafe to eat, which really was the core issue with methylmercury in terms of the diet of the folks that would utilize the resources in the Churchill River.

So those discussions were had in tandem with: Are we going to spend \$20 million for something that the science says is a 1 per cent to 2 per cent difference?

But in terms of a deliberate plan to delay, I have no evidence of that and I can categorically state I was not a part of any such plan.

**S. REID:** Okay, thank you very much.

I know there are other people who have questions.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, MHA for Harbour Main.

Good morning, Mr. Chippett.

**J. CHIPPETT:** Good morning.

**H. CONWAY OTTENHEIMER:** Just to go from the point that was just raised by my colleague regarding communications.

So you indicated basically communication is a two-way street and you said just now that if it's something government wanted to get

done, it did not get delivered to, I guess, your department.

So can you just explain to us how you think that could have gotten delivered to your department in an effective way?

**J. CHIPPETT:** I think what I was trying to say in that previous comment was we didn't deliver it. Government made a choice eventually that it would proceed with – I guess out of the physical mitigation options that were identified in the report, when we did get direction, the option that was chosen was wetland capping. By the time we got the decision from the big table, from the Cabinet table as the Premier had asked, we were informed that that was too late.

I'll reiterate the communication piece about if there had been in people's minds about the deadline, I think that would have helped. But again, I guess I go back to maybe some of the first questions from MHA Brown, that certainly the linkage, in my mind and in officials in the department, was that issuing the permit and having capping done at a cost of what originally was thought to be \$20 million was getting out ahead of a decision that we needed from the government on if it wanted to do physical mitigation at all, and if it was capping, was it soil removal. I mean, they were all packaged as one recommendation.

Because I think, as somebody else raised, the data – one of the very strong pieces of work to come out of this is the monitoring regime. No credit to me, but credit to the people in water resources and the senior advisor and the work of the IEAC, I think the methylmercury data collection process is second to none. That was something that we consistently monitored based on parameters set by the IEAC, and we wanted as much of that data as we could when we went to seek decisions from government.

The dilemma or the toss-up was every bit of data we get, particularly after that initial impoundment, was instructive on how we

would go about putting advice to ministers and to government about the issue.

**H. CONWAY OTTENHEIMER:** Just from what you've said, I want to be clearer about your statement. So you're saying that yes, communication was an issue, but are you also saying there was uncertainty – that there was uncertainty coming from, I would assume, the big table, or as you referred to the big table, or government in general, or does that include Nalcor? Where is this uncertainty coming from?

**J. CHIPPETT:** The uncertainty I was referring to there was the uncertainty around – and I don't know that you wouldn't know this in real time when you're going through it, but when you look at what the Auditor General has put together, there are numerous dates that are thrown around as being a deadline.

To, I think, MHA Reid's point, there was a December date listed on the initial permit amendment. There was a November date, I think, I read in the AG report when Nalcor was talking about contractors coming out.

So, speaking personally, it had not crystalized in my mind that the date we should be working towards was November 1 versus December whatever, because those direct discussions didn't happen. I guess that's where I refer to the notion of, does the Committee meet more; would it have been different if everybody had been at the November meeting that is referenced in the report, that Nalcor didn't have a representative at?

**H. CONWAY OTTENHEIMER:** Okay.

Getting to that point about deadlines – and you had indicated it's difficult to predict deadlines. Obviously you were aware of the importance of having a deadline, given that physical mitigation of the Muskrat Falls reservoir wetlands, ultimately, did not occur. So there was that sense of urgency – even though there may not have been a particular

deadline, would you agree that there was a sense of urgency that this needed to get done as soon as possible?

**J. CHIPPETT:** I spoke to that in the process leading up to the AG report and did say that there had been expression of interest and urgency from several parties but never with a date we need something by then or we won't be able to do it. I think people were anxious to see it happening, and rightly so.

The other thing I would say is some of that urgency, in the early days, was about whether or not we were going to do all or some of the physical mitigation option that referred to soil removal, or deforestation and removal. So yes, there were people who raised an urgency.

Some of the places in those reports reference Mr. Reimer as the chair of the IEAC and I'm quite upfront in the fact that I know he wrote me. I remember receiving the email and I didn't write him back, and I should have. But when you're dealing with a large number of things in the run of a day – sometimes I do it far too often. I open, I don't know, 15 windows on the screen and then you move on and you miss things sometimes. So I was quite upfront about that.

But in addressing that, Dr. Reimer was on the IEAC, we had officials on the IEAC and the senior advisor would bring back things from that committee from time to time. So yes, there was an urgency, but the crystallization of kind of a more finite point to say, all right, we need something by then never really crystalized in my mind.

**H. CONWAY OTTENHEIMER:** Okay, thank you.

When I read the report and I look at it, one of the first findings of the Office of the Auditor General was that – and this is under Criteria 2 – they could not determine a plausible reason – a plausible reason – why the wetland capping policy decision did not

happen in a timely manner. I guess that's really, in essence, why we're here, is to understand why.

As my colleague, Mr. Reid, asked, was there intent. It doesn't appear from the Auditor General's report that there was not, that it wasn't intentional, yet one has to wonder when we look at all of these missed deadlines and just the timelines that never got dealt with appropriately. I'll just read from – for example, on page 2 of the report it says, with respect to the timelines, we see that Nalcor had provided two studies to the IEAC as well that would, I assume, be given to you as well. That you would know that there was critical information regarding timelines to the two targeted mitigation scenarios, yet it just doesn't seem like it occurred.

So that's, I think, what we're trying to understand, Mr. Chippett. There was credible information and the report indicated that there was credible information that doesn't seem to have been relied on. We don't understand why that happened.

Could you perhaps elaborate or clarify anything on that?

**J. CHIPPETT:** I could certainly try.

I think I covered the piece earlier on the early discussions of the committee in terms of the potential for it to be done afterwards. Some of those discussions suggested that it would be easiest to do it afterwards and that was Nalcor's folks, as far as I understand, having that discussion with the senior advisor.

Then, secondly, there was still the linkage between needing a decision on the overall recommendations prior to issuing a permit. That was a linkage that I had made in talking with staff about the fact that government had not decided, at that point in time, on what mitigation measure would be utilized.

I saw issuing that permit as getting out ahead of government's overall decision-making process on the recommendations of the IEAC and particularly those with respect to physical mitigation.

But I think everybody knows deadlines in government, or what have you, drive people and it was not clear that we were outside that window, to me, because the intent was not to rely on the after impoundment option, but it was presented as something that could be pursued. Then there were, what I would call, circumstantial events that occurred that meant we were later than we thought we would be in getting to government.

I go back to the October letter and a discussion with Minister Parsons and Mr. Samms from the Premier's office, and then in a week that minister is moved on and Minister Letto becomes the minister and you kind of start over, to a certain extent. But it wasn't that long into that tenure of Minister Letto that we had the meeting with the premier when he gave us that direction.

So that's kind of – communication can always be better and, like I said, maybe structurally or schedule-wise, we could've had meetings more often, or even in that meeting where we did not have everybody at the table, that could've potentially made a difference.

**H. CONWAY OTTENHEIMER:** Thank you.

**S. GAMBIN-WALSH:** Good morning.

**J. CHIPPETT:** Good morning.

**S. GAMBIN-WALSH:** The intent of my questions and the objective, as we all know here, is to improve public administration and communication.

So on April 10, 2018, the Independent Expert Advisory Committee issued a set of recommendations that included the physical

mitigation recommendation, the target removal of soil and/or wetland capping.

Is it safe to say that the Department of MAE became aware of this recommendation on April 10, 2018?

**J. CHIPPETT:** Yes, I think so.

**S. GAMBIN-WALSH:** Okay.

Can you recall who the clerk was at that time?

**J. CHIPPETT:** I think it was Ann Marie Hann.

**S. GAMBIN-WALSH:** Okay.

So when did the Department of MAE inform the clerk of the Executive Council, Elizabeth Day?

**J. CHIPPETT:** I don't know. Maybe she was clerk at that time, was she? I can't remember.

**S. GAMBIN-WALSH:** It's okay.

**J. CHIPPETT:** The Premier's office and the clerk would've been informed, I think, pretty much from the beginning that those recommendations had been received.

**S. GAMBIN-WALSH:** Okay.

So the Premier's office, that means including the chief of staff, Greg Mercer?

**J. CHIPPETT:** That's a possibility. I don't know. I remember sending updates, emails to those folks. Whether it was the chief of staff and the clerk or the clerk and somebody else in the Premier's office or what have you, but around the time that they happened, I'm sure there would have been updated provided that we had those recommendations.

**S. GAMBIN-WALSH:** From the department?

**J. CHIPPETT:** Yes.

**S. GAMBIN-WALSH:** Okay.

Who directed you to place the request on hold? The permit amendment request was placed on hold on August 29. Were you directed to do that?

**J. CHIPPETT:** I wasn't.

**S. GAMBIN-WALSH:** So you chose to do that as the deputy minister?

**J. CHIPPETT:** I did.

**S. GAMBIN-WALSH:** Okay.

So permits are at a director level, a director of a division usually deals with permits. They don't need ministerial or Cabinet approval. Can you just bring us through how this one got to that level that it was with the deputy minister?

**J. CHIPPETT:** Yeah. So staff in Water Resources and the senior advisor who had obviously been party to discussions about the IEAC because they would meet – senior advisors on the committee, they would also meet with Water Resources because Water Resources technical staff were providing advice and summarizing the data that was being collected on methylmercury. Per their policy, they brought that to me because, as people would read in the report, that was fairly early on that – well, it was August that we don't have a decision with respect to the physical mitigation and are we kind of letting the cat out of the bag early by issuing a permit.

**S. GAMBIN-WALSH:** Okay.

Nunatsiavut began sounding the alarm over methylmercury before the Muskrat Falls Project even got started. Anyone who watched the news, NTV news knew about this. Did the Department of MAE understand the importance of this request from the

Nunatsiavut Government, from the media, from the public?

We had a protest, we had people occupying Muskrat Falls, we had locks broken, we had a hunger strike – I believe it was three individuals were on a hunger strike. There was a lot of media about this going on at the exact same time this was unfolding in the Department of MAE.

Was there a lot of conversation, a lot of meetings? What was MAE's interpretation or were you just – what was your interpretation of what was actually happening?

**J. CHIPPETT:** Well, I don't think anybody – I wouldn't and I don't think any of the MAE staff who worked on this would say that they thought it wasn't important. You're right, those particular things were happening. But I think a big strength of the staff that was involved in terms of the senior advisor and the water resources division is their reliance on science and on the data. Of course, it's referenced in the report that some of the – there was an interim set of recommendations in September, I believe it was, that were approved very quickly to improve the data gathering.

We thought we had a really good data-gathering process before. The IEAC and Dr. Reimer had recommended changes early. Those changes were made and, as a result of that, Dr. Reimer himself publicly stated it's probably the best methylmercury monitoring system that he had seen. He spoke very highly of it. That was the system that was being used to monitor data.

The science that had started some of those issues or had started kind of the re-engagement of Nunatsiavut on this issue seemed to have, albeit with a different methodology, a much higher level of increase than what our own on-the-ground, in-the-field data collection was showing. That's what we were doing in the department was implementing those

recommendations and trying to make sure that we were not missing anything with respect to data.

I can give you one more quick example with the data. I believe it was the scientist who actually did the initial piece of work for Nunatsiavut, Dr. Calder – in scientific measurement, there's a measurement you can get that is not a zero but it will not detect is the basic story. We can't find it. In our initial datasets, we were using those as zeros and they did not agree with that. They raised that as an issue, an issue that was maybe keeping our data too low, so our reports too low. So our staff developed a program during that time to adjust for those non-detect measurements.

So all of these things were going on in the department in the background and, to us, that science, that real data from on the Churchill River at multiple depths, Churchill River taken above the dam and below the dam, was the most important information we could be gathering.

We had meetings on that issue of, are our ratings too low; why weren't some of the groups trusting our data? So we found a way to address that non-detect measurement, and different temperatures cause methylmercury or mercury to react differently. So we adjusted the sampling times that we would do. That was one of the first sets of recommendations.

So there was a lot of work going on in the department to make sure we were getting that stuff right. Because there were only a few, I'll say, water resources or methylmercury experts there and we wanted to make sure that we were getting that data all right.

**S. GAMBIN-WALSH:** Okay.

In October 2018, page 29 of the AG's report, it says yourself and Minister Parsons met with the premier and a special advisor. Who was the special advisor?

**J. CHIPPETT:** What page was that again?

**S. GAMBIN-WALSH:** It's actually in the –

**J. CHIPPETT:** Timeline at the back, maybe?

**S. GAMBIN-WALSH:** No, you can go to page 29.

**J. CHIPPETT:** So you said it was –

**S. GAMBIN-WALSH:** "Deputy Minister and Minister Parsons of MAE meet with Special Advisor to the Premier to present and discuss draft letter to Nalcor." So I'm just asking who the special advisor was that was in that meeting with you.

**J. CHIPPETT:** John Samms.

**S. GAMBIN-WALSH:** John Samms.

Okay, thank you very much.

**CHAIR:** I have a number of follow-up questions, Mr. Chippett, as a result of some of the things my colleagues have asked. One thing – and excuse me if I'm a little bit all over the place here, but I want to go back to, firstly, July 23, 2018, when Nalcor submitted a communications plan to Municipal Affairs and Environment on the intent of the wetland capping.

Can you tell us who that plan was communicated to? Who in MAE received that communications plan?

**J. CHIPPETT:** I think it came in through our communications director, you know, through the normal communications channel from Nalcor. It was provided to me and I believe I had provided it to Minister Parsons.

**CHAIR:** Okay.

The very next day Nalcor placed that same communication plan on hold. Can you explain why this happened?

**J. CHIPPETT:** I wasn't involved in the decision to put it on hold, but I can only assume it was because we were having these discussions about needing a decision on wetland capping before we issued a permit for that work.

**CHAIR:** So we will follow up with Nalcor and find out.

Going back to the decision that you made on August 29, 2018, you just told one of my colleagues that it was your decision to put the permit request on hold; is that correct?

**J. CHIPPETT:** That is correct.

**CHAIR:** So that same day, according to the Auditor General's report, you and a senior advisor had a briefing with the premier and his staff and in that particular timeline, on that day, had you made that decision to put this on hold before you met with the premier, or was your decision made after you met with the premier?

**J. CHIPPETT:** I couldn't tell you. I don't know.

**CHAIR:** But you're going in as a deputy minister on an important file that, according to the Auditor General as well, was part of your mandate and in your mandate letter was a top priority for you to implement the recommendations of the Independent Expert Advisory Committee. This was a project that was very important to the premier, as he has stated. So you go to see the premier and you can't recall whether you actually spoke to him about a decision that was going to put this on hold?

**J. CHIPPETT:** Yeah, sorry, I thought what you had asked me was, was it put on hold before or after the meeting with the premier and I don't recall if it was.

**CHAIR:** Was it discussed with the premier that you would put it on hold then?

**J. CHIPPETT:** The briefing with the premier – and these materials would've been available to the Auditor General – was on the merits of – it was on all of the IEAC recommendations with a focus on physical mitigation. So on what the experts were saying it would cost to do physical mitigation, what some of the unintended – or sorry, soil removal, in terms of that option, what would be some of the unintended consequences if you did that, pros and cons, complexity of the project similar for wetland capping. The notion of that was to see if, at that time, there was a preference, there was direction to come on whether or not we were going to proceed with one or the other. We did not get direction at that meeting.

**CHAIR:** But was the premier aware that the permit had been put on hold?

**J. CHIPPETT:** I don't think we spoke specifically of the permit in that meeting, and I think I said that to the Auditor General as well.

**CHAIR:** So earlier in response to a question about the Cabinet Secretariat, you indicated that there was no meeting and it wasn't until – you weren't able to get this before Cabinet Secretariat until January of 2019.

**J. CHIPPETT:** Right.

**CHAIR:** So, in your opinion, isn't it unusual for Cabinet Secretariat to ignore a timeline of a matter that is important to the premier?

**J. CHIPPETT:** I can't tell you what the thinking was, other than we had communicated what the premier had said, which was, he wanted to take this to full Cabinet before we rolled it out.

**CHAIR:** So, again, were you surprised, I guess, that the premier who wanted this wetland capping and wanted Cabinet to basically consider this issue, that it was not put on Cabinet agenda until January?

**J. CHIPPETT:** I mean, as some Committee members would know, I did work in Cabinet Secretariat for a number of years a long time ago, but there are all kinds of considerations that impact timelines and agendas for Cabinet at various times of the year and deputies are not normally too influential on things. You communicate what you think the premier would like to see, based on a direction we had, but we did not get to the same place in terms of the next meeting that he had wanted, but that wasn't our decision.

**CHAIR:** On November 5, 2018, there was a meeting of the Lower Churchill committee and Nalcor wasn't at the meeting.

Are there minutes from that particular meeting? Do you recall?

**J. CHIPPETT:** I don't know if there was an officially endorsed set of minutes from that. I know there are minutes that – I know, for example, the clerk of the Executive Council took minutes at that meeting and I believe they were provided to the Auditor General.

**CHAIR:** When we look at the timelines here and the decision to cancel or to postpone or to put on hold on August 29, 2018, the permit and Nalcor's communication in terms of its timelines in necessity, what action did you take to ensure that this was being dealt within a timely manner? Given that it was part of your mandate letter as an important piece and given the fact that you put it on hold on August 29, 2018, what communications did you have with other government agencies, departments, the Premier's office to ensure that this would be dealt with and get to Cabinet? Did you make any communications, letters, correspondence through your minister or through yourself to other government departments or to the Cabinet Secretariat about this?

**J. CHIPPETT:** So I referenced in response to an earlier question the drafting of the letter in October. I hand delivered that letter

to Minister Parsons, who, of course, was also Minister of Justice at that time. I brought that letter to him. I recall it because I delivered it his office in Justice and he called Mr. Samms. Once we had a discussion and I told him what I was looking for, he had that discussion with – called Mr. Samms and Mr. Samms came to meet with us, at that particular point in time. Minister Parsons asked Mr. Samms to discuss the matter in the Premier's office.

**CHAIR:** Did you get any feedback from discussions?

**J. CHIPPETT:** We did not, not in the short term anyway, and then our ministers changed in a very short time after that meeting.

**CHAIR:** Okay.

I'm going to now go around again and ask if Committee Members have one more question that they could ask so I could get everybody in. I think there may be some questions for the AG as well.

**J. BROWN:** Thank you.

Deputy Minister Chippett, have you at any time during all this process had any meetings with the different Indigenous governments of Labrador on the permit process, even prior to or after you paused and put the permitting on hold? Did you meet with any of the Indigenous governments or their representatives?

**J. CHIPPETT:** We had started to schedule meetings in April after the recommendations came in. Actually, the reason I remember it as well as I do is because the order we had talked about meeting with people. We were going to meet with Dr. Reimer, as the chair of the committee, and then we were going to meet with the Indigenous groups. On the day that we had been scheduled to meet with Dr. Reimer was the day that Minister Joyce was asked to leave Cabinet. So that



was postponed and we rescheduled those meetings.

In the majority of cases, Minister Parsons and I, sometimes with our senior advisor, met with the Indigenous groups. They weren't in person. They were over the phone. I think there was one instance where Minister Parsons was not available, so I think I did the meeting with the NunatuKavut Community Council myself, along with the senior advisor.

**J. BROWN:** In any of these meetings that you had with the Indigenous governments, did they express concerns with the timeline or that the speed which these decisions were not being met to their satisfaction?

**J. CHIPPETT:** They did say that they were anxious about timing in those meetings.

**S. REID:** I'm just interested in interaction between this department and the Premier's office on this issue and Cabinet Secretariat as well, I guess, and Cabinet in general.

In the Muskrat Falls inquiry, you stated that you didn't feel that the department could move forward without clear direction from the Premier's office in this. Was that an issue in moving this forward? Was there some confusion over the deadlines or things like that? In terms of the Premier's office at the time, were you getting clear direction there?

**J. CHIPPETT:** I would say that there was – I mean, people would understand that as a deputy, you have multiple kind of lines of accountability. Obviously, the Premier appoints deputy ministers. The clerk is the senior deputy in the system and kind of that direct reporting relationship is with the clerk, and then obviously the person that sits in the office next to you in the department, your minister, there's a direct relationship there as well.

So I do think that the particular set of circumstances that had evolved at that time

made it a little bit more difficult to get direction, in that Premier Ball had very much taken a leadership role in establishing the meeting that resulted in an agreement with the Indigenous groups. One of the recommendations coming out of that was the IEAC and so on.

But in the meantime, in the middle of that process, the minister who had been in the department and familiar with the file is asked to leave Cabinet and a new minister is appointed, and then in November another minister is appointed. So you have an obligation to try to keep all of those groups informed and I think that that may have been a contributing factor.

**S. REID:** Okay.

Thank you very much for your informative answers.

**H. CONWAY OTTENHEIMER:** So I have a question, thank you.

I'm just following up, Mr. Chippett, (inaudible) the decision with respect to you putting on hold the permit amendment request and you were asked what action did you take and what communications you had. You referenced a draft letter or a letter. I just want to make sure I understand. This was a letter that you had communicated to the Premier's office, I understand, or who was this letter sent to? There is reference in the report to a draft letter that occurred in late-October of 2018. Is that the same letter that you're talking about?

**J. CHIPPETT:** Yes.

**H. CONWAY OTTENHEIMER:** Okay. Thank you.

So that letter, it indicates in the report that your intention was to inform the minister that your department didn't have a government decision yet on the recommendations from IEAC on the issue of physical mitigation. I understand there are conflicting

recollections of whether the deputy minister – it indicates in the report on page 10 – briefed the minister on the timelines and permit amendment request.

So what can you give us in terms of information about that, what your recollection is with respect the draft letter and what you would have briefed the minister on at the time?

**J. CHIPPETT:** So the letter, just to clarify, was drafted to go from my minister at the time, Minister Parsons, to Mr. Marshall, as the CEO, at Nalcor. When I brought that letter to Minister Parsons, my recollection is that I raised the fact that we had drafted the letter – I had asked for it to be drafted – in response to a senior advisor raising with me the fact that Nalcor was anxious about proceeding and the permit being required. That is when Minister Parsons called Mr. Samms in my presence and Mr. Samms physically joined us in Minister Parsons's office to have that discussion.

**H. CONWAY OTTENHEIMER:** Okay.

Now, was that letter sent to Nalcor?

**J. CHIPPETT:** No.

**H. CONWAY OTTENHEIMER:** Okay. Why was that not sent to Nalcor? Why didn't it get there?

**J. CHIPPETT:** The discussion with Mr. Samms was about whether or not the Premier's office would be okay with sending that letter. As I said, I think, in response to MHA Wakeham, we did not get direction back on that letter. Then, in the subsequent week or so, Minister Letto was appointed, and we actually redrafted the letter for him; but around the same time, we ended up with the meeting that I think is referenced in the AG report with the Premier on two issues, one being the garbage collection tax, as I recall, and the other one being methylmercury.

**H. CONWAY OTTENHEIMER:** Okay.

Just one final question with respect to that letter. It appears from the Auditor General's report that the letter, although it did discuss and perhaps emphasize wetland capping, it didn't get into emphasizing the timelines or the timeline sensitivity for the work. Why was that omitted from the letter?

**J. CHIPPETT:** If we had given direction at that point in time, through that letter or otherwise to Nalcor that we were going to proceed with capping, the permit would have automatically been issued. There would have been no reason to continue to hold it.

**H. CONWAY OTTENHEIMER:** Okay, thank you.

Thank you, Mr. Chippett.

**S. GAMBIN-WALSH:** I just want to go back to a few questions that have been asked already. You've answered them somewhat, but I just want confirmation.

How did you communicate the July 25, 2018, request from Nalcor to your staff, to the ADM, managers and the senior advisor, to those in the Executive Council?

**J. CHIPPETT:** Can you repeat the date?

**S. GAMBIN-WALSH:** It's the July 25. It's the Nalcor submits permit amendment request to MAE. So that particular communication around this permit that was brought to you from the Water Resources staff. So the normal process is that as a deputy minister, you have an executive around you and when you have important issues like this, you would call your executive together and have a meeting. So were you meeting with your executive?

**J. CHIPPETT:** So the decision really on that permit would have – the discussions would have been with myself, the senior advisor, the expert on methylmercury, who was the

former ADM of Environment but who stayed on to take on the methylmercury file, and the director of the Water Resources division, Haseen Khan.

**S. GAMBIN-WALSH:** And who was the senior advisor?

**J. CHIPPETT:** Martin Goebel.

**S. GAMBIN-WALSH:** Okay.

So there wasn't any further discussion had with your executive team, with your ADMs, nothing like that?

**J. CHIPPETT:** No.

**S. GAMBIN-WALSH:** Okay.

**J. CHIPPETT:** It wouldn't have spanned –

**S. GAMBIN-WALSH:** Past –

**J. CHIPPETT:** – the responsibilities of the others. It would have all been contained in that division's bailiwick, I guess.

**S. GAMBIN-WALSH:** Okay.

Water Resources?

**J. CHIPPETT:** Yes.

**S. GAMBIN-WALSH:** Who would be responsible to read the engineering consultant's report within the Department of MAE?

**J. CHIPPETT:** Say that again, sorry.

**S. GAMBIN-WALSH:** Who would be responsible to read the engineering consultant's report?

**J. CHIPPETT:** Right. So the scientific expert on this file was Martin Goebel, and he was also our Member on the IEAC, so he would've been seeing those reports and so on, in real time, and would be reading and

digesting those and speaking to me about that.

**S. GAMBIN-WALSH:** But at the same time, he wouldn't go to the Premier's office with you to meet with the premier when you went?

**J. CHIPPETT:** It depends on who would've called the meeting and so on. For example, the August meeting, I'm pretty sure he was there at that one with me in the Premier's office.

**S. GAMBIN-WALSH:** When you went to the Premier's office to discuss the permit itself, that meeting where the clerk wasn't present, was there anyone else from the department with you?

**J. CHIPPETT:** So is that the discussion –

**S. GAMBIN-WALSH:** The one leading up to where the premier –

**J. CHIPPETT:** – with the letter and so on?

**S. GAMBIN-WALSH:** – indicated that he wanted it to go to Cabinet.

**J. CHIPPETT:** Yeah, so that meeting was organized by the Premier's office. I know Minister Letto and the premier and the premier's chief of staff were present, I believe. It may have just been the minister and I at that meeting. I can't recall if Martin was with me or not.

**S. GAMBIN-WALSH:** Okay, I'm good.

**CHAIR:** Just a couple more quick ones.

In your discussions with, I think, Mr. Samms and yourself, was there – in the Auditor General's report it indicated that there was no follow up with him afterwards in terms of getting an update on the status. Is that correct?

**J. CHIPPETT:** That's correct.

**CHAIR:** The Cabinet paper that would have been submitted to the Cabinet Secretariat, when was that submitted?

**J. CHIPPETT:** That was submitted – I don't think it was that long after the premier had wanted it to go to the next agenda item.

**CHAIR:** So it would have been submitted in –

**J. CHIPPETT:** I don't know the exact date.

**CHAIR:** But summer, spring of – 2018 clearly?

**J. CHIPPETT:** Yeah, it was fairly close to when we had that meeting with the premier.

**CHAIR:** Okay.

So under normal circumstances, again, this would have been submitted. Would it have been six months before the Cabinet actually met in January or was it submitted two months before or – any rough idea of timelines from that perspective?

**J. CHIPPETT:** It was submitted definitely within weeks of that meeting with the premier. I don't know what the date of that meeting with the premier was.

**CHAIR:** Is that your October 2018 meeting you're talking about?

**J. CHIPPETT:** No, I'm talking about the one when Minister Letto and I met with Premier Ball.

**CHAIR:** Oh that meeting back in November 2018?

**J. CHIPPETT:** Yeah.

**CHAIR:** Why wouldn't a Cabinet paper have been prepared earlier?

**J. CHIPPETT:** That's a good question. Part of it was we were consistently – the background here was well understood. It

was the data that we continued to update. You can look at presentation decks that were available throughout the fall that we were consistently updating based on the gathering of new data every time new results would come from the Churchill River and so on.

We were consistently improving, updating our materials based on that data, because the materials continued to show that methylmercury levels were not rising.

**CHAIR:** Despite all of that, the decision was made in January to proceed with wetland capping. So even though these reports, as you suggested, were not showing this, the decision was still made in January.

I'm trying to understand though how a Cabinet decision could not obviously have been made on wetland capping if a Cabinet paper was never submitted. From what you've just told me, there was no Cabinet paper submitted. It wasn't until Minister Letto in November of 2018, which was just two months or a little bit before Cabinet met, that no Cabinet paper had been prepared or vetted through government departments at any time after the recommendations of the Independent Expert Advisory Committee were put forward and accepted.

**J. CHIPPETT:** Right. The materials for Cabinet did not go in before then.

**CHAIR:** When we talk about Cabinet's ability to make a decision, Cabinet cannot make a decision without the Cabinet paper and the Cabinet paper, as you know, would be vetted among a significant number of government departments. But no preparation work, that Cabinet paper was never prepared.

**J. CHIPPETT:** Materials were put together for some of the meetings we've talked about here today and that's what was used to – various iterations of those were used to put together materials for Cabinet after the direction came from Premier Ball. That was

not a significant period of time between that and when the –

**CHAIR:** Well, from the guidelines, Nalcor was prepared to implement wetland capping, but government was not prepared to give them the permit, and then August 29 you cancelled the permit, or put it on hold, I should say. So no decisions were made.

What follow up was done? Once you put the permit on hold, what follow up was done to basically allow Nalcor to proceed? Because if they could not proceed until the Cabinet gave direction, which did not happen until January of 2019, what steps were taken between the time it was put on hold on August 29, I think, of 2018 to get the Cabinet paper ready, to get it so that Cabinet could deal with this well before the deadline passed?

**J. CHIPPETT:** Well, I go back to the meeting that we had in October around the letter with Minister Parsons and Mr. Samms to see really if government was satisfied with our department proceeding on its own with issuing that letter and thereby authorizing the capping. As I said, if that feedback had been received, the permit would have been issued. We did not receive that feedback at that time.

**CHAIR:** In terms of dealing with Cabinet submissions, when you're dealing with sensitive time issues, time-sensitive issues, what's the normal process that you would follow as a deputy minister in ensuring that a Cabinet submission gets to Cabinet in a timely manner? It could be even different things but there are lots of things that you deal with as a deputy minister that are time sensitive and you need to get them to Cabinet.

So what would be the normal way of following up on making sure that a Cabinet paper gets to Cabinet on a timely basis?

**J. CHIPPETT:** I think, initially, you do your background work, and I described that I

thought we were doing a lot of that and I thought we were doing it well. You would seek direction from your minister, because normally Cabinet papers go in the system and they are put together by the department and they are endorsed by ministers in terms of the recommended course of action. In this case, like I said, it was kind of a dual accountability there because obviously the premier was the minister for Indigenous Affairs and we would have been briefing him as well.

So in October, as much as it was a letter, it was also an opportunity to try to have a discussion about where we wanted to go on the issue. If the answer from that letter had been: Carry on, you don't need to come to Cabinet, we can draft that letter and send it to Nalcor. Then the permit would have been issued. Or it could have been: Well, we want you to come to Cabinet on all these issues. Because there was more obviously than just the one recommendation on physical mitigation. There were recommendations on other things.

**CHAIR:** Jordan, did you have another?

**J. BROWN:** Thank you.

In the meeting that you had with the Churchill Falls development committee that Nalcor wasn't at, at any time during the meeting did anyone say we should call Nalcor or have a follow-up meeting about this with Nalcor, seeing as that it was said that they should have been at that meeting?

**J. CHIPPETT:** I don't think that was specifically said in that meeting. Like I said, for example, there would have been other deputies who were involved at that table, whether that be Natural Resources or the chair of the committee or whatever. But, really, we talked about the fact that we wanted to proceed with capping and ultimately it didn't – can't change history right now, but that would've been a spot where an extra piece of communication would have been helpful.

**J. BROWN:** Yeah.

I guess looking back now, like you said, we can't change what happened, but looking back, as a deputy minister, have you changed internally within the departments that you've worked with since on how information is conveyed and shared within the department or interdepartmentally on such large files like this?

**J. CHIPPETT:** Yeah, I mean, I think you can always work harder on communication. I have thought about this so many days since sitting in the January meeting when Nalcor said capping could not be done.

In terms of how things could have been done differently or how things could have been done better, it goes back to making sure you have good processes and good communication through those processes, so obviously that did not occur –

**J. BROWN:** Yeah.

**J. CHIPPETT:** – in sufficient enough fashion.

That's kind of the biggest lesson learned for me, is that you really need to pick apart and work hard to establish good processes from the beginning to ensure that you don't miss things along the way.

**J. BROWN:** Going back to when all of this information and everything came in, are you aware of anybody within the immediate team that was dealing with this file being told by someone at Nalcor that they would need to meet certain deadlines to achieve this?

Did anyone ever say, like, we need this permit to be approved by X date or X month to meet the deadlines with, obviously, the incoming spring thaw and also with the impoundment and the completion of that? Were you aware of anybody, yourself or anyone that reports to you, saying this has to be approved by X date?

**J. CHIPPETT:** I do not recall such a statement. I mean, I spoke earlier at length to the date on the original permit amendment. The date with respect to when – you know, I found out after the fact this was the – it might have been early November, people would talk about general timeframes of the year. But to the best of my knowledge, nobody said to me if we don't have this permit by that date we can't do that.

**J. BROWN:** Who in your department at the time, that you recall, was the point person for communications directly between the people at Nalcor that were requiring this permit and who would be receiving that information in your department in your team? Who was the individual or individuals that would be considered the point people on receiving this communication?

**J. CHIPPETT:** It would be staff of the Water Resources division. That is normally where that would be sent or that communication would be happening. There might have been some communication in this instance between Mr. Goebel as well, because obviously there was an overlap between the permit request that would normally be processed through Water Resources versus the methylmercury recommendations that came through the IEAC.

**J. BROWN:** Who was the senior director in the Water Resources department at the time when all this was happening?

**J. CHIPPETT:** Haseen Khan is the director and has been pretty much for as long as I've been in government.

**J. BROWN:** All right, perfect.

Thank you, Deputy Minister Chippett.

**CHAIR:** Does anybody have any other follow-up questions?

Just a couple of more questions.

It was just talked about, the timelines, but on three separate occasions it says that “Nalcor’s IEAC representative followed up with the Senior Advisor via email on the status of the permit amendment and repeatedly stressed the urgency for getting the permit amendment approved, emphasizing that ‘the window to complete the [wetland capping] work [was] closing.’” That was back in August and the same thing, but again, that urgency did not seem to get communicated.

Were you aware of the urgency?

**J. CHIPPETT:** I stated for the report that there were people who had expressed an urgency for – the Auditor General, rather, that, yes, there were people who had expressed urgency but a timeline or a very specific kind of deadline did not – I’m not saying nobody ever spoke to me about this at all, but there was not kind of a consistent message in all that I had heard or that I recall hearing where somebody said if we don’t have this by this date, we can’t do it.

**CHAIR:** In December of 2018, Municipal Affairs and Environment – the presentation that was going to be made to Cabinet on the recommendations of the IEAC was deferred to January. Who made that decision?

**J. CHIPPETT:** I don’t know, Sir.

**CHAIR:** Okay.

The last question I have, I guess, is a statement that is in the Auditor General’s report and it says: “It appears that credible information on physical mitigation options and deadlines was not used by the Deputy Minister and Senior Advisor of Municipal Affairs and Environment to guide their decision making and communication processes. Their reliance on a risky post flooding physical mitigation option may have lessened any sense of urgency.”

I’d like to get your comments on that statement.

**J. CHIPPETT:** I think in reference to an earlier question, I had said that I agreed with the Auditor General’s assessment of those consulting reports, that the option that was focused on was on doing it before the impoundment. But there were some suggestions, obviously, and included there in an option that it could be done after, and there had been discussions with Nalcor officials about the fact that it might be easier, in fact, to do it afterwards with a barge or what have you.

At the end of the day, obviously, when we got to a stage where that needed to be, I guess, the only option, Nalcor’s view was that it was unsafe to proceed. I think there are emails to that effect, where we wanted to check with Nalcor to see if that was a possibility. But at the end of the day, they concluded that it could not be done after the fact, safely.

**CHAIR:** Okay.

Thank you, Deputy Minister Chippett, for coming to meet with us today. I appreciate your answers to the Committee. I would ask the staff from the Auditor General, given what you heard today, if you had any comments or any follow-up that you would like to have in the public record.

**S. RUSSELL:** No, I would just say that what Mr. Chippett provided is in line with the evidence that we collected during our audit. There’s nothing that differs from that. Basically Nalcor made the application for the permit. The date on the application indicated December of 2018. We only saw evidence of communication between the IEAC member from MAE and the IEAC member from Nalcor on follow-up of that permit.

Once Nalcor was told that the permit was on hold, there was no more follow-up and then the rest of what happened in the fall is exactly as we collected it. There was no communication that we could find any evidence of at the senior level of Nalcor with

the senior level of government during the fall.

**CHAIR:** Thank you.

Okay, thanks everyone. We'll take a short recess now while we convene again for our next witness.

Thank you again.

### Recess

**CHAIR:** Welcome back, everyone, to the second part of our public hearing today.

Right now we have with us Mr. Martin Goebel. Thank you for your appearance here at our hearing today. I will go through some housekeeping remarks and then provide you with an opportunity, if you would like, to make an opening statement.

The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to achieve consensus in its decisions, whenever possible, and Members take a non-partisan approach to their work on this Committee.

From a housekeeping perspective, again, I remind all participants that this is a public meeting and their testimony will be part of the public record. Live audio will be streamed on the House of Assembly website at [assembly.nl.ca](http://assembly.nl.ca) and an archive will be available following the meeting. *Hansard* will also be available on the House of Assembly on the House of Assembly website once it is finalized.

Witnesses appearing before a Standing Committee of the House of Assembly are entitled to the same rights granted to Members of the House of Assembly respecting parliamentary privilege. Witnesses may speak freely and what you

say in this parliamentary proceeding may not be used against you in civil proceedings.

I will ask the Clerk to administer an oath or an affirmation to you and then you will, as I said, be invited to make an opening statement. Our Committee Members will reintroduce themselves to you and then they will pose questions in 10-minute intervals.

If we could start again with the introduction of the Committee Members, starting on my immediate left.

**J. BROWN:** Thank you.

Jordan Brown, MHA for Labrador West.

**L. STOYLES:** Lucy Stoyles, MHA for Mount Pearl North.

**S. REID:** Scott Reid, MHA for St. George's - Humber.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, MHA for Harbour Main.

**S. GAMBIN-WALSH:** Sherry Gambin-Walsh, MHA for Placentia - St. Mary's.

**CHAIR:** My name is Tony Wakeham and I'm the MHA for the District of Stephenville - Port au Port.

Now, I'd ask the Clerk to administer the oaths and affirmations. But before I do, I want to reintroduce the staff that are here from the Auditor General's department.

**S. RUSSELL:** Sandra Russell, Deputy Auditor General.

**T. KEATS:** Trena Keats, Assistant Auditor General.

**A. MARTIN:** Adam Martin, Audit Principal.



Swearing of Witnesses

Mr. Martin Goebel

**CHAIR:** Thank you, and now I will ask Committee Members to start questioning, and I'll start with my colleague on my left.

**J. BROWN:** Thank you, Mr. Goebel, for joining us here today.

I'd like to start by asking if you could provide a summary of your work with the IEAC and when you were appointed to that committee to overlook the wetland capping issue.

**M. GOEBEL:** Okay, thank you for the question.

I was working with government all my career, basically. I'm an engineer in civil engineering with a specialty in water resources. At the time of the Muskrat Falls Project, I was involved as ADM in the project. My section was responsible, for example, for the Environmental Assessment Division. It was responsible for permitting and monitoring through the Water Resources Management Division.

The IEAC was formed in October of 2016, as you probably are well aware. The Premier held a meeting with the three Indigenous leaders, following protests that were happening at the site. The issues that prompted those protests were the fact that reservoir impoundment was imminently going to start. There was a plan to impound water that November for the purposes of protecting the structures during the freeze-up. The Indigenous groups, having been given information through the Harvard study, were concerned that there was not sufficient vegetation removal and soil clearing that had taken place prior to that initial flooding. Of course, that is a determinant of how much methylmercury would be produced in the reservoir.

So my expertise and my role in government put me into that meeting room with

Indigenous people that night. The committee was formed and I was tasked with helping to set up the terms of reference for that committee. Once the terms of reference had been approved by government, I was tasked with helping to find a chair for that committee. Once the chair was in place and we had scientists appointed to the subcommittee, and I was involved in that, I was basically the de facto member for the province. That was my official role.

So once this was all set up, I retired. Government quickly realized that there was a key person who was going to be gone, and they offered me the position of senior advisor on methylmercury, which I accepted. So I was basically retired for two weeks and I was back on this.

**J. BROWN:** Thank you, Mr. Goebel.

I guess once the report was completed and submitted to government, the recommendations were to proceed with wetland capping prior to impoundment. But communications received from the department at the time suggested that you had a different opinion on that. What was the rationale on your opinion of doing it after flooding and contravening what the committee had suggested to government? What was the rationale on your difference of opinion there?

**M. GOEBEL:** Okay, that's a very good question and I can explain that completely.

When the recommendations were being formulated at the IEAC level there was a scientific subcommittee that basically came up with those recommendations. Right at the beginning I said that the protests and the issues were about the soil removal and the vegetation removal. So during the workings of the IEAC, the IEAC produced three recommendations initially. One of those recommendations was to look at the whole issue of vegetation clearing and soil removal, so vegetation and soil removal.

Nalcor asked SNC-Lavalin to produce a report, which they did. It's a comprehensive report. It has been put into the evidence. It was dated December 22 and it came back with a bill in terms of cost in the billions of dollars for this vegetation and soil removal.

The committee looked at this, the IEAC, myself included, and it was decided, in consultation with the engineering or with the scientific subcommittee, to ask the consultant to go back and look at this in a little bit different light. So they asked to look at it in terms of targeted soil removal, areas that were targeted were easily accessible, had high potential for methylmercury but excluded riparian areas and vegetated areas. So vegetation was no longer on the table. In terms of soil removal, some of the highest organic content of soil is in wetlands. So rather than removing the soil from those wetlands, the suggestion was made to cap them.

So the second report that was provided to the committee very late in the mandate, on March 22, was different. It was targeted soil removal and wetland capping, that was ultimately one recommendation that was made to go with this report. A combination of, again, soil removal and wetland capping: that was the recommendation.

During the deliberations for the committee to go forward with these recommendations, there was a split decision. The science was completely unclear as to whether or not soil removal was effective. There was no way to determine that. It's a project that had never been done before anywhere in Canada. It was an immense project. It would have been hundreds of football field sized areas that would have been filled, that would have been put beside the river, and there was no way to know how that would affect the river. There was no opportunity to do an environmental assessment, and further work that had been done with experimental lab work indicated that it wouldn't work at all.

So there was a split decision on whether or not that particular aspect of the project should even go ahead. The way that the IEAC was constituted, however, was that there was four votes that were held by the three Indigenous groups and municipalities. The federal government, provincial government and Nalcor had no vote in the matter and, subsequently, the Innu Nation also rejected the idea of soil removal but was in favour of the wetland capping aspect of that project. So everything that I know about that is based on this report.

In our instructions to the consultant, at the time, was to look at the wetland capping and one of the key things that was instructed, and this is repeated in the report, was that in order to prevent impacts from the capping, that the work be done in the winter.

**J. BROWN:** Yeah.

**M. GOEBEL:** So the report provides a timeline for work of this project. In the Auditor General's report on the timeline of the project, it talks about the project start date on page 29 of August/September. That's a start date from the soil removal and wetland capping report, which was the same start date in the original vegetation and soil removal report.

However, if you look at just the wetland capping, the actual start date in this report on page – actually pages aren't numbered. Right at the very beginning it says: "It is anticipated that (if not already frozen) the material placed will freeze soon after placement as work will be conducted from November to the end of February/early April."

Okay, so that's what it says here and that's what I went with.

**J. BROWN:** Okay.

**M. GOEBEL:** And it also made engineering sense.

When you have a wetland, and you know a wetland, you step in it with your boots you go squish right down. Can you imagine trying to back a dump truck with fill on to that or take a bulldozer and push material onto that if it's all wet and gooey. It can't be done; it has to be done in the winter, according to this engineering report. That's what I believed in, that's what I read and that's what I reported to my contact person, really, who was Jamie Chippett. That's the advice I gave him, that's why I said this is a winter project, there's time to do this.

**J. BROWN:** Okay, perfect. I really appreciate it.

Thank you.

**L. STOYLES:** Thank you for coming, Mr. Goebel.

On page 9 of the AG's report it talks about not enough attention was given to the engineering report. On that same page, it talks about information that you provided on March 21, 2018, in the report.

I'm just wondering if there was a copy or any briefing notes on that information, the briefing you had given to the deputy minister?

**M. GOEBEL:** What's the date again?

**L. STOYLES:** On page 9, March 21, 2018, it talks about the briefing you had with the deputy minister and we were wondering if there were any documents related to that briefing. Also, on that same page, it talks about there wasn't enough attention given to the engineering report –

**M. GOEBEL:** Okay.

**L. STOYLES:** – and you, being the expert on the project, just wondering your input on that.

**M. GOEBEL:** Okay. What page of the Auditor's report?

**L. STOYLES:** Page 9.

**M. GOEBEL:** Page 9.

**L. STOYLES:** The last sentence there it talks about the engineering report.

**M. GOEBEL:** Okay, so the engineering report is, again, this report from SNC-Lavalin that I've been referring to. I was fully aware of what was in that report and also how that report came to be and the recommendations that came out of the IEAC that had their roots in this report and their roots in the earlier instructions of the IEAC.

So I don't, right now, have the briefing material. I'm not sure how I would have communicated. I did provide countless PowerPoint presentations that talked about the recommendations and how those recommendations were voted upon by the various members of the IEAC and what the various positions of the various groups were. Dr. Reimer, when he provided the recommendations to the minister at the time – I think it was April 10 – in his letter, he provided the actual recommendations. Plus all the members had an opportunity to give a written submission as to why they felt the way they did about the soil removal issue.

So I have a page and a half that's in that letter that explained how I came to the conclusion to not vote for soil removal. I really had no objection to the wetland capping, per se; it was in fact just a very small subcomponent of the whole thing. It had a negligible benefit; however, it had good optics really. If was to go ahead, it didn't really cost all that much in the big scheme of things. Everybody was in agreement that if wetland capping could be done, there's a good chance of success of being able to carry it out and – well, it had some long-term benefit, but it wasn't really quantified as anything other than negligible.

**L. STOYLES:** So as the expert on the project, was there any time that you

would've gone to the deputy minister, to the government and said this project can't work? I am just asking a question. Was there a time that you felt that the project shouldn't go ahead?

**M. GOEBEL:** I didn't feel that it couldn't go ahead. Now you're talking about the wetland capping?

**L. STOYLES:** Right, thank you.

**M. GOEBEL:** Not the soil removal?

**L. STOYLES:** Yes.

**M. GOEBEL:** Yeah, so that's important because, again, government had to deal with that recommendation as a whole. But the wetland capping part, I really had no problem with it, but it had time to be executed. There was time to execute it based on the schedule – the actual schedule, not the August-September schedule, but the fact that starting in November, it could be done.

I think if you look in the estimates in that report, the estimates was that there would be two or three work crews that could do the work and there was an estimate done that it could prepare about half a hectare per day. There was 39.5 hectare of wetland that was identified as being suitable for capping. Half a hectare per day, so that's 79 days of work. January, February, March, you're done.

**L. STOYLES:** Was there any time that you felt that your advice wasn't taken serious, the advice that you were giving to the deputy minister and the government that – did you ever feel that the advice you gave them as the expert on the project, that you weren't taken serious?

**M. GOEBEL:** Not really. I mean, I had briefings with the deputy; I had briefings with various ministers. We went through three ministers during this time period. I had briefings prepared. I went through all the points, many of the points that I've just

repeated here now. There was really no reason for me to believe that I wasn't – no, I was taken seriously; I'm convinced of that.

**L. STOYLES:** So obviously, because we're having these hearings, something went wrong. Is there any advice you would give different today now that the project is over and you highlight and you look back?

**M. GOEBEL:** Well, I think the fact that the work did not take place was perhaps a miscommunication to some extent. I think perhaps Nalcor had a different work agenda for this wetland capping than what was reflected in this engineering report.

I came to know this after that they had a deadline for finishing the work around December. But I learned later that the work crew had actually been disbanded already in November. So here I was basically saying this has time to be done – we got to wait for winter to start the work in accordance with the engineering recommendation here and what we prescribed to the engineering company, the way we would like it to be done, was different than what Nalcor had planned to do.

That somehow slipped through the cracks, as far as I can tell.

**L. STOYLES:** So there are general talks about missed opportunities and, in your opinion, I guess, that was the missed opportunity, the work obviously never got done. You, as the expert, I'm assuming, recommended that the work would be done. So who dropped the ball?

**M. GOEBEL:** You know, it wasn't my decision to go ahead with the project. I mean, I could only say that this is what the IEAC recommended and what the consensus was of all the members there. So that was fine. As far as I was concerned, I wanted to see that go ahead.

It wasn't for me to make the final decision, however, because the overall

recommendation about soil removal and wetland capping had yet to be made. With Minister Parsons, for example, we had teleconferences with the Indigenous groups to hear what their concerns were and what kind of issues they would have or any additional information they wanted to provide pertaining to the IEAC recommendations after the recommendations had come out.

The one thing that was committed to by the minister each time was that before a final decision was to be made on any of the recommendations, that they would be consulted or at least informed beforehand. It was left at that.

So I was always waiting for somebody to say okay, we've informed Indigenous groups that we're not going to do this work – that is the soil removal, or any further communications. Now, I don't know for sure because I was not involved in any. That doesn't mean it didn't happen, but I was certainly involved in the communications with Indigenous groups at the briefing level after the IEAC recommendations had been put out. So that was in the summer – well, the summer after the recommendations were made, so 2018, I think.

**L. STOYLES:** All right, I'll pass it on.

**S. REID:** Thank you very much.

Thanks for coming here today to have a discussion with us about this topic. I appreciate your expertise in this matter. I've got a few questions and I'll ask a number of questions and give you an opportunity to answer them all together, I guess.

My questions sort of surround the whole issue of how solid the science was in terms of this decision to do the wetland capping and the methylmercury, the dangers that existed, and the way the committee was established and the way the decision was made to put forward this option, the wetland capping.

So I guess I'm sort of wondering, in your opinion, how definitive was the science in terms of the dangers that existed, in terms of methylmercury? You mentioned that this type of mitigation, the initial type that was recommended, was sort of a big project and even the project that was determined afterwards to be a big project. You mentioned that there wasn't really – it was a new sort of procedure that was being put forward, I think. So I'm just wondering how definitive was the science?

I'll ask a couple of other questions, too. I'm wondering how was that perceived, the decision to move forward with the wetland capping? How was that perceived by the other people maybe you talked within Nalcor or within the department or other aspects of government? How was that perceived? Did they see this as a serious issue that needed to be addressed or was it just optics maybe? I'm not sure.

Then, I'm not sure if you're still with the department, but I'm also interested in any sort of follow up that's been done to sort of – the fact that wetland capping did not happen. What's the science now in terms of the evidence of the impact this has had on methylmercury? Is it a serious issue? Is it too early to tell? I'd just like your opinion on that if you could.

Thank you very much.

**M. GOEBEL:** Okay, those are all really great questions. I hope I can answer them all in turn, but if I stray off or don't cover one of them, please remind me again.

So I think the first part was how good was the science or what was the science behind the removal of soil and the wetland capping? In the Harvard report, the Harvard paper that was peer reviewed and published in *Environmental Science & Technology*, this paper here, the main lead scientist in this was a fellow by the name of Ryan Calder and his paper predicted such things as a 10-fold increase in riverine

methylmercury levels and a 2.6-fold increase in estuary surface waters.

So methylmercury is probably one of the top 10 toxins that you can get into water. Its effect is primarily on developing children and fetuses. It creates neurological problems for humans and it is ingested indirectly, not by drinking the water, but through the food chain.

So the methylmercury is produced by methylation bacteria, which produce the methylmercury. Small microbes and small organisms consume those bacteria and ingest that methylmercury. Those organisms are eaten by crustaceans and small invertebrates. They then ingest that methylmercury and they build it up in their bodies and then those are eaten by small fish and, again, it's built up in their bodies and then larger fish eat that.

So every time it goes from one level of the food chain to the next, it builds up, often by a factor of 10. So after it's gone through several steps of the food chain, you can have concentrations that are hundreds of times what was originally in the water. If you eat that fish consistently, you will bioaccumulate that in your body.

The rate at which methylmercury is broken down is very slow; it's got a half-life of about 70 days. So it takes a long time, if you stop your exposure to methylmercury to get rid of it. But if you continuously eat it, you will build up more and more. Currently, there's no fish anywhere in Lake Melville that is exceeding any Health Canada guidelines for methylmercury content, so right now things are still very good.

So one of the reasons that methylmercury, these bacteria, thrive is they use organic material as their food. So that was the reason behind removing the vegetation and the soil.

In the Harvard paper, they quoted a 14-fold increase in methylmercury in a laboratory

experiment where they took a soil sample and basically put it into a cylinder, added water and measured the methylmercury that was produced. So they talked about a 14-fold increase in methylmercury. These are very, very scary numbers when they came out: a 10-fold increase of methylmercury in the river, a 14-fold increase in the soil. These were crazy numbers.

But the problem with the Harvard study was that this model was never calibrated or never verified, so it was never run using the same parameters on a reservoir where you already knew the results ahead of time to see if these numbers were correct. This was all based on first principles but there was really no way to verify any of this.

One of the things that we did was, in 2016, we started to very actively monitor the methylmercury in the whole system. We had stations set up in the river at the location of the reservoir, upstream completely separate from any influence from the project and at several places downstream.

By now, we've taken almost 3,000 samples and we have a complete record of the methylmercury from the beginning, from roughly October 2016, and it's this real-world data now that is really important to look at and to examine and compare to the Harvard model that was predicted. It turns out that the methylmercury has not materialized that was predicted by the Harvard model. It hasn't even been 20 per cent of the Harvard model.

So to me, you know, I think that's really important and that's a great message for the people up in Labrador to know that, you know, thank goodness this hasn't materialized the way it was expected.

So to get back to your question about how this was decided. During the IEAC, what we did was we said, okay, how much will the soil removal and the wetland capping change in the model if we run it again with these changes? The IEAC went back to

Ryan Calder and asked him to run the model with the two assumptions that were being made. One was the soil removal, which would, basically, remove about 25 per cent of the factors that were producing methylmercury and the wetland capping, which was about 2 per cent effect.

So they ran the model and they showed, okay, if we do these things here is where the methylmercury would end up at. So I just want to find one paper here. Excuse me for just a second.

So I want to read to you a letter from Ryan Calder to Ken Reimer, the chair, February 28, having done this review that we asked him to do. On page 4 of the letter he made this statement: Scenario A – A being the wetland capping – has a negligible impact on exposure forecasts, given the small impact on expected post-flooding peak methylmercury levels in the water column. That came from the scientist who wrote the Harvard paper and predicted these big increases – negligible impact from the benefit of wetland capping.

That makes sense too, because at best a 2 per cent reduction in methylmercury would not be detectable. Scientific measurement of biological phenomenon like that, you're lucky if you have 10 to 20 per cent accuracy. So you could do this and there was no way to tell afterwards, oh yeah, here's how much better methylmercury is: one because it's so small you can't even measure it anyway and, two, because you don't have a control over here where you can compare it to where you have done nothing, for instance. There's nothing to compare it to. Nature has a variability. You can't detect 2 per cent change over and above the variability of nature.

Indeed the monitoring that we've done has shown that from wintertime, when you have very low methylmercury production, to summertime, when you have the highest production, even then you can see the trends in the data. We have all the data. All

the results are on a government website that show this from the very beginning.

For each station that I mentioned earlier where we take measurements, you can see every measurement that was taken. You can see the trends and you can see how the initial flooding already caused methylmercury to increase during the summer. When the final flooding happened, you see larger increases, but then, as you go downstream, those increases and those changes are just tempered. The wave of methylmercury that this whole time series presents becomes less and less as you go downstream into Lake Melville.

**S. REID:** Okay, thank you very much. I appreciate your expertise and your continued work in this area.

Thanks very much.

**H. CONWAY OTTENHEIMER:** Mr. Goebel, I'm trying to understand the post-impoundment process or option and the pre-impoundment option. Because I'm looking at the report – and I'm actually right now looking at page 9 of the Auditor General's report. We're talking about some of the approaches that were taken and we do see, in the report, that it's stated that the deputy minister confirmed that you, as the senior advisor, you were a key contributor to the policy decision processes on the IEAC recommendations. Also, you, in the report it stated, did not support any physical mitigation and you recommended no further action. So I just want to put those statements out for you to elaborate on. You also advised the Auditor General that you believed that wetland capping after flooding was a strong possibility.

So there's some concern that this belief may have lessened the sense of urgency related to the physical mitigation recommendation and that there was another option available, the post-impoundment option was available. Yet, we know from looking at the engineering consultant's

report and the report of the Independent Expert Committee of the IEAC, they basically said that post-impoundment was very risky.

Those are some of the facts that at least we have here in the report, and I want to understand and I think it's important for us to understand a conclusion that was made by the Auditor General that perhaps there was not enough attention given to the engineering report to guide in the decision-making and communication processes that ultimately led to this issue with respect to wetland capping and that it ultimately did not occur because of missed deadlines.

So I know that that's a lot there, but think it's important to understand the context because you clearly were a key contributor to the decision-making process. You believed that post-impoundment was a strong possibility. Yet, you referenced just now in your evidence that you're talking about the Harvard study – is there more a reliance on that? Can you please put this all in context so we understand what's happening here?

**M. GOEBEL:** Sure. Thank you for the question; that's a great question. I've thought about that many, many times and I certainly thought about that quite a bit in preparation for coming to this Committee today.

I think the way it's phrased and it's portrayed in the Auditor General's report, with all due respect to the excellent work that they do, they characterized the post-flooding wetland capping possibility as something that was risky. The word "risky" is never used by the engineering report. What they did say is that: "Any work over water is inherently more dangerous." I think that's stating the obvious, no different than going fishing. If you're in a boat, you're doing dangerous work relative to if you were on dry land. "Work would be restricted to the open water season." Then it talked about

that there is a risk of injury or loss of life to the operators.

I think that's a little bit different than saying it's risky. If I were to say, for instance, that driving to work in the morning is a risk, as opposed to staying at home, working from home, that's an acceptable thing to say. But I don't think to say it was risky to go work would be an acceptable thing to say.

I first heard of the option to do this wetland capping after the impoundment when I had a face-to-face meeting with the committee in Happy Valley-Goose Bay. That was February or March before we had the final recommendations. We had a big two-day meeting. I met with Peter Madden of Nalcor and Dave Haley. Quite excitedly they said, oh, the consultant has come up with the idea of doing this wetland capping from a barge. They said that's a way out for us if we can't get the wetland capped before initial filling. I thought that was great, too. Sure enough, it shows up in this report as an option.

When you analyze this work – and I read a little bit to you from this report; it's section 5.7 and it talks about working from water. Some of what I read was in that first introductory section. But remember, this report is about soil removal and wetland capping.

So they broke it down in section 5.7.1 to talk about post-flooding, evacuation, removal of soil materials. So where it was targeted there was no longer – riparian lands was no longer an equation. So working from a barge to dredge out soil and you would hit trees, it would be very, very difficult or if you pump you would get rocks into the pumps and the hoses.

So section 5.7 talks about, you know, some of the hazards and dangers of proceeding with working from water. For instance, it talked about working in the oil sands tailings ponds and it talked about how often the pumps were broken as a result. So one of



the dangers, of course, of a project is that it can't be completed because of breakdowns and so on and so forth.

Section 5.7.2 talks about capping after inundation. Capping is the opposite. So you have a barge and you bring out some material, sand and gravel or clay, and, basically, using an excavator, you place the material into the water and it goes on the bottom where you use a hose or pumping system to put that material.

So this report, if it was really a hazard, a danger, why would it go on for another whole page and talk about how this should be done and give options and explain it. In this whole section, not one word of anything about danger or safety or anything else.

Let's face it, working from a barge, for instance, to cover pipelines or transmission cables always requires a barge to place material on that – it could be in the ocean. This is not an unusual type of operation.

So, you know, knowing that, the way I read the report, and it's there in black and white, I felt this was a valid option, but I want to leave you with just one last point, if I may.

So, again, remember that first report which was about the vegetation and soil removal. I want to just go to page 17 of the report and here they also talked about using a barge. This is, again, not for capping but for the soil removal and also in the Appendix where the work methods are described, it talks about using a barge to do some of the work.

It says the second approach uses barges to access more remote areas from the shoreline with an excavator mounted onboard. This can be done safely and is often used in areas of ice breakup or for dredging in rivers or other water bodies.

Same report, so this report mentions risks, which they should do, which is professional, talks about risks in a balanced manner, but,

overall, they had already said that it's safe to do.

**H. CONWAY OTTENHEIMER:** Just to follow up on that, so what you're saying, it's not just specific to soil removal at all, it also applies to wetland capping, the risk element.

**M. GOEBEL:** Yes. I think the work methodology is different; the removal part is more difficult because you're basically reaching down. You can't really see what's going on down there, you have to take stuff and pull it up. Let's say an excavator, you're going to get a bucketful of mud and that's all going to wash away in the current and it's going to be difficult.

In terms of risk, there's a risk that the work wouldn't get done properly. But the placement, which is the opposite, again based on the way this report is constructed, it didn't seem to be a problem. The specifics of it were addressed: type of material, how to place the material. These were addressed in this report.

**H. CONWAY OTTENHEIMER:** Okay, thank you.

Thank you, Sir.

**S. GAMBIN-WALSH:** I have two questions; my first one is based on the permit. On July 25, 2018, it says: "Nalcor submits permit amendment request to MAE to perform wetland capping."

So did you advise the deputy minister or the minister of the day on the action required or not required as a result of the permit request by Nalcor?

**M. GOEBEL:** I'm sorry, I didn't quite hear everything.

**S. GAMBIN-WALSH:** So on July 25, Nalcor submitted a permit amendment.

**M. GOEBEL:** Yes, application for an amendment.

**S. GAMBIN-WALSH:** Right, to MAE. So that particular application, that particular document, did you advise the minister or the deputy minister on what to do or not to do as it pertained to that permit?

**M. GOEBEL:** No, I did not. That permit is issued by the Water Resources Management Division. So I knew about the permit, I knew that a permit had to be issued for that work. The reason for that permit was because that work would be at odds with the original permit. That's why it's an amendment.

So the original permit, that was the big one. That was really the huge permit. This permit was to say, yeah, Nalcor, you can go ahead and build a dam on that river and you can block that entire river and create a 100-square kilometre reservoir. That is a huge permit.

This amendment was to address 40 hectares of difference in the river bottom after the work was done; a tiny little thing compared to the overall permit, but it still needed to be done to protect Nalcor from any liability from not potentially following the legislation to the letter.

So they had to have that permit. So I didn't really give it much more thought beyond that.

**S. GAMBIN-WALSH:** Okay.

So my second question has to do with the Water Resources division and I'm just wondering what information or knowledge you could contribute to the science that they were relying on for the data.

It seems like the system used to gather the data seemed to be in a bit of conflict with some other systems that were being used to gather data on methylmercury specifically on the levels. What do you know about the

science that was used within government to measure the methylmercury levels?

**M. GOEBEL:** Well, the measurement of methylmercury levels in the river, that's ongoing. The initial sampling scheme: number of samples, the location of samples, what should be tested for, the need for an accredited lab to make sure that the samples are legitimately analyzed and can be held up as evidence in court. That was all prepared by the Water Resources division and myself, at the time when I was still the ADM of the Water Resources division.

Once the IEAC was formed, one of the first things we did was we took that monitoring plan – and the monitoring plan, by the way, is on our website. We took that to the IEAC and we got them to sign off on it. They made some recommendations, in particular Trevor Bell, researcher at Memorial University, made some recommendations. We made changes to the plan and carried out the monitoring ever since in accordance with that plan.

There was a point where the IEAC actually looked at the results and basically complimented Nalcor for this particular monitoring plan, which was described, I think, as second to none in the world for this kind of thing. It really is. I know of no other hydroelectric project where this extensive level of monitoring has taken place and where there's such a complete time series of results.

So it's carried on to this day. It's open and transparent in the sense that the results, as soon as we get them, we post them on the web. We provide a graph that shows the results. You can read the results numerically in a spreadsheet. So I'm very proud of this plan and I think everybody should be very proud of this plan. It has been a godsend for us because it tells us what's really happening which is over and above anything that the models could tell us.

But there were other models besides the Harvard model. There were models that were done by Harris and another company, I can't remember. There was analysis done during IEAC. There were models done during the environmental assessment process, which didn't predict the same results that the Harvard model did. But looking at them now, I'd say they were much closer to what actually is happening today. But none of the models are important now anymore, other than what's actually happening there.

**S. GAMBIN-WALSH:** Just to allude on that: How many years of measurement would you say would give a good prediction of the future?

**M. GOEBEL:** There is a very typical timeline for methylmercury that is based on what is observed from other reservoirs. Typically, in terms of what is in the water, there is a very quick, initial increase in the methylmercury in the reservoir. Then there is the bioaccumulation effect that I described earlier. That can take years and sometimes up to 10 years for it to reach a maximum and then it slowly declines because methylmercury has this long half-life that I mentioned. It could take 25 years for it to go back to background levels.

There are a couple things about the Muskrat Falls reservoir that make it – if you were to classify all the reservoirs into different groups, which ones are the ones that produce a lot of methylmercury and those that produce very little methylmercury, Muskrat Falls reservoir falls into the category of reservoirs that produce little methylmercury.

A couple of reasons; it is big, but it is relatively small. The reservoir is about 101 square kilometres but it is in a watershed that is over 90,000 square kilometres. The actual flooded area in this reservoir is about 40 square kilometres so the 60 square kilometres is already the river that is there in the first place, so the river is widened a little

bit. The second thing is this is not a storage reservoir as such; it is not meant to impound water so you keep the water from the spring runoff and then use it in the summer when there is less water. This is a reservoir that is built to create a certain water level and to maintain that water level. That's what we call a run of the river type system.

Basically the water flows into this reservoir, goes through the turbines and goes out. The water in that reservoir stays in the reservoir for roughly 10 days. It gets changed over and over and over again. That's quite in contrast to the Smallwood Reservoir, for instance, where you have a huge reservoir – somewhere over 1,000 square kilometres – and water is stored there for use at times when there's less water during the summer and so on.

So you can have fluctuations in that reservoir that vary over a time period of years, depending on if you have a big spring runoff or you have a dry summer or you need more power, you can draw on that water and use it when you need it. The Muskrat Falls system is not designed to do that. It's designed to simply have the water flow in and flow out.

**S. GAMBIN-WALSH:** Okay, thank you.

**CHAIR:** Thank you.

I just want to follow up with a couple of points, I guess, having listened to the conversation. Certainly from the report, as was referenced on page 9, they call it the senior advisory.

You were the senior advisory; is that correct?

**M. GOEBEL:** That's me in the report, yeah.

**CHAIR:** So they, again, talked about, believed that wetland capping after flooding was a strong possibility. We know now that the opinion of Nalcor was different.

**M. GOEBEL:** Yes, it was.

**CHAIR:** We've heard from you now today about all the rationale behind what you said and the reports you've read out, so I appreciate all of that. We'll certainly hear from Nalcor on their reasoning. But at the end of the day, we've also heard lots of discussion from you around what's happened since in the monitoring and the effects and we're not really seeing – thankfully, some of the things that were thought might happen are not happening.

But this comes down to the reason why we're here today, to discuss the report that was done by the Auditor General. I'm going to read a line from that report that says: "We could not determine a plausible reason why the wetland capping policy decision did not happen in a timely matter." Because despite everything we've heard in relation to all of the technical issues around this, ultimately a Cabinet paper got prepared, submitted to Cabinet and Cabinet approved wetland capping. They approved this to go ahead.

**M. GOEBEL:** Yes.

**CHAIR:** If that decision to go ahead had been made significantly earlier, perhaps Nalcor would've been able to do the work. Despite the numerous correspondence that appears to go back and forth here about the urgency of timelines, Nalcor's belief that they could do this project significantly lower than the original estimates based on the timelines: "We could not determine a plausible reason why the wetland capping policy decision did not happen in a timely manner."

So that's the fundamental thing that we're trying to get at: What happened? How did that something that was a priority that was supposed to be dealt with did not get dealt with until we get into a period of time when we have two different opinions as to whether or not it could or couldn't be done?

I want to refer you to the briefing you and the deputy had on August 29, 2018, with the Premier and his staff where the Auditor General says you focused on the status of methylmercury monitoring. In that meeting, can you recall who else was present in that meeting?

**M. GOEBEL:** My notes aren't the greatest, but you're referring to August 29?

**CHAIR:** Yes, that's what's in the AG's report.

**M. GOEBEL:** Yeah, I just have a note here that I prepared for the meeting and I prepared a final presentation for that meeting. So whatever is in that presentation is basically what I would have communicated to the Premier. I'm pretty sure I was at that meeting, but I didn't take notes during the course of that meeting and who was there. I do recall there was quite a few people there but –

**CHAIR:** Yeah, and the reason that date is so important, because it was the same time that Nalcor had followed up again, wondering what the status of their permit application was and it was the same day that the deputy minister has testified that he put the permit application on hold.

So did you have any discussions with the deputy minister about that decision?

**M. GOEBEL:** I can't recall specific discussions with him. I do recall on several occasions, Peter Madden, the representative from Nalcor would call me and ask me, because we were both on the same committee, where's the permit. We got to go ahead with it.

I would invariably see Jamie Chippett about that and say: I've got a call from Nalcor. We need that permit. But he was, of course, the middleman here. He was going to the minister for a decision.

It wasn't solely about the permit per se, it was about the recommendation that the IEAC had made and how do we address that recommendation? It was in that recommendation that government needed to make a decision and to communicate that to the Indigenous groups. I think there was no way for me to say that communication took place or that they had made that decision in that manner. It was part of a bigger picture issue and that permit was only a small bit of that recommendation.

**CHAIR:** The application for the permit would then, in your words, depend upon the approval of Cabinet to proceed with wetland capping?

**M. GOEBEL:** Normally, that kind of permit would not at all. I mean, at the beginning of my career I was in the same position as the director is now.

**CHAIR:** Right.

**M. GOEBEL:** I was the manager in the section where we issued hundreds, if not thousands, of permits. Only occasionally, on the rarest of occasions, would a permit go to a higher level.

Initially, when I first started, they were all signed by the minister directly, but at some point in time, signing authority was delegated to the assistant deputy minister or the director. So there are lots of permits out there that were signed by me personally and were put out.

But this one – and Haseen correctly recognized that it was tied to the IEAC recommendation. There was no communication from government as to how to deal with that recommendation; therefore, he could not just go ahead and sign it.

**CHAIR:** Right. So he would have brought it to the deputy minister, and then the deputy minister made a decision to put it on hold. But there was no follow-up then with other departments of government or the Premier's

office to talk about the fact that despite the communications from Nalcor about timelines – and in September of 2018, again, looking at the summary detail, it says: "Numerous parties (Nalcor, Indigenous governments and organizations, IEAC Chair) contact MAE with concerns about timeline for implementing the IEAC's recommendations." That was the summer of 2018.

Despite numerous parties talking about concerns around timelines, for reasons that we have not been able to find out they never got acted upon. Those concerns never found their way to an appropriate decision-maker until Cabinet meets in January of 2019 and approves wetland capping.

So we're trying to understand how that process fell down, for lack of a better word. Because, clearly, when one thinks that there's a concern raised by the committee, the chair and others – were you aware of those concerns?

**M. GOEBEL:** Oh absolutely. I don't disagree with a word that you just said. We were aware of this. The Indigenous people constantly said: When are we going to do this? This has to be done before impoundment. This was not just at that meeting; this goes back to the original days when the IEAC was formed. There was always this sense of urgency to get this done before the July deadline when first impoundment was scheduled to take place.

It was communicated to me, it was communicated to my deputy, but again, all I can say is that there had to be government decision made on what to do with this recommendation. I didn't hear a word that there was a decision made. I mean if the moment the decision had been made, or somebody said it's green and go, I would have faxed that permit or Haseen would have faxed that permit to Nalcor.

**CHAIR:** Thank you so much.

**M. GOEBEL:** You're very welcome.

**J. BROWN:** Thank you.

So on December 22, 2017, Nalcor provided its engineering consultant's feasibility study on full mitigation to the IEAC. Obviously, you sat on the IEAC. Did you brief the deputy minister or the minister on the timelines that were in that report? Because the IEAC report had a timeline on when work should commence and when work shouldn't. Did you brief them on the timelines within those reports?

**M. GOEBEL:** I'm thinking back to those briefing notes that I would have prepared. I think it was assumed that the work would begin as soon as it was approved, but my focus was really what were the recommendations. There were four recommendations made by the committee, there's only this one that dealt with physical mitigation. Two of the other ones were the recommendation to set up a committee to look at the health management and another committee to look at community-based monitoring.

Those were pretty well no-brainers and were easy to recommend that these go ahead because it was unanimous support for them in the committee. But there was not unanimous consent for the physical mitigation. There was a split. So that's what I would try to focus on and try to explain the science of those –

**J. BROWN:** I'm talking about the SNC reports that were given to Nalcor, not the IEAC recommendations. I'm talking about the actual physical reports that were done by Nalcor that were given to the IEAC on their ones.

On March 22, obviously, you guys got the supplementary one on Scenario A and on Scenario B. Like I said, in those reports that were presented to the IEAC, there were timelines on when the mitigation should start. Like you said in earlier testimony to

me, the work would have to start in November because of the winter.

Did you brief the deputy minister on those dates and those timelines that had to be met in order for this to work? Did you brief the minister on those timelines?

**M. GOEBEL:** I did not specifically talk about the timelines in this report, either the ones that were quoted as August-September for the overall project, or November which is in the thing. But I did talk about the fact that this is a winter project. I did talk about the fact that the report gave an option for doing this after impoundment.

**J. BROWN:** One more question. In your belief, and as the point person between the IEAC, the department and the government, I am just wondering: Do you believe that the minister, deputy minister, was aware of the timelines in the report and the urgency that this permit has to be let before November 2018? Do you believe that the deputy minister was aware of those timelines?

**M. GOEBEL:** I want to say it this way: The urgency that Nalcor communicated to us was always relayed to the deputy.

**J. BROWN:** Okay.

**M. GOEBEL:** I did not give a breakdown of this report, the details of what was in it, but I did always communicate whenever Nalcor was looking for – where's this permit and said, look, we've got to get this permit out as soon as possible.

**J. BROWN:** With your dealings with Nalcor, roughly how many people over at Nalcor were your contacts regarding this file?

**M. GOEBEL:** My main contact was Peter Madden, because he was my counterpart on the IEAC. I also knew Gilbert Bennett. He wasn't a contact, but occasionally when something went a little bit funny or I had a particular issue, I did contact Gilbert.

I also met him several times when I stood in for – there was sort of an oversight committee and occasionally the deputy would ask me to attend that. This was in the earlier days when there were environmental assessment issues more so than these methylmercury issues. But I would attend those meetings occasionally.

So I felt comfortable that I could pick up the phone and call Mr. Bennett and say I needed something or can you help me out with something; usually data requests or information requests or something like that and he was always very obliging.

**J. BROWN:** Did Mr. Bennett ever contact you regarding the permit and the delays in receiving the permit?

**M. GOEBEL:** Not that I recall.

**J. BROWN:** Did Mr. Madden contact you frequently about the delays in the permit?

**M. GOEBEL:** Yes, he did, about three times I would say.

**J. BROWN:** Okay.

Did anyone else in Nalcor ever contact you about the permitting?

**M. GOEBEL:** Not that I recall, no.

**J. BROWN:** All right, perfect. Those are all my questions.

Thank you so much, Mr. Goebel.

**M. GOEBEL:** Okay, thank you.

**H. CONWAY OTTENHEIMER:** Thank you.

Just to follow up on the question that the Member for Labrador West just asked you with respect to Nalcor. We look at page 11 of the Auditor General's report in August of 2018, there were three separate occasions: August 3, August 9 and August 29 that Nalcor's IEAC representative followed up

with you via email on the status of the permit amendment and repeatedly stressed the urgency for getting the permit amendment approved, emphasizing that the window to complete the wetland capping work was closing.

You received these emails. It's noted in the report that you did not provide the emails to the deputy minister, yet you still made the deputy minister aware of the urgency that was expressed in these emails. Also, one of the observations in the report is that neither you nor the deputy minister sufficiently explored the context of the inquiries or why the timeline was being stressed by these Nalcor representatives in the emails.

So while you did reply to the emails, the Auditor General's report indicates or makes the observation that neither you nor the minister asked for any clarification from the Nalcor IEAC representative.

Do you believe that comment or observation by the Auditor General, was that something that was a miss, for example, perhaps on your part or was it necessary? I'd like to understand more of why there seems to be a suggestion that you should have obtained more clarification about the urgency. So if you could comment on that, please.

**M. GOEBEL:** Yeah, that's a good question, and in reading the Auditor General's report on that, I mean, I can't disagree with a statement like that. I mean, obviously, with hindsight, if there had been full awareness and full disclosure and full communication, things might have gone differently, but the way they went ahead, to me, was not so much about the deadlines in the report. To me, it was we need this as soon as possible. That was good enough for me, really, to say as soon as possible, who cares if it's November or December, whatever. They need their permit now and that's what I focused on.

**H. CONWAY OTTENHEIMER:** Okay, thank you.

One final question. In your response to one of the questions by my colleagues you had indicated that really there was no direction from government on how to proceed with respect to this policy decision and you also stated somewhere else that the government decision had to be made. So one can conclude that ultimately you're waiting for direction on this important decision from government.

So what was your understanding or what would your belief be as to why there was no government decision? Why the hold up, in your opinion?

**M. GOEBEL:** I really can't answer what's in the minds of other people. I don't want to assume what my higher-ups were thinking, but I do know, in their defence, we went through three ministers over this time period and we had to basically start over again each time with new briefings and with new personalities, obviously. They had their priorities. So that's what we did.

We basically needed to wait for a recommendation from government as to what to do with the IEAC recommendation. I can't say if – I'd be negligent to say it was intentional or unintentional or whatever reason happened. All I know is I can say the obvious: it didn't happen.

**H. CONWAY OTTENHEIMER:** Okay.

Thank you very much for your expertise and your candour. I appreciate that.

Thank you.

**M. GOEBEL:** Thank you very much, too.

**CHAIR:** Scott.

**S. REID:** I just have a quick follow-up to the questions I asked earlier, and the Member for Placentia - St. Mary's also touched on it, I guess. It's about the continuing follow-up in terms of methylmercury levels and issues like that.

I just want to be clear and make sure I understood that, at this point, it doesn't seem to be the dangerous levels that might have been predicted in some of the models.

As well, in terms of going forward, you're going to continue to monitor the levels for a longer period and continue to see if there are any issues that develop here that we should be aware of? Is that correct?

**M. GOEBEL:** Yeah, that's very much correct.

So I've brought with me just so I could refresh my own self about this. I don't know if you can see it from there, but this is for the station – the water quality monitoring station, N5, which is just a couple of kilometres below the dams. So what comes out of the dam at that station, what's measured at that station is really what counts. This is the methylmercury coming from the reservoir and going into the system downstream.

This is just the snapshot in time right now, but for 2020-21, the water year at that location, Calder had predicted that the peak annual flow-weighted mean methylmercury would be 0.18 nanograms per litre. The observed methylmercury at that location for that year was 0.044 nanograms per litre, roughly a quarter of what was predicted. So that's what I have here right in front of me.

The year prior to that, it was a little bit more and trending for this year it's a little bit less. I don't have the full water year yet, I'm missing about six weeks of data, but right now I can only say that thank goodness, this is looking a lot better than the scare that Harvard gave us, basically.

**S. REID:** Yeah.

**M. GOEBEL:** Yes, monitoring will continue. One of the recommendations from the IEAC was to review the monitoring program and to have a community-based monitoring program to better suit the needs of the



Indigenous people. So the new committee – and I am on that as well – is going to be looking at that. It would be good to have community input in this monitoring program. But the really important thing that has to be monitored is not the water as such; this is only just something that you need to know in order to figure out how to proceed further on downstream and into the future.

The really important thing to monitor will be the fish and how much methylmercury is in the fish, specifically the fish that is eaten by people in their regular diet. There, again, Nalcor is doing monitoring. There are annual fish surveys that are done. Fish are collected and their methylmercury is determined. That work is ongoing and will continue. It is part of the requirement that the department placed on Nalcor as a condition of the release of the project under the environmental assessment act. So this will continue for sure.

**S. REID:** Yeah.

You mentioned earlier that it could accumulate for 25 years. So this is going to be an ongoing monitoring of the impacts.

**M. GOEBEL:** Correct, yeah.

**S. REID:** Thank you very much.

**M. GOEBEL:** You're welcome.

**CHAIR:** Before we go to break, I will again ask the Auditor General if they had any comments on anything they heard this morning.

**S. RUSSELL:** Thank you.

I'm just going to clarify one thing. Nalcor was in the Edwards Brook area doing a piece on fish habitat. Their permit was only for 28 hectares that was in that area that they now had a camp and roads and everything that they could access that area. There was another 11.5 hectares that were

located in other areas that was not part of that permit.

So that was never under consideration for wetland capping at all in the process that was in place. That wasn't part of it. I just wanted to clarify that for you.

**CHAIR:** Okay. Thank you.

Mr. Goebel, do you have any last comments you would like to make? We want to thank you, again, for taking your time to come here and help inform us on some of the things around the report and what happened and your expertise. We appreciate that.

If you have any closing comments you'd like to make, by all means.

**M. GOEBEL:** You are most welcome. My time is your time in this matter. I'm very happy to provide you information if you need a follow-up. I'd be glad to do that.

I think I've had an excellent opportunity to say everything that I wanted to say. I really appreciate the excellent questions that were posed. They really covered all the material that I was hoping to be able to talk about today.

**CHAIR:** Thank you so much.

**M. GOEBEL:** You're welcome.

**CHAIR:** So we'll now recess again until this afternoon.

### Recess

**CHAIR:** Hello again, now we'll reconvene the meeting of the Public Accounts Committee on the public hearing on the physical mitigation of Muskrat Falls reservoir wetlands. I want to welcome Mr. Aubrey Gover here to our meeting. Thank you again for your appearance here today.

The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to achieve consensus in its decisions whenever possible, and Members take a non-partisan approach to their work on this Committee.

Again, from a housekeeping perspective, I remind participants that this is a public meeting and their testimony will be part of the public record. Live audio will be streamed on the House of Assembly website at [assembly.nl.ca](http://assembly.nl.ca) and an archive will be available following the meeting. *Hansard* will also be available on the House of Assembly website once it is finalized.

Witnesses appearing before a Standing Committee of the House of Assembly are entitled to the same rights granted to Members of the House of Assembly respecting parliamentary privilege. Witnesses may speak freely, and what you say in this parliamentary proceeding may not be used against you in civil proceedings.

Right now, before I ask the Clerk to administer the oath or affirmation, I would take an opportunity to introduce everybody on the Public Accounts Committee and also members of the Auditor General's department who are here, starting with my colleague on the left.

**J. BROWN:** Thank you.

Jordan Brown, Member for Labrador West.

**L. STOYLES:** Lucy Stoyles, MHA for Mount Pearl North.

**S. REID:** Scott Reid, St. George's - Humber.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, MHA for Harbour Main.

**S. GAMBIN-WALSH:** Sherry Gambin-Walsh, MHA for Placentia - St. Mary's.

**CHAIR:** I'm Tony Wakeham, MHA for Stephenville - Port au Port.

**S. RUSSELL:** Sandra Russell, Deputy Auditor General.

**T. KEATS:** Trena Keats, Assistant Auditor General.

**A. MARTIN:** Adam Martin, Audit Principal.

**CHAIR:** Now I'll ask the Clerk if she would administer the oath or affirmation to the witness.

### Swearing of Witnesses

Mr. Aubrey Gover

**CHAIR:** Committee Members will basically ask questions for about 10 minutes each; we just go around the table. But before we start, Mr. Gover, if there was any opening statement you'd like to make or anything like that, we'd be more than happy to hear from you for a couple of minutes.

**A. GOVER:** No, I really have no opening statement. I'm happy to be here today to participate in your examination of this issue. I testified before the Muskrat Falls committee in general about Indigenous matters in relation to that project. I was interviewed by the Muskrat Falls inquiry with respect to environmental issues but they saw fit not to examine me.

The Auditor General's office did examine me for a morning on evidence related to their particular work on this matter. I was happy to co-operate in that and I'm happy to co-operate here today and do my best to answer all your questions fully and truthfully as I just swore to do.

**CHAIR:** Thank you.

I'll start again with Mr. Brown.

**J. BROWN:** Thank you, and thank you, Mr. Gover.

In the Muskrat Falls wetland capping AG report when you were asked there, you said that the Public Accounts Committee cannot confer on the Auditor General's authority to conduct the review which was not within the statute and that your department, at the time, chose not to participate fully because you do not feel that it was within the statute to do so. Can you explain the objection from the department on the participation in this matter?

**A. GOVER:** Let me be clear on that. We wanted, in every respect, to fully participate and did. We turned over every record we had in our possession to the Auditor General. I testified for a morning and answered every question that was asked of me, and I would've come back and testified again and again and again.

This was a comment that I made to the Auditor General in relation to a letter that the Auditor General had drafted and asked me to sign. One of the concerns I raised was – this was not a concern of the Department of Indigenous Affairs and Reconciliation; this was a concern that was raised by others, besides myself, about the authority of the Public Accounts Committee to make this particular reference under the Auditor General's act as a matter of law to the Auditor General. We came to no conclusion on it. Everyone agreed to participate in the process.

Whatever our concerns were, were not a formal objection; it was just noting that given that the definition of an audit, given that this is really directed more towards the financial administration, internal controls and payment of public funds to others, was this within the scope of what was contemplated by the Auditor General's act.

For example, one is not going to say that the act is of such a nature that the Public Accounts Committee could order the Auditor

General to investigate a private property dispute. There are limits to what the statute, like all statutes, prescribe for the authorities that are established by them or operate pursuant to them as to what they can do.

But that was not – I never wrote a formal letter to the Auditor General saying I object to your jurisdiction. I just noted it in an email to the Auditor General's Office in relation to one of these certification letters.

So while other people in the government had similar concerns, none of us raised it as a formal objection and we agreed to participate. As I said, I was happy to testify. I would have testified again and again and again because no one is more disappointed than me that wetland capping did not occur. I advocated for it. I supported it. I encouraged it and was severely disappointed when we were informed, as a government, by Nalcor that it couldn't occur.

**J. BROWN:** Thank you so much, Mr. Gover. I appreciate that and I'm glad.

Moving on to wetland capping itself now and the essence of it.

In earlier testimony we heard about, obviously, the IEAC and they were presented with two reports, one in December and the follow supplement one in March. Both those reports did have timelines that would have to be met in order to keep on schedule, especially in the March one it mentioned that work had to commence in November. And according to the timeline in the Auditor General's report, by November we were still nowhere with any permitting or anything to do the work.

Were you aware of these timelines? Did you raise them as a deputy minister up to Cabinet that these timelines should be met with the response back from Cabinet that their decision should be made?

**A. GOVER:** With respect to the Independent Experts Advisory Committee,

we were not participants. By that I mean the Office of Indigenous Affairs and Reconciliation or the Office of Indigenous Affairs, as it was at the time, I can't remember. We've had a few changes in our organizational structure. But the Independent Experts Advisory Committee, as you're probably well aware, was comprised of the three of Nunatsiavut, Innu and NunatuKavut and a representative from the municipalities of the area, the federal government, the provincial government and Nalcor.

So the provincial government representative on the IEAC was, basically, a representative, I believe, of the Department of Environment and the Labrador Affairs Secretariat or office, at the time, provided support in some matters to the Independent Experts Advisory Committee.

So they did their work. I would not have been aware of the timelines or the work. I would become aware of what they had decided when they sent in the report to government and when they sent in the first lot of recommendations they were all accepted and done. Then the second lot of recommendations came in and so they needed to be processed. But the lead for processing, and as you say, providing advice to ministers and Cabinet about the recommendations and any time concerns with the recommendations, that was being led by the Department of Environment.

I did participate in meetings at the request of the Department of Environment in order to formulate our advice or advice to the government, by that I mean the political government, Cabinet, the ministers, on the recommendations, but my advice on the recommendations was wetland capping should be done. We felt, based upon the long and arduous representations of the Nunatsiavut Government on methylmercury in relation to the project, that in the totality of the circumstances that was a reasonable thing to do. We felt there needed to be

some physical mitigation, so we advocated for it.

Now, as is noted in the Auditor General's report, there was a steering committee for these projects and generally it was deputy ministers, people from Executive Council and senior representatives of Nalcor. So when the issue of physical mitigation in terms of soil removal and wetland capping was being discussed at the committee, I was very concerned about this because I was worried that I knew we were approaching the full impoundment of the reservoir, so I was concerned that when this reservoir is up to its maximum height, which is quite a height, as you probably well know being from Labrador, could wetland capping be done once the full impoundment of the reservoir was carried out?

I was told by the Nalcor officials at one of these steering committee meetings that yes, even after full impoundment, what would happen is material could be gathered up, could be placed on a barge, the barge would go out on the reservoir and I guess dump the material on the areas that needed to be capped.

So since I was assured that wetland capping could essentially be done at anytime, where I had information from the people who knew, had the engineering expertise to address this issue that wetland capping could be done at anytime, I wasn't overly concerned about the timeline, but I was concerned enough to inquire about it.

Now, I notice in the Auditor General's report there were other documents and things, I was never privy to them.

**J. BROWN:** Okay.

**A. GOVER:** So when the government made its decision that it was prepared to proceed with wetland capping, and we had the meeting that's noted, I guess, in the Auditor General's chronology in January and we were told then by the representatives of

Nalcor that wetland capping could not be carried out, I was astonished.

I had no hint that there were some factors that would have inhibited wetland capping to be carried out. As I said, as an advocate for it, I was severely disappointed to learn it because that was the first time I realized there was some constraints on doing it.

But to answer your question, Sir, not all of these time sensitivities was I aware of, because Indigenous Affairs was not participating as a representative on the committee, and Environment was taking the lead with its technical knowledge of methylmercury sitting on the committee to provide the materials that needed to go to ministers and the Cabinet to make a decision with respect to wetland capping.

**J. BROWN:** Thank you so much. I appreciate your time.

**L. STOYLES:** Hi, Mr. Gover.

Thank you for coming today.

As we've heard from a number of other participants so far today, we learned how important this project was to the government and that.

I'm just wondering about your department working with Municipal Affairs and if you were part of the communications on a regular basis when they had a meeting regarding this project? I know it talks about the timelines.

Do you feel that your department knew everything that was going on? Were the two departments working together?

**A. GOVER:** Well, this is something that is a challenge when you're in a department or an office or a secretariat that is small, that has really limited or no programs and that the programs for the people that you're advocating for are all controlled by other departments.

I'll just use this as an illustration: An issue may come up from a particular Indigenous government or organization about policing in the province. We can make representation to the Department of Justice, but we don't control policing in the province. I'm not saying the Department of Justice does, but it is within their mandate; it is not within our mandate.

So while we have the role to advocate on behalf of Indigenous people, we don't issue permits. We generally don't make statutes and regulations. We don't run programs. What do we do? We conduct land claim negotiations. We help with agreements and negotiations on agreements between the Government of Newfoundland and Labrador, sometimes the federal government and Indigenous governments and organizations. We help departments discharge the Indigenous duty to consult on projects that affect asserted or established Indigenous rights, and we provide some advice to departments on how to better deliver their programs in a manner that is respectful, appropriate and takes into account the unique needs and circumstances of Indigenous people.

In this case, the authorization that would have been required from the provincial government to do wetland capping, this was not an authorization that we would be issuing. So our role is to provide advice. When we were called upon, as I was, by the deputy minister of the Department of Environment – or Municipal and Provincial Affairs, as it was at the time – to go to meetings and provide advice, I went and I provided my advice.

But I didn't correspond. I wasn't a regulator. I wasn't the entity. Indigenous Affairs wasn't responsible to issue a permit. The interaction on the issuing on the authority, if one was needed – which apparently one was needed from the Auditor General's report – did not rest with Indigenous Affairs; it rested with the water division of the Department of Environment. So they were

the ones that were having the interaction with Nalcor and they were the ones that would ultimately have to issue the authority to Nalcor to conduct wetland capping. So the time sensitivities were more with the regulator than they were with us.

**L. STOYLES:** So you stated that you had concerns and I am just wondering who would you have brought your concerns to. Would you have brought them to the deputy minister of Municipal Affairs or would you have brought them to Cabinet?

**A. GOVER:** No, like I said, there was a steering committee that met on a fairly regular basis, comprised of deputy ministers of the relevant departments and people from Cabinet Secretariat and Nalcor officials. I think it was all public servants and Nalcor officials. There was no ministers or elected officials involved.

As I said, following the establishment of the Independent Experts Advisory Committee and having had some – in fact, the thing that led to the establishment of that committee was the raising of the water in the reservoir, not up to its full impoundment but up to a certain height.

But I guess just from – I'm not an engineer. I'm not a methylmercury scientist but I just know this. If there's organic material at the bottom of a pond and you want to cap it with soil, gravel or other capping materials, it is a lot easier to do if the water is shallow. So as the water was increasing, I'd be concerned about that, which led to my question at the steering committee meeting, to Nalcor: Can this be done after full impoundment? And I was told, yes, the material could be barged out and, basically, with today's technology, I am sure, laid right on the organic material that had to be capped.

I am sure the deputy minister that was responsible for Environment was invited to the meetings, like all relevant deputies were invited to the meetings. So I had raised my concern. Nalcor did not come to me

afterwards to say oh, what we said at the meeting was wrong. I knew the decision, given the significance of the decision and the importance of the project, had to be a decision that was ultimately made by the elected branch of government, the Cabinet.

So I expected that Cabinet would make its decision and then after Cabinet had made its decision, which in this case was to proceed with wetland capping, Nalcor would apply for the permit or the amendment of the permit that it needed to do the wetland capping to the Department of Environment and then that would be processed.

I didn't know that they had put in a permit, even before this. On the time sensitivities, like I said, I was delighted when the Cabinet said yes, let's do wetland capping and then my hopes were crushed when I was told by Nalcor the time to do it had passed.

So that's a long answer. For example, we don't directly deliver education, we don't directly issue permits and we always have to work in co-operation with all the other departments. Like I said, I thought I had the answer to the question that I needed, and at no time did anyone come to me and say this has to be done by X date.

Had I known that, that this wetland capping had to be done by X date and the government was prepared to do it, I would've done everything I could have done to make sure it was done by that date. But I was not aware there was a deadline or a constraint on the wetland capping.

**L. STOYLES:** It was more of a communication issue than, from what I'm hearing. Moving forward – the project is done – the whole purpose of these hearings is what can we do to improve it for the next time. What advice would you give us?

**A. GOVER:** Well, this was examined by the Muskrat Falls inquiry. Now, like I said, I didn't testify on this particular aspect at Muskrat Falls, but I read what

Commissioner LeBlanc had to say about it. I read the Auditor General's report and their findings. I guess there has to be close communication between a proponent and a regulator on the issuance of the authorizations, such that the authorizations are issued in a timely manner.

I generally have never encountered this experience before, because in my business where Indigenous consultation is involved, the permits cannot be issued until Indigenous consultation is completed. I often get calls from developers saying oh, I need this permit or I need that permit or I need this permit, and the consultation is going to take this long and that's no good to me because I can't get my project up and running by such and such a time. The proponents are on people, regulators, government officials to get the permits out in the time that they need to do their mine or whatever it is.

In this case, one would've thought that Nalcor and Environment, who was going to issue this permit, would've been in close communication about the timing on when the permit needed to be issued. If that communication wasn't there, there was a breakdown in communication. As a result of the breakdown in communication, as we now know, the authority could not be issued or the work couldn't be done in the time frame that it could be done.

So what I'm saying is, normally, if you apply, say, I need a quarry exploration, I need a mineral exploration permit, and you want to do your work in Labrador, in particular, where there's only a certain season, you want to make sure that the people who are issuing the permit and the person that needs the permit, are in co-operation to ensure that the process is completed to issue the permit in time for the work to be done. So here that would have been the issuance of the water authority or the water-use permit or whatever it was and Nalcor Energy. Those conversations, I was not part of.

**L. STOYLES:** All right, thank you.

**S. REID:** I guess I want to get a little bit of insight maybe into the set-up of the IEAC and the consultation with the Indigenous groups as this process evolved, I guess.

So could you tell me a bit about the process, did you have any involvement in that committee or were you aware of things that were happening there? Also, as things were evolving, how were Indigenous governments reacting to the situation? Were they insistent that something be happening soon? You mentioned the rising of the reservoir levels.

Also, I'm sort of wondering about an update in terms of where things are now? How do the Indigenous groups feel now about the situation in relation to wetland capping? I understand that Nunatsiavut hasn't – two of the groups have accepted a settlement, whereas Nunatsiavut hasn't.

So I'm just wondering what's the situation in relation to those things?

**A. GOVER:** Well, thank you for that question.

I'll just take the last part of it first, that's kind of more straightforward and simple.

So after this incident that we're talking about, this breakdown in communication, I guess, as it's been described, the decision was taken that – I think the approximate cost that was anticipated to do the wetland capping was about \$30 million. So when it was discovered, or we were informed, and it was decided or determined that wetland capping couldn't proceed, it was then decided – not by myself or my advice wasn't really sought on it – that Nalcor would take the \$30 million and offer \$10 million each to Nunatsiavut, Innu and NunatuKavut.

Innu took the \$10 million. NunatuKavut took the \$10 million and Nunatsiavut declined the \$10 million. It was no surprise to me. They

had fought so long and so hard on this issue that concerned them with respect to methylmercury, that it was not a surprise to me that President Lampe decided to decline the money, in the sense that what Nunatsiavut really wanted was not cash, but physical mitigation.

So that's the situation on the money today, is two have taken it and one hasn't. Maybe I'll just continue on with today and then I'll go a little bit back in the past.

After the failure of wetland capping, or given the failure of wetland capping, one of the other recommendations of the Independent Expert Advisory Committee was methylmercury is such a concern from this reservoir, the production of methylmercury, we need something, independent of government, that will monitor the levels of methylmercury and determine if the levels are reaching high enough that consumption advisories should be out or some other action should be taken or public information should be made available.

So the answer to that was: we need to form what is now called the Muskrat Falls Monitoring and Management Health Oversight Committee. That was the successor to the Independent Expert Advisory Committee that was recommended by the Expert Advisory Committee. So I did have a hand in setting that up.

To the best of my recollection, it was set up similarly to the Independent Expert Advisory Committee, which is federal government, provincial government, Nalcor, the three Indigenous governments and organizations that I've mentioned and a municipal rep and they have an independent chairperson. These folks have been given a responsibility to look at the monitoring results; provide advice on how to monitor; check and see if the levels are approaching areas that could be hazardous to people's health; look at the bioaccumulation of this in the ecosystem, because it's not just methylmercury in the water, it's methylmercury in the fish and

everything else, seals. They have an ability to recommend that public consumption advisories be put out or public education be put out.

I'm happy to say that the three Indigenous governments and organizations are all represented on that committee. That committee is up and running and working and I have – from my role in helping to establish it – every confidence given the people that are on it and their interests on it that should there be any need to take any actions with respect to methylmercury levels, that the committee will see that those actions are taken and advocate to the government and recommend to the government that actions be taken to deal with methylmercury.

It was very important to me that the three Indigenous governments be on it, in particular Nunatsiavut, who had fought the longest and hardest in relation to this issue, that they were on it.

I would say one other thing in relation to the projects and the Indigenous peoples of Labrador, which is, Innu from the beginning were always pretty content because they had their three conditions met for the project, which was an Impacts and Benefits Agreement, the Upper Churchill Redress Agreement and a land claim agreement-in-principle.

NunatuKavut fought long and hard during the consultations, during the EA of the project, to have an Impacts and Benefits Agreement. They never got an Impacts and Benefits Agreement until the Ball administration, towards the middle-latter part of the Ball administration, there was a community development agreement entered in between Nalcor Energy and a NunatuKavut Community Council, which I'm not saying made all their grievances from the way the project went forward in their point of view whole, but at least they had something.



So Innu had their things that they wanted, NunatuKavut eventually got a Community Development Agreement. Nunatsiavut still, really, their main interest was methylmercury. So their participation on the committee today is a means so they can participate, be informed and have their concerns and interests with respect to methylmercury addressed.

On the consultations during the EA and on consultations on permits after the EA, there were consultations with not only the Labrador groups, but with seven Quebec Indigenous organizations that have land claims assertions in Labrador. So there was consultation on the entire EA procedure, on the Joint Review Panel report, and then, the projects needed over 4,100 provincial permits. There was a process for consultation with the three Labrador groups and the others on all those.

As you know, there were a lot of concerns expressed by NunatuKavut and by Nunatsiavut, which are detailed out in the LeBlanc inquiry. That was the part I did testify with respect to. So where people are today, I have a sense that the project is built and people have a greater comfort or less anxiety with respect to the project. But as I say now, we look to the committee and the monitoring results to help us ensure that there are no adverse health effects on any individual that happens to be downstream of the project.

It's been a long project in the making, so there are a lot of things. But let's just say in general, anyone doing business in Labrador has to be aware that in 2004 the Supreme Court of Canada changed government actions throughout this country. Anywhere there were land claims, what the Supreme Court of Canada said, if government – be that the federal or provincial government – is contemplating taking an action that could adversely affect the asserted or established rights of Indigenous people, consultation must precede the action or must precede the EA release, the permit or the authority.

So throughout the Muskrat Falls Project there was engagement with the three Indigenous governments and organizations in Labrador and seven Indigenous governments and organizations in Quebec.

**S. REID:** Okay, thank you.

**H. CONWAY OTTENHEIMER:** Good evening, Mr. Gover.

The first question I'd like to ask: you gave evidence just a few minutes ago that you weren't aware of the timelines. You were very concerned that there would be approaching a full impoundment of the reservoir. Your advice had been that wetland capping should be done and you advocated for it. Is that a correct summary of your evidence?

**A. GOVER:** Absolutely, I thought it should be done. I advocated for it. I supported it. I was happy the government decided to do it. I was concerned about how the rising waters in the reservoir may affect the ability to do wetland capping. I asked about it and I was told it could be done after full impoundment. That is correct.

**H. CONWAY OTTENHEIMER:** Yes, thank you.

You were aware of the urgency of this matter, so I ask the question: you had indicated that you did raise your concerns in the steering committee meeting. You were basically assured that this could be done and you were satisfied with those assurances that were given.

**A. GOVER:** Yes.

**H. CONWAY OTTENHEIMER:** So after that was that the only action that you took, raising it with the steering committee? Was there anything else that you would've done after that as time was progressing?

**A. GOVER:** Not necessarily because there were actions after that.

**H. CONWAY OTTENHEIMER:** Okay.

**A. GOVER:** But after that, the actions would have been as I said. We have to provide the government advice. By this, I mean the Department of Environment was leading the initiative to provide the government advice. So, obviously, we were called together, and since the Indigenous interests were so pronounced I was participating in providing the advice.

So I would go to meetings where the IEAC recommendations were laid out. We would have presentations and PowerPoints prepared by the Department of Environment on the issues and I would provide my input. My input would always be: I would like to see wetland capping done. But as I said earlier, the interaction between, let's say Nalcor Energy, the proponent, and the regulator, being the Department of Environment, was their interaction.

So the material that was passed in before then, unless that came to my attention at the committee, I wouldn't have been aware of any time sensitivities. Under oath here, to the best of my recollection, in my discussions at these meetings where we were preparing the advice, vetting the advice that would go to government, I was not apprised that there was a time sensitivity.

**H. CONWAY OTTENHEIMER:** Okay.

So, if I may say, that seems to me that there's perhaps a deficiency there. Would you have any recommendations so that going forward, for example, like you in that position would have perhaps had more influence or been able to change the course of how things occurred? Because we know that wetland capping, you were very severely disappointed. You indicated that it did not occur.

Just going forward, what recommendations or what lessons have we learned that we can avoid this in the future?

**A. GOVER:** I did say, obviously, good communication between proponents and regulators is essential, but there's another thing here which I'm not sure entirely why it happened. As I said, there were 4,100 provincial permits required for the projects. As I've said, and as you would be aware given your legal background, in 2004 the duty to consult came into being. So we as a government couldn't issue relevant permits in Labrador without doing a consultation.

Our practice and procedure is that whenever a project is released from EA, we do a set of guidelines which says this is how the Indigenous consultation will be carried out for provincial permits. In this case, after the Lower Churchill Projects were released from an environmental assessment, there were such guidelines. We had discussed them with Nalcor Energy.

To the best of my recollection, the way the guidelines work is whenever Nalcor put in an application for a permit, they would simultaneously send it to the regulator and send it to all Indigenous governments and organizations. That would start the clock ticking on the Indigenous consultation.

In this particular case, for this particular amendment to the permit, which apparently was submitted, our office was not sent the copy of the permit. As a result I don't believe, nor do I believe any Indigenous government and organization was sent a copy of that permit.

In fact, it was only the result of the Auditor General's review that we discovered that we had no copy of the application to amend the permit to allow for wetland capping. I don't know why that happened, but my understanding is, to trigger a consultation process, the permit had to go out to the Indigenous groups at minimum, but also it had to go to the regulator and it had to go to us. My understanding was that's what Nalcor did. In 4,100 permits, this is about the only case where I could see that it didn't happen. Why, I'm not sure.

**H. CONWAY OTTENHEIMER:** Okay, thank you.

The permit, I just want to be clear, was required to go to Indigenous groups as well as your department and, for some reason, you did not receive a copy. You're not sure of why that happened. Do you have any ideas of possibly why? Was it an oversight or –?

**A. GOVER:** I don't know, because we designed the guidelines and we did them in consultation with Nalcor. We've done this various ways. Sometimes we have guidelines where the proponent sends in their permit to the department and then the department sends it out to Indigenous groups.

But, in this particular case, I remember we had the conversation with Nalcor that Nalcor said, look, we want to make sure the timeline commences. We don't want to send it in to an official in some department and it might lie around on a desk for a couple of weeks and then it gets sent out; we've lost a couple of weeks. We want to trigger consultation by sending out the permit. That's what the guidelines provided. Nalcor sent out the permit that triggered the consultation.

All I can say is I don't know why it didn't conform to the guidelines, once they put in their application for the permit. From reading the LeBlanc inquiry and the Auditor General's report, I guess a decision was made in the Department of Environment to put the permit on hold, to put the application on hold, and I guess unbeknownst to us that stopped the process.

Now, I will say this, I do agree that the decision on wetland capping could not be made by any official, so in the sense of whether or not the application for the amendment to permit was actually approved or not could only be done, issued to Nalcor, after Cabinet had made the decision or after the premier had made the decision or after

ministers had made a decision. It had to be a political decision.

So I understood while it couldn't be actioned, in the process of actioning it, we could have circulated it to the Indigenous governments and organizations and say what do you think of that. I haven't even seen it to this day; I presume Nalcor laid out a plan to do it and how they were going to do it and that would have been of interest to the Indigenous governments and organizations. They might have had some thoughts as to how it should be done, when it should be done or this, that or the other thing. I don't know these sort of things they would tell us in consultation.

But because of the hold, this is another reason why I wasn't as involved in it as I might have been, because once consultation begins and Indigenous governments and organizations start to send in their comments and their views, then that's when we all get together and say, well, what do you think of that and how could we address that. Because the consultation requires any reasonable comments that are made or concerns raised by an Indigenous government and organization, we should fully, fairly and consider them as the Crown, as the provincial government, and try to accommodate them.

But I had no representations from departments, Nalcor or Indigenous governments and organizations about the permit application to proceed with wetland capping. All I can say is, I don't know, but my speculation is that there was a decision to put the permit on hold until Cabinet made its decision and that brought the whole process to a halt.

**H. CONWAY OTTENHEIMER:** Thank you, Mr. Gover.

**S. GAMBIN-WALSH:** I just have a couple of questions for clarity, that is all. I am just wondering, were the three leaders reaching

out to you, relaying concerns to you, asking you to discuss wetland capping with the deputy minister of Municipal Affairs? And what about the Executive Council? Were the three leaders putting any pressure on you or trying to ask you, as their advocate, to discuss this with Municipal Affairs and Environment and, of course, with the Executive Council, Cabinet Secretariat? Was there anything like that?

**A. GOVER:** You know we're an entity of Executive Council, but I guess when you're talking about Executive Council, you're really more like Cabinet Secretariat, the Premier's office, things like that.

**S. GAMBIN-WALSH:** Yeah.

**A. GOVER:** So the vehicle for discussion, I guess, amongst those entities was the steering committee. So there were fairly frequent steering committee meetings. Now, not every steering committee meeting discussed the IEAC recommendations, but I guess periodically they were discussed, certainly like there intended to an update on how Indigenous people felt about the project. Indigenous people had a number of concerns about the project from its beginning to its end, and we're still ongoing with it.

But that was the vehicle – all I can say is I've worked now with the Indigenous people of the province for 20 years. I was going to do everything I could to make sure their interests were addressed, so whenever I had the opportunity to advocate for that, I advocated for that. In a sense, I didn't feel pressure not to advocate, not to speak my truth, not to try to represent the truth as they saw it.

Like I said, I was concerned about this issue. I supported this issue. I wanted this issue to proceed. I guess the only people in the province that might have been more disappointed than me that it didn't proceed were the Indigenous people that wanted this to proceed.

But I didn't feel any pressure not to do it, or not to advocate for it, or delay it or frustrate it. I don't think any of the findings have ever said that there was any intention to defeat wetland capping. It was just a failure of communications and processes to make sure that it happened. That's regrettable. Certainly some of the things we've spoken about here today, better communications and improvement in the processing, would have probably headed this off.

I will say, in the course of this, I had pretty good relationships with senior officials at Nalcor. As I said earlier, I remember at times people in Nalcor would phone me and say we need such and such a permit, can we see what we can do on the Indigenous consultation front because we need this in a certain amount of time. Of course, in the interest of the public, interests of the projects and Indigenous people, I tried to balance out those interests and move it along.

But no one called me from Nalcor and said do you know what? We need this wetland capping by this date. Because I can assure you, if anyone called me and said that to me, I would've moved everybody that I could move to get it done by that date.

So I don't know, but, yes, there should be good communications. Our office is always open to Indigenous people, proponents or people of interest. Anybody can call – they can call me – at any time, like I said. I did have calls, but I had no call or representations with respect to the timeline on this, and so there it is.

I guess to the extent that I could be held accountable and responsible for its failure, in disgrace, I accept that responsibility. But I tried in honour to see that it occurred.

**S. GAMBIN-WALSH:** Thank you.

**CHAIR:** Thank you.

I just have a few more questions to follow up. The passion you have for the Indigenous populations in our province comes through loud and clear in your testimony and we certainly know that, having dealt with you on a number of different files.

The only thing I'm troubled by is in your statement you said you were told by somebody that wetland capping could be done after flooding. Who told you that?

**A. GOVER:** So to the best of my recollection – I'm not here to criticize or condemn anybody.

**CHAIR:** No.

**A. GOVER:** I have the greatest of respect for my colleagues and all of the people that I work with and all the premiers and ministers that I've worked with, whether they were Liberal or Conservative. I found all the premiers and ministers I've worked with to have a passion for Indigenous people.

**CHAIR:** Yes.

**A. GOVER:** And all the people at Nalcor.

Anyway, to the best of my recollection, when I asked that question I looked to the person that, when it came to the project, I had respect for and confidence in about his knowledge and understanding of the most intimate details of it, that would've been Vice-President Gil Bennett.

**CHAIR:** The reason I ask that is, because at the same time as that was being said, Nalcor, on at least three occasions in August, communicated with Municipal Affairs and Environment about the urgency of getting this permit approved and the need to get on with the capping.

At the same time, in the summer of 2018, there were numerous parties, including Nalcor, the three Indigenous governments and the chair of the IEAC, who all contacted

Municipal Affairs and Environment with concerns about time and the timing for implementation of the recommendations.

Clearly, concerns were being raised by the Indigenous groups, by Nalcor that this project needed to proceed, this approval needed to be dealt with. But those concerns were not relayed through your department?

**A. GOVER:** No, I appreciate what you say, Sir, and having read the LeBlanc report on this and having read the Auditor General's report, I was not aware that all these representations were being made.

**CHAIR:** In your reporting relationship as deputy minister, who do you report to?

**A. GOVER:** Well, at that time when wetland capping was in process, I would've reported directly to the premier. He was my minister, the premier assumed the responsibility, former Premier Ball, for Labrador Affairs and Indigenous Affairs and maybe even Intergovernmental Affairs directly, as the premier's prerogative.

Obviously, before Premier Ball came in, under the Conservatives there were ministers. At times of my career, I've reported directly to the premier; at times I reported to ministers and premiers. The premiers tend to be very interested in Indigenous issues, so there's an overlap between reporting to the minister or reporting to the premier. But on this particular matter, the wetland capping, my minister was the premier.

**CHAIR:** Right.

And the reason I ask that is because the premier was the person who originally implemented and gave the idea about forming this independent committee to review and so he instigated that.

So, as the premier of the province who had started this and now you're a deputy minister responsible for Indigenous Affairs

directly underneath him as the minister, did he express any concern to you about the timelines regarding wetland capping?

**A. GOVER:** I can't say that we had – well, the answer to that question is no, because the premier appoints the deputies, appoints the executive. My ultimate loyalty has to be to faithfully and fully, to the best of my ability, serve the people of the province including the Indigenous people, through the ministers I answer to. So if that had been raised with me, I would have investigated it, dug it up and provided the best possible advice I could on it.

Like I said, I detailed before my testimony under oath before the Auditor General the same sort of facts I'm saying to you here today under oath, which is: I asked the question, I had an answer, I wasn't that concerned about it because I had that answer. Then the decision was made and I discovered it cannot be done.

Had anybody, at any time, when this was critical, come to me and said: What can we do about the timelines or what do you think about the timelines? Well, obviously, since I was so enthusiastic about having the wetland capping done, I would have done what I could.

I mean, I get calls all the time about smaller matters of less consequence, like I said, from anybody: We need a process to do consultation on this project. Proponents come in to the province and they say: Oh, we're going to Labrador. We really don't know much about Labrador. How do we handle Indigenous people in Labrador?

I try to do my best on even the smallest of questions. So had anyone raised anything about this time sensitivity, like I said, it was my duty to advocate for the Indigenous people of the province. If I was aware that there was a critical factor in this – a time – I would have done what I could to make sure the time was met, because I couldn't dictate the government's decision.

The government's decision on the IEAC recommendations was the government's decision. Certainly, I would have in my duty, had to provide all the information for the government to make a decision within a time frame that the work could be done. But I was not aware that we were under such a time crunch.

**CHAIR:** So on August 29, when Municipal Affairs and Environment briefed the premier on the status of monitoring and the analysis of methylmercury, you weren't invited to that meeting?

**A. GOVER:** Was I invited to the meeting?

**CHAIR:** Yeah.

**A. GOVER:** Not to the best of my recollection.

**CHAIR:** Okay.

So, again, the premier of the province, you are his deputy responsible for Indigenous Affairs, a very passionate deputy. At the same time as a decision is being made, a very important decision about wetland capping, a very controversial issue – which you testified here earlier that the three levels of government were concerned about it at the time and stuff – the premier of the province did not consult with his deputy minister responsible for that department.

**A. GOVER:** In a sense that not directly. In a sense that the material that was going to the premier to advise him with respect to this issue, I had my input on, but I can't recollect the meeting. I can't recollect being at the briefing, no. Obviously, there are records which would say whether I was there or not. All I can recollect is here's my input on the materials that are going to be used to brief the premier or ministers or Cabinet and there it was.

**CHAIR:** So let me ask you this question then: Of all the material that you were copied on that went to the Premier's office

concerning wetland capping and the idea of timelines and the necessity to move with this project, you were never copied on anything that alluded to the urgency to get this wetland capping done?

**A. GOVER:** Absolutely not. Because as I said, I was of the understanding and belief that after the Cabinet, the government, had made its decision to do wetland capping and we had this meeting – it's detailed in the Auditor General's chronology as to when it occurred, but sometime in January we're at the steering committee meeting and the Nalcor representatives were there – it was said government has made its decision to proceed with wetland capping and the Nalcor officials said, well, that can't be done now, I was flabbergasted.

**CHAIR:** Thank you.

Did you have a follow-up question?

**J. BROWN:** I do. Thank you there.

In late October 2018, the deputy minister of MAE and Minister Parsons met with the special advisor to the premier – who we determined it was Mr. Samms – to discuss a draft letter to Nalcor about this permitting. Were you aware of any of that prior to you copying us?

**A. GOVER:** Sir, I can't say that I was.

**J. BROWN:** Okay.

On November 5, 2018, there was a meeting with the Lower Churchill committee. Nalcor was not invited due to an invitation error and it was discussing this same topic. Were you part of that committee or were you aware of those committee meetings?

**A. GOVER:** If there was a steering committee meeting, like the steering committee that was set up with Nalcor and the deputies.

**J. BROWN:** Yeah

**A. GOVER:** To the best of my recollection I was invited to all of them and I never missed any.

**J. BROWN:** Okay. So you were at the meeting of November 5 when Nalcor was not invited to the steering committee meeting.

**A. GOVER:** I didn't send out the invitations but if there was a steering committee meeting on the 5th, all I can say is I assume I was there. Like I said, as far as I know, I was invited to every meeting of the steering committee and I attended every meeting of the steering committee.

I believe in the Auditor General's report, when I was reading it there was the November meeting, but then I think there was a previous meeting in June, June 4 or something like that. I was just trying to piece together the meeting at which I actually asked about the wetland capping. I was trying to go back and thinking about the steering committee meetings. It might have been the June meeting but I'll say this, yes, as far as I know I was invited to all steering committee meetings and I attended all steering committee meetings. So if there was a meeting in November: I would have to say that I would think I was at it, yes.

**J. BROWN:** Have you had any conversations with the special advisor to the premier, Mr. Samms, or Mr. Greg Mercer, on any of the wetland capping stuff or anything through the Premier's office?

**A. GOVER:** I had no conversation, to the best of my recollection, with Mr. Samms; with Mr. Mercer, to the best of my recollection, I had no conversation with him. My input into this issue was – as I said, all my input was as a public servant, participating with my colleagues and other public servants in providing materials to go to advise the government as to the actions it could consider in relation to this.

So to the best of my recollection I had no conversation with Mr. Samms or Mr. Mercer about any of this matter.

**J. BROWN:** Thank you.

Did you ever meet with Mr. Ken Reimer to discuss anything to do with the report that came out of the IEAC report, discuss anything with the wetland capping with him and his findings?

**A. GOVER:** No.

**J. BROWN:** All right, perfect. Thank you.

One last question there. Given everything that went on with this and, obviously, the failure to launch when it came to actually doing any physical mitigation, do you feel that the spirit of the October 25-26 meeting in 2016 – do you feel the spirit of that meeting has not been met and that we probably did some permanent harm with our relationship with Indigenous people by failure to do the wetland capping?

**A. GOVER:** My only answer to that has to be, yes, because that meeting established the Independent Expert Advisory Committee and they provided us with the recommendations. The government decided wetland capping should be done.

So the committee had recommended it, the government said, yes, let's do it and then it didn't occur. How could that not impair our relationships with Indigenous governments and organizations, in particular, the Nunatsiavut Government, who had fought so long and done their own research on this issue, did their own studies.

Then it was like, how do we make amends? What can we do afterwards? I don't think anyone thought that the inability to proceed with wetland capping did not harm our relationships with the Nunatsiavut Government in particular. So all I can say is that from my point of view, having not proceeded with wetland capping, what was

the government's effort to try to assure people, Indigenous and otherwise who live in the Lake Melville area, that methylmercury would not be a health risk for them?

The thing that I see was the establishment of this committee with the three Indigenous governments and organizations on it, and the municipal representative and expertise from federal and provincial governments to have someone, who would not be part of government, look at all the results and, with an independent chair, have an ability to speak on these issues.

So if I was an Nunatsiavut beneficiary living in Rigolet today, after the failure of wetland capping, the completion of impoundment, the history of these reservoirs and the production of methylmercury as we found out worldwide, how would I say today – how do I know when I eat that seal or when I eat that goose, or when I eat that partridge or when I consume that fish that I'm not going to put myself at risk?

The only way I know, apart from the government's efforts, is that there is this independent group of people that are looking at it, including people that represent me, the Nunatsiavut Government, as a Nunatsiavut beneficiary – I shouldn't be saying "me." I mean, I'm not a beneficiary; I'm not even Indigenous. But for people in Cartwright or for people in Rigolet, or for people in Happy Valley-Goose Bay, North West River, Mud Lake – it's not just Indigenous people – how do you know that this is safe?

I guess, apart from the government's actions in relation to this, whatever the government might want to do, if you're in Happy Valley-Goose Bay and you're non-Indigenous, there is a municipal representative to represent the interests of Happy Valley-Goose Bay, North West River, Mud Lake, Sheshatshiu, Cartwright and Rigolet.



Given that wetland capping didn't occur – I'm not a scientist, so I can't say how much that increased the risk of methylmercury but, presumably, if the capping had been done, the risk of methylmercury would have been reduced to some degree. So that didn't happen. Did that make relationships better? I would say no. But the government did set up this independent committee to provide some degree of assurance. Knowing the people on it, as I said earlier, I had every confidence in them to protect, to make sure health is not adversely affected by any unpredicted increase in methylmercury.

**J. BROWN:** Thank you so much.

**CHAIR:** Thank you, Mr. Gover, for your testimony today.

Before we leave, I ask again the Auditor General if they would like to say anything about the testimony that was provided.

**S. RUSSELL:** No, I have nothing further.

**CHAIR:** Okay.

Again, thank you, Mr. Gover, for taking the time to come here today, we really appreciate it and we'll take just a couple of minutes now in order to get ready for our next witness.

Thank you, again.

**A. GOVER:** Thank you, Sir.

Good to see you again.

**CHAIR:** Good to see you.

### **Recess**

**CHAIR:** Good afternoon, again.

We'll reconvene now the public hearing by the Public Accounts Committee on the physical mitigation of Muskrat Falls reservoir wetlands. I want to thank Ms. Erin

Shea for coming to be with us today and perhaps answering a few questions that Committee Members might have.

Before I do that, I will get the Committee Members to introduce themselves to you and also members of the Auditor General's department, starting with my left again.

**J. BROWN:** Jordan Brown, I'm the Member for Labrador West.

**L. STOYLES:** Lucy Stoyles, I'm the Member for Mount Pearl North.

**S. REID:** Scott Reid, MHA for St. George's - Humber.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, MHA for Harbour Main.

**S. GAMBIN-WALSH:** Sherry Gambin-Walsh, MHA for Placentia - St. Mary's.

**CHAIR:** I'm Tony Wakeham. I'm the MHA for Stephenville - Port au Port.

Welcome.

Now I'd ask the AG's department.

**S. RUSSELL:** Sandra Russell, Deputy Auditor General.

**T. KEATS:** Trena Keats, Assistant Auditor General.

**A. MARTIN:** Adam Martin, Audit Principal.

**CHAIR:** Thank you.

Before we continue on with the swearing-in piece of this, I will read out a statement to you. The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to achieve consensus in its decisions

whenever possible, and Members take a non-partisan approach to their work on this Committee.

I again remind the participants that this is a public meeting and their testimony will be part of the public record. Live audio will be streamed on the House of Assembly website at [assembly.nl.ca](http://assembly.nl.ca) and an archive will be available following the meeting. *Hansard* will also be available on the House of Assembly website once it is finalized.

Witnesses appearing before a Standing Committee of the House of Assembly are entitled to the same rights granted to Members of the House of Assembly respecting parliamentary privilege. Witnesses may speak freely and what you say in this parliamentary proceeding may not be used against you in civil proceedings.

So now I would ask the Clerk if she would administer the oath or affirmation to you.

### **Swearing of Witnesses**

Ms. Erin Shea

**CHAIR:** Thank you, Ms. Shea.

Before we get started, normally what we do is each Committee Member will be allocated 10 minutes; they can ask a bunch of questions. There may be some that will ask questions, some may not, but that's usually how we work it. Before we do that, we always like our invited guest to say if they would like to make any opening remarks or comments to us before we start.

**E. SHEA:** I just want to let you know that when I did first get this file for methylmercury it was in 2015. That was in the Department of Health at the time; it was considered an issue by that department. I have also been in several other departments: Natural Resources, Environment and Conservation. I didn't always have control over the

communications of the issues, but I certainly was there for a lot of it.

**CHAIR:** Okay, wonderful.

Thank you so much.

I'll start with Ms. Gambin-Walsh on my right.

**S. GAMBIN-WALSH:** Okay.

Erin, were you working as a director of communications from September 22, 2017, to January 9, 2019, in the Department of Environment?

**E. SHEA:** Municipal Affairs and Environment.

**S. GAMBIN-WALSH:** Municipal Affairs and Environment?

**E. SHEA:** Well, that was formed in February, so yes.

**S. GAMBIN-WALSH:** So as the director of communications, while you were in Municipal Affairs and Environment, did you see any official written requests from Nalcor?

**E. SHEA:** As far as requests from Nalcor would go, I probably wouldn't receive anything like that. Being the communications director, I would generally receive their plans, what messaging they wanted to use. It wouldn't come to me before the decision.

**S. GAMBIN-WALSH:** No, I'm more or less asking if you were in meetings or executive meetings or whatnot that there were communications from Nalcor at those meetings.

**E. SHEA:** Yes.

**S. GAMBIN-WALSH:** Did you see any communications regarding the permit amendment?

**E. SHEA:** At that time, no.

**S. GAMBIN-WALSH:** Okay.

Did you work closely with the executive team in Municipal Affairs and Environment?

**E. SHEA:** Yes.

**S. GAMBIN-WALSH:** Okay.

Were there a lot of meetings in the department pertaining to Muskrat Falls from September 2017 to January 2019?

**E. SHEA:** Can you repeat that?

**S. GAMBIN-WALSH:** Were there a lot of meetings in the department pertaining to Muskrat Falls?

**E. SHEA:** Yes, I would say we did meet a lot about it.

**S. GAMBIN-WALSH:** Okay.

**E. SHEA:** When I said we didn't receive anything about the permitting, that I didn't see that, I did know about it. I just didn't see the actual amended permit request.

**S. GAMBIN-WALSH:** Okay.

What do you remember about the permit request, the one of July 25, 2018, where Nalcor submitted a permit amendment request to MAE to perform wetland capping? What's your knowledge of that particular permit?

**E. SHEA:** Let me think going back. I did know that this was an idea of Nalcor's. That this is how they wanted to cap the wetlands. But I was fully aware that it was a government decision, so I wouldn't have looked at it as though Nalcor was, say, going to get their way, going to just do whatever they felt like.

I was aware that they had previous permits for – lots of permits for Muskrat Falls. I just

assumed that, of course, they would need permitting for what they were asking for now.

**S. GAMBIN-WALSH:** Okay, thank you.

**J. BROWN:** Thank you.

I'm sure like you said, you were aware they said Nalcor put out a communication plan that was circulated to MAE, and then it was put on hold the day after. Are you aware of who quashed that or suspended that? Any rationale on why it was done like that?

**E. SHEA:** No, I don't know who. I just knew that it was put on hold when I received it from Karen. She's the communications person, Karen O'Neill, at Nalcor. When I received it – actually, you know what? Now that I think of it, it was her who sent me an email and said that they were holding it.

**J. BROWN:** Could you repeat the name of the individual again, please?

**E. SHEA:** Karen O'Neill.

**J. BROWN:** Have you had previous work with Karen O'Neill prior to this?

**E. SHEA:** Yes, since I started the file she was always at Nalcor.

**J. BROWN:** Had she sent over any other communication plans or anything like that, prior to this one here that's being mentioned?

**E. SHEA:** Yes, she would probably send them over if they were about – I mean, I'm talking about other things, for example, the North Spur. When they wanted to communicate something about that, they would often send over the communications plan for when they were going to lower the boom and when they were going to flood the reservoir, but they would send them to Natural Resources, currently IET.

I wouldn't necessarily have to receive them, because as the regulator, it's nice for me to know what they're going to say, but it's better for Natural Resources to know.

**J. BROWN:** Okay, thank you so much for that.

So did you find it odd that they sent over this communication plan and pulled it the next day? Did you see anything odd about that or not a normal procedure?

**E. SHEA:** I heard rumblings about this fish habitat compensation plan and I didn't really know anything about it because, to me, that's sort of right down in Water Resources territory. But I did know about it and, to be honest, I sort of just assumed that they had changed their plan or that it was now going to involve the compensation plan. I don't recall it being mentioned before that time.

**J. BROWN:** Perfect, thank you so much.

**H. CONWAY OTTENHEIMER:** Ms. Shea, I'm just wondering, I just want to ask you about July 23, 2018. We've been told that Nalcor submitted the communications plan to your department on the intent of wetland capping as part of the fish habitat compensation plan work, right?

**E. SHEA:** It was in that, was it?

**H. CONWAY OTTENHEIMER:** Pardon?

**E. SHEA:** The fish compensation plan was in that?

**H. CONWAY OTTENHEIMER:** Apparently, yes.

**E. SHEA:** Okay.

**H. CONWAY OTTENHEIMER:** That's the information we have.

**E. SHEA:** I don't think you're wrong, I just –

**H. CONWAY OTTENHEIMER:** Okay.

**E. SHEA:** That's probably me not knowing which one it was in.

**H. CONWAY OTTENHEIMER:** Well, I was just going to ask you can you expand upon that. What would you remember? What is your recollection of that communication plan, which basically talked about the intent of wetland capping?

**E. SHEA:** Yes, I remember when I received it, thinking, oh, you know, you guys are really jumping the gun here. You don't even have approval to go ahead and do this. You don't have the permitting for the other one, so you're going to slip around the side and use the permit that you already have. That's what I thought.

Now, I'm not an expert in permitting, but that is just what I thought. When they pulled it back, I thought maybe somebody had said to them, look, it can't be done this way or something like that.

**H. CONWAY OTTENHEIMER:** Okay.

One other thing we've heard, Ms. Shea, throughout the testimonies today is that, for example, we've heard from Mr. Chippett who had indicated that communication seems to be a big issue; probably the biggest lessons to be learned from all of this. We've heard from other witnesses today who've talked about the breakdown in communication with respect to what happened here in terms of wetland capping not occurring.

Do you have any comment on that? Is that your belief, as well, on what happened here?

**E. SHEA:** I think that doesn't necessarily refer to the kind of communications that I would do as the communications director. That doesn't preclude me from being involved and doing the other kind of communications, but I think it's no secret that there was an issue with communication between us and Nalcor, meaning MAE and

Nalcor, for sure. Even though I got along great with Karen, there is always – with Nalcor, there is no trust there. That's from my point of view. I'm always kind of watching my back. It's not that I don't trust Karen or a specific person, it's I never know what they're going to do, so I just kind of sit and wait and see. Try not to pass judgment.

Obviously, to me, the crux of the whole thing is, we, as a government, did not communicate with the Indigenous groups properly. That's just my opinion and I could be wrong but I do think that they were asking to be communicated to. I'm not talking about MAE. I'm talking Indigenous Affairs, Natural Resources, MAE for sure, Nalcor.

But when you're talking about the communications, you kind of have to go back and see: why was the communication so bad? Part of it is the relationship between the entities, not just between the departments, I mean, MAE and Natural Resources would be sort of almost like representative – Natural Resources would be the representative of the business owner and we would be the regulator. So we have to create some kind of a space there.

But Nalcor had had a long storied history of they did testing on the hair samples for the methylmercury. They had been up and back many, many, many times. They had spoken to some of the groups about the North Spur and the other types of things that go along with the Muskrat Falls Project.

So, yeah, I think, my main thing is that – and I know you guys are looking to improve the government, that's why you're here, and I really hope that – there's been a lot of suffering because of the AG report, because of the breakdown in relationships due to – and I can't say it's due to methylmercury but it definitely precipitated something.

I think if you can fix it, that's what you have to fix, the communication with the Indigenous groups over the Muskrat Falls. I

mean, it's still ongoing so who knows, but, I think, that if we had, in 2016 and 2015, properly engaged them, there's a likelihood that they wouldn't have gotten to the point where they had to have that big blowout, all-nighter in 2016. I think things could have been different from there.

But you know this is conjecture on my part.

**H. CONWAY OTTENHEIMER:** Well, thank you, we appreciate your candor as well.

The previous witness, Mr. Gover, had indicated, too, that consultation with Indigenous groups was certainly lacking, in particular with respect to the permit. That in terms of the communication, I guess, this would have been a communication issue. That the application permit should have gone to Indigenous groups and to his department and that it was the only time that he could see that this did not happen in the history of permit applications. That would have had the objective of triggering consultation.

So I think that is what you're getting at now when you're talking about that lack of engagement, in particular, with our Indigenous people?

**E. SHEA:** Yeah, not specific to the capping and the amendment.

I'm going to be really honest. To me, the capping led to a big problem but it is not a big problem. It was going to get us 2 per cent mitigation up there and we know now there was barely any change to the actual amount of methylmercury that was created.

So, just going back in time, I don't want to blow the permitting and application out of proportion because, to me, in a project that's not done where we've spent \$14 billion, this, in my world, is so small that it almost doesn't – like, it warrants apologies and talking, sitting down discovering could we have done better. But I think the hullabaloo over the whole thing is – you

know, you took something that was just – methylmercury is a big thing because it could affect people’s health drastically. Thank God, there’s none up there.

But to worry about the 2 per cent and then it didn’t get done and that still ended up being a great thing, that it didn’t get done. I know that by laying blame, we can move forward and figure out what went wrong, but I’ve got to say, I don’t think it’s big enough for this kind of overreaction.

**H. CONWAY OTTENHEIMER:** So is it safe to say your concern is primarily with the suffering – as you described it – that has gone on in repairing the relationships that have been damaged as a result of this?

**E. SHEA:** Yes, I think – and I’m not just talking about the people in MAE. I mean, the people in Nalcor, they’re not faceless. A lot of them are really trying hard to get this thing done and they take their responsibility very seriously. I think that Natural Resources are the same thing.

In Natural Resources, they only wanted to sort of be a conveyor between us, MAE and Nalcor. Indigenous Affairs has that actual role of trying to get everybody to talk and be a support. I just feel like all the finger pointing is losing – the actual point of the whole thing is getting lost and that’s that we could’ve been better in communicating, but it’s like you’ve used a hammer on a toothpick. This is how I feel.

**H. CONWAY OTTENHEIMER:** Okay, thank you very much, Ms. Shea.

**E. SHEA:** You’re welcome.

**CHAIR:** (Inaudible) July 23, 2018, when the communication plan that Nalcor submitted to Municipal Affairs and Environment on the intent of wetland capping. That communication plan, I think I heard you say, would have come to you from O’Neill. Who would you have forwarded that on to?

**E. SHEA:** I would forward that to Jamie and Martin. If it had more about permitting in it, I might have considered putting Haseen in there as well.

**CHAIR:** You would not have forwarded it on to any other government department or anything like that, though?

**E. SHEA:** No. The way it’s done is Nalcor, Karen – they’ve got a bunch of communications people – could have sent it – she would have to send it to either Natural Resources and MAE, or separately. But first Natural Resources, because Natural Resources, it is their responsibility to bring it up to the Premier’s office, the communications branch. Because it’s something that the business wanted to do, it wasn’t a regulator thing, it wouldn’t be my place to send on the communications plan at all, no.

**CHAIR:** But it’s your belief that it would’ve been – there was nobody cc’d on it other than a direct email or however it was sent –

**E. SHEA:** Yeah, just within my department.

**CHAIR:** There was no copying of anybody on the original email. We’d have to go back to Nalcor to find out if they actually had sent another copy of that draft to Natural Resources, as you suggest.

**E. SHEA:** In that case they copied me, or they put us both in the “To:” line. Diana Quinton was the communications director in Natural Resources, and I was in MAE. I believe, in my memory, she sent them both to us at the same time. So I just kind of sent it to my people.

Honestly, I remember thinking – still remember sort of looking at the fish compensation habitat plan and being like, you guys, you’re pulling a fast one on us. But, of course, later it came to be obvious that it was more serious and they did send another one to replace it in August that didn’t really mention the IEAC.

**CHAIR:** Right.

As the director of communications, you would have been privy – you would've sat in on all of the executive briefings –

**E. SHEA:** Most of them, yeah.

**CHAIR:** – with the minister as well in attendance?

**E. SHEA:** Yeah.

**CHAIR:** In your recollection, in terms of the agendas for these meetings, in terms of wetland capping and timeliness of it and the importance of getting it done before a certain date, do you recall any of those agenda items being at the meeting? Were you present for any discussions on any of those “potential communications” that were coming in from Nalcor around the need to get this done sooner than later?

**E. SHEA:** I want to say no, because I don't recall it on any agendas. I mean, you must remember, we didn't know that it was going to be too late. In my mind, I didn't really think of it having a timeline problem. We didn't feel we were pressed for time. We knew, of course, that it had to be done before impoundment, it was going to be in July, but we were as surprised as anybody, I think, when Gilbert Bennett came back and said it wasn't going to be possible. Because we had always thought it would be possible.

Now, I know that the AG felt that was kind of like us relying on a risky maneuver or something. But that wasn't how we saw it at all; we really did believe that it was possible to do it afterward and that that was a viable solution.

I mean, we must have spoken about it in meetings but I don't recall anything very specific to it and I do think it's because the wetland capping was the smallest thing. It was the 2 per cent. The soil removal was the big-ticket item and it was to be combined with the capping.

To look at the capping by itself was – we wouldn't have really done that in my opinion, we would have – obviously, we were considering the permit, but I wasn't there when we were considering the permit and I figured that was Haseen's territory with the permit.

**CHAIR:** Okay.

Thank you so much.

Any other questions from anyone?

Again, thank you for taking the time to come and meet with us today.

As we have in the past, I don't know if the Auditor General has any further comments they'd like to make.

**S. RUSSELL:** No, I have nothing to add.

**CHAIR:** We normally give our witnesses an opportunity for a closing statement if you have anything else you would like to say, feel free.

**E. SHEA:** Okay, just let me think.

I want to say that I started out and told you how long I've been doing this methylmercury file and I've seen it really impact people, as I'm sure you can understand when I was speaking. I wish I could say when it's going to stop.

This happened four years ago. So for the past three years, maybe every four or five or six months everybody comes back asking for information. You know, I don't mind looking it up, but it can be very upsetting especially after going through the Muskrat Falls inquiry, which, by the way, the politicians sat at the inquiry and pretty much said what happened. So I was very surprised when it went to the AG.

I also didn't realize that it causes a report and it's almost like this is like a runaway

train, for me. I'm like oh my God, you're back, okay, no problem, I'll look it up again.

But I just want to say that I really think the money that goes into the lawyers for looking at this stuff and whatever, as you know, could be better spent on health care and education and all that. I just want to let you know, I think that we're done with it. It got to be done, man.

**CHAIR:** Okay, thank you so much.

**E. SHEA:** Okay, thank you.

I thought you guys were going to be a lot longer.

**CHAIR:** So we'll conclude our meeting for today and recess until 10 a.m. tomorrow.

Thank you.

The Committee adjourned.