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Physical Mitigation of Muskrat Falls Reservoir Wetlands: Report of the Auditor General  
(Continued from November 24, 2022)

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Honourable Derek Bennett, MHA

## **PUBLIC ACCOUNTS COMMITTEE**

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

Chair: Tony Wakeham, MHA

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Lucy Stoyles, MHA  
Brian Warr, MHA  
Helen Conway Ottenheimer, MHA  
Jordan Brown, MHA

Clerk of the Committee: Kim Hawley George

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Appearing:

#### **Witnesses Appearing**

Peter Madden, Regulatory Compliance Lead, Nalcor Energy (former)  
Gilbert Bennett, Executive Vice-President, Power Development, Nalcor Energy (former)  
Haseen Khan, Director, Water Resource Management Division, Department of ECC  
Karen O'Neill, Director of Communications, Nalcor Energy (former)

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

Denise Hanrahan, Auditor General  
Trena Keats, Assistant Auditor General  
Jennifer Tuttle, Audit Principal  
Adam Martin, Audit Principal

#### **Also Present**

Paul Pike, MHA

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

Bobbi Russell, Policy and Communications Officer  
Evan Beazley, Committee Clerk (A)

Pursuant to Standing Order 68, Paul Pike, MHA for Burin - Grand Bank, substitutes for Scott Reid, MHA for St. George's - Humber.

The Committee met at 10 a.m. in the House of Assembly Chamber.

**CHAIR (Wakeham):** Welcome everybody to the public hearing on the *Physical Mitigation of Muskrat Falls Reservoir Wetlands* report of the Auditor General.

Today, we have Mr. Peter Madden with us.

Welcome, Peter.

**P. MADDEN:** Thank you.

**CHAIR:** Thank you 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.

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'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 now what I would like to do is ask the Clerk to administer the oaths and affirmations to the witness.

### Swearing of Witnesses

Mr. Peter Madden

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

Before we get started, we'll take an opportunity to go around and allow people to introduce themselves to you.

My name is Tony Wakeham. I'm the MHA for Stephenville - Port au Port and Chair of the Public Accounts Committee.

**J. BROWN:** My name is Jordan Brown. I'm the MHA for Labrador West.

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

**B. WARR:** Good morning, Peter. My name is Brian Warr, the MHA for Baie Verte - Green Bay.

Welcome.

**P. PIKE:** Paul Pike, Member for Burin - Grand Bank.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, Member of the House of Assembly for Harbour Main.

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

Sherry Gambin-Walsh, MHA for Placentia - St. Mary's.

**P. MADDEN:** Okay, nice to meet you all.

**CHAIR:** Right across the room there is the staff from the Auditor General's department.

**D. HANRAHAN:** Hi, Denise Hanrahan, Auditor General.

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

**J. TUTTLE:** Hi, Jennifer Tuttle, Principal.

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

**CHAIR:** Thank you all.

Peter, normally what we do is we'll allow our witnesses, if they want, to make an opening statement about two or three minutes if they wish to do so, then generally what we'll do is Committee Members will take some turns in asking a few questions and keep it going like that.

If you would like to make any comments in opening or not, it's entirely up to you.

**P. MADDEN:** (Inaudible) describe my role on the Lower Churchill Project.

I started with Nalcor in 2009 as support for the environmental assessment. That process moved into the information request phase of the EA at the time and I supported that process, then into the Joint Review Panel phase and I supported that process. Then when we received the decision statement, the process moved into the construction phase of the project, I moved into the regulatory compliance role, which meant I was responsible for obtaining all of the approvals necessary to move forward with all aspects of construction for both the Labrador-Island Link and the Muskrat Falls Project.

I was also responsible for environmental effects monitoring to support the fisheries habitat compensation program, as well as the environmental effects monitoring for downstream effects, which is of particular interest to this Committee for this subject.

I also was in charge of the historic resources recovery project that went on up there and helped support all the environmental effects monitoring that went on for the project. That was more focused

on the Labrador Muskrat Falls Project. There was another person in charge of the Labrador-Island Link environmental effects monitoring.

That's it I guess. I sat on the environmental management committee with the Innu Nation. That was a requirement as part of the Impacts and Benefits Agreement with Innu Nation. I was Nalcor's representative on the IEAC.

For me, I guess this is a chance to just generally give my opinion. I think the lesson learned from all of these wasn't learned at the point of discussion for this Committee today, it was learned earlier. It was when, in project planning phase, the level of engagement with key stakeholders was not the appropriate level of engagement.

I think, the Nunatsiavut Government, NunatuKavut Community Council should also have been involved more closely in environmental effects monitoring planning and human health risk assessment planning. I think there wouldn't have been a requirement for this IEAC that was stood up, kind of, last minute and I don't think was super functional. There could have been a partnership developed to work through the environmental effects monitoring plan. Then, at the end of the day, as we are all seeing now with the data, kind of supporting the predictions that were made through the comprehensive environmental effects monitoring plan that was developed, there was a lot of fear mongering involved at the end of the day and that was a really bad outcome for the people of Labrador.

So I think with better engagement earlier on, that's the lesson learned for today, in my opinion.

Thanks.

**CHAIR:** Okay. Thank you.

So now we'll start with some Committee Members. I'll just turn to my right.

**S. GAMBIN-WALSH:** Hello.

So you were the regulatory compliance lead. Right?

**P. MADDEN:** That's right.

**S. GAMBIN-WALSH:** So were you the primary point of contact with the permits coordinator when processing permit applications and reviewing the permit register?

**P. MADDEN:** The permits coordinator being an employee of Nalcor?

**S. GAMBIN-WALSH:** Yes.

**P. MADDEN:** Yes, I was the manager of that person.

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

So did you or were you involved in the process to obtain environmental permits and authorizations for wetland capping of 28 hectares of wetland, about 70 acres within an area near Edwards Brook Camp?

**P. MADDEN:** Yes.

**S. GAMBIN-WALSH:** So the Crown's duty to consult and accommodate Indigenous and treaty rights is a fundamental matter of social justice, which invokes very solemn legal obligations. Nalcor had consulted with Indigenous stakeholders and according to the media it was evident that these stakeholders wanted wetland capping mitigation.

The IEAC recommendation was that wetland capping will be directed by government. Were you alarmed, surprised or even concerned that work continued without communication from government about whether to proceed with wetland capping or not?

**P. MADDEN:** I'm not sure I was alarmed or concerned, but I definitely understood that

we needed to get the permit processed and expedited in order for the project timelines to proceed as they were planned and get that wetland capping completed. So I was aware that there was a schedule risk, yes.

**S. GAMBIN-WALSH:** So you continued on to do the work but you had not received communication from government whether to do the wetland capping or not. Would that be correct?

**P. MADDEN:** No. I guess my role; I have no involvement in construction whatsoever. My job was to obtain approvals from government. Proceeding with any construction would never have been my role in any – if that's what you mean.

**S. GAMBIN-WALSH:** So who did you communicate with about the fact that you had not received any permit from government, that you had not received the communication? So it appears there was a request put in to government.

**P. MADDEN:** Yes.

**S. GAMBIN-WALSH:** It appears as if Nalcor is waiting for an answer.

**P. MADDEN:** That's right.

**S. GAMBIN-WALSH:** Asking for an answer but not getting a response. Yet, there was a timeline so the work had to continue. Who was the communication with in government? You're the manager of the permits at Nalcor.

**P. MADDEN:** Yeah.

**S. GAMBIN-WALSH:** So who were you communicating with in government to say: Hello, we need this permit? Where is it?

**P. MADDEN:** I think there's some email communication that kind of suggests that is there. Water Resources certainly was always our key contact because that permit was their jurisdiction. So I would have been

in constant communication with them, as per protocol with any permit really.

**S. GAMBIN-WALSH:** Right.

**P. MADDEN:** We would've been following up, like, we need this to proceed.

**S. GAMBIN-WALSH:** So specific to this one –

**P. MADDEN:** This one was a little bit different because it was a Government of Newfoundland initiative, not a Nalcor-led initiative.

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

**P. MADDEN:** But we certainly needed a permit to proceed with the work, yes.

**S. GAMBIN-WALSH:** All right.

So it was a government initiative because it was an IEAC recommendation?

**P. MADDEN:** Well, Nalcor wouldn't proceed – it wasn't in Nalcor's plan to do any physical mitigation for methylmercury. That's well known. I mean, it wasn't part of the environmental assessment, the project plan. That was never a consideration. So the only reason why Nalcor identified the schedule risk and said if we want to proceed with this, there is this option, and it was a good option because we had the infrastructure in place to access that location.

So we've suggested that this is how we could proceed with such a physical mitigation, but it would have been completely up to, I guess, the Government of Newfoundland whether they wanted to proceed with that. That wasn't a Nalcor decision, because it just really wasn't part of the project plan.

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

So that's what I'm trying to get at. I'm trying to get at what the discussion was within Nalcor because it wasn't part of your timeline. It wasn't part of your plan and all of a sudden you had this request and you're trying to deal with your timelines that you actually have in front of you –

**P. MADDEN:** Yes.

**S. GAMBIN-WALSH:** – and put this request in. So, I mean, as your time is going forward, there is a realization that you have not received this permit. I'm just trying to wrap my head around Nalcor's communication to government specific to this permit. Because we appear to have a communication deficit or issue or something here and we're just trying to identify exactly what it is, and how pressing was Nalcor; or because it wasn't part of your timeline, were you pressing at all; or were you alarming or saying to government you wanted this but you haven't given us this.

**P. MADDEN:** As far as I remember, I was following up regularly – as far as I remember.

**S. GAMBIN-WALSH:** You were doing what, sorry?

**P. MADDEN:** Following up regularly on this permit.

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

**P. MADDEN:** Knowing that the timeline was getting tight, yes.

**S. GAMBIN-WALSH:** And so your communication was Water Resources.

**P. MADDEN:** It would have been Water Resources.

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

So my last question: To your knowledge, was there any direction or communication from the Department of Municipal Affairs

and Environment about wetland capping? So, to your knowledge, can you remember receiving any direction from that specific department pertaining to this permit and this request?

**P. MADDEN:** Well, we would have been in contact. I mean, I'm not sure what, specifically, they would have said, but we would have been in constant contact. I don't think we were getting any feedback like – we were essentially just saying, you know, we'll get back to you when we can, I guess, that kind of feedback.

**S. GAMBIN-WALSH:** So you did communicate with the department that you guys had a timeline and that you would proceed with your timeline. Were they aware?

**P. MADDEN:** Yes, that would have been part of the communication.

**S. GAMBIN-WALSH:** Okay. Thank you very much.

**P. MADDEN:** I mean, it's hard to remember exact conversations. These would have been phone conversations and I'm not trying to blame anybody for anything.

**S. GAMBIN-WALSH:** No, I understand. I'm just trying to formulate the communication here. I'm trying to determine, you know, with this specific request from government, wetland capping, Nalcor had its own timelines and its own work plan and so government is putting something into your work plan and you're in Labrador weather and you're trying to proceed – like, what was actually happening? Where did the communication – or did it even break down? Maybe it didn't break down.

**P. MADDEN:** I don't think it did break down.

**S. GAMBIN-WALSH:** Okay. I am trying to determine were you clear in your communication to government. You had a timeline and this is the timeline you were

following. There are also indications that Nalcor had suggested that it could be done after you did your work in that fall. I mean, you're permits, so you probably –

**P. MADDEN:** It is my understanding that that would have been tough to pull off. It was already a very uncertain approach to reduce the issue. I think that that would have been a worst-case scenario, we could give this a shot type approach, I would think.

**S. GAMBIN-WALSH:** Right. You just said tough to pull off. Tough to pull off after or tough to pull off during that period of time?

**P. MADDEN:** I think – from my understanding, I'm not an engineer – that it would've been difficult to effectively cover the wetlands when the reservoir was in place.

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

Just to be clear, so you don't believe that there was any communication breakdown from Nalcor to the provincial government?

**P. MADDEN:** No, I don't think so.

**S. GAMBIN-WALSH:** Okay, thank you very much. That's it for me.

**CHAIR:** Lucy.

**L. STOYLES:** Thank you, Mr. Madden, for coming today. The questions we have are we want to try and find out what went wrong and if we can do something to change it if a project like this were to ever happen again.

In your opinion, what do you think went wrong in communicating – you did communicate. Who did you communicate with? Nalcor had their own experts and the government had their own experts. Do you feel they all communicated together? If the government was requesting and asking for the wetland capping to happen, I'm just wondering why it didn't happen and I'm just

wondering what's your opinion on what went wrong?

**P. MADDEN:** We would have proceeded with wetland capping if the Government of Newfoundland and Labrador had told us to proceed with it. We would have definitely done that. If we had to have received a response to the permit application, we would have proceeded with wetland capping, from my understanding.

**L. STOYLES:** Okay. But you were responsible for getting the – I'm assuming – permits and that.

**P. MADDEN:** Yes.

**L. STOYLES:** You had the permits in place; is that correct?

**P. MADDEN:** No, we were advised by government that we would need an amendment to our main alter body water permit to create the reservoir. We needed an amendment. So that's the permit that I think you guys are aware of, that you've seen documentation. We needed that so we would've needed re-approval to proceed with that piece of work – that scope of work.

**L. STOYLES:** So do you feel that the experts Nalcor had and experts that the government had, all worked together for the betterment of the project? Did they communicate enough do you feel?

**P. MADDEN:** I do think that there was a sufficient level of communication between government and Nalcor, yes.

**L. STOYLES:** But the capping never, ever got done so the communication broke down somewhere along the lines and that was your –

**P. MADDEN:** I don't think communication was the issue.

**L. STOYLES:** So what was the issue?

**P. MADDEN:** The issue was that – I can't say this for sure, but I think the issue was that this was a very difficult situation because the IEAC had proposed to do more than just wetland capping. They proposed that all of the soil be removed from the reservoir, which complicated things and made it difficult to proceed with one or the other. That's just my opinion. I have no way to – but I just think that made it difficult for officials at government to move forward.

**L. STOYLES:** So an after effect now, in your expert opinion, do you think it made a difference?

**P. MADDEN:** No, wetland capping wouldn't have made a major difference. We've even heard from – and I'm not an expert in that area. I became a tabletop expert over that period, but experts like Wolfgang Jansen, who was supporting the Innu Nation at the time, mentioned that the best outcome for wetland capping would've been as a study. It would've gave the scientific community more information about the efficacy of such an approach. It was never done before, nor was soil removal. So nobody knew what the outcome would be and we were covering such a small amount of wetlands in the reservoir, it's unlikely that it would have made a difference.

**L. STOYLES:** Okay.

Thank you very much.

**B. WARR:** Thank you, Mr. Madden.

I just want to go back to MHA Gambin-Walsh's questioning with regards to permit application and you're saying that your key contacts were Water Resources. She talked about communication timelines with government.

Were you concerned, and if you were, with regards to these timelines, did you communicate your concerns at any time with senior officials at Nalcor? If so, what was their response?



**P. MADDEN:** Everybody at Nalcor was interested in proceeding because we had decided to put the application together. We wanted to proceed with that part of the scope because that way we wouldn't have any schedule risk, because there was a chance maybe government would've told us not to fill the reservoir type of thing, right. Everybody was very interested in proceeding. That's why the application was put together, that's why we kind of were pushing to proceed. We came up with the plan to go to Edwards Brook. Everybody on the Nalcor side was interested in proceeding with this work.

**B. WARR:** Okay, thank you.

One of the conclusions of this report was that there were numerous missed opportunities to understand and manage the urgency of the wetland capping timelines between the department and other stakeholders, appears to have resulted in physical mitigation of Muskrat Falls reservoir wetlands now occurring. Would you agree with that conclusion? Do you feel it's an accurate account of what actually happened?

**P. MADDEN:** I don't think there was a lack of communication on this subject. If that answers the question (inaudible).

**B. WARR:** Thank you, Chair.

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

We heard in previous testimony from government officials that they kept saying they had this presentation by Nalcor; there was a presentation given that this all could be done after impoundment. Are you aware or are you aware of anyone at Nalcor who gave a presentation to members of the Department of Municipal Affairs and Environment and Labrador and Indigenous Affairs, a presentation on doing the capping after impoundment?

**P. MADDEN:** I can't recall that happening, no. Sorry.

**J. BROWN:** Yeah, because we've had three witnesses here so far that said they were involved in a presentation that was given by Nalcor on that topic.

During that time, who were your other contacts in government? Was it just Mr. Khan with Water Resources? Were you also in contact with Mr. Goebel or Deputy Minister Chippett on these permit issues?

**P. MADDEN:** The way that the communication protocol was at the time, as far as I can remember, was – and I was definitely in constant contact with Mr. Goebel. He was my contact and Mr. Chippett would have been in contact with my superiors.

**J. BROWN:** After the report was submitted and recommendations were accepted by government, did the chair of the IEAC reach out to you about his concerns about the deadlines not being met?

**P. MADDEN:** Reach out to me? No, he wouldn't have.

**J. BROWN:** Mr. Reimer never ever reached out to you?

**P. MADDEN:** No, he wouldn't have.

**J. BROWN:** Another thing that we heard in a previous testimony from government officials was that they were not aware it seemed to be, of any urgency or anything about this permit. Did you ever, at any time, know of anyone at Nalcor who let the government know about the urgency on, like, this permit needed to be done, be submitted, or approved at a particular juncture? From previous testimony, we found that they didn't seem to understand that there was an urgency for this.

**P. MADDEN:** Yes, I would only be surmising that that would have been

contacted but I can't remember specifically if I said those words to them. With all permits, if we weren't getting them in time – that was protocol to give that information.

**J. BROWN:** In previous testimony from other government officials that came before us, there seemed to be an inherent, internal kind of feeling that this wasn't needed to be done. We had one testimony here that one individual talked about how it seemed kind of like we're not really interested in doing this anyway so kind of getting the sense of feet-dragging. Did you feel that same thing from the department that they were just kind of not really interested in even getting any of this work done?

**P. MADDEN:** I can't say that that was the case for sure.

**J. BROWN:** Okay.

Obviously, Nalcor commissioned two studies on this. They had their first one and then they had the supplementary one on just capping afterwards. In there, there was a recommendation that all of this work had to be done at a certain point and that the permit would have to be approved by September.

Was that communicated effectively to government that this permit had to be done by September in order to get the work done during the freeze-up of the wetlands?

**P. MADDEN:** I can't remember, specifically, if we said that but if it was in the report, they would have had the report (inaudible).

**J. BROWN:** Okay, perfect. That's all my questions.

Thank you.

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

First of all, I would like to just explore a couple of points that you made with respect to your role. You said that the issue, in

response to one of the questions from my colleague, was difficult. It was a difficult situation and the IEAC had proposed more than wetland capping. Now, you were a member of the IEAC; is that correct?

**P. MADDEN:** Yes, I was a sitting, non-voting member.

**H. CONWAY OTTENHEIMER:** Okay. So, therefore, it was difficult for government officials – I think you were saying it was difficult for them to really do what IEAC was recommending. Is that really what your point is on that?

**P. MADDEN:** Yes, and, of course, that's my opinion, so it's not a fact. But the IEAC made a recommendation that was not very feasible, extremely dangerous, never had been undertaken before. The outcome was unknown. It would have been certainly difficult for any governing body to require that, that they proceed with all of the recommendations of the IEAC. Yes, that would be very difficult I would think.

**H. CONWAY OTTENHEIMER:** Okay.

**P. MADDEN:** Extremely expensive.

**H. CONWAY OTTENHEIMER:** I'm just going to get you to explain and elaborate a little bit on that for us, please. Because I know that we've heard from some other witnesses previously in this hearing. For example, you indicated that Martin Goebel was your contact – he was your primary contact – and his view with respect to, for example, wetland capping, if I recall correctly, is that there was really a split decision on whether it should go ahead, this aspect of it, and that the science was unclear.

Is that your view as well?

**P. MADDEN:** I think that he's right in the sense that the real problem here was that the community was afraid for their health and covering the wetlands was not going to

solve that problem. The outcome was definitely unknown. It would have been an experiment.

**H. CONWAY OTTENHEIMER:** Okay.

**P. MADDEN:** So if that's what he meant, then I agree 100 per cent, yes.

**H. CONWAY OTTENHEIMER:** So what would you have based that conclusion on, that covering the wetlands would not solve that problem? What was the basis for your conclusion?

**P. MADDEN:** It was actually advice from the experts that also sat on the Committee and experts Nalcor had. Because it's such a small amount of wetlands that would have been in the future reservoir area that the real reduction in the food chain would have been negligible, but that doesn't mean that doing it wouldn't have been a valuable undertaking from the science perspective.

**H. CONWAY OTTENHEIMER:** Okay. What experts are you specifically referring to?

**P. MADDEN:** I do recall a conversation I had with Innu Nation's expert and we also had Dr. Reed Harris as part of our group. Those two would be considered experts in that field and they would have suggested that that type of approach would not have had a significant impact on reducing.

**H. CONWAY OTTENHEIMER:** So your view on this is consistent as well with the senior advisor on methylmercury, Martin Goebel, who also said that he had no objection to wetland capping, but that it had negligible benefit and it was more about the optics. Is that your sense of it as well?

**P. MADDEN:** Well, I'm not concerned about optics; that wasn't my job nor will it ever be. But I 100 per cent agree that it would have been valuable as a study to add to the scientific understanding of the mobilization of methylmercury in these environments. But it would not have had any impact at the

end of the food chain and affected people's health in any way, shape or form.

**H. CONWAY OTTENHEIMER:** So one other point that your lead contact, Mr. Goebel, stated in his testimony was that the fact that the work did not take place – and I am just paraphrasing right now – was communication and that, essentially, it was a big part of the problem here. We know from the findings of the Auditor General that that is the conclusion there as well.

So you would disagree with him on that point that really communication, you had stated earlier, you didn't think that communication breakdown was the issue here. Is that right?

**P. MADDEN:** I wouldn't think communication breakdown was an issue, particularly since there was a permit submitted well in advance and it wasn't acted upon. The timeline for permits is generally 30 to 45 days. When it was supposed to go to Indigenous review, it would have been a 45-day process. So it was well in advance of when it needed to be approved.

**H. CONWAY OTTENHEIMER:** Okay.

One other thing, you had indicated that in communication, with respect to that piece, that you would have been following up regularly, and your contact was also with Water Resources. Can you recall how often and how regularly and consistently you would have been following up on this issue?

**P. MADDEN:** There wasn't a defined protocol, and I can't recall, but it was part of our unofficial protocols that we would certainly be concerned and follow up on permits that we needed. I can't recall specifically how many times I would have called.

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

**P. MADDEN:** We sent emails from the permits coordinator and myself. I hope they're on file there, but I'm not sure.

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

Dr. Reimer, so he being the chair of the IEAC, you would've had regular contact with Dr. Reimer?

**P. MADDEN:** No, I personally interacted with him before the committee sat and I would say that it wasn't a collaborative relationship after that.

**H. CONWAY OTTENHEIMER:** Why was that the case?

**P. MADDEN:** Again, my opinion, but I think that Dr. Reimer had an objective in the beginning to make sure that all of these recommendations were put forward. That wouldn't have been aligned with the objective on our side. Nalcor had done a lot of work on this subject, had used a lot of real baseline data that they had obtained over a number of years to identify the requirement to mitigate impacts to human health.

Physical mitigation was not one of them, so we would never have suggested to proceed with that. It was an unknown, unverified, expensive and unsafe approach, particularly the soil removal approach. But it was clear in the IEAC meetings that Dr. Reimer was trying to push the committee towards making these recommendations. It wasn't balanced.

**H. CONWAY OTTENHEIMER:** So I take it from that then, you would perhaps not agree with his assessment that, for example, after the recommendations were submitted, they heard nothing and really they were, in essence, left in the dark. He expressed an extreme disappointment – the silence was disappointing.

Do you have any comment on that? I see I'm running out of time, but do you have any comment on that?

**P. MADDEN:** I just know that – I don't have any comment particularly on whether he was left in the dark or not. I wouldn't know what communication he had with government on that subject. We certainly did not engage with Dr. Reimer after that, after the committee made the recommendations.

But yes, again, there was even an instance when he was essentially suggesting that Dr. Baikie recommendations on the committee shouldn't be considered because she essentially said that the subject should be addressed through the human health side, on the communications side. That's how the subject should be addressed, not through physical mitigation. In the meeting, he openly said her opinion should not be considered because she's a doctor.

**H. CONWAY OTTENHEIMER:** Okay.

So it seems evident that there was a lack of collaboration, there was a lack of perhaps co-operation in terms of the theme here. I just want to ask about – I know Dr. Reimer was very concerned about urgency. He indicated that there was a constant theme of urgency throughout this time period. Would you agree with that? Did you feel that there was a sense of urgency as well?

**P. MADDEN:** Absolutely. If you wanted to proceed with those physical mitigation measures, you were already past the point when you could properly plan to undertake such a major project.

Soil removal should have required an environmental assessment by itself. Years of planning and research would have been required to properly execute that. They recommended it, so, of course, there was a time issue, a big scheduling issue.

**H. CONWAY OTTENHEIMER:** Okay. Just one final question.

With respect to your role – and you were the regulatory compliance lead with Nalcor – do you feel it was your responsibility, and if it wasn't, whose was it, to escalate the issue in October when the contractor was almost finished and it appeared that wetland capping may not happen before flooding?

**P. MADDEN:** Our senior management would have been well aware that we didn't – this topic wasn't like a topic that was kind of just dealt with in the working level. Everybody at Nalcor knew these IEAC recommendations. It was in the news. It wasn't unknown. So everybody in both organizations were well aware that we had made this permit, the time was running out. Absolutely. There's no doubt about it.

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

**CHAIR:** Thank you.

I just have a few follow-up questions as well. To start off with a follow-up to my colleague's last question. Clearly, as you suggested, this was a topic of conversation at Nalcor. Everybody is aware of the wetland capping and everybody would have been aware at Nalcor of the timeline to get this done. There has been conversations made – suggested that Nalcor had communicated that wetland capping could have been done after the flooding took place.

I'd just ask your opinion of that. If that was something that you would agree with or that Nalcor communicated that, considering that you were the one responsible for that whole environmental impact piece.

**P. MADDEN:** Yes.

**CHAIR:** Was that something that was considered to be factual at Nalcor? That you

could actually go in and do wetland capping after the flooding had taken place.

**P. MADDEN:** Yeah, I believe – and I think you guys can check this – it was considered in one of the feasibility studies that were completed, I think it was actually written in there that maybe you could. And it was written in a kind of – like everything else was with this, this has never been done before, so it was all kind of: maybe we could do it this way. That's how I understood it.

Conversations I had internally would've been that that would've been difficult to do and like we said before, to cap a wetland probably would be better – it certainly would be better to do it beforehand because you had to be pretty precise to make sure you ensure that the wetland was – so to pour it from the reservoir, I would think would've been difficult.

**CHAIR:** Right.

I guess it comes down to the whole concept of whether or not – you said that Nalcor was fully aware of and certainly engaged in the whole issue around wetland capping. It was in the news, so one would have thought government would have been fully engaged. We do have a series of communications going back and forth in August about trying to get the permits necessary to proceed with the work.

What was the working relationship between yourself and Karen O'Neill, the director of communications? Would you have talked to her –?

**P. MADDEN:** Daily contact.

**CHAIR:** Right. So I'm interested in that because on the July 23 it said: "Nalcor submits communications plan to MAE on intent of wetland capping as part of fish habitat compensation plan work." Would you have been involved in that communications plan?

**P. MADDEN:** Yes.

**CHAIR:** Okay, so that was July 23. On July 24, the next day – and I would think that this communications plan took time to prepare; it wasn't done in like an hour.

**P. MADDEN:** Absolutely.

**CHAIR:** The very next day that communications plan was put on hold, it says, by Nalcor. Nalcor puts communications plan on hold.

Can you tell me: Were you part of that decision to put that on hold?

**P. MADDEN:** No.

**CHAIR:** Do you know who was?

**P. MADDEN:** As I understand it – and Karen would be best to probably answer those questions – we were getting our direction from government on communications. So I could surmise that they would have asked us to put it on hold until they had – under further advisement.

**CHAIR:** Okay.

Yeah, I'm just curious about it because I found it strange. The other piece you mention frequently is around the whole committee that was set up by the Premier, the IEAC. Their first set of recommendations were given to government back on September 22, 2017, which included, as you suggested, the soil removal plus the wetland capping. There was a lot of discussion about whether or not what could or couldn't be done.

But this report that we're dealing with is simply the wetland capping piece, because as we go down through the timelines, another series of recommendations were made later on by the IEAC, which you are a part of. Those recommendations would have been discussed. The second set of recommendations, did they include –

because in March of 2018 I'm looking at a timeline that suggested there were two options provided: Scenario A being wetland capping and Scenario B being targeted soil removal.

In April after that, the IEAC says it issued the second set of recommendations which includes the physical mitigation recommendation, targeted removal of soil and/or wetland capping. So after that, the decision was made to go with the wetland capping.

So that was back in April of 2018. It seemed then that there was a continuation of initiatives to try and get – can you take me through the process of how, okay, now the decision has been made? In April of 2018 we're going to proceed with the wetland capping piece. So as a director or as the senior person in charge of Nalcor from that environmental thing, how would you have gone from that moment to say, okay, here's what we're going to do and this is when we're going to do it? Were you involved in that type of discussion?

**P. MADDEN:** Yeah, I can't really recall how this went down, but I can maybe guess as to how things would have happened. So I would have been receiving my direction from my superiors on this subject?

**CHAIR:** Who would have been your direct superior?

**P. MADDEN:** So my direct superior was David Haley at the time, but I was in constant contact with Gilbert as well.

**CHAIR:** Okay. Gilbert as well.

**P. MADDEN:** Gilbert was very involved in these types of things.

**CHAIR:** Okay, yeah.

**P. MADDEN:** I understand he's a witness today.

**CHAIR:** Yes, Gilbert will be with us this afternoon.

**P. MADDEN:** Yeah, so myself and Gilbert would have been in constant contact on this subject.

**CHAIR:** Yeah.

What I'm trying to understand is the sense now of urgency or non-urgency to get this done. Because we've heard testimony earlier that while it was agreed to do it, there was a lot of discussion that maybe it really didn't matter because you were only talking about a 2 per cent impact. But regardless of that, a decision had been made to do this, so now I'm trying to see or understand if Nalcor had taken that and ran with it. It appeared from some of the emails that Nalcor had put plans in place –

**P. MADDEN:** Yes, which –

**CHAIR:** – that would have seen a –

**P. MADDEN:** Sorry.

**CHAIR:** You go ahead.

**P. MADDEN:** Sorry, I butted in there.

Yes, I think our motivation would have been to get it advanced so that it didn't affect the project schedule. As everybody knows, it wasn't part of the project. It wouldn't have been our recommendation to proceed with physical mitigation.

**CHAIR:** Right.

**P. MADDEN:** But we knew that there was a potential that this could affect the project schedule, so we certainly were motivated to get the permit process moving and to get everything in place. Mobilize contractors, make a project plan, there are lots of other things than just getting the permit in order to undertake something like this.

**CHAIR:** According to what we've heard or saw and read is that the idea was it could've been done at a significantly lower cost, by the fact that you already had a team in position to carry out this work up to a certain point in time.

**P. MADDEN:** Exactly.

**CHAIR:** As you said, it wasn't in your original plan, but now you were prepared to move on it and you communicated that to government. All those communications would've been to the Environment Department.

Would you have communicated directly with anybody about that or was it through other people?

**P. MADDEN:** No, I would've been in direct contact with Mr. Goebel and probably other officials in Water Resources. Mr. Goebel was a special advisory, I believe, if I remember correctly, but permits, the regular – I can't remember who was in place at the time, but there would've been a permits coordinator on the other side. An environmental scientist, I think is what they're called, on the other side that would've been in charge of the permit applications. I think Dr. Khan would've been the manager or the director and those would've been the individuals that technically would've been moving the permits forward.

**CHAIR:** Did you have any conversations with the deputy minister at the time?

**P. MADDEN:** I wouldn't have. The communications protocol – I remember this very vividly – would be that I wouldn't be in contact with Mr. Chippett.

**CHAIR:** Okay, thank you.

Now, I'll just go back around again if some other Committee Members have some additional questions.

**S. GAMBIN-WALSH:** I just want to know, just to be clear: To your knowledge was there an actual November date deadline, anything to do with November, on the amended permit when you submitted the permit?

**P. MADDEN:** I'm sorry, I can't remember. No, sorry.

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

I haven't seen the permit, would a date be written on a permit if there was one? Would that be normal protocol?

**P. MADDEN:** As to when it was needed?

**S. GAMBIN-WALSH:** Yeah. Would Nalcor put a date – so you put in a permit, it takes normally –

**P. MADDEN:** Potentially. In the project description, like when you're describing the project, I think potentially, but I can't recall whether we would've done it.

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

**P. MADDEN:** But I'm sure the document must be available.

**S. GAMBIN-WALSH:** Yeah, and routinely when you put in a permit request, 30 to 45 days is the routine.

**P. MADDEN:** Exactly.

**S. GAMBIN-WALSH:** It was the routine through the project?

**P. MADDEN:** A hundred per cent, that's what –

**S. GAMBIN-WALSH:** No issues?

**P. MADDEN:** We needed to stick to those, it was already tough to get the permits in time because we had, I think it was, a 30-day requirement under the Aboriginal consultation guidelines from the government

and that made it difficult to do business as it was, so we were always very hopeful that those timelines were met, 30 to 45 days.

**S. GAMBIN-WALSH:** To your knowledge, can you recall having an issue with any other permit prior to this one?

**P. MADDEN:** Oh yes.

**S. GAMBIN-WALSH:** It wasn't unusual?

**P. MADDEN:** This long was definitely unusual, yes.

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

**P. MADDEN:** But of course we were, you know –

**S. GAMBIN-WALSH:** Yeah, I know.

**P. MADDEN:** I think we had 1,500 or 2,000 permits.

**S. GAMBIN-WALSH:** Yeah, a lot.

**P. MADDEN:** It was a lot and there certainly were delays, yes.

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

**P. MADDEN:** But this one was definitely – there were reasons why this was longer, I would think.

**S. GAMBIN-WALSH:** There were reasons why it was taking –

**P. MADDEN:** Well, I would think that it had nothing to do with the application. It had to do with something else.

**S. GAMBIN-WALSH:** Okay. But to your knowledge you were clear on the application of what you were requesting?

**P. MADDEN:** Oh yes, the application would've had to have been detailed. There were lots of communications on – well, this was part of the IEAC, it was well-known



what the scope of work would have been and if we submit a permit we expect to get it in 30 to 45 days.

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

**P. MADDEN:** It would be hard to make an argument that it should have taken much longer than that. There was no information request to us that I can remember or anything that – that might be the protocol if there's significant outstanding information that they need to process a permit, maybe we would – do it take longer?

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

**P. MADDEN:** But there were none that I can recall.

**S. GAMBIN-WALSH:** Around the same time as this permit, you were waiting for this permit and you're proceeding with your work and trying to stay on your timeline. On November 5 there was a meeting of the Lower Churchill committee, Nalcor's not invited due to an invitation error by the executive responsible for coordinating the meeting. Can you recall anything pertaining to that meeting or –?

**P. MADDEN:** Sorry, I can't.

**S. GAMBIN-WALSH:** Okay. It says on November 5, 2018, there was a meeting of the Lower Churchill committee, Nalcor's not invited due to an invitation error by the executive responsible for coordinating the meeting. Can you recall anything pertaining to that meeting or not getting an invitation or anything?

**P. MADDEN:** Oh sorry, I can't remember.

**S. GAMBIN-WALSH:** You can't, okay.

**P. MADDEN:** I wasn't clear.

**S. GAMBIN-WALSH:** All right, thank you very much.

**P. MADDEN:** No problem.

**CHAIR:** Paul.

**P. PIKE:** Yes, thank you, Mr. Madden for being here.

I'm bringing myself up to speed this morning on a lot of the issues. But one of the things that I've noticed is that the levels of methylmercury downstream apparently are quite low at this point. But no one knows when these levels will begin to rise, it's a multi-year – it would take that much time, a lot of time, to be able to find out what these levels are. That's what I'm reading.

**P. MADDEN:** Did you want me to comment on that first?

**P. PIKE:** Yeah.

**P. MADDEN:** I'm not an expert, but that's why you measure water and you measure in fish and other receptors in the environment is because you will see a near immediate increase in water, but the timelines are protracted for bioaccumulation through the food chain.

So there might be a time in the future when you find that the levels will be higher in the receptors, but you should see the increases in the water monitoring immediately. If you're not seeing increases in water, then it's likely you won't see major increases in fish.

**P. PIKE:** So prior to the decisions being made, was the water tested?

**P. MADDEN:** Actually, the Water Resources Management Division directed Nalcor to start water sampling before the IEAC was set up. That was a direction based on – it was essentially in response to the Nunatsiavut Government's pressure.

**P. PIKE:** Okay, so is that being tested to this day?

**P. MADDEN:** To this day it's still being tested, yes.

**P. PIKE:** And do we know anything –?

**P. MADDEN:** We know that the results are consistent with what Nalcor said and the independent third party scientists that Nalcor engaged. It's consistent with what they said it would be.

**P. PIKE:** So based on that information, I assume that members of the committee had this information prior to making a decision. Would that have played in this? The results we have here or the levels of methylmercury, that was all done prior to a decision. Would that have a big impact on the decision did you think?

**P. MADDEN:** Yeah, I guess the problem was that every reservoir is different. The model that was developed by Nalcor, by Dr. Reed Harris, he used a number of different assumptions that were based on Experimental Lakes region in Ontario and a number of different things; some data from the Quebec reservoirs, some data from the Upper Churchill, a number of different things and developed a model.

But every reservoir is different and there was kind of a thought that because there's a low storage in the Muskrat Falls reservoir that there wouldn't be as much methylmercury created by that reservoir because it's a fast flowing – it's almost a run of the river without being run of the river. It's fast flowing; it's not like the Upper Churchill, much less land mass was flooded.

I don't know how much you want me to get into this, but the other big issue was that – so I personally have a big problem with the Harvard research. I think that that was fear mongering and it was factually inaccurate, and the factual inaccuracies they had was they were identifying increases in certain species that would never be a part of the system. So they would never have been in the Lower Churchill River or Lake Melville.

For example, lake trout, Arctic char, salmon, these species may for a short time hang out, maybe in Lake Melville or transferred through them. Lake trout will never be in the system; they were all identified having increases.

So that's one example. They essentially ignored even the sampling. Nalcor had taken thousands of samples from Lake Melville to identify the species' composition. They never even looked at it to include it in their research. The Nunatsiavut membership, they eat a lot of Arctic char, they eat a lot of seal and they eat a lot of certain things that really would've been tough or near impossible for the flooding of the Muskrat Falls reservoir to have an effect on this. So it was very frustrating that these people from somewhere else came up and scared our fellow Newfoundlanders and Labradorians. Like, it was very frustrating on my part. I took it very personally.

This model that Dr. Calder put together, the assumptions were almost – it seemed to us – purposefully ramped up to match a scenario that would result in a human health risk that, really, we didn't see there. That's why the recommendations were on the communication side. Like Dr. Maureen Baikie had suggested while she was sitting on the committee.

So I know I'm a bit soapboxy here, I hope that's fine, but I was very passionate about the subject when I worked there and I was very concerned about how the IEAC was working – or certain people sitting on the committee, including federal officials that were sitting on the committee, were misleading people and it resulted in really unfortunate, a lot of fear in the community. We had high school students doing plays. They thought that their whole community was going to be sick. It was bad, and it was completely unnecessary.

I know Nalcor essentially lost – and this is why my opening statement was what it was. The trust was lost; we all know that. The

trust will never probably be gained again. But there was a lot of really good work done on the environmental effects monitoring side. We had Dr. James McCarthy there who sat on the committee and was really well respected by everybody on the committee. Nobody said, oh, you're working for Nalcor; we can't trust you. But he was the one who did a lot of the work. There was a lot of really work and continues to be to this day.

The trust was lost, so it was about up-front engagement, it was about being a partner with the communities. We wouldn't be sitting here if that had happened properly.

**P. PIKE:** Okay, thank you.

**P. MADDEN:** Sorry.

**P. PIKE:** No further questions. No, that was good. I really appreciate the answer.

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

Just to follow up on that, when you started speaking earlier, you indicated that there are lessons learned and it really has to do with the level of engagement, and that's connected and linked with the trust that was lost. The level of engagement from key stakeholders, I think that's what you're saying, was necessary and it did not happen and was not at the level that it should've been. You also mentioned there could've been a partnership in environmental effects monitoring.

Can you just in a concrete way, though, show us how that looks like? How could that have been improved? How could that level of engagement occur in a tangible way?

**P. MADDEN:** I'm not experienced in negotiating impacts and benefits agreements; I just want to say that upfront. I know that's complicated and there are land claims. I think that those agreements actually became a hurdle to developing

those earlier relationships. We should've had agreements with all three Labrador Indigenous groups and they should've reflected the potential impacts.

Going into the project, there was no way to know that there'd be no impacts on the Nunatsiavut membership or the NunatuKavut membership. But we had to negotiate an IBA with the Innu Nation because the project was on their lands. I think that became an unfortunate hurdle, but I think that there have been leaps and bounds since then. I think we'd all agree to that. I don't think you'd ever enter a project like this anymore without some sort of agreement with all of the Indigenous groups in the vicinity of a project of this size with these types of environmental impacts.

I think you do have to have an agreement, and maybe the agreement is less so on the – the IBA with Innu Nation, of course, they were a partner in the project, so there was employment and business. But maybe with certain agreements, it would be more on the development of the environmental effects monitoring and human health risk assessment, for example. This is obviously specific to methylmercury.

There were requests for funding from Nunatsiavut Government that we didn't proceed on early after the Joint Review Panel put out their report. I think it was simply due to the fact that there was this idea that we don't have an IBA with this group, so we can't provide this type of financial support for this type of endeavour. I think that was it.

Those are big lessons learned. The amount of money that should have been spent upfront on that would've avoided a lot of issues that we've seen since, for sure.

**H. CONWAY OTTENHEIMER:** Who do you think would have been responsible to see that that happened? Who directly?

**P. MADDEN:** I don't know if I should speak to that. I'm not 100 per cent sure if Nalcor or, with respect to the IBA, how we – I know that Nalcor had hired the people to do negotiations with Innu Nation. That's why I think it's relevant for here is that I think it starts with the government in that we have to make sure that these projects – especially, it's a bit of a different situation because this isn't a private proponent. But if it were a private proponent, you would expect them to come to the table with these negotiations, the approach themselves, I would think. But this one was a bit different because certainly the Government of Newfoundland and Labrador would have had to have an opinion on what – because it's their money – agreements were struck.

In this case, it probably would've been a joint kind of approach. Everybody was at fault – or everybody should learn a lesson, I should say, instead of pointing blame.

**H. CONWAY OTTENHEIMER:** Yes. In regard to that, this is all about learning, trying to improve and correct where necessary.

In the Auditor General's report, one of the conclusions and probably, in my view, the key conclusion in why the physical mitigation of Muskrat Falls reservoir wetlands did not occur – well, they could not determine, the Office of the Auditor General “could not determine a plausible reason why the wetland capping policy decision did not happen in a timely manner.”

So that is the first finding that's cited by the Auditor General. Can you comment on that? What is your opinion about that?

**P. MADDEN:** I think I kind of touched on it before. I think it is hard to know why certain things don't go – it was a topic that was being addressed in the media. The word that comes to mind is it was the political topic, which I know is not – I know you guys don't necessarily want to hear that that's a

problem sometimes, but it certainly is I guess.

So I think when things become those types of topics that there's no real win-win kind of outcome, then almost the result sometimes is the lack of a decision to go forward, as opposed to a decision to move in one direction or the other.

**H. CONWAY OTTENHEIMER:** So in terms of what the reasoning is, I mean, it does not appear, at least from the findings of the Auditor General, that there was no intent for this to happen, but perhaps what you're suggesting is the lack of action, the omission of any action led to this not occurring.

**P. MADDEN:** Exactly.

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

Those are all my questions.

**CHAIR:** Thank you.

I'm just going to follow up with a couple of more now, based on some of the things – in terms of what we just talked about or you just talked about, the plausible reason why wetland capping didn't happen.

In your position with Nalcor, in terms of this regulatory role and environment effects monitoring and all of those things, are you satisfied that you did everything you needed to do to ensure that this wetland capping was, I guess, from an environment piece, from a permit-granting piece, that everything that Nalcor wasn't – you had requested all of the permits and everything else you needed to get this work done?

**P. MADDEN:** Yes.

**CHAIR:** You mentioned earlier you dealt with thousands of permits and normally it would be anywhere from 30 to 45 days, would be the normal range. In this particular

case, this particular permit, continued to drag on and was never issued. Is that correct?

**P. MADDEN:** Yes.

**CHAIR:** So again on that piece of why it wasn't done or why it wasn't issued – this is why I want to clarify that you had mentioned you had not received any correspondence back from Environment. In other words, when you submitted the application, it wasn't that you received a whole list of questions back or there were a series of questions to and fro like in any granting of any permit, there may be things that need to be clarified. So was there any of that communication back and forth when it came to this permit?

**P. MADDEN:** No.

**CHAIR:** So essentially it was applied for and never granted.

**P. MADDEN:** Yes.

**CHAIR:** From your perspective, Nalcor had done everything they needed to do to make sure.

**P. MADDEN:** (Inaudible.)

**CHAIR:** Okay, thank you.

Peter, I want to thank you for coming in today and for your openness and honesty and passion. If there is any closing remark you would like to make or anything like that, feel free to do so.

Before I do that, though, I normally ask the Auditor General if the Auditor General would like to make any comment or anything.

**D. HANRAHAN:** (Inaudible.)

**CHAIR:** All good.

Okay, go ahead.

**P. MADDEN:** Thank you very much for your time and listening to my opinions on things. Hopefully, I was of some help.

Have a great day.

**CHAIR:** Thank you.

Okay, the Committee will now recess for our next witness until 1 o'clock.

Thank you.

### Recess

**CHAIR:** Hello and welcome back.

We're going to renew our public hearing on the *Physical Mitigation of Muskrat Falls Reservoir Wetlands* report of the Auditor General. We have as a witness this afternoon now, Mr. Gilbert Bennett, executive vice-president of the power development at Nalcor from 2005 to 2022.

Welcome, Mr. Bennett. Thank you for appearing at our 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.

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.

Now I'm going to ask the Clerk to administer the oath or affirmation to Mr. Bennett.

### **Swearing of Witnesses**

Mr. Gilbert Bennett.

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

Before we proceed, I'll take the opportunity now to introduce Members of the Committee and members of the Auditor General's department who are with us.

My name is Tony Wakeham; I'm the MHA for Stephenville - Port au Port and Chair of the Public Accounts Committee.

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

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

**B. WARR:** Welcome Mr. Bennett. My name is Brian Warr, MHA for Baie Verte - Green Bay.

**P. PIKE:** Paul Pike, MHA for Burin - Grand Bank.

**H. CONWAY OTTENHEIMER:** Helen Conway Ottenheimer, Member for MHA. Hello.

**S. GAMBIN-WALSH:** Good afternoon, Sherry Gambin-Walsh, MHA for Placentia - St. Mary's and Vice-Chair of Public Accounts.

**G. BENNETT:** Okay, great.

**D. HANRAHAN:** Denise Hanrahan, Auditor General.

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

**J. TUTTLE:** Jennifer Tuttle, Audit Principal.

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

**CHAIR:** Thank you, everyone.

Mr. Bennett, before we get started, what we'll usually do is we'll go around every Member of the Committee and allocate around 10 minutes to asking questions they might have and then if time permits we'll go around again. But before we do, we ask all the witnesses who come before us if they'd like to make an opening statement, a couple of minutes or whatever. The floor is yours.

**G. BENNETT:** Thank you, Mr. Chair.

I think I'll let you get right into questions. I know you've had a number of witnesses. I've read the transcripts, there's a lot of material covered. So I think I'd be duplicating comments that are already made without the benefit of your questions.

**CHAIR:** Okay, wonderful.

Then we'll get right into questions and I'll start with the Vice-Chair.

**S. GAMBIN-WALSH:** So, Mr. Bennett, in a letter dated July 24, 2018, that was sent to the Water Resources Management Division of MAE, Nalcor requested permission to perform capping of about 70 acres of wetlands within an area near the Edwards Brook Camp. The permit request was made with an expectation by Nalcor that wetland capping will be directed by government, based on the IEAC recommendation. Actually, in the permit, in the letter it stated that the work is planned for completion by December 1, 2018.

So what was your involvement with this request and were you informed of any communication from government?

**G. BENNETT:** So I was definitely aware of the request. We looked at that request and that application and the work in it as an opportunity to get ahead of the wetland capping exercise. I was aware it was to be filed and I was aware of the communication back and forth between Mr. Madden and the department.

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

Are you aware of any response from the department of Water Resources, Municipal Affairs and Environment?

**G. BENNETT:** I think there was some. I mean, I recall that when we got to August, we were advised explicitly that the application was on hold.

**S. GAMBIN-WALSH:** In August?

**G. BENNETT:** I think it was the latter part of August we were formally told that.

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

Were there any concerns regarding the delay in getting a response or the fact it was told it was on hold?

**G. BENNETT:** I think as the summer and into the early fall progressed we became concerned that this possibly wasn't going to happen. What I wasn't aware was what folks in government were actually thinking of what they intended to do with the IEAC recommendation. We brought this forward as an opportunity to get ahead of the situation, but we weren't the decision-maker.

Ultimately, I think looking back on it in hindsight and knowing what happened throughout the fall and into the early winter, as Mr. Marshall pointed out in the inquiry, it probably would have been helpful if we had raised a flag to say: if you people are serious about this, we need to get on with it.

I think at face value, when I read the SNC-Lavalin report, the assumptions that they made were fairly clear. There were a number of prerequisite activities that had to be done and I guess at the most basic level, I understood where that report was. It was in the hands of the IEAC, it was in the hands of the department and I thought they would have been aware of what was stated in that report.

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

So you said you were informed in August that the application was on hold. Are you aware of any additional communication around the reasoning why it was placed on hold?

**G. BENNETT:** No.

**S. GAMBIN-WALSH:** No.

Okay, thank you very much. That's it for me.

**CHAIR:** Lucy, would you like to go next?

**L. STOYLES:** Thank you, Mr. Bennett, for coming today.

A question I had, if Nalcor really wanted to have the capping done, if they felt that it was important to have the capping done, do you think it would've been done? Because according to the environmental assessment in the beginning when the project was starting and everything, there was no talk about wetland capping or anything like that. It wasn't part of the initial project. When it came to reality and they saw that it was a problem with the project, I'm just wondering if there was enough emphasis put on that from Nalcor's decision to do it. I'm just wondering how much pressure Nalcor could've actually put on the government to get it done if it needed to be done.

**G. BENNETT:** If it had been an essential component of the approved project, we would've needed to have put a lot of pressure on the government to say you're

putting the project at risk if this permit is not approved.

I could look at the wetland capping initiative through a couple of different points of view. In terms of the advice of our experts – and that's on the record with the IEAC – the benefit of this wetland capping initiative was modest and wouldn't have had a significant impact on mercury levels in fish and human health risk. On the other hand, there was an extensive consultation effort with Indigenous groups in Labrador and those groups were expecting that things were going to get done.

What I didn't know what how government was going to weigh those and say how are we going to work with this. Are we going to follow through with that commitment, or are we going to rely on the science and the modelling that had been completed, the difference in opinions that were presented from various members of the IEAC and make a different policy decision? That I didn't know.

**L. STOYLES:** After reading the Auditor General's report, would you have changed anything now that we have this report and we look at the issues that are related to the project? We're looking at moving forward, of course, and what advice we can give for future projects. You, being one of the most powerful people at Nalcor to make those decisions, I'm just wondering what advice you could give to this Committee and to the province.

**G. BENNETT:** I think looking back in hindsight, getting a group of people together and understanding the scope of the work, what the SNC-Lavalin report really meant, what the significance of those assumptions were, what the overall effort that would be required to undertake wetland capping, it would have been really helpful if a number of key people understood all of that context.

I think you may have heard a similar message from others that had someone –

and that it could have been any of a number of people, had they put their hand up and said, okay, let's understand what wetland capping is all about, what does it really take, how much time will it take, how much effort will it take and what are the risks, that would have been a helpful conversation to have.

**L. STOYLES:** But wouldn't the experts on both sides have met and figured all that out and give you that advice? I'm just asking the question.

**G. BENNETT:** It may have happened at the IEAC. Needless to say, it didn't happen –

**L. STOYLES:** But your experts at Nalcor, did that happen? Did the two groups of experts get together, meet and give you advice?

**G. BENNETT:** No, it didn't happen. The construction experts inside our project team were not engaged with counterparts in government to understand what this was all about.

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

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

My first question is: Did you or are you aware of anyone at Nalcor giving a presentation to Municipal Affairs and Environment and Labrador Affairs and Indigenous Affairs on capping after impoundment?

**G. BENNETT:** A presentation? No, I don't recall seeing a presentation.

**J. BROWN:** Okay, because the witnesses from those two groups, they keep mentioning a presentation. They were given a presentation on doing it after the fact. That was a part of their testimony earlier. They always pointed out saying that they received this information from Nalcor at some point. So you're not aware of any presentation or anything being given to them?



**G. BENNETT:** I can't place my mind at anything there. I mean there is some commentary in the SNC-Lavalin report. It's very brief. I think the highlights from the SNC-Lavalin report are documented in the Auditor General's report talking about the risks and effort associated with the post-impoundment alternative.

**J. BROWN:** Perfect, thank you.

During the course of all this, obviously, we did just speak to the other individual there that was with you. But did you have any reach out or have any contact with Deputy Minister Chippett on this file and on the delays and eventual suspending or putting a hold on the permitting process for this particular capping process?

**G. BENNETT:** No, I didn't reach out to him directly. We did feed information back through Mr. Madden, who was our representative on the IEAC, who spoke to his counterpart from Municipal Affairs and Environment on the committee.

**J. BROWN:** Yeah.

**G. BENNETT:** That was the communication mechanism that we used.

**J. BROWN:** Okay.

So there was no reaching out and saying what's the delay? Why are they there before, obviously, they suspended or put a hold on the whole process in August?

When government did put a hold on the permitting process for the amendment to your permit for Edwards Brook Camp area, did that surprise you at all or were you expecting that?

**G. BENNETT:** I would say it was one of a couple of possible outcomes that I had thought might unfold. One possibility was government would say look, the IEAC recommendation is interesting but there's no significant benefit here and we're not

going to go down that path. The other possibility is they say well, if we want it done, then we need to do it quickly.

**J. BROWN:** Yeah.

During the process of the permitting process, you stated that one of your contractors was already in the relative area of Edwards Brook. Were they contacted by yourself or anyone at Nalcor to prepare them or to give them a heads up of this possible work?

**G. BENNETT:** Before we floated the idea I'm relatively certain that we had unit costs and quotes from the contractor in question. I recall that we took a look, from a survey perspective, at this area in Edwards Brook and some preliminary effort to be in a position to move forward with it.

**J. BROWN:** During the entire process, I understand this was not in the original plan of everything with the Lower Churchill, but obviously an agreement was reached with Indigenous groups and all this to do this work. Was Nalcor prepared to do the capping if directed or if the permit was approved by government? Were you prepared? There was no qualms or anything about that? It was just going and doing the work?

**G. BENNETT:** Absolutely. If we had been given direction, we'll follow the direction. We would have explained, at the time, if there were risks or cost consequences from that decision, but we would have carried out the work. I mean, that's our role.

**J. BROWN:** Okay.

Obviously, you were prepared to do all of this. Did you find from the department responsible any bias on their – we know that Mr. Goebel has said in his testimony that he wasn't sold on the idea. Did you find any bias or anything from the government side that they were just going to drag their

feet on this, they weren't really interested in this?

**G. BENNETT:** Absolutely not.

**J. BROWN:** No?

**G. BENNETT:** I didn't see any – I had no concern that somebody was dragging their feet so as not to have to do it.

**J. BROWN:** Okay, perfect. That's all my questioning.

Thank you, Mr. Bennett.

**B. WARR:** Thank you, Mr. Bennett and, again, good afternoon.

I'm just going to take you through a set of working timelines. On July 25, 2018, Nalcor submitted a permit amendment, a request to MAE to perform wetland capping. That was on the 25th of July 2018. On July 31, 2018, Nalcor follows up with MAE asking for a status update on the permit amendment request. On August 3, Nalcor follows up with MAE on status of permit amendment request stressing time pressures. On August 9, 2018, which is 15 days later, the fourth attempt, Nalcor follows up with MAE on status of permit amendment requesting stating time pressures. Thirty-four days after the initial on August 29, 2018, Nalcor follows up with MAE on status of permit amendment request stating time pressures. That's five times in 34 days.

I guess two questions, number one, I got a sense, in listening to some of the testimony, that you didn't feel – I mean the science around wetland capping was going to be a benefit or somewhat of a small benefit. But I see that there were five attempts. You were doing your due diligence. There were five attempts to get this amendment. What went wrong?

**G. BENNETT:** That's a really good question.

Mr. Madden, who appeared this morning, is our permit coordinator. He handled the approval of the thousand or so permits that were processed for the project.

I guess, from our perspective, we looked at it and said, here's an opportunity, let's push it to the extent we can. I guess at the end of the day, there are other things that had to happen before that permit could be approved. I mean, ultimately, approval of that permit meant that some portion of the IEAC recommendation was accepted. You could debate in whole or in part. That was a policy question. It had to be answered. In order to get that answer, there had to be discussion with Indigenous groups to make sure that they were on board. There is a question of project execution that has to be answered, in terms of how long will it take, how much would it cost, what does the plan look like and how does that unfold? Unfortunately, all those pieces never came together here.

You can't have, in this particular case, given that relationship – I can understand that permit might not get approved if all those other activities hadn't taken place. So if we had come in and said okay, here's a permit, great idea, let's push it to the department and, by the way, we're going to follow our Aboriginal and Indigenous consultation process and we're going to send it out to the 10 Indigenous groups that we consult with on project permits. Then we're answering the question as to what happens with the IEAC recommendation and that's not appropriate. The policy question has to be answered. There are multiple departments inside government that have to put those pieces together and get everybody on the same page.

So I can understand the permit didn't get approved because all those other activities hadn't taken place. I guess the unfortunate part here is that all of those other activities didn't fully recognize the timelines that are required in order to execute the work.

**B. WARR:** Thank you.

Did you have a main contact within the circles of government? Who was your main contact on this particular project?

**G. BENNETT:** Inside Municipal Affairs and Environment?

**B. WARR:** Well, yes and –

**G. BENNETT:** (Inaudible.)

**B. WARR:** Because my next question would be, if you weren't being satisfied on the five attempts, again within your due diligence of getting the permit amended, did you think that a phone call to someone – if you were dealing with an individual within MAE and not being satisfied – in a higher position might have worked to at least get that part satisfied.

**G. BENNETT:** I think if it were one of the permits that were, what I'll call, mandatory for the project, so if it was the original permit that was holding up construction and the job as a whole, I would have been on the phone with the deputy minister in about 15 minutes.

**B. WARR:** Yeah.

**G. BENNETT:** My reticence here is that this wasn't our initiative and it wasn't yet determined to be part of the project, because a policy decision hadn't been made. So I didn't necessarily feel like being the person who should start calling around and saying, okay, what's going on with this initiative.

My understanding of the situation, and what I understood happened at the IEAC and the briefings that happened, led me to conclude that the conversations were happening and the awareness was there. In hindsight, I may have been able to break a logjam if I had gotten to the deputy, or I think as Mr. Marshall pointed out, he had reached out at

a more senior level than me, exactly where is this going and what do we need to do.

**B. WARR:** Okay, thank you, Chair.

**H. CONWAY OTTENHEIMER:** Just talking further about the amendment process, we've heard from a number of witnesses, and one in particular, Mr. Chippett, had indicated in his testimony that with respect to obtaining permits he said if Nalcor wanted a permit, they would've been in touch. Yes, he admitted that Nalcor, in response to one of our questions, could not get the permit on its own, but it could come to the department to push the approvals.

So there seems to be there a suggestion of some responsibility on the part of Nalcor, or if you will, the fact that Nalcor didn't do more. I'm just wondering if you could comment on that or do you have any response to that position?

**G. BENNETT:** I guess looking back on the situation I'm one of the number of people who in hindsight could have said where is this going. As I mentioned, the reason I didn't do that is because this permit wasn't one that we had to have to build the project. Of the 1,400-some-odd permits that we have for the project as a whole, there are permits in there that if we don't receive them, we have to stop work. We shut contractors down, stand down on the project. On those permits, I absolutely did escalate those, because those were in the critical path of getting the project done.

On this one I didn't know where we were going, and no one had identified yet that it was one that I needed to execute. That's the distinction of the two.

The recommendation was with Municipal Affairs and Environment from the IEAC and I look at them as the decision-maker in terms of what the next step would be on that initiative of wetland capping.

**H. CONWAY OTTENHEIMER:** No one had identified – so, in your mind, the who of who should have identified would've been the Department of Municipal Affairs and Environment. Is that correct?

**G. BENNETT:** That's my understanding, yes. The IEAC recommendation was presented to Municipal Affairs and Environment and I look to them as being the policy lead to coordinate government's response to that recommendation. Then we would've received direction and we would've undertaken work from there.

I think, if I recall, there were maybe one or two other initiatives on a related matter where that exactly did happen. So in the case of the monitoring recommendation from the IEAC to increase extensive methylmercury monitoring in the Muskrat Falls reservoir downstream, I received a letter from the minister of Municipal Affairs and Environment at the time: Gilbert, here's direction; go do it.

I think there was a similar letter on the record for extending some reservoir clearing. It came in the form of a directive. That's what I thought was going to happen here. I guess, ultimately, that directive happened in a meeting in early January of 2019. My response at that time was I have 3½ months before the spring freshet. I can't get that done.

**H. CONWAY OTTENHEIMER:** Okay.

When you were told that the application was on hold – there was no reason given for that hold – did you ask why there was a hold? Were you satisfied with just hearing that? Did you make any further inquiries?

**G. BENNETT:** I didn't. I concluded it was a reasonable position, given that deliberations with respect to the recommendation were under way inside government. I mean that's the way I rationalized it at the time.

**H. CONWAY OTTENHEIMER:** Okay.

Also, you were asked by the Member here for Mount Pearl North in hindsight the advice that you would give. In hindsight, there would be getting a group of people together, a number of key people. There would be more efforts made.

Her question or response to that was didn't that occur anyway within Nalcor. Can you just explain because you stated that construction experts were not engaged with government? So I'm not sure I understand what you mean there. Could you just elaborate for us on what you mean?

**G. BENNETT:** Sure. If you look at the SNC-Lavalin feasibility study, it does outline the necessary activities that have to be undertaken in order to execute the work. There's not a lot of detail there.

So I guess my point is we weren't called in to present what I'll call an execution plan – so schedule, cost estimate, critical activities, mobilization plan, commercial plan and cost estimates – to be able to say, okay, here's what that work takes. So that was the engagement that I'm saying didn't happen.

**H. CONWAY OTTENHEIMER:** Okay.

There's another recurring theme that has arisen throughout the hearing and that's with respect to a communication breakdown. Mr. Madden, who we heard from earlier, indicated he did not believe that there was really any issue of communication, but we've heard from other witnesses who say exactly that that is the essence of the problem here and as to why wetland capping did not occur. Can you please comment on that?

**G. BENNETT:** I think looking at it from my point of view, Mr. Madden was a prime contact on the IEAC. He was also the prime contact inside Nalcor for permitting activities and I can conclude that his communication to his counterparts was clear and documented. You have the record of the multiple contacts that went across from Mr.

Madden to his colleagues and government. I think I can also see where communication didn't happen too well.

So I think you probably had people who appeared in this hearing who would say that they didn't know necessarily what the full scope of work was, or they didn't know the complexities associated with doing the wetland capping after impoundment, or they didn't fully understand the schedule. So I think both explanations are accurate, that Mr. Madden, from his frame of reference and his communications, that is very clear and well documented. But the other people who were involved around the topic didn't have necessarily a full understanding of what this initiative was going to take.

**H. CONWAY OTTENHEIMER:** So how do you feel that this could have been rectified or remedied?

**G. BENNETT:** I think if more documentation in greater detail that explains what the SNC-Lavalin report means – in the project world, we would take a feasibility report from a consultant, go through detailed engineering and put that into a detailed project execution plan that gets worked in the field.

That level of detail didn't exist for this initiative and I think that's probably one of the more fundamental gaps and we talked about that earlier as being – it could be done in a meeting with our respective experts to say okay, here's what that feasibility study means, here's what it will take to do it in the field, here's how much it will cost and here are the prerequisites. So that detailed work, unfortunately, didn't happen here and it would have been helpful had that occurred.

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

One other thing that Mr. Madden had indicated, as far as lessons learned, that the level of engagement from key stakeholders was not at the level it should be. We asked how he felt that could have been improved.

He had some serious concerns about the IEAC and there were also some concerns that he raised in general about fear mongering and some other things in terms of the optics, I guess, or the politicization of everything. Can you comment on that as well, please?

**G. BENNETT:** I would share some of those concerns. Now, there were a variety of opinions expressed at the IEAC and a report is presented to government. I think I'd look at that the same way that both the Government of Canada and the Government of Newfoundland and Labrador responded to the Joint Review Panel recommendations.

Recommendations come forward to government, and then government gets to make a decision on what to do with those recommendations. In the case of the Joint Review Panel, they were able to say we agree with those and we're going to implement them, as they're written. There are recommendations that were brought forward where government said we agree with the intent of what you're saying; we're not going to quite do it that way. We're going to do something slightly different that conforms to our policy objectives. Then there are recommendations that were rejected. There weren't too many of those, but it did occur.

I actually expected that process to unfold in a similar way with the IEAC recommendations. That, from a policy perspective, they'd be looked at, the merits of those recommendations would be considered and then government would respond to those recommendations.

So, in the back of my mind, based on my experience with the previous environmental assessments for both the generation and transmission projects, I expected something similar to happen here where we would see a formal response to the recommendations from the IEAC and then the points about how well justified some of those

recommendations were, or whether government actually agreed with them, that could have been fleshed out in their response.

**H. CONWAY OTTENHEIMER:** Okay. Thank you very much, Mr. Bennett. That is it.

**G. BENNETT:** Okay.

**P. PIKE:** I'm just trying to get an understanding of something more so than anything else right now. I will form a question out of it in a second, but the whole idea around timelines – why were these timelines so important? If we look at the other options, like post-impoundment capping and wetland capping, why did we deviate at all from this amendment when we knew the importance of it? Was it because of timing? Was it economics?

Because my understanding in reading, the Indigenous governments were offered \$30 million because of the damage to the wetland. I was wondering what was so important about these dates. We're here because of a decision that was made and, to me, the options were not there. Unless this post-impoundment capping is something – I don't know how that could have been done and what it would have meant. I know what the capping would have done because you would have a non-organic material placed over the top, but that would be in the initial amendment that you guys wanted.

**G. BENNETT:** That's right.

**P. PIKE:** Anyway, could you just explain some of that to me?

**G. BENNETT:** Okay. So let me try to highlight a couple of important milestones. The timing on impoundment of the reservoir, so raising the reservoir level, the full supply level, the timing for that was prescribed in a number of permits. I think it was in both the Government of Canada's DFO section 35,

fisheries authorization. In that authorization, it was constrained around the spawning season for various fish in the reservoir. So they said here's a window you have to work within.

That was generally in the July to August time frame. So that date was prescribed. If you missed that, you could be waiting a year to impound and that has a definite knockdown impact on commission of the plant, if you don't have the water level high enough to run the turbines.

Another constraint that would exist was when things start to thaw in Labrador. So when snow starts to melt, things get soggy. Water level in the river rises during the spring freshet, and that was arguably sometime in May.

You need to do a survey and understand the work that you're about to undertake before the snow comes on the ground so that you've identified: okay, where are these wetlands, have we surveyed them, have we mapped them out, do we know where they are, do we have a source of material to put over them? That needed to happen in the fall before the snow came down.

First snowfall in Central Labrador is somewhere around the middle of November. If a contractor is on the ground you can start snow clearing and you can gain some time there, but if you wait too long you're going to be working under several feet of snow. That doesn't work too well.

Impoundment was scheduled for the summer of 2019. As we worked our way through the fall of 2018, okay, Johnson's Construction was doing their work at Edwards Brook; they're completing their fish habitat work. They have their camp, they are mobilized, their heavy equipment is on the ground and they're working through the fall. When they leave, then you have to remobilize a new contractor, get a camp in, get the water, power, sewer services set up

so that you can house the workers who are there.

Those are probably the major constraints that sort of bound when we could do the activity. If we weren't able to use our existing contractor, then I'd have to add on some procurement process where we engage that contractor, hammer out a contract, get the quality, safety and other execution plans necessary to do the work. Through the summer and fall with Johnson's on the ground, we had that homework already done. If we had been told, okay, go do it, we could've pretty well started immediately because they were already on the ground and engaged with commercial terms and we just carry on with that work. As we get toward the end of the fall and they finish their work, that window disappears.

That's probably the high-level explanation of how this activity needed to fit in.

**P. PIKE:** What was your proposal or contract valued at?

**G. BENNETT:** If I recall, our change order was in the range of \$5 million to \$10 million. Now, it wasn't the exact scope that was identified in the IEAC report, but it was an effort to cap wetlands that were in the reservoir that were readily accessible.

**P. PIKE:** Okay, thank you.

**G. BENNETT:** Okay.

**CHAIR:** Okay, thank you.

I'm going to ask a few follow-up questions, then we'll have, hopefully, time if anyone else has further questions.

For me, it's a question of priority. Correct me if I don't have this right, but in its project plan, Nalcor had never included a plan to do wetland capping or soil removal. That wasn't part of your strategic plan. You had studies done that had given you – scientific

studies and others that had talked about those issues about the methylmercury and stuff, but that wasn't in your scope of what your plan was to develop Muskrat Falls.

**G. BENNETT:** That is correct. It was not in our scope and it was not in our authorizations and it was not in any, to date, directives for the project.

**CHAIR:** So as this moved along, and in 2016 when the IEAC committee was established to look at this particular issue, the committee made a series of recommendations back in September of 2017. It says in a news release from Municipal Affairs and Environment: Government received and accepted the first set of recommendations from the IEAC. Then they went back to Nalcor to talk about how do we implement them and that's when the other report was developed which talked about options.

**G. BENNETT:** Right.

**CHAIR:** The options identified then became the separation: the wetland-capping scenario versus the soil removal option.

In April of 2018, it states that the IEAC issued its second set of recommendations which included the physical mitigation recommendation and/or wetland capping. So they were prepared to move on it.

So back then there was some direction given that we proceed with the wetland capping side and obviously that's clear in all of the requests you identified in the timelines and the request.

What I have to ask is, given that this is not in the scope of the project, this is nothing to do with the work that Nalcor is doing, this is something that they were asked to do, how important a topic of conversation, for nothing else, was this in terms of Nalcor at the executive level in terms of getting this wetland capping done?

**G. BENNETT:** Well, it definitely had my attention and I think that the importance of maintaining the relationship with the Indigenous groups in Labrador was important. As I said earlier, scientifically we could debate how much benefit it would have, but there's also a benefit in being able to look at it, look at this initiative and say this is not an extraordinary cost, it's a reasonable accommodation to a concern that's been expressed.

I think in the environmental assessment we talk about precautionary principle. We say we're not going to throw out things that are reasonably cost effective just because they don't have scientific perfection.

So if this was important to maintain a relationship, then we were game to do it. I think Mr. Madden might say that I appeared at his desk more than once to say have you heard anything about this and have you communicated with your colleagues in Municipal Affairs and Environment to say okay, are they aware that this is in and do they know what we're trying to accomplish? What I didn't have, you know, direct input into was what the underlying policy decision was.

**CHAIR:** So when you made those appearances in Mr. Madden's office to question him on that, did you take the initiative to bring it up the ladder yourself to people at your level or higher in government and elsewhere?

**G. BENNETT:** I didn't. I didn't step into a decision-making process that I knew who was responsible for making the decision.

**CHAIR:** Right.

**G. BENNETT:** I satisfied myself that, are they aware of it, is it in the department and do key people know? I've communicated back – the message was communicated back to me. The deputy is aware of this and he's aware of the file and the importance.

**CHAIR:** Were you aware that some of the people at the departments in government were under the impression that Nalcor had told them that the wetland capping could take place after the flooding was completed?

**G. BENNETT:** So technically, I mean that same commentary is in the SNC-Lavalin report for March 2018.

**CHAIR:** Right.

**G. BENNETT:** Where they say that yes, you can do it. I would say, yes, it is possible to do it. I mean, dredging operations and soil removal underwater, those are possible. Those are things that get done. I'm not a fan of it and I think the risks are outlined, not in a lot of detail, in the SNC report, but they are highlighted there. Well, they definitely talked about the increased risk associated with its marine operations compared to working on dry land, and we've had some experience in the Strait of Bell Isle with marine operations there and the level of effort that goes into managing those activities is a lot more than when you have excavators on the ground.

So I would say that it's possible. Was it preferred? Definitely not. Would it have been more expensive? Absolutely.

**CHAIR:** Were you aware that potentially some of the people in those same government departments were using – it seemed to be, at least one, have said that they didn't see a sense or urgency because it could be done after the flooding. Do you think that might have contributed to this?

**G. BENNETT:** I can see it now. With the documentation that's been compiled, I can see how that conclusion could have been drawn.

**CHAIR:** Right.

**G. BENNETT:** And it's unfortunate that we didn't have our coordinating committee



meetings throughout the summer and fall of 2018 and I didn't have an opportunity to hear that directly from a number of people, because I would have been able to sort of correct that misunderstanding or misapprehension.

**CHAIR:** That brings me to another point. Why would those coordinating meetings not have happened during that period of time?

**G. BENNETT:** They're ad hoc, so they're called at the request of the clerk. Scheduling – I can't recall if there was anything specific that happened during that period why I wouldn't be there.

**CHAIR:** But in the summer of 2018, according to the notes that we have, there were numerous parties, Indigenous governments and organizations, the IEAC chair, contacted Municipal Affairs and Environment with concerns about the timeline for implementing the IEAC's recommendation. Your organization was part of issuing that concern as well.

**G. BENNETT:** Those concerns had been communicated by Mr. Madden. We didn't go public. That's not something that we would do.

**CHAIR:** No.

**G. BENNETT:** But we certainly saw those unfolding. I mean I recall the commentary from the Nunatsiavut Government at the time and I felt that concern about timing had been expressed publicly by them.

**CHAIR:** Mr. Madden's reporting relationship would have been directly to who?

**G. BENNETT:** Let's see. Mr. Madden reported to Dave Haley, our environment manager, as an SNC-Lavalin employee.

**CHAIR:** Right.

**G. BENNETT:** Who in turn reported through to Scott O'Brien, our project manager.

**CHAIR:** What I'm trying to get at, because in July 23, 2018, it said Nalcor submitted a communications plan to Municipal Affairs. I'm just wondering if you were aware of that plan.

**G. BENNETT:** I absolutely was.

**CHAIR:** The next day, the plan was put on hold according to the information. Are you aware of why it was put on hold?

**G. BENNETT:** I've been racking my brain about that one. I can put together a plausible explanation, although I don't have documentation.

I know there's no way in the world that we're going to move forward with a communications initiative without having alignment with government. So we're not going to be the one to go first and say we're doing this without having everybody on board. That would be our reporting department into Natural Resources, as they were at the time, and also with our regulator in Municipal Affairs and Environment.

**CHAIR:** All right.

Is it fair to say that at that particular point in time you'd still not had a permit?

**G. BENNETT:** We did not have a permit. Probably more importantly, we didn't have alignment that the permit was going to be issued.

So I think there are a couple of points here. Mr. Gover probably – well, actually, he did get into this when he talked about the need for Aboriginal consultation before the permit could be issued. So we knew that the permit would have to be circulated to the Indigenous groups for consultation before it could be approved, but what we didn't have is we didn't have an indication from the province that they were amenable to our permit application.

**CHAIR:** Right.

**G. BENNETT:** With that information, then we would have went through the formal process. But then the permit is released to Indigenous groups, we're advancing this initiative and without having alignment with government that this was an appropriate course of action, that's not a step we would take.

**CHAIR:** One of my colleagues pointed out the number of times in 34 days that you had requested and identified the need to get this permit issued. In all of those correspondence to the department by officials, was there ever anything in writing back to say any reasons given why the permit wasn't issued, or was it a case of just no response?

**G. BENNETT:** I think in the case of the August 28-29 correspondence, there is an email back that says the permit is on hold. It doesn't explain why, but it says it's on hold.

**CHAIR:** That's all was said? It just said it was on hold.

**G. BENNETT:** Right.

**CHAIR:** So whenever it was written in the July 24 letter that was written by Peter Madden to Mr. Khan, he never ever got a written response back?

**G. BENNETT:** I don't know. So that would have –

**CHAIR:** Okay, I'll ask Mr. Khan.

**G. BENNETT:** Okay.

The document would be in our document management system if he, in fact, replied.

**CHAIR:** Right.

So you've already said that you were fully aware of this. In your opinion, Nalcor was prepared to do everything it needed to do to ensure that this plan went ahead as you had proposed.

**G. BENNETT:** With the direction, we would have executed the plan.

**CHAIR:** Would have executed the plan.

Okay, thank you.

**S. GAMBIN-WALSH:** My questions have been answered.

Thank you.

**J. BROWN:** Thank you.

Now, like I said, we understand you've been at the Muskrat Falls Project from groundbreaking until this year and you've had a long-standing relationship with Indigenous communities, is a big part of it, as it was built in an Indigenous area. You did mention that Nalcor was fully prepared to go do this work, everything like that because of its recommendation and you said it was a good opportunity to work with Indigenous groups on their concerns.

After everything that's happened and everything like that, did you have a sense that this has broken some faith with Indigenous groups? Has this actually damaged probably some of the relationship by not executing what they've asked for?

**G. BENNETT:** The opinions might be mixed. I would certainly expect that the Nunatsiavut Government – and they've expressed this publicly throughout 2018 – is not pleased that this initiative didn't happen. I think the others, if you look at Innu Nation and NunatuKavut Community Council, I'm not sure that they have the same level of concern. I'm going to safely say that Nunatsiavut Government would definitely not be pleased with the outcome and they've expressed that publicly.

**J. BROWN:** Perfect, thank you so much.

**L. STOYLES:** I have a similar question, actually, or almost the same question, but

maybe it's a different way I'm going to phrase it.

You talked about how important it was working with the Indigenous people and how important it was to work with them. Did you get a lot of calls from any of them wondering and wanting the capping done? I'm just wondering what kind of impact they would've had contacting you, because I'm sure they would've contacted and Nalcor directly, along with government. I'm just wondering how much impact did – how many times did they contact you or did they?

**G. BENNETT:** They didn't. I'm not surprised. They definitely did make representation to the Premier's office and to the Indigenous Affairs leadership. I'm not surprised that they didn't come directly to us.

**L. STOYLES:** They didn't go directly to you guys at all?

**G. BENNETT:** No, they would've – I think in a government-to-government relationship, what I've seen historically is that call would've been made directly to government, most often the Premier's office.

**L. STOYLES:** Do you feel that Nalcor had total control over the project or was there a lot of government interference?

**G. BENNETT:** I won't say interference, but there are activities that we undertake that are prescribed, limited or set by government policy, permitting requirements and so on. They're one of the key ones so that the conditions that are in our authorizing regulations and the release from environmental assessment, the benefits plan for the project, to name a few, where government gives us policy direction and then we incorporate that into our plans. So I wouldn't say that we have absolute control, no, not by a long shot. It wouldn't be appropriate.

**L. STOYLES:** So I guess my final question: Did the government decide the capping wasn't – well, I mean, the government obviously decided the capping wasn't going to be done. Is that your opinion as well? The government just didn't sign off on the permit?

**G. BENNETT:** Well, it didn't happen.

**L. STOYLES:** It didn't happen, so somebody is responsible for not giving the permit.

**G. BENNETT:** Right, so whether it was a conscious decision or whether it was the unfortunate outcome of a process where that decision didn't get made, I guess it gets us to the same place. The activity was not undertaken.

**L. STOYLES:** Thank you.

**B. WARR:** Thank you, Mr. Bennett.

I mentioned some working timelines in my last opportunity to ask you some questions and I guess in my interest in hearing your answer, I missed a timeline. I brought two timelines up to and including August 29, which was 34 days in which Nalcor went back to the department looking for the permit to be approved.

Five months later, on January 14, Nalcor is informed at the Lower Churchill Committee meeting by MAE to proceed with wetland capping. I'd like to hear your thoughts on that. I realize that Nalcor advises that it's too late, but five months after the 34 days in which you contacted them at five different occasions, five months later they're informing you that they want to proceed with wetland capping.

**G. BENNETT:** All I could say was what I said at the time is: folks, we're late, we just don't have time, we can't do it now and we're in a bad spot.

**B. WARR:** And the response?

**G. BENNETT:** Recognition that we're in a bad spot I think was what I interpreted from the response.

**B. WARR:** Thank you, fair answer.

Thank you, Chair.

**H. CONWAY OTTENHEIMER:** Just going back to the issue of the request for an amendment to permit to alter the body of water, that letter of July 24, 2018, you were aware of the request. You felt, you stated earlier in your first responses, that it was an opportunity to get ahead of the situation, but you also qualified that by saying that you weren't the decision-makers and then you were told that the application was on hold. There was no reason given for it. You had concerns that this is possibly not going to happen.

Then you referenced the Muskrat Falls inquiry and you indicated Mr. Marshall – referenced him in that he said it would have been helpful to get ahead of this. I think you said that possibly by raising some red flags, then I think you said we would have put a lot of pressure on.

Even though you weren't the decision-makers, and you've earlier stated that you couldn't really interject yourself, I'm just wondering how would that have looked? What would you have done? What tangibly could you have done to put pressure on?

**G. BENNETT:** I think it wouldn't have been me directly. I think it would have been a conversation with Mr. Marshall to say okay, Stan, it's time to call the premier.

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

**G. BENNETT:** Okay.

**S. GAMBIN-WALSH:** One more question for clarity. You somewhat answered it but I'm just going to ask again.

The work is planned for completion by December 1, 2018. I mean, it's clear; it's here, July 24. It's noted.

**G. BENNETT:** Right.

**S. GAMBIN-WALSH:** Anyone could come in and read that and understand what that means.

You just said after the request came in past this date, we recognized that we were in a bad spot here. There's a request. We can't fulfil it. We're sorry. We can't do it. We told you the work was going to be completed by December 1, and there's evidence that you reached out five times. Nalcor reached out five times.

Again, you've said that you don't think there was a communications error. So if there wasn't a communications error, if Nalcor reached out five times, if this letter says December 1, if you recognize after when the request comes in that, I'm sorry, it can't be done, something broke down somewhere. Is it the committee's recommendations and the fact that those recommendations – could they have come in too late for the whole process?

We have the Muskrat Falls Project Oversight Committee, which was formed right at the beginning I believe. It was an internal committee made up of the clerk of the Executive Council as the chair, deputy ministers and ADMs from a number of different departments. So it's not like there wasn't oversight on this right from the beginning because there was.

Now, I don't know how interactive they were because when I went looking for minutes I didn't find very many. It could be that they weren't kept or they're just not available. Because it is the clerk of the Executive Council, so perhaps they're just not available.

There was oversight right from day one so there's evidence of such. There's

communication from Nalcor, there's evidence of such, but then there's another committee that gives recommendations as the project is moving along. It's not a communication error, so what is it?

**G. BENNETT:** Well, it may be a communication gap. There are actually several committees. You raised the Muskrat Falls Oversight Committee. My interpretation of their mandate is that they're focused on what we've been directed to do or what we've been authorized to do as part of the project definition.

I don't recall the IEAC response or deliberations come up in that committee.

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

**G. BENNETT:** And that really doesn't surprise me a lot because I look at the IEAC recommendation as being sort of quasi regulatory in the sense that it's like responding to the environmental assessment review panel. So I think that matter would have been handled within Municipal Affairs and Environment, coordinated by them as opposed to the Oversight Committee.

**S. GAMBIN-WALSH:** So do you think there might have been a disconnect here?

**G. BENNETT:** It could have been put on the agenda. We don't run the agenda for the Oversight Committee. That's the clerk's discretion and we have standard reporting that we provide to the Oversight Committee, but it could have come up there.

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

**G. BENNETT:** That's a possible opportunity.

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

**CHAIR:** Thank you.

Just a couple of follow-up questions. You say you've read through the *Hansard* reports from the previous witnesses. Dr. Reimer was the chair of the IEAC and in response to a comment that I had made which said, clearly, wetland capping should have happened and could have happened and needed to happen. I said, is that a fair assumption? He said absolutely. I'm wondering what your reaction to that is.

**G. BENNETT:** I think there were a couple of points. I think the benefits are scientifically marginal. The relationship importance with Indigenous groups is significant, so that needed to be weighed. Whether this was the best way to achieve that relationship goal or not, I think that could be thought about.

One thing that struck me about Dr. Reimer's commentary is I think at one point, when someone questioned about the magnitude of the benefit, he said something to the effect that in other provinces, Manitoba in particular, that wetlands were deeper and there would have been a more than 2 per cent benefit. I don't think that statement is well founded on our data from Muskrat Falls. In fact, there is a land classification study that was on the record for the IEAC that indicated that the wetlands that were surveyed by AMEC were fairly shallow.

So I think he was more confident in the benefits than I would have concluded, and I think maybe the final point I'll make in that regard is that the actual monitoring results from the water monitoring program are showing lower levels than were predicted by Ryan Calder in his work, by a significant margin. So I think that's probably the fairest way to characterize that.

**CHAIR:** Right.

I think the main point that you've made and I'll ask again is that you were ready, willing and able to do the wetland capping, as you had outlined in your request to government, to get it done in a timeline.

**G. BENNETT:** Yes.

**CHAIR:** Following up on the relationship-building piece for a second. The \$30-million payment in lieu of wetland capping, for lack of a better word, whose idea was that?

**G. BENNETT:** It came up in conversation between, as I recall, Mr. Marshall and the premier. I wasn't there, so I don't know who had the first commentary.

**CHAIR:** Okay. But that was obviously done at that high level?

**G. BENNETT:** It definitely was done at the most senior level.

**CHAIR:** Finally, I just want to ask a question that talks about what the Auditor General found and one of the comments in the report. It talked about the fact that the urgency of wetland capping should have been well understood and pursued by the Department of Municipal Affairs and Environment. Would you be able to say the same thing based on the information provided by Nalcor to the department that they should have been aware, should have understood the urgency of the request?

**G. BENNETT:** I thought that the SNC-Lavalin report highlighted that urgency when it talked about meeting to start work in October at the latest, and then raising a question as to whether it even could in fact happen then. So I was a little surprised when I heard commentary and testimony here that there was belief that the work could have been done in January when we were actually given the direction to try to move this forward.

I was surprised by that, given everything in the SNC-Lavalin report. Practically speaking, at that point, winter is really setting in in Labrador. There is a foot of snow on the ground. There are no roads. There are no identified areas that we can go to work. So I found that surprising. I thought

that was fairly well documented in the SNC-Lavalin report.

The other commentary that is fairly clear in the SNC-Lavalin report is the risks were inherent in doing the work post-impoundment. So I didn't find that the sort of commentary that you may have heard earlier was aligned with the sort of commentary from SNC-Lavalin who had put some thought into it – not a lot. They said that in the report, but they identified these risks early in the report and fairly clearly, in my view. They did use the word dangerous. The work being more dangerous than it would have otherwise been.

**CHAIR:** Thank you.

**G. BENNETT:** That was their wording directly from the report.

**CHAIR:** Does anyone else have any further questions? Are you all good?

Okay, I usually ask the Auditor General if they'd like to make a comment or ask anything.

**D. HANRAHAN:** We're good.

Thank you.

**CHAIR:** All good.

Listen, I want to thank you for taking the time to come in, Mr. Bennett, and meet with us. As we always do, if you have any closing comment you'd like to make or anything like that.

**G. BENNETT:** I think everything that I have in the back of mind I've covered off here in responses to questions.

Thanks for the opportunity.

**CHAIR:** Really appreciate it. Thank you.

I'll now recess the Committee and the hearing until our next witness.

**Recess**

**CHAIR:** Welcome Mr. Khan.

Thank you for your appearance at our hearing today. We'll resume our hearing in relation to the *Physical Mitigation of Muskrat Falls Reservoir Wetlands* report of the Auditor General.

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.

There are some housekeeping remarks I will also make. 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 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 now ask the Clerk to administer the oath or affirmation to Mr. Khan.

**Swearing of Witnesses**

Mr. Haseen Khan.

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

Before we get started, we'll take the time to introduce everybody here to you, Members

of the Committee and the Auditor General staff that are here.

My name is Tony Wakeham; I'm the MHA for Stephenville - Port au Port and Chair of the Public Accounts Committee.

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

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

**B. WARR:** Good afternoon, Mr. Khan. Brian Warr, MHA, Baie Verte - Green Bay.

**P. PIKE:** Good afternoon. Paul Pike, MHA, Burin - Grand Bank.

**H. CONWAY OTTENHEIMER:** Welcome, Mr. Khan. My name is Helen Conway Ottenheimer; I'm the Member for Harbour Main.

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

**D. HANRAHAN:** Denise Hanrahan, Auditor General.

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

**J. TUTTLE:** Jennifer Tuttle, Audit Principle.

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

**CHAIR:** Thank you everyone.

Mr. Khan, what we normally do, we'll ask each of our Members of the Committee – we'll have a series of questions that they may pose to you and we'll take turns doing that.

Before we start, we always give the witness an opportunity, if you'd like, to make an opening statement of any kind, by all means for the next couple of minutes feel free to do so.

**H. KHAN:** Good afternoon.

My name is Haseen Khan. I'm currently director of Water Resources Management Division. I have been in this position since 2008. Prior to that, I was manager of Water Resources Management Division since 1990, when I joined the public service.

Thank you.

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

We will get started and I'll ask the Vice-Chair if she would start.

**S. GAMBIN-WALSH:** Okay. Mr. Khan, I have a letter here dated July 24, 2018. It was sent to the Water Resources Management Division of MAE from Nalcor from Peter Madden. It's requesting permission to perform capping on about 70 acres of wetlands within an area near the Edwards Brook Camp. The permit request was made with an expectation by Nalcor that wetland capping would be directed by government based on the IEAC recommendations. What was your role as it pertained to this request?

**H. KHAN:** Thank you very much.

My role as the regulator was to review that application for amendment, to put that through the regular review process and to ensure that it met all the requirements to issue the permit.

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

So once that was completed, once you did that, who did you communicate the results of your analysis to in MAE?

**H. KHAN:** I would like to elaborate on that. Generally, when we receive applications for permit, we have a generic email to which all applications are submitted. In this case, I don't know for what reasons, Nalcor followed a different process. The same application to Martin Goebel, senior advisor

with the department and then they also sent the same application to me via email. So it followed a somewhat different process, and knowing that Nalcor had been involved in this business for a very long time, so I assigned the application to one of my staff and asked her to review it and to prepare the kind of amendment, if the file is in order.

So as you said, the application was received on July 24 or 25, I did acknowledge application on July 31 to Nalcor indicating application had been received, it is being reviewed and once that is completed we will inform you about the path forward.

The staff prepared the amendment on August 2 and brought it to my attention. So I reviewed the amendment and then I called a staff member: Do you realize that the activity which is being requested to be approved is a part of IEAC recommendations, which are under review by the government? She said, I mean, I'm not involved in the IEAC process so I don't know about that. So I said okay, leave it with me and I have to think about it.

On August 3, I had a meeting with my ADM and I briefed her that I am not comfortable in signing this amendment because if I sign this amendment then, by default, I'm approving IEAC recommendations which are under review by the government. She said: Okay, let me think about it.

After I think a couple of weeks, on August 24, again, I reminded her that, look, we have to discuss this and we have to kind of make a decision. At that point, she said: Haseen, I think it is important that both of us should go and brief the deputy minister about your assessment of this file.

So, on August 29, myself and her had a meeting with our deputy minister and I briefed the deputy minister that this is my assessment and this is my situation and this is my position. The deputy minister agreed with my assessment. He said: Haseen, you



are right if approving this finding means, by default, we are approving the recommendations of IEAC, which are still under review by the government. After a brief discussion, he told me: Haseen, put this file on hold until we resolve this issue, until government have made a decision on the IEAC recommendations.

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

On a different topic, I'm just going to ask you about the levels of methylmercury today. It was almost four years later. So there was a prediction at the time that the levels probably weren't going to be as high into the future as the IEAC recommendations, the documentation and materials that they were using to make the recommendations. I understand that we continue to measure those levels. Can you tell where we are, four years later?

**H. KHAN:** Thank you very much for your question. It's a very good question.

I have been involved in that right from 2016, because Martin and I were the ones who prepared that water-monitoring plan. So based on the data we have, we have about 3,000 samples for which we have data. All that information is available on our webpage. We have created a special methylmercury webpage and, to date, monitoring, with the exception of a few seasonal spikes, had not shown any alarming level of increase in methylmercury as predicted by the Calder model who was with Harvard at that time.

Just also for the information of the Members, we in the division operate under the principle of transparency and accountability, so we have developed this webpage. We call that webpage a one-stop shop on all information on all information on methylmercury. All water monitoring which we are doing is available there.

In addition to that, there are a number of other monitorings. Biota monitoring, which is being carried out by Nalcor contractors as part of (inaudible). We have provided links to that information also on the webpage.

To answer your question, yes, so far, with the exception of a few seasonal spikes, we have not seen any kind of substantial increase in methylmercury levels based on water monitoring.

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

That's all the questions for me right now.

**L. STOYLES:** Thank you, Mr. Khan, for coming today.

You're still in the same position as director of the Water Resources Management Division in the Department of Environment and Climate Change. I'm assuming you had the authority to give this permit on your own; is that correct?

**H. KHAN:** It's a very interesting question. The authority comes under the *Water Resources Act*, and authority is delegated by the minister to the director of the division. But you see the delegation of the authority has two dimensions. One is the dimension of responsibility that you have to discharge that delegated authority with full responsibility. Second is the question of the dimension of accountability. Whatever decision you take, you have to be full accountable for that decision.

Yes, I do have a delegated authority from the minister to sign permits, but I have to exercise that authority with caution, and I have to exercise that authority by the established protocols and procedures. For your information, in our division we issue over 600 permits every year. We have to be very consistent and kind of transparent in our process. We have to be fair, because we are dealing with more than 600 proponents. We cannot say for one

proponent we will follow this rule; for another, we will follow this rule. We have a standard operating protocols, standard operating procedures and each application goes through that process.

As a part of that process, if there are any flags at any stage, the process stops immediately. I give you one example; this is not an isolated case. Often, we get applications and we realize that this project has to be registered under Environmental Assessment Act. Immediately, we will put application on hold, inform the proponent, and refer the file to EA process. Until we hear from EA, we won't take any action. So to answer your question, yes, I have delegated authority, but I exercise that authority as by established protocols and procedures.

**L. STOYLES:** So after reading the Auditor General's report – and I'm assuming you've read the Auditor General's report – would you have made a different decision?

**H. KHAN:** No, I would have not because if I did that, all of us would have been, the government would have been in a much more bigger problem than what we are in at this point in time. Because, number one, I would have not made the proper use of delegated authority. Number two, by default, I would have overstepped my authority. Number three, I would have taken a decision on a file – I would have bypassed the government review and approval process.

**L. STOYLES:** So my last question is: Was there any political interference with you making your decision? Did you make the decision totally on your own? You just said you would have communicated with the minister and with the department. So I'm just wondering if there was any political interference.

**H. KHAN:** At any point in time, there was no pressure or interference, because as I said we have – even if there's a pressure or

interference, I mean we are bureaucrats. Our job is to be fair and consistent, so we follow established protocols. So to answer your question, in this case, there was no pressure, no interference. The application went through due review process as by established protocols and procedures. It was given any preferential or non-preferential treatment.

**L. STOYLES:** Thank you very much.

**P. PIKE:** I'm just wondering about the follow-up requests and follow-ups to the permit amendment that were made during July and August of 2018. I'm just wondering if that was brought to your attention, if there were – because of the timing that was involved and if the amendment was going to be approved, then it had to be done in a certain time frame in order for the mitigation to be done.

So I'm just wondering were you aware of those? And if you were, wouldn't you think that was something that you would take beyond the deputy minister? That you would certainly say if we don't approve this they're not going to be able to do it and so on. Were you fully aware of the consequences of not doing this?

**H. KHAN:** Very, very good question. Thank you very much.

First of all, we are bureaucrats; the deputy minister is the head of the department. We don't go beyond the deputy minister. Any issue, any suggestion, any consideration, we stop at the deputy minister because that is how the government operates. The deputy minister is the head of the department and once we have conferred our position to him or her, that rests with him or her.

But to answer your question, first of all, let me give a different perspective. Nalcor was part of IEA; they were a member of the committee. Nalcor was fully aware that wetland capping is a part of IEAC

recommendation. In spite of that, I don't know what motivated Nalcor to apply for a permit for an activity which was under review by the government, number one.

Number two, during this entire process, I never got any call from any Nalcor officials that this is an urgency and this has to be processed. Second, if it was so important for Nalcor, Nalcor is fully aware of our permitting process. Why Nalcor did not put it in writing that this work must be completed by this date and government has to take some action. There is no record of that anywhere.

**P. PIKE:** Okay, thank you.

**J. BROWN:** Thank you.

I'll bring attention to the letter that was originally submitted to yourself from Peter Madden. In the letter, it asked for the amendment from the permit, especially in the Edwards Brook Camp area, they did say that the work was planned to be completed by December 1, 2018.

Within your own department, wouldn't you consider that a timeline or a deadline that this would have to be approved by for them to complete the work? Would you take that into consideration as like the end goal?

**H. KHAN:** Very good question.

Not at all, because the language says it is planned, the work to be completed by December 1. It did not say it has to be done by December 1, first thing. The second thing is, when we issue permits, proponents comes to us that I will complete project by this date. Then they will come back to us again, oh, Sir, for obvious reasons we could not complete, can you extend the permit? I say yes, we will issue the amendment and we will extend the duration of our permit.

So it's a very standard procedure and that is why we issue amendments. Generally, our amendments are to extend the date of the

permit to complete that particular undertaking.

So in this case, just like any other application, it is planned that work is to be completed by December 1. It was not confirmed. It was not a firm date and if it was that important, as I said earlier, Nalcor should have written a letter to the deputy minister or to me or to anyone else in the department that this is a priority for us, it has to be done by this date.

Actually, if you go through our general records, after August 24 Nalcor did not make any follow-up inquiry: what is the status of this amendment? The only informal reference after that was at a very low level, front-line staff meeting on October 11. So I don't know what was Nalcor's plan.

**J. BROWN:** So after August when you informed Peter Madden that the permit was now on hold pending, I guess, some decision from higher up, there was no other communication from Peter Madden on this file at all after that point.

**H. KHAN:** I will correct. I had no communication with Peter Madden. Peter was dealing with Martin Goebel and Martin Goebel will talk to me. So I had no direct communication with Peter Madden.

**J. BROWN:** Okay.

**H. KHAN:** So all the information which came to me, came through Martin Goebel. And as far as my information is concerned, based on my review of Auditor General's report and all that information, Nalcor did not make any official inquiry regarding the status of the amendment after August 24.

**J. BROWN:** And after August 24, Mr. Goebel never approached you with this file either, after that date regarding any communication from Nalcor?

**H. KHAN:** Mr. Goebel and I have very long-term working relationship. We have been

colleagues; Mr. Goebel has been my supervisor for 21 years and I consider him one of the best professional engineers in the province. We do discuss technical matters from time to time and this application was discussed between two of us. I told Martin: Martin, I'm not comfortable in signing this permit because this permit is directly approving recommendations of IEAC, and he was fully committed. He said: Yes, Haseen, you are right. I told him I am going to bring this file to the attention of the deputy minister.

**J. BROWN:** Perfect, that's all my questions.

Thank you, Mr. Khan.

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

I'm just wondering, when we're looking at the process, the permit amendment request, so in determining if this type of request requires a policy decision, is that typically a responsibility for your position? Have you been in this situation before, for example?

**H. KHAN:** You see, this is actually a very interesting question. I have been reflecting with this myself for a very long time when I was dealing with this amendment. This was a unique file. I have not dealt with any file which is under review at a very high level of the government. I have not come across any file where there are recommendations which are being reviewed. But to answer your question, there are a number of guesses where there are policy issues. I can give you examples.

For example, off Torbay Road there was a residential development. The area was zoned, the conservation area, and the application was for a residential development. So it was a policy issue. I briefed my superiors that no, this permit cannot be issued until the City of St. John's changes the land use zoning of that area. So, yes, I do deal with that kind of policy issues, but not at this level.

As I said, every year we issue on average 600 permits annually and we receive about 650 or 660 applications. So it means 50 to 60 applications are either rejected every year or put on hold for various – either the application is incomplete or there's a policy conflict or the project has to go through EA process.

As I said, our approval process is highly streamlined and robust. We make sure that we are fair and consistent with each and every proponent. We don't treat anyone kind of favourably or unfavorably.

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

The Auditor General's report, when she and the Office of the Auditor General assessed Criteria 3, which was whether appropriate communications relating to this permit, whether it was facilitated by the proper processes at the Department of Municipal Affairs and Environment, they did find that yes, the division used appropriate processes for the wetland capping permit amendment request. However, there is a statement that the deputy minister did not bring the permit amendment request to the attention of Minister Parsons or Cabinet Secretariat or ensure there was follow up with Nalcor. Furthermore, there's an interesting point that's made in the report. There's an acknowledgement that the request was placed on hold by the division and it was based ultimately upon the direction of the deputy minister. There was a decision to bring the policy decision to the premier.

Now, it is stated in the report that officials at the division advised the Office of the Auditor General that in their experience of the department's permit processing, the wetland capping request was the only instance where a request required a policy decision from Cabinet prior to approval. Can you comment on that, please, Sir?

**H. KHAN:** Yes. First of all, I agree with the report of the Auditor General. There are non-partisan people. They have done excellent work. They follow established protocols and procedures. I have dealt with them on two audits, so I have very high regard for them.

To go back to your question, first of all, I did not put file on hold. My job is to make recommendations. I made recommendations to the ADM, I made recommendations to the DM and they accepted my recommendations and it was the departmental decision to put the file on hold until government makes a decision on IEAC recommendations.

As far as communication aspect is concerned, the communication regarding department process was very clear between me and my superiors and that was communicated to Nalcor, I'm sure, clearly and kind of on a timely basis. But what were the other dimensions of communications; I was not involved in that so I can't comment on that.

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

So is it, in your experience, the wetland capping request, was that the only instance where a request required a policy decision from Cabinet?

**H. KHAN:** Yes, I have mentioned that. That was the only file in my career where kind of the policy decision had to go to the highest level of the government. As I said, there are other policy issues, but those policy issues could be at municipal level, those could be at environmental assessment level, or could be another thing.

I can give you another example. People come to me all the time that I want to build a house in this area and I review the application and I said no, you can't build the house there because you are in the 1-to-20-year flood zone. And they say, why can't I build, because this land belongs to me? So I

said our policy says we will not allow to build any residences in the 1-to-20-year flood zone. I tell them that you have false sense of ownership. Land does not belong to you; land belongs to the river. The river can reclaim that land whenever it wants, and that's why we have floods.

This is another example that there are policy issues, but at different scales, not at that scale that we have to go to the Cabinet on every file. This is the only file which has gone to that level.

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

Did you receive any communication about wetland capping from the department's executive prior to receiving this request?

**H. KHAN:** No, there was discussion between me and Martin that Nalcor is planning to apply for an amendment and based on that discussion, because I am a regulator, so I said, oh, this is Labrador, the first thing which came to my mind is I should contact my counterparts in Indigenous Affairs – will it require any Indigenous consultation?

Actually, I will give you some more information. You see, I was the one who signed the original permit, the main permit for this Muskrat Falls Project, which we call permit 6933. After that, we received six amendment requests from Nalcor to that permit. Out of six, five were processed. This was the only one which was not processed. That speaks to the process itself.

**H. CONWAY OTTENHEIMER:** Okay.

I just want to go back to something you stated initially in your testimony about the general process that when you receive a permit amendment request there's a typical process, but that Nalcor followed a different process and you weren't sure why. So this inconsistency, could you just elaborate on that for us please for clarification?

**H. KHAN:** Yeah, let me clarify. Actually, as far as the review process is concerned, that is the same for each and every application because that process is kind of managed by us. There was no change in that process. The only difference was that a lot of the applications coming to front-line staff, to the generic email, it was sent to senior people, such as the senior advisor and myself. So that was my point.

As far as the review process is concerned, we have well-established flow charts and I provided a copy of those flow charts to the Auditor General's staff and each application has to go through that flow chart where we check if the application is complete, if there is proof of land of ownership, has the locality been completed, are there any EA requirements, are there any land use conflicts, are there any other policy dimensions? So that process is the same and this application went through that process.

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

Those are all my questions for now.

**B. WARR:** Good afternoon again, Mr. Khan. Nice to see you.

I just want to go back to some testimony that we heard earlier on from Peter Madden. His testimony outlined that his key contact within the department of MAE was through Water Resources. Would you agree with that, and if so, was that with you?

**H. KHAN:** Thank you, Mr. Warr, and nice to see you, too.

Yes, Peter was in contact with a number of our front-line staff, with whom they used to meet on a quarterly basis. So I won't negate that statement, but as far as this amendment is concerned, based on my information, Peter's main communication or contact point was Martin Goebel.

**B. WARR:** Okay, thank you.

I'm just going to take you through some working timelines. On the 25th of July 2018, Nalcor submitted a permit amendment request to MAE to perform wetland capping, that's on the 25th of July 2018. On the 31st of July, Nalcor followed up with MAE asking for a status update on the permit amendment. Three or four days later on August 3, Nalcor follows up again with MAE on status of permit amendment requesting the time pressures. Six days later, Nalcor follows up with MAE on the status of the permit stating time pressures. On August 29, Nalcor follows up with MAE on status of permit requesting time pressures.

Two questions. Number one: Do you feel that Nalcor was being overaggressive in their wanting to get this permit signed off by your department? Do you feel that they were being overaggressive in their demands for the approval of this permit is number one?

Number two: You mentioned earlier on when one of my colleagues asked you a question, you mentioned – if I heard you right, and please correct me if I'm wrong – that there was nothing communicated in writing.

Can you tell us how these requests were forwarded to you?

**H. KHAN:** Thank you, Mr. Warr.

There was nothing in writing. I think, as I said, Peter and Martin, they were in touch with each other all the time because both of them were members of the IEAC. So they did have that working relationship. As far as I recall, I think all of Peter's communication on this particular file was with Martin Goebel and Martin will kind of communicate that information. He communicated it to me once or twice, but once I told him: Martin, I cannot sign this permit until government makes a decision. Then he did not bring up this with me.

Now, he might have briefed others and I'm not kind of aware of that. But, again, yes, to the best of my knowledge, all these inquiries were, I think, either by phone or by email.

I don't think in this entire process anyone from Nalcor came firmly: look, we have to complete this work by this date. I have not seen that type of information.

**B. WARR:** So in saying that, you don't think that they were overaggressive in the way – some of these requests were only two and three days apart. Was there a communication issue? Obviously they felt they weren't getting the answers that they thought they deserved.

**H. KHAN:** Since, Mr. Warr, I was not directly communicating with them, so it would be difficult for me to comment what was their intent and what was the nature of that communication.

**B. WARR:** Okay, that's fair.

Thank you, Chair.

Thank you, Mr. Khan.

**CHAIR:** I just wanted to clarify when you say there were no written communications. According to the Auditor General's report, the follow-up by Nalcor in August 2018 on three separate occasions: "... followed up with the Senior Advisor via email on the status of the permit amendment ...." That would've been Martin, I guess, that he would've followed up with. Neither of those emails were copied to you?

**H. KHAN:** No, they were not, to the best of my knowledge. Again, I will say, these emails were just to inquire when are we going to get that amendment. I don't think those emails kind of highlighted the issue that we, as a proponent, have to complete this work by this particular date.

**CHAIR:** Well, I hate to disagree, but according to the Auditor General's report,

the emails: "... via email on the status of the permit amendment and repeatedly stressed" – this is in the Auditor General's report – "the urgency for getting the permit amendment approved, emphasizing that 'the window to complete the [wetland capping] work [was] closing'"

That was clearly identified in the emails that the gap was closing on the opportunity to get the wetland capping done. Was that information shared with you?

**H. KHAN:** I don't kind of disagree with you. I don't recall whether it was shared with me or not, but my point has been that when they submitted the application they said we plan to complete the work by December 1, 2018. But after that, yes, they made inquiries about the permit. The highlighted the urgency, as I have read in the Auditor General's report. But they never said any specific date, that look, guys, if we don't get this amendment by November 30, we are done; we can't do any work. That is what I was alluding to. I was not contradicting either the Auditor General's information or any kind of correspondence from Nalcor.

**CHAIR:** But reading the Auditor General's report, it would seem to indicate that Nalcor was indeed expressing a need or the urgency of getting this information done, and while they did not put a date on the window to complete, they did say that it was closing. So that would have naturally triggered, I would have thought, some kind of discussion at the department in relation to getting the permit amendment approved. Again, I ask: Were you involved in any of those discussions?

**H. KHAN:** I was not involved in those discussions and I am speaking based on my experience of issuing 600 regulatory permits every year. That problem always come to us that: look, we have to complete this project by this particular date, that particular date, and that is from where I was coming.

To be fair to the department, I think this file is a priority file of the department and the department's entire focus was to get government's sign-off on those IEAC recommendations and once that was done, then the amendment will automatically be issued. So I think that is how the department was linking these two items.

**CHAIR:** So you mentioned earlier that there were six amendments made to the original permit 6933.

**H. KHAN:** Yes.

**CHAIR:** Five of those amendments were approved directly by your division. This sixth amendment wasn't approved because of your opinion that you presented to the deputy, that because it was a recommendation of the IEAC, it should not be approved by your division until somebody higher up approved that particular recommendation.

Was there anything else about the request other than that piece that would have prevented it from being approved?

**H. KHAN:** Okay, first of all, out of those six amendments, this was amendment number five.

**CHAIR:** Okay.

**H. KHAN:** Okay.

So before this there were four amendments, and after this there were one amendment. All those five amendments were very procedural in nature. For example, first, the Muskrat Falls Corporation was created. So the permit was issued in the name of Nalcor. After that corporation was created, the amendment has to be issued to reflect the correct owner of the project.

Then the department wanted to impose some conditions regarding the construction of (inaudible) so we kind of issued an amendment. Then the permit expired

because when the permit was issued in '13, it was valid only up to 2018. So then we extended the duration. So all those amendments were procedural and very operational in nature. They had no policy dimension, but this amendment had a strong policy dimension. It was linked to the recommendation of IEAC which was supposed to be approved by the government.

**CHAIR:** In your discussions with the deputy and Mr. Goebel on August 29, I believe, you said you met with the deputy minister and the recommendation was to put this permit amendment on hold at that time. Mr. Goebel would have received these emails from Nalcor about the urgency and the window closing. Do you recall in that meeting whether there was any discussion around that urgency, those emails, in that particular meeting that you guys had?

**H. KHAN:** First, Martin Goebel was not in that meeting. That meeting was only between myself, my ADM and deputy minister. So only three of us were in that meeting. I explained to the deputy minister my position, and by the way he's a very able and competent deputy minister. He has been in the government far too long and he takes decisions when decisions have to be taken. He told me then and there – it didn't take too long for him, once I explained that: Haseen, yes, you are right and I agree with you. We have to get the recommendations approved before we can take any operational – he used the words “any operational decision.” Issuing this permit is an operational decision, subject to that policy approval.

**CHAIR:** Yeah.

But did you have any discussion about an urgency to get it done, i.e., get the policy initiative approved? Was there any sense of urgency in the meeting with you, your ADM and the deputy minister that if this permit amendment didn't get that policy approved that you felt was it needed that you were



reaching for – was there a sense of urgency to get this done?

Was a Cabinet paper prepared? Was there a briefing note for the minister prepared coming out of your meeting on August 29? Are you aware of any of those things happening that would have created this sense of urgency that needed to be created in order to move it, as you suggested, to that level where it needed to get approved by Cabinet.

**H. KHAN:** Thank you for your question.

First of all, it is outside my area of responsibility. I'm a regulator. I issue permits.

Once I have communicated my position to the deputy minister or to my supervisor, and once they have agreed with my position, for me, my job is over. This is what we do with all proponents. Once we have identified any deficiency or any shortcoming, we inform the proponent. The file is on hold.

We don't chase that proponent; we don't do any follow-up because we issue more than 600 permits every year. If we start chasing all these proponents, we won't be able to do our work because we have a very limited number of people and we have a 30-day turnaround for every application if the application is complete. So to answer your question, that was outside my area of responsibility because my job was over once I briefed them that there is some policy conflict with this amendment.

**CHAIR:** So when you did your briefing with the deputy minister, you provided him with some kind of a briefing note, I would assume, at the time.

**H. KHAN:** No, I did not provide any briefing note; I just took the amendment file with me, which I still have with me. I showed it to him and I briefed him verbally.

**CHAIR:** Is it fair to say that was your last involvement with the file then, in terms of the application amendments? Or was there continued to be requests made to move this project forward?

**H. KHAN:** No, I would say that was my last discussion with the deputy minister on that file. After that, I came back from the meeting and I told my staff that we will put this file on hold until as directed by the department until government makes a decision on these IEAC recommendations.

**CHAIR:** Okay, thank you.

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

Mr. Khan, just looking at the Auditor General's report and it's noted there in the report that there was a quarterly meeting in October of 2018 of the department staff with Nalcor officials. According to the Auditor General, it appears to have been the last opportunity for the department to have recognized that Nalcor's contractors would need to stay in the Edwards Brook Camp area in order for wetland capping to be an option.

So I understand – and correct me if I'm wrong – that at that meeting it was between Nalcor and the division of the department, and the permit amendment was mentioned. Nalcor did note that the fish habitat compensation work is nearing completion. It's also referenced that the division does not share this information with its director.

So could you please elaborate on that? Were you in attendance at that meeting in October of 2018?

**H. KHAN:** First of all, I was not in that meeting and I never attended any quarterly meetings because quarterly meetings were among front-line technical staff of Nalcor and Water Resources. The purpose of those meetings was just to discuss how work is progressing on the site. Are there any issues in terms of siltation, in terms of

erosion, in terms of landslides or any other aspect of the work?

As documented in meeting minutes pointed out by the Auditor General's staff, yes, Nalcor did make a very informal mention of this statement, but the staff who were involved in that meeting did not have that big picture. They were not involved in IEAC. They were not aware of IEAC recommendations and they could not establish the linkage, to be fair to them, between this ongoing work in (inaudible) Edwards Brook and wetland capping. They will never inform me or talk to me about those quarterly meetings because those were routine operational matters and that was maybe one of the reasons that first they could not establish the linkage.

Second, they would not report those deliberations to me and that was their position.

**H. CONWAY OTTENHEIMER:** Thank you for that clarification.

**CHAIR:** Does anyone else have any questions?

Would the Auditor General like to make any comment?

Thank you, Mr. Khan, for coming here today.

Normally what we do, once we finish, is we give you an opportunity, if you'd like to have any closing remarks by all means you're welcome to do so, but once again thank you again for coming.

**H. KHAN:** Thank you very much.

I have nothing to say. If at any point in time, if you have any point in clarification or any follow-up questions I would be pleased to answer, but I just want to say for the record that we are public servants, our job is excellence in public service delivery. Our process is highly robust and highly

streamlined and we deal with public safety issues. We deal with drinking water safety, damn safety, flood forecasting, flood risk mapping and we are very proud of our work.

Our work had been recognized locally, nationally and internationally. We have received funding from NATO, European Space Agency to share our knowledge and our technology with developing countries. We have completed projects in Egypt, in Jordan, in Russia, in Colombia, in Honduras, just to share our technology at no cost to the Government of Newfoundland and Labrador.

So we are very proud of our work and we are very pleased that we are able to put Newfoundland and Labrador, from water perspective, on the national and international radar screen. We have a very small team, but we have received four Public Service Award of Excellence and two of our teams have received Public Service Award of Excellence. So that is a testimony to the quality of our work we do in Water Resources.

**CHAIR:** Thank you.

Thank you and your division for the work you do.

**H. KHAN:** Thank you very much.

**CHAIR:** I am quite familiar with it; I'm from Stephenville - Port au Port.

Thank you.

**H. KHAN:** Thank you.

**CHAIR:** We will now recess until our next witness at 3:45.

Thank you.

### **Recess**

**CHAIR:** Hello, welcome back. I call to order again now and resume the public hearing

on the *Physical Mitigation of Muskrat Falls Reservoir Wetlands* report of the Auditor General. I'd like to welcome Ms. Karen O'Neill to our hearing and thank you for your appearance here today.

The Standing Committee on Public Accounts is dedicating 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 items: To 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 made 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.

I will now ask the Clerk to administer the oaths or affirmations to Ms. O'Neill.

### **Swearing of Witnesses**

Ms. Karen O'Neill

**CHAIR:** Thank you.

Before we get started now, we'll introduce ourselves and Members of the Auditor General's department who are with us.

My name is Tony Wakeham; I'm the MHA for Stephenville - Port au Port and the Chair of the Public Accounts.

**J. BROWN:** My name is Jordan Brown. I'm the MHA for Labrador West.

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

**B. WARR:** Good afternoon, Ms. O'Neill.

It's Brian Warr, MHA for Baie Verte - Green Bay.

**P. PIKE:** Good afternoon.

Paul Pike, MHA, Burin - Grand Bank.

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

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

Sherry Gambin-Walsh, MHA for Placentia - St. Mary's.

**D. HANRAHAN:** Denise Hanrahan, Auditor General.

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

**J. TUTTLE:** Hi, Jennifer Tuttle, Audit Principal.

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

**CHAIR:** Thank you, everyone.

Before we get started with the Committee questions, usually we'll just go around in minutes and ask their questions, but we always ask people who are coming as witnesses if they'd like to have any opening remarks or comments.

**K. O'NEILL:** No opening remarks, but I guess for context: I was the communications manager for Nalcor Energy

Muskrat Falls during the time period, I guess, of the Auditor General's report, and have been an employee of Hydro/Nalcor since 2006 in various communications functions.

**CHAIR:** Okay, thank you for that.

I'll turn to my colleague on my left to start some questions.

**J. BROWN:** Thank you for being here.

I'll be pretty brief; I'm just more focused on a particular time and space. So in July of 2018 – July 23 to be precise – you submitted a communications plan over to Ms. Shea at Municipal Affairs and Environment on the wetland capping as part of the fish habitat compensation plan work. Then, the following day, on July 24, 2018, you retracted the plan and said it was put on hold. What was the rationale for putting that on hold at that time?

**K. O'NEILL:** Sure, thank you for the question.

The communications plan at that time actually went to two directors of communications, as my normal protocol would have been primarily to engage the director of communications at Natural Resources and then, depending upon the topic, those communications plans would also go to other departments. In this case, because of the topic, it went to Erin Shea, director of communications for Municipal Affairs and Environment.

So on the 23rd the plan went over, it talked about – I guess for backup; communications plans are done all the time on various topics. Some proceed; some don't. It's a way of preparing for the activities you're going to undertake on a specific topic. You could write multiple communications plans and not every one will see the light of day.

With that in mind, this did go over. We were preparing to undertake stakeholder activities

and public engagement on wetland capping as well as fish habitat compensation. Diana and Erin would received that plan on the 23rd and then on the 24th I did say, hang tight, we're not going forward; I'll circle back with you again next week.

The reason for that, while I can't recall any communication that would have taken place to why that would have been delayed, but because we didn't have approval on the permit and we did not have alignment with government on proceeding with wetland capping, we would not have proceeded with any public communications activities. Therefore, we would have put that plan and those activities on hold.

**J. BROWN:** So at this time, who directed you to put that on hold? Was that internal or was that from Mr. Bennett? Who was directing that this be all put on hold for now?

**K. O'NEILL:** So I don't recall any direction. These things we would communicate within our own groups.

**J. BROWN:** Okay.

**K. O'NEILL:** And again, as I mentioned, we did not have a permit to proceed. We did not have alignment with government to talk about wetland capping and we would certainly not go out and talk about something that we did not have alignment with government on. So these would have been conversations we would have had internally to notice or to identify that we did not have alignment. It was premature to communicate and, therefore, we would have put those activities on hold.

**J. BROWN:** Perfect. Thank you for clearing that all up for us.

Thank you so much.

**L. STOYLES:** Thank you for coming today.

So you're still in the same current role, I understand. You answered Jordan's

question. When you reported your findings and that, who did you cc on any of your correspondence in your role as communications? I am just wondering who you would have cc'd. Would any of the politicians be cc'd or just the deputy ministers in the department? How much communications would have gone through your hands? Ms. Shea, who testified at the last hearings, we had talked about, I am going to say, the water-cooler chats about the department and how they felt sort of about the project. I'm just wondering what your thoughts are on that.

**K. O'NEILL:** Sure. Just for a minor clarification. I am no longer the manager of communications for the Lower Churchill Project. That position of mine ended in June of 2021, so I am in a different communications capacity, employed by Newfoundland and Labrador Hydro.

The communications that went over on July 23 was sent directly to Diana Quinton with Natural Resources and Erin Shea with Municipal Affairs and Environment. That communication was also cc'd to an employee of mine, Renee Paul, as well as my supervisor, Deanne Fisher, and this would have been normal protocol for communications.

Again, as I mentioned earlier, we would send communications to various departments. It was always to the Department of Natural Resources as our shareholder and then, depending upon the topic, it could go to other departments. For the Muskrat Falls Project, it was primarily to Natural Resources first and then Municipal Affairs and Environment because of the topic.

Then what would have happened is once it would reach in the hands of those directors of communications, it was up to them to forward it to their appropriate representatives in their departments.

**L. STOYLES:** So you didn't send it to Cabinet?

**K. O'NEILL:** No, and that was never my process or protocol. We communicate directly with directors of communications within the various departments in applicable departments.

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

**H. CONWAY OTTENHEIMER:** Just one question, Ms. O'Neill.

With respect to your comments that you don't recall that you received any direction and you were aware that you just did not have the permit to proceed and any conversations you would have had would have been internally – you wouldn't have received any direction, so who would have made that decision? Would that have been a decision yourself? How did you come to know also that there was not a permit to proceed and with whom would you have had conversations with internally, were there specific meeting? Just elaborate a little bit on that so that we understand the process, please.

**K. O'NEILL:** Sure, thank you.

I would like to clarify. It is not that I don't recall anyone directing me to pull that or to put that communications plan on hold. What I recall is that the communications plan was provided, we had internal discussions about – again, this is normal process, so in preparing the communications plan multiple people would be engaged.

On this specific topic Peter Madden, who I know testified here today, Gilbert Bennett, my other co-workers, supervisor, so we would all come together to discuss an item that we were going to communicate about. In this case it was wetland capping and fish habitat compensation. In some instances, those plans would go to different subject matter experts for review and input. I would primarily identify the key messages, the

activities, the stakeholders, but the input would be provided again by subject matter experts, depending upon the topic of the day.

In this one in particular, I worked very closely with Peter and Gilbert and others. I knew very well that the IEAC recommendations had been put forth to government. I knew that no decision had been made at that time by government to proceed on any of the IEAC recommendations. However, we were preparing for an initiative that we had put to government and we were hoping we could proceed with this initiative. Therefore, a plan was put in place to that effect.

Then, given that we just didn't have the approval at that time, we put the plan on hold.

**H. CONWAY OTTENHEIMER:** It is safe to say that you were hoping that this plan or this initiative would go forward. Is that correct?

**K. O'NEILL:** Yes, that's correct.

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

Those are all my questions.

**K. O'NEILL:** Thank you.

**S. GAMBIN-WALSH:** Just a quick question. How much time goes into drafting communication plans?

**K. O'NEILL:** It really depends upon the topic. In this case, I recall I looked through my notes. I think that was submitted on the 23rd. Drafting of that one probably started on the 21st or the 22nd. We typically like to start from a previous plan. So if key messages were developed for other plans, stakeholders were identified, activities were identified, we start from a previous plan and build upon that and change the topic. It really depends on the complexity of the

topic. Some, they could take an hour, and some could take a couple of days.

**S. GAMBIN-WALSH:** Okay. You did that based on discussions that you had with your colleagues at Nalcor and based on, you just mentioned, that government had accepted the IEAC recommendations. Is that why you drafted this communication plan?

**K. O'NEILL:** No, for clarity, I think I said the government did not accept the IEAC recommendations.

**S. GAMBIN-WALSH:** Right.

**K. O'NEILL:** We developed the plan. We were already going forward with our planned fish habitat compensation work. While that did not, in itself, demand or require a communications plan, we were always communicating and engaging on the different activities we were doing with residents of the affected area. That could be through our website, through social media, Facebook posts, through our office in Happy Valley-Goose Bay. So we were constantly preparing material and communicating with various stakeholders.

So on the fish habitat compensation program, we would have been being prepared to talk about that upcoming work, mainly from a safety perspective because it was about ensuring people were aware of the work we were doing, especially if they were operating on the river, that they knew that we were operating in a particular area. So with the wetland capping, we were moving forward with building that work into the fish habitat compensation plan and preparing to communicate on both topics at the one time.

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

**CHAIR:** I just wanted to ask a couple of quick questions. Who was your immediate supervisor?

**K. O'NEILL:** I guess I had two. My immediate supervisor from a communications function was Deanne Fisher. She's director of communications for now Nalcor or Newfoundland and Labrador Hydro. It was Nalcor Energy.

**CHAIR:** Yeah.

**K. O'NEILL:** But my closest working supervisor would have been Gilbert Bennett.

**CHAIR:** Okay.

So the direction to "prepare this plan" would have come from who?

**K. O'NEILL:** I guess, when you prepare a communications plan in our function, I wasn't directed to do it. These would be conversations that I would taking part with, with other colleagues. So I was at the leadership table learning about topics, learning about issues, projects that were upcoming. So it would me to come to others to say I think we should get out ahead on this topic or this topic, whatever the –

**CHAIR:** So was there someone had final sign-off on the communication plan once it was drafted?

**K. O'NEILL:** The final sign-off yes, would ultimately – I would not send anything to government unless I had final sign-off from Gilbert and he wouldn't sign-off on it unless we had final say – or I wouldn't say final say, review by the subject matter expert.

**CHAIR:** Okay.

So there's a bit of work that had gone into this. Because it wasn't just you woke up in the morning and wrote up this great communications plan and then everything happened, obviously from what I'm hearing, a number of people sat around the table, talked about the need, talked about what you were doing, talked about the fish habitat compensation piece. Did a considerable

piece of work, whether it was one day, two days before. You can tell if I'm wrong, but it would seem like this was well thought, that you were putting this together. You were developing a good communications plan that would get the sign-off of Mr. Bennett and others. Then it was sent in to Municipal Affairs and Environment to let them know this is what your plan was. Then the next day, after all that, it was put on hold.

So how did that moment happen? I guess I'm trying to understand, as my colleague said, because one minute it's let's get this plan out there and then the next minute, the next day, it's okay, no, we're not going to do this now. We're going to pull it back and we're going to notify that the plan is on hold. I'm trying to understand the logic of what happened between that 24 hours of putting it out, because you would have known. The day you were sending this out, you would have known that you did not have or that the IEAC recommendation had not been approved, for lack of a better word. What we found out from government because, in speaking with the officials from the Water Services division, they said they were waiting on government to approve the recommendation before they could approve the amendment to the permit.

I'm just wondering how or what happened in that 24 hours that you decided just to simply say no, we're going to shut it down.

**K. O'NEILL:** It's not uncommon to write a communications plan or draft a communications plan that never goes anywhere.

**CHAIR:** I understand that, but this one went to the Municipal Affairs and Environment. That's what I'm struggling to understand.

**K. O'NEILL:** Yes, even once a plan is approved internally and sent to a government – Natural Resources at the time – you're preparing for what you're going to do. Sometimes those activities actually don't take place. You may not actually implement

your communications plan. So I don't get disappointed when I work on a document that doesn't get implemented because it's common; it happens. I can't say it's common, but it does happen.

In this case, yes, the plan went over to prepare for – I believe it might have been for the following week we were going to begin those stakeholder engagement processes. Our process at that time was always to communicate with Innu Nation first, followed by the two other Indigenous communities in Labrador, followed by the public, et cetera, and there was an order as to which we would follow stakeholder engagement prior to actually communicating publicly. So the plan was outlining the activities we were going to take, I believe it was the following week.

The plan went over. The next day I guess we realized or, through discussions internally, we realized that hey, we've got to put a hold on this because government and us are not yet prepared to go out and start this communications engagement process.

**CHAIR:** So this happened the next day after it had been sent out that it was put on hold.

**K. O'NEILL:** I don't recall what happened between or the communication that took place between the 23rd and the 24th. I know, through my emails, and the documentation that was provided, that on the 23rd the plan went over to say we were going to implement it, and on the 24th wrote and said, we're on hold; I'll circle back with you. There was no further communication provided or updated communication provided.

**CHAIR:** Right.

So August 24, 2018, it says Nalcor submits a communication plan – again, on the 24th of August. So that particular one, again, it doesn't say that it was recalled but we do find out on the 29th that the permit application was put on hold.

What happened to that particular communications plan that went in to Municipal Affairs and Environment on the 24th of August?

**K. O'NEILL:** That was a completely different plan, not related to wetland capping or fish habitat compensation. It was actually a plan that we were submitting to communicate about all of the reports and assessments that had been completed by scientific experts on behalf of Nalcor in relation to methylmercury.

So while related in the fact that it was methylmercury and it was related to looking at methylmercury in Muskrat Falls reservoir, it was not connected to the previous conversation. It was completely separated.

**CHAIR:** It wasn't connected to wetland capping?

**K. O'NEILL:** No, it was not.

**CHAIR:** Okay.

Thank you.

Any further questions?

I think we're good.

**K. O'NEILL:** Thank you very much.

**CHAIR:** Is there anything else you would like to add or does the Auditor General have anything they'd like to say.

**K. O'NEILL:** No, I am fine. Thank you very much and I appreciate the opportunity.

**CHAIR:** Thank you for taking the time to come in and meet with us. We really appreciate it.

**K. O'NEILL:** Thank you.

**CHAIR:** Thank you.



Now I would like to call for an adjournment to this current session of the Public Accounts Committee and the public hearing.

**AN HON. MEMBER:** So moved.

**S. GAMBIN-WALSH:** Seconded.

**CHAIR:** Carried.

The meeting is now adjourned.

On motion, the Committee adjourned.