THE CHAIRMAN: Ladies and gentlemen, we are ready to proceed. I gather you're Mr. Kulchyski?

MR. KULCHYSKI: That's correct.

THE CHAIRMAN: I'll let you proceed then.

MR. GREWAR: Sorry, this is Rudnicki?

THE CHAIRMAN: Kulchyski.

MR. GREWAR: Okay. We've got the presentations out of order then. You have no PowerPoint presentation?

MR. KULCHYSKI: No.

MR. GREWAR: I will have to swear you in. Could you state your name for the record, please.

MR. KULCHYSKI: Sure. Peter Kulchyski.

MR. GREWAR: Mr. Kulchyski, are you aware that it is an offence in Manitoba to knowingly this Commission?

MR. KULCHYSKI: Now I am, yes.

MR. GREWAR: Do you promise to tell only the truth in proceedings before this Commission?

MR. KULCHYSKI: Absolutely.

MR. GREWAR: Thank you, sir.

MR. KULCHYSKI: Thanks.

(PETER KULCHYSKI: SWORN)

MR. KULCHYSKI: Well, I'm currently head of the Native Studies Department of the University of Manitoba. Kathi asked me to say, or Ms. Kinew, that I was actually born in Bissett, Manitoba. I attended high school at Cranberry Portage at Frontier Collegiate Institute, the government-run residential high school. I did my undergraduate degree at the University of Winnipeg in Politics before my Masters and PhD at York University. So I'm a dyed in the wool Manitoban who is very happy and proud to have come back here. And it's an honour for me to address you. What I want to do in the brief amount of time that I've got, it is a
thoroughly -- an oral presentation. I am currently writing up an analysis for the Canadian Centre for Policy Alternatives about the Wuskwatim Statement of Understanding between Manitoba Hydro and the Nisichawayasihk Cree Nation. I will make that available to the Commission. It will be ready within a few days. Also I just haven't had time. I am a volunteer and I've been very busy with the teaching term but I will write up my notes for you from today and attach any other documents. Although I'm speaking to you at a very general level, I'm not going to be looking at the technicalities of any agreements for you so I believe you'll be able to follow what I have to say. Also I'm quite prepared to come back and deal with any further questions have apart from any you might have today, if you want me to, subject to both of our schedules.

What I'm going to speak to you about today comes into four categories. The first is communities. I think it's important I say a few words about the distinctive nature of Aboriginal communities because that's really the basis of Aboriginal and Treaty rights. Secondly, I'll talk about Treaties. Thirdly, I want to talk about contemporary agreements. And lastly, I want to talk a little bit about rivers and legacies. And I believe I can do this within the 20 minutes or half an hour that I've got. So let me begin with communities first of all. I think in general, I believe Canadians misunderstand some of the things that distinguish aboriginal communities from mainstream communities. And I believe I can do this within the 20 minutes or half an hour that I've got. So let me begin with communities first of all. I think in general, I believe Canadians misunderstand some of the things that distinguish aboriginal communities from mainstream communities. And I want to get a few of those out on the table because I think before we get anywhere, it's important to understand this. And so there's three points that I want to make. First of all, Aboriginal cultures are hunting cultures. They are not agricultural or they come from agricultural societies, they come from hunting societies. And there's a profound and basic differences between hunting cultures and other kinds cultures.

Most of the rest of multicultural Canada, whether you're an immigrant from Vietnam or England or Poland or where ever, you came either from an agricultural society or an industrial society with a whole different set and kind of values and understandings.

One of the distinctiveness of Aboriginal peoples is that the values, structures, the nature of the culture itself owes itself to the fact that it's a hunting culture. And I should say Manitoba is one of the last homelands in the world for hunting cultures. So when we talk about Aboriginal cultures, it's important to remember that they are not simply another link in the chain of multicultures. We can't say Polish, Ukranian, Vietnamese, Portuguese, Cree. In fact, there's a qualitative difference between Cree and all of those other cultures because of the nature of it as a hunting culture. Secondly, there's also a distinction between Cree and all of those others that I listed because of the fact that Cree were prior occupants of Manitoba. That fact means that my parents are Polish and Ukranian and I speak neither Polish and Ukranian. I walk around with my hand on my forehead like this and lament the fact that I don't know much about Ukranian culture and I try and pretend it's a grand tragedy but actually it's just a personally sad event. If the Cree language disappears from Northern Manitoba, the chances of the Cree language surviving in the world become greatly reduced. Portuguese language will continue to be practised in Portugal. Polish language and culture will continue to be practised in Poland. Vietnamese language and culture will continue to be practised in Vietnam.
It's a sad fact that Aboriginal cultures have Canada as their homeland. Well, the sad fact and the great fact. It means that we have the obligation, the responsibility and the great privilege of being the homelands of those cultures. And to the extent that we're keeping those cultures alive and vital we're making a contribution to the world's cultural diversity in a way that none of the other multicultural elements of Canada can quite claim. Last thing I want to say about Aboriginal communities is the extended nature of occupation of those communities. Families in Aboriginal communities can rest assured that their descendants will continue to be in those communities for generations to follow. All right. So if you're a Neckoway from Nelson House, you have a very good chance that there will be Neckoways in Nelson House 200 years from now. And you have to be concerned about that.

I'm a Kulchyski from Bissett. When my older brother passes away, there will be no more in Bissett. And that's a fact of life for most of us for the reality of most non-Aboriginal Canadians. It's not a fact of life for most Aboriginal Canadians. There is out migration from Aboriginal communities but there is also a long-term generational commitment family by family to every one of those communities that distinguishes them from the rest of the rural communities in Manitoba. So in my view, the fact that they are hunting cultures, that they are prior occupants and that they contemplate an extended occupation of particular areas of land, their homelands, into the distant future are things that mark Aboriginal communities out from non-Aboriginal communities and are one of the reasons why we have, not only the reason, but one of the main reasons why I think it's right that we have Treaty rights and we have Aboriginal rights.

Treaties have been with us in Manitoba for a long time and of course Treaty 5 was signed initially in Northern Manitoba in 1875 with various adhesions through into the 20th century. So I am on to my second topic now on treaties. It's only in the last 15 years that the Supreme Court of Canada has really started to look at what are the canons of interpretation? How do we interpret treaties? What do treaties mean? And in two particular cases that I want to mention, the Sioui case and the Marshall case which I wanted to just talk about at a very general level. The courts have said treaties are a lot more valuable than they have been treated through much of the first 100 years of the history. The Sioui decision of 1990 written by then Justice Dickson said that treaties need to be interpreted in a liberal and generous manner. And I'm paraphrasing. They said you don't just read the literal words of the treaties. You have to pay attention to what both parties were understanding when they came to the table.

The Marshall decision of 1999 emphasized that the oral history of Aboriginal peoples and other extrinsic evidence should play a role in interpreting the treaty. And it reaffirmed the nature of the Sioui decision. Both of those two decisions would tell us that we shouldn't look at the treaties the way we have for much of the last 100 years, which I would say has been based on the literal rendering of the treaties and I would characterize as a narrow and mean-spirited interpretation of the treaties.

The courts have said we need to take a liberal and generous interpretation of treaties. The treaties are now constitutionally protected since 1982. Section 35 says existing Aboriginal and rights are hereby recognized and affirmed.
I would say at a bare minimum, if you want to then say well what would a liberal and interpretation of the treaties look like? What would a liberal and generous interpretation of the treaties look like? What would the understanding of both parties be? There are two critical aspects. Certainly it was the understanding of the Federal Government that they were negotiating something like access to Aboriginal lands. They worded that as a land surrender. But what, in my view, they were actually getting was access to Aboriginal lands. What they were promising, what they certainly strongly promised in every treaty orally during treaty negotiations was that the Aboriginal people could maintain their way of life. And what the treaty itself indicated was that Aboriginal would continue to have hunting, fishing and trapping right on so-called unoccupied Crown lands. And it's that that I want to devote my attention to here, unoccupied Crown lands which is in a sense some of what we're talking about.

It's my view that if we were to actually have a liberal and generous interpretation of the Treaty we would recognize that Aboriginal peoples have an ongoing interest, a legal right and an interest in all unoccupied Crown lands in Manitoba and specifically in Northern Manitoba.

If we were to be liberal and generous, we would say it's our duty to ensure that enough unoccupied Crown lands remain intact in a way that would continue to support the hunting economy and way of life of Aboriginal peoples. And at a minimum to me, not really being liberal and generous, but at a bare minimum, that would mean understanding Aboriginal people as co-owners and co-managers of unoccupied Crown lands. Of consulting with them before we have a plan for a project and we're this far down the road. But actually talking to people before we make plans and say what are your plans, what lands do you need? How viable and sustainable is the hunting economy of your community? These are questions we should have asked a long time ago.

We should be asking now if we want to take a liberal and generous interpretation of the treaties the way the Supreme Court of Canada has said. And it's unfortunate to me that we don't. All we seem to come to this point where a project is proposed and we're well down the road before we can engage in serious consultation.

Thirdly, I want to turn then to agreements. It was certainly not the intention of the signers of treaties that they would be in a worse off position, particularly the Aboriginal signatories of treaties, that that would put them in a worse off position than people who hadn't signed treaties.

But the history of Manitoba in the last 20, 30 years has actually -- that's been the case. The Treaty nations of Northern Manitoba who got into agreements with us 100 years ago have effectively been punished for signing those treaties because they've gotten worse deals around hydroelectric development proposals than First Nations have in Northern Manitoba.

So the James Bay in Northern Quebec agreement compares favourably and is much better in many respects than the Northern Flood Agreement which even seen so generous that some of the parties felt they needed to buy out some of the provisions. The current Peace of the Braves in Quebec structurally is a much better agreement than the Statement of Understanding between Manitoba Hydro and the Nisichawayasihk Cree Nation which I've had the opportunity to look at, the October document. Primarily on a structural basis, we can argue about the amounts of money and about the sizes of the project, but structurally the Wuskwatim agreement, the Statement of Understanding says Wuskwatim -- the
Nisichawayasihk Nation will gain funds as a result of assuming some risk. They will be lent money and therefore they will assume risk for a project and therefore they will gain an equity position in the project. Structurally on the other hand, the James Bay Cree are being offered funding, $70 million a year for 50 years. And they actually, in the negotiations, talked about having an equity position. The Cree rejected that. They are getting effectively because these developments are taking place on their lands. Today, that deal, the Peace of the Braves, was negotiated after the Cree had a modern Treaty. So we can't even say the situation is different in terms of treaties. There's a treaty now in Northern Quebec, the James Bay in Northern Quebec agreement. There's a Treaty in Northern Manitoba, Treaty 5.

Why are we offering the Nisichawayasihk Cree Nation so much less? Why are we having them have to assume risk in order to take an equity position in a project? And in Quebec, they are saying you get money, you have no risk.

I'm not faulting the leaders of Nisichawayasihk Cree Nation. I think they do the best they can to get the best deal they can. But I'm saying we, the public, Manitoba Hydro and the Manitoba Government, aren't being fair to them. We're not offering them anything like the deals that are being offered in other jurisdictions.

It's my view in fact that Manitoba was founded on an Aboriginal fact, Louis Riel, concerns of the Metis and concerns of First Nations. It's my view as a proud Manitoba citizen that we should be leading the way in having Treaties respected and in developing modern arrangements with First Nations and with treaty nations that stand the scrutiny of other jurisdictions within Canada.

In fact, I believe this agreement, if it goes ahead, puts us behind other jurisdictions, puts us in last place. And is something that, as a Manitoban, I would hang my head over. And I would say we're not giving our First Nations and our treaty nations anything like the kind of respect they are getting in other jurisdictions. And actually that makes me ashamed.

Finally I want to turn to rivers and legacies and I'm not -- I have no expertise on environmental issues. I do have some expertise on treaty rights and on northern communities and northern cultures. But I travel on rivers. I've travelled on the Nelson River with bottled river. I've travelled on the Winnipeg River with bottled water. It's hard to survive as a hunter in the world today when you have to take water out with you wherever you go.

Rivers are the life blood of the hunting economies. They are the transportation routes. They connect people together. They are really how people survive. The current poster for the Department of Native Studies -- I will attach it to documents that I send you -- has an image by an Aboriginal artist called River People. I think that's quite true actually. If you look at the traditional maps of Canada and you look at many of those communities today, they are situated along rivers. And regardless of the various debates about the projects, I know that before the first wave of Hydro development in Northern Manitoba, you could drink the water on the Nelson River. And I know that now, practically speaking, most people don't. I know that now with this project that's proposed and future projects that's proposed, we're striking another stake in the hearts of hunters. And think about it. We don't hesitate to say that farming families are the basis of rural communities. And we invest in farming families because we want those communities. Right. The Federal Government is announcing $500 million for the beef industry because it's been hard hit. Have you ever seen an
announcement of that magnitude supporting hunting families in northern Canada? Has anybody done anything conscientiously to try and say maybe hunters are the basis of a sustainable future in Northern Manitoba? In fact, the hunting economy doesn't even register with economists. They see hunters as unemployed people. They don't see any GDP coming out of hunters.

If there's one thing that I would want to leave you with is that hunting is not an outdated way of life. Hunters can actually live a wealthier way of life. And I'm among now the privileged members of society. It wasn't always that way and I can appreciate my privilege. But actually, many hunters live a better way of life than me because the hunting way of life allows them more time. It allows them to spend time with their families. It allows them to invent very rich cultures. It allows them to be their own bosses, to live a bush life. That's a good way of life.

What we're underestimating in all of this is a quality of life that we have systematically denigrated for a few hundred years that we're only now becoming to be in a position that we can actually appreciate. If we say the only economic development that can take place in northern Manitoba is Hydro development and mining development and lumber development, we're missing the very basis of what sustained Northern Manitoba communities actually for centuries.

And I'll leave you with one image of hunting communities. Hunting communities around the world have been around for at least as long as modern human beings have, according to archeologists. Let's say 60,000 years is the current estimate. Agricultural societies have been around for about 8,000 to 10,000 years. Industrial society wouldn't even make it on that chart. It would something like a few hundred years.

Hunting communities have proven themselves to be the most sustainable social organization that human beings have ever invented. No other way of life has sustained itself for that long. And I'm not talking about a past way of life, I'm talking about now a contemporary way of life. Hunters hunt with modern technologies and enjoy some of the modern benefits of life but they are still living.

One of the last homelands of the world of hunters is Northern Manitoba as a part of Northern Canada. If we don't begin to start appreciating that, I think we continue a legacy that will leave another generation of children hating Manitoba Hydro, hating Manitoba Hydro. We'll leave generation of children who have small wage work and whose families are largely unemployed and are meaningfully unemployed because they can't even sustain themselves by going out on the land and living that rich way of life.

The Berger Inquiry of the mid 1970s said they didn't say no to the proposed pipeline development, they said delay it. I was born in Northern Manitoba. My father is buried under the earth of Northern Manitoba. I've travelled around the world and came back to Manitoba because I want to be here. My daughter was born here. I love this province and love the north.

I urge you, as a Commission, to use whatever powers you have to delay or stop this project because I think we're doing the wrong thing with Northern Manitoba and I think we are doing the wrong thing with the hunters who deserve a much better break in our economy and in our lives. And that's, in a nutshell, what I have to say to you. Thank you.

THE CHAIRMAN: Thank you. Mr. Sargeant.
MR. SARGEANT: Dr. Kulchyski, just on your almost very last point about the Berger Commission, you noted that Berger suggested delaying the pipeline. And in the last two, three, five years we've seen great development on those pipelines as the Aboriginal communities in the NWT, particularly in the McKenzie Valley, have concluded their treaties and now feel in a position to take advantage of the economic development. How does that differ from the Nisichawayasihk Cree Nation now moving to take advantage of economic development in their region much as the Deh-Cho and other NWT Bands are moving in that direction?

MR. KULCHYSKI: Well, I should say the two regions that are in favour of development and that have completed their modern treaties are the Sahtu and the Gwichin. The Deh-Cho region which is a third region to the south.

MR. SARGEANT: I just picked that out. It's just one of the three or four in the valley.

MR. KULCHYSKI: Since I'm actually intimately familiar with the Deh-Cho and with all of those regions, I'll say this. The Deh-Cho, from my discussions with the leadership, they continue to be opposed to pipeline development and they haven't concluded a modern Treaty agreement. I know the Sahtu very well. I haven't worked that closely with the Gwichin. There's a fair bit of controversy within the Sahtu community.

But I would say between the early 1970s when that project was first proposed and now, and it's again there's a lot of talk of it, we haven't seen construction happening, certainly those communities have had a long time. Some of them have finished Treaty negotiations and some of them are now prepared to be involved. And you know, I wish them the best in that.

I don't believe that the nature of pipeline construction is as economically devastating as the nature of Hydro development in terms of its impact on the environment. Because when you affect a whole river system, you affect all of what comes off of that. I would suspect even the Sahtu and Gwichin regions would have a great deal of difficulty if someone wanted to try and do Hydro development on the Deh-Cho River, on the McKenzie River itself.

So the difference is partly the nature of the projects, partly that they've had agreements that have given them significant equity to start off with. They can decide to buy in or not buy into the project without borrowing money but having their own money. And they've had enough money to sort of train themselves and prepare themselves from their land claims.

We've disrespected the treaty 5 land claim to such an extent that most of the First Nations, you know, they haven't been sitting on $75 million, hiring their own lawyers, looking at the broad situation, spending 10 years sort of thinking about do they want to be involved or not. For the most part, they've been funded by Indian Affairs. They've been underfunded. There are serious and aggravated problems in the communities. I don't think they've been given the time to prepare.

And it's partly because the modern treaties, the Sahtu Treaty and the Gwichin Treaty as more recent agreements, have more money attached to them and are given more respect. Treaty 5 has given the Nisichawayasihk Cree Nation members $5.00 a year.

MR. SARGEANT: I don't want to speak for Councillor Thomas but we've heard from him over the last two or three weeks or couple of weeks that
we've been sitting here that his community has really put a lot of
tought and a lot of consideration into this over the past number of
years really since I suppose since the early, mid-nineties when they
started to negotiate the NFA implementation agreement. And not long
after that was put in place, they moved into this. So at least I don't
get the impression that it's been a hasty decision and an uninformed
decision on their part.

MR. KULCHYSKI: You know, I'll leave that to members of the community
including the Chief to speak to. I hear different things obviously from
different community members. The one thing I'd say is that to me, the
real comparison is between what's going on in Northern Quebec and what's
going on in Manitoba where you have two treaties, one an earlier Treaty
and one a modern Treaty and effectively, by the nature of this agreement,
we're punishing people from having solemnly signed an agreement more than
100 years ago. Apart from the dollar amounts and other things that's
structural disparity, I don't think anybody looking at the situation
objectively can't say we're doing much worse. We're not offering the
same kind of deal here in Manitoba than is offered to the Crees of
Quebec. And I don't see any logical reason why that's the case.

MR. SARGEANT: We heard yesterday from Councillor Thomas that they did
consider the Quebec situation and they opted for this one.

MR. KULCHYSKI: Well, when people only have one offer on the table --

MR. SARGEANT: He indicated there was more than one offer. Again, I
don't want to speak for him but this is what I heard from him yesterday.

MR. KULCHYSKI: I mean it certainly would seem to me to be
incomprehensible if you were offered anything like what the Cree of
Quebec were getting which is simply money without strings attached to
it and without assuming risk. You know, I can't believe that the leaders
of Nisichawayasihk wouldn't have taken that rather than a debt that gives
them risk and gives them equity. They could have just used the money to
buy if they want equity which is what the Cree in Quebec could consider
and at the moment, generally speaking, they ruled that out.

I should say one of the other problems with equity, and I
haven't had the time to do a detailed analysis for you of the agreement,
but I will send you one, I believe this is the reason that the Cree
in Quebec didn't use the money they got to buy into the project is
because when they do have equity, they are tied into it. And that ties
our hands up when it comes to being critics over the environment damage.
Once you start assuming equity, you have to hope that the project is
going to succeed and, therefore, you start having objective interest in,
you know, not being as rigorous in making sure that the environmental
impacts are mitigated and all of those sorts of things. You start
needering to make sure the project makes profits so your community doesn't
 go in debt.

So apart from its value in dollar terms structurally, the equity
position means that the community becomes tied into the success of the
project. And if strict environmental standards, for example, are
limiting the profit margin, then you're in an objective conflict of
interest. The Cree in Quebec are in no such conflict of interest.

MR. SARGEANT: How about the Gwichin and Sahtu and the McKenzie Valley
pipeline? Aren't they to be equity partners?
MR. KULCHYSKI: They are proposing to be equity partners and I would say they will be in a similar kind of conflict of interest. But again, I will emphasize, the Hydro development won't have the same kind of environmental impact. You know, I know those communities, particularly the Sahtu communities, they are very very concerned about doing things that will support the hunting way of life. They see that as really one of the basis and the future of their communities.

So you know, they are not looking at hunting is something that belongs in the past and we're getting into this dismissing that. They are saying we've looked at this carefully. We think, you know, it's not going to have as much environmental impact. We think we can continue to protect our hunters and it's probably in our interest to take an equity position. I have concerns that that will put them in a similar conflict of interest still around the environmental impacts. But you're not looking at something that's going to affect the whole river system. So the impacts are less.

MR. SARGEANT: Thank you.

THE CHAIRMAN: Mr. Mayer.

MR. MAYER: Dr. Kulchyski, I have some similar concerns that Mr. Sargeant has. You say you're writing a paper on the agreement or the memorandum that presently exists between Nisichawayasihk and Hydro?

MR. KULCHYSKI: That's right.

MR. MAYER: And how long have you had those documents?

MR. KULCHYSKI: I'm drafting something, so I have a draft of something. I gave a paper at a conference at the University of Winnipeg. It's all a blur to me now because it's been a very busy but I believe it was three weeks ago.

MR. MAYER: We heard about that conference. Have you had the opportunity or did you in fact read the material filed by Hydro and Nisichawayasihk on this very issue?

MR. KULCHYSKI: I've read the Statement of Understanding and then I followed the debates in the newspaper but I haven't had the opportunity to read further.

MR. MAYER: Were you aware, doctor, that volumes of documents have been filed before this Commission all of which have been in the hands of the person who calls you or of the organization that calls you today as a witness and you're telling us you haven't read any of that?

MR. KULCHYSKI: I'm telling you that I'm a volunteer witness. I happen to have a full-time job that's a very busy one. And so I want to thank Gaile Whelan Enns for inviting me here. She's made those documents available to me and I must say she leaned on me quite heavily to try and have my report prepared. If I was testifying tomorrow rather than today, I might have been able to bring a document. That's how close I am. But I will not bring something that's not complete and I haven't had the chance to kind of dot the I's and cross the t's. I simply won't do that.
MR. MAYER: Doctor, I too have a day job and for all intents and purposes on this Commission, I am a volunteer and I have read that material. Now, you're giving evidence today on an agreement or criticizing an agreement that you have seen bits and pieces of --

MR. KULCHYSKI: I've seen the agreement and read it closely.

MR. MAYER: Okay.

MR. KULCHYSKI: And --

MR. MAYER: Do you have the whole agreement, sir?

MR. KULCHYSKI: I'll show you what I have.

MR. MAYER: I'll take your word for that, sir.

MR. KULCHYSKI: October 2003 Summary of Understanding.

MR. MAYER: Okay.

MR. KULCHYSKI: And I should say that this refers to, and I'll be happy to look at it when it comes out, a further deal that would be signed afterwards that would be in legal language. I'll be happy to look at that. You know, I'm concerned about the big picture here rather than all of the technical details. I appreciate your work in looking at all the technical details. I look at the agreements to legal understandings as I look at treaties, the actual legal understandings.

MR. MAYER: But then, sir, if you've read that agreement, you know it is not legally binding, don't you?

MR. KULCHYSKI: That's right.

MR. MAYER: So you talk about legal understandings, what they have is a Memorandum of Agreement. My concern, sir, is that you are asking us to substitute your decision on the issue of this agreement and this partnership for that of the Nisichawayasihk Cree Nation and Manitoba Hydro and the members of the Nisichawayasihk Cree Nation who have voted on this. Doesn't that seem a little paternalistic to you, sir?

KULCHYSKI: No, it doesn't at all seem paternalistic. And let me say that you are absolutely correct. This is a non-binding agreement. A project development agreement will be signed subsequent to this. I've seen a lot of ratification processes go on in communities I didn't have time today to talk to you about, although I'd be happy to talk to you about. The ratification process that's discussed in this agreement is kind of a travesty actually in the sense of there's no time line that's mandated. So you can have an agreement and try and have the community vote on it within a few days. These are agreements that will affect people's long-term and often they are presented with a legal document. Usually -- well, not usually, almost always the ratification processes involve people coming and selling an agreement to the community without any opportunity for internal community debate. I also happen to know that there's a good portion of the community that opposes the agreement. And since their voices aren't largely paid for or subsidized
and since they don't have offices, fax equipment, computers, I do partly make it my job to try and speak for those who don't get the opportunity and don't have the resources sometimes to speak for themselves. Although I believe the Commission has probably heard from a few of them here.

MR. MAYER: I have no further questions.

THE CHAIRMAN: Mr. Nepinak.

MR. NEPINAK: Thank you, Mr. Chairman. Dr. Kulchyski, first of all, I want to commend you for the work that you are doing and my question is, I guess no disrespect to your opinion, but I also come from a treaty area, a treaty 2. Treaty 2 and treaty 5 overlap. And my question is, you know, I guess the growing demand by our First Nations people. I had the opportunity to lead the community at one time. My community is situated below the Hydro development areas south of Grand Rapids. To the south, we have agricultural development. And at one point, as you stated that, you know, I can recall back to my childhood that I don't think there was any unemployment, you know, the trapping, you know, the fishing. The hunting was abundant. And shortly after those years, a fur block was developed overlapping the Treaty areas 2 and 5. Fur blocks were to protect our way of life, mainly our trapping in the late forties, early fifties. It's a similar process as what the NCN has done through their resource management area to protect, you know, those traditional hunting areas.

And in my own experience, doctor, you know, unfortunately the fur trade has been weakened. You know, the hunting we enjoyed at one time is no longer there due to settlements as you outlined. And I agree that, you know, we welcome the new settlers and they have I guess every right to enjoy the resources in the country we so enjoy.

But my question to you is, firstly, I think it was an excellent presentation by the Chief of NCN and, you know, his councillors and his people as to why they entered into this kind of an arrangement with Manitoba Hydro. You know, through their documentation, it's an excellent work that they have done. But I'm not doubting that I'm making a decision here now.

But my question to you, doctor, is for us, my community, we're now over 100 per cent larger in population than we were at the time you know. And if you look at the surveys that were done by NCN and I think every First Nation is experiencing the same dilemma, a fast growing population, the demand on our resources. What then do we now do with the unemployment you know? I'd like to ask you what do you recommend to the Commission? What should governments do, today's governments, you know, today's corporation? I guess that is my question. Thank you.

MR. KULCHYSKI: Well, there's a couple of things I'll pick up from what you said and then I'll answer your question directly. But one is, in effect, this is a decision about whether the northern communities are going to basically go the same way as the southern communities. And the southern communities, Aboriginal communities mostly had to give up on the hunting way of life and experienced extraordinary problems and are still trying to decide then what kind of economies can they have because the communities want to stay together. That's one of the features that defines them. They want to remain as communities. They want to remain connected to each other but they have virtually no sustainable economy and not a sufficient land base to build much of a sustainable economy and so they are in serious trouble.
The northern communities have, many of them, the basis for continued sustainable economy. And that's effectively what we're talking about destroying. And I've seen northern communities where they have small scale economic development, a degree of commercial fishing, a degree of tourism, a degree of craft industries. And actually the communities promote and support people going out on the land. They have schools for the young children that take place out on the land. They have programs that try and support hunters and try and support people going out on the land. So that you can use contemporary technology to be settled in one place but use vast regions worth of resources.

Technology, since really the mid-sixties, can actually allow centralized communities to use much larger land areas in a way that was much harder for people to earlier in this century. And there's been very little that's promoted, little to nothing that's promoted that kind of a vision in Aboriginal communities. I would say, you know, we can go the path of industrial style economic development and create marginal, very poorly supported infrastructures of suburbs that look like poor versions of suburbs in Southern Canada. And I would say ultimately create more despair and real hatred for what's been done to the land that can't be changed. Or we can say stop and we can say maybe we should look at what sustained the people here for thousands of years and maybe there are ways with the technology we have and the large amounts of land that are still left intact that that could be the basis. And then other things can work around it. You can find other forms of economies that will work with it.

But until you change your thinking and say no, this isn't some outdated way of life and this isn't something that's gone and this isn't something that we don't really care about anyway, you have to start with the presumption this is something we value. This is the bedrock of these communities and everything else we're going to do is going to be, in respect, working around that. It's a change in attitude.

And that's what I think respect for the treaties really implies, that's what the treaties in my mind were about. So I would say those forms of economic development.

Every time I see young people go out on the land with elders, I see young people who start getting inspired and getting a little bit of hope and who start believing in themselves. Every time they are sent down to the south, they look at models and say well, can I -- and they can achieve that but it creates senses of doubt and insecurity.

I think people need to walk in the footsteps from the past into the future and gain pride and have that pride in what was done in the past. More important than anything else, if people can have that, they will have hope. And if they can have that, they will have a future. If they grow up having gone hunting and fishing on the land with their grandparents and then when they are in their twenties and thirties, they will see that their own people decided to allow the land to be destroyed, I don't see much hope there.

THE CHAIRMAN: Mr. Nepinak.

MR. NEPINAK: Thank you. Could you elaborate a bit on the proposal that was laid out by the proponents on traditional knowledge?

MR. KULCHYSKI: I didn't see what was laid out by the proponents on traditional knowledge. But I'll say this much. Again, with anything
like that, right, we can study it. We can put it in a box put it in a museum, right. Hallelujah, it's in a museum. People can go to see it one day a month. That doesn't do anything for a culture. A culture survives if it's alive. If you can hear the children speaking their own language in the playground, you'll know you've got a culture.

If we've got ten tones of volumes of reports traditional knowledge that have been researched and put in the library, you don't have a culture, you've got a library.

MR. NEPINAK: Thank you.

THE CHAIRMAN: Ms. Kathi Kinew Avery.

MS. AVERY KINEW: Professor Kulchyski, I just have one or two comments about treaties. You referred people to Supreme Court judgments where it said to interpret them within the context of the times. And surely it would be within the context of the times to look at that Summary of Understanding within the whole development that the Nisichawayasihk are seeking. And part of it was what Mr. Nepinak referred to the traditional knowledge, not to set it aside in a museum but to ensure that if a project goes ahead, that it would respect the sacred lands and the viable lands that they would use for hunting. So I wonder about your structural analysis if you're just looking at papers and speaking with one component of the First Nation when actually they've been working for several years, at least we heard yesterday since 1996 to make sure if a project goes ahead, it respects the people, the land, the resources, the treaty.

MR. KULCHYSKI: Well, I should say I look at the papers in the context of the travel I've done to very many Aboriginal, particularly northern communities. And I think about these things as a human being on this earth and what the future holds.

The Summary of Understanding actually is not a treaty document. It says it in the document itself. It's kind of hidden at the very back. I'll read to you what it says. It say,

"Nothing in this Summary of Understanding or any other arrangements or agreements contemplated in this Summary of Understanding which means the Project Development Agreement that would come subsequent from it is intended to alter Aboriginal or Treaty rights. Recognized and affirmed under Section 35 of the Constitution Act."

It doesn't say diminish Aboriginal or Treaty rights, it says alter which means that there's no way that this document or the documents that flow from them can actually be seen as a treaty which is one of the weaknesses of these documents that I talk about in my more detailed analysis in the first instance.

MS. AVERY KINEW: Would you say the Peace of the Brave in Quebec is a treaty?

MR. KULCHYSKI: I would say it is, yes.

MS. AVERY KINEW: On what basis?
MR. KULCHYSKI: Well, I've talked to various of the negotiators and none of them can answer that question firmly. There's no language that says it isn't a treaty.

So the Sioui decision, actually the one that I referred you to, outlines the criteria for assessing whether something is a Treaty or not. And it talks about the capacities of the various parties and the nature of the document itself. And I would say if you apply those criteria, actually both to the Northern Flood Agreement and to the Peace of the Braves, you would have to conclude that both of those documents are treaties. What keeps this document from being a treaty is that it says it's not a treaty, very clearly in black and white.

MR. SARGEANT: It doesn't say it's not a treaty what you read to us. Basically it's a non-derogation clause. It says it doesn't affect the existing treaties.

MR. KULCHYSKI: It says it doesn't alter Aboriginal or treaty rights. If it doesn't alter Aboriginal or treaty rights, I don't see how it can be then said to be a treaty because if it were a treaty, it would entirely alter.

MR. SARGEANT: I'm not saying it is a treaty but it doesn't say it's not a treaty.

MR. KULCHYSKI: I'm saying it looks clear to me that it's not a treaty.

MS. AVERY KINEW: Sorry, I don't want to get carried away in this direction. I wasn't necessarily saying it was a treaty, I was applying the same approach that if you're going to have an understanding, you need the context of the times.

MR. KULCHYSKI: Well I would say for me the overriding treaty that deals with this situation is Treaty number 5 and that's where we'd need some context. And there we had Aboriginal people who wanted as strongly as possible to put in black and white that their way of life would be protected.

And to the extent that they could find wording, they articulated that as a hunting way of life in the English language.

MS. AVERY KINEW: The Supreme Court has also said that you don't have to be frozen in time, you can evolve.

MR. KULCHYSKI: Well, sure. And I think hunting itself has evolved in time as it evolved in time before Europeans ever arrived on the continent.

MS. AVERY KINEW: As a hunting people, I would think Nisichawayasihk would have looked at how to protect their people's right to continue hunting. And from evidence that we've had, that things have happened. Because they've decided to proceed as co-proponents, they have changed the access road to where this construction site might be. They've changed the whole design of the dam to be a lower head. And traditional knowledge in that sense has been put to work. And that would be the context in which I'm wondering are you interpreting this Summary of Understanding?
MR. KULCHYSKI: Well, I appreciate that. Although again, the language in the Summary of Understanding, which is what I've got in front of us, talks about normally the water levels would be in certain degrees and so I worry that that's -- I would love to have a copy and I will look at a copy of the Project Development Agreement when it comes forward. But if the language there is as weak as the language in the Summary of Understanding and if Nisichawayasihk then is one of the proponents and has an equity position, you start having a conflict of interest around protecting the environment. And I would say in general, you're very clearly moving away from seeing the hunting economy as the basis of the way of life. That part of it seems to me I can't see how we can deny that.

MS. AVERY KINEW: Just two more things. The structural analysis you're doing does say that you're comparing an interim document, Summary of Understanding, with a final document, Peace of the Braves?

MR. KULCHYSKI: When I see the final document, I'll do an analysis of that as well but I'm right now analysing what I have in front of me which is the Summary of Understandings between the Nisichawayasihk Cree Nation and Manitoba Hydro.

MS. AVERY KINEW: The last point I'd just like to ask about is it's been brought up before by CASIL too as to whether Nisichawayasihk leadership is in conflict of interest. And wouldn't you say it's a fact of life that Chiefs and Councils are called upon to do many things at once? You have to protect rights, you have to develop your economy. You have to see to the needs of elders and people who require assistance. You want to provide opportunities for young people by getting broadband Internet into your communities. I mean everyday is a conflict and you have to balance the interests of many.

MR. KULCHYSKI: I would certainly say it's a case that there are general competing forces that Aboriginal leaders as other leaders in society have to deal with that put them in conflict. When I talk about conflict of interest, I am talking about a very specific thing that this agreement contemplates which is a group that will be co-owners of a project also supposedly has a role in monitoring the environmental degradation. That means there's a specific conflict of interest where on the one hand, it's in your interest because you're in debt to make sure that the project makes money. And on the other interest, what might limit that project making money is strict environmental standards. That's a very specific kind of conflict of interest that's embodied by this document that I'm concerned about. And it's different than the general nature of having to make political decisions as an Aboriginal or even as a non-Aboriginal politician. I think that becomes kind of an objective conflictual position.

MS. AVERY KINEW: Okay. Thank you. I won't pursue it. I'm sure others will.

THE CHAIRMAN: Dr. Kulchyski, I find that it's unfortunate that you did not go beyond the Memorandum of Understanding. You talk in terms as if you had no knowledge at all about the environmental impact assessment about the project. And I would like to hear your comments based on a broader understanding of what's proposed here.
It's a fact of life that every community makes decisions for its future and you did make reference or a distinction between southern communities and northern communities in terms of their sustainability. And you did yourself indicate about the hundreds of millions that are being put in agriculture. In spite of that, it's changing and has changed rapidly. It's not so surprising that northern communities would like to ensure their sustainability as well. And in spite of that, there will be some changes.

A community such as NCN looks at carrying on its livelihood and its culture but at the same time, they also need the finances to ensure the survival of the community to retain their community. And you seem to imply that hunting and trapping is going to make it possible for the community to stay forever as it is as if it was in a sort of a vacuum because it pleases us all to look back and say, well, there's great value and culture there and we have to find a way of sort of building walls around it to make sure it stays the way it was. I seem to hear that in your interpretation here that because it's sort of the last bastion somewhere in the world where we have a language spoken, where we have cultural values, we sort of have to ensure that we protect them every way and we prevent it from choosing for themselves economic development to retain its people to do exactly what you want. So I am not so sure that you have taken enough of a broad view of the issue in terms of what the NCN is proposing here.

MR. KULCHYSKI: I'll say a couple of things in response to that, and I appreciate your concerns. First of all, in terms of the sustainability, I would say right now northern Aboriginal communities are sustainable. What threatens their sustainability are projects like this. It's not a question of, as in farming communities, they developed -- you know, within the last 100 years, haven't proven themselves sustainable and we found actually that they are not sustainable and there's lots of problems. With Aboriginal communities, they were there for thousands of years.

THE CHAIRMAN: Is that why they are leaving their communities?

MR. KULCHYSKI: I'll come back to that but let me respond to your first question first. We'll get back to why people are leaving their communities if you want to ask that as a question. Northern Aboriginal communities have proven themselves sustainable. And it's something like this that will put them in the situation where they become no longer sustainable in my view. That's the problem. I'm not thinking about culture behind walls. I think culture has adapted, culture has grown.

Aboriginal culture, like other cultures, has changed over time. I am not talking about hunting is something that people practice the way they practiced the same 200 years ago. Obviously technology has changed. The ways and forms of hunting have changed quite dramatically. But the values underlying hunting culture has remained remarkably consistent.

You know, anthropologists at the beginning of the 20th century, all the talk was about Aboriginal people are disappearing, Aboriginal culture is disappearing. At the end of the 20th century, there's this remarkable talk about people were surprised to find that Aboriginal cultures are surviving and thriving in many respects. No thanks to projects like this, thanks to the fact that in northern
communities, they've been isolated from projects like this. And that's proven the basis of their sustainability and their ability to survive.

Now, you can laugh about cultural distinctiveness. You can say what's another culture. I don't laugh about cultural distinctiveness actually. I think that if Cree culture disappears as a meaningfully different culture from Northern Manitoba, we have done the world an enormous disservice and ourselves an enormous disservice. Whatever any particular culture can tell us about what it is to be human, about how we can live with the world around us, about how we can treat other human beings gets lost to us. I don't laugh when I think about what happened to the Baothuck in Newfoundland. We don't even know what language group the Baothuck belong to. I don't laugh when I think that 200 years from now, people might look back at these hearings and say these people really weren't concerned about culture. Now we don't have it.

The reason why I don't laugh about it is because I think about those Aboriginal kids who are leaving their communities. And I'll tell you for the most part, many of them, they are leaving because they haven't had the proper exposure to their own culture. They haven't been able to be proud of who they are as Aboriginal people because most of what gets taught and most of what goes on around them doesn't give them the opportunity. They don't get the opportunity to go in the bush. They don't get the opportunity to be with elders. They don't get the opportunity to take pride in the contributions that their people have made. I would say destroying those cultures or dismissing them, we're really effectively condemning those communities to be ghettos 100 years from now and I think that that's for me almost criminal behaviour.

THE CHAIRMAN: Well, everybody will agree with you on that point or a lot of people will and I'll be the first one to agree with you on that. But to say that the northern communities are better off because they are in a position where they are very different and they are allowed to retain their culture and their language, I myself have worked in The Yukon and found out that that is absolutely not the case except for the Gwichin in the north because there is no access to their community. But all of the other languages, seven of them, are gone and they are gone forever.

MR. KULCHYSKI: What that tells you is that those communities that are more connected to the industrial economy lose their culture. Those communities that are more isolated and able to maintain their hunting economy are able to keep it and are better off for that. And we have the same situation in Northern Manitoba.

THE CHAIRMAN: We will agree on that but then we'll have to agree as well that that's not the reality we live in.

MR. KULCHYSKI: Go to those communities. I mean I have gone to Lac Brochet, put my cup in the lake and drank the water. And I've almost never been treated that respectfully by young people, by teenagers. I'm used to teenagers just dismissing strangers. I'm quite impressed with the degree of the strength of the culture that's there. And this is an area I don't take anecdotally. I do research on this. I've travelled to far northern communities all across Canada and I'm pleased to be back in Manitoba and working more in Northern Manitoba communities doing that. And to me where there's a hope, there's a strong hunting culture that's
being passed on to young people. Where you can see elders who will be elders 50 years from now is where you have hunting families in place.

THE CHAIRMAN: Unfortunately, more or less come around to agreeing with what I said before because when I gave you the example of the Gwichin in the Northern Yukon, the only reason that that is happening is because they are, within a wall and a nut, have access to the rest of the world. So basically, they haven't got a choice at this point in time to evolve perhaps the way they would like to.

MR. KULCHYSKI: They have choices. There's oil and gas developments constantly being proposed to them, constantly being proposed to them. There's big dollars constantly being presented to them for oil and gas development. They have the Internet. I know people from the community of Old Crow who are as articulate and world travelled as any people that you will see. They have choices.

And the people who are most cosmopolitan in Aboriginal communities, who have seen most of the world, come to appreciate that it's their own grandparents' hunting. That's the thing they love the most. They go back to that constantly. I've seen very cosmopolitan Aboriginal people from a variety of communities, that's what they find they love and I don't blame them.

THE CHAIRMAN: Any further questions? Mr. Bedford?

MR. BEDFORD: Mr. Chair, we had not anticipated frankly that witnesses would come today and promise to deliver written material in the future. We had thought the deadline for that was in February. However, you, as Commissioners, will have to decide if you are going to accept, from Dr. Kulchyski or indeed any further witnesses, papers in the future.

If you decide in Dr. Kulchyski's case that you are going to accept a written paper from him, then we most certainly will wait until we have received the paper and read it before we ask him questions about the very many thought-provoking matters he's raised here this morning.

However, if you decide that you're not going to accept his paper, then it may well be that we can ask some questions. I rather anticipate you may wish to discuss that among yourselves, at least over the noon hour. Certainly we would urge caution that if you open the door and allow one expert to file his written report after he's testified, I rather fear you may be faced with the same request from other experts. And I for one have difficulty understanding how you would distinguish and allow one to file and others perhaps not. But that is your decision to make.

THE CHAIRMAN: I think I can respond for the Panel that Mr. Kulchyski has made his presentation and he has chosen to make it orally and we will accept his oral presentation. And that is what will be on the record.

So if you wish to question him on the basis of his presentation, you may do so.

MR. BEDFORD: In that event, we would like a short break so I can discuss with Ms. Matthews Lemieux which questions we're able to put to Dr. Kulchyski.

THE CHAIRMAN: There may be others who wish to ask questions. Mr. Abra?
MR. ABRA: Mr. Chairman, I can ask some questions and that may take us through to the lunch break in any event. I just have a few questions of Dr. Kulchyski.

THE CHAIRMAN: Yes, proceed.

MR. ABRA: Dr. Kulchyski, my name is Doug Abra. I'm the lawyer for the Commission. Do I understand from your evidence that all you have read is the Summary of Understanding related to this application?

MR. KULCHYSKI: I've read quite a bit of other stuff actually.

MR. ABRA: Well, what else?

MR. KULCHYSKI: Supreme Court cases, I referred to the treaty itself. Actually I've read the treaty itself. I've read a fair bit of treaty history.

MR. ABRA: No, I'm sorry. I didn't make my question clear, sir, I'm sorry. What I'm asking is related to today, this particular application by Manitoba Hydro and NCN, the only document that you've read is it the Summary of Understanding. For example, have you read any of the documents that had been filed that are known as NFAAT or Needs For Alternatives?

MR. KULCHYSKI: No.

MR. ABRA: You haven't?

MR. KULCHYSKI: No.

MR. ABRA: Have you read any of the Environmental Impact statements that have been filed?

MR. KULCHYSKI: I've read some summaries of what I take to be those but I haven't read the

MR. ABRA: Which summaries are those, sir? From where did you get them?

MR. KULCHYSKI: Well, from the Manitoba Wildlands. I've gone through their website and they have some of the documents and they have some summaries of them.

MR. ABRA: I see. So this was a website of Manitoba Wildlands that you read?

MR. KULCHYSKI: That's right.

MR. ABRA: And it was a document prepared by Manitoba Wildlands?

MR. KULCHYSKI: I've read documents prepared by them but I think they have also included documents by the proponents.

MR. ABRA: You see, for example, there was a summary that was prepared by Manitoba Hydro and NCN of 10 or 15 pages that describe the project. Did you read that?
MR. KULCHYSKI: I am not an environmental expert so I haven't gone into
the environmental aspects of the project.

MR. ABRA: As you've heard, Mr. Thomas, a councillor from NCN, did
testify before the Commission. Did you read his evidence at all?

MR. KULCHYSKI: No.

MR. ABRA: You didn't read the transcript of his evidence?

MR. KULCHYSKI: No.

MR. ABRA: Chief Primrose gave evidence before the Panel the first day or
at least made a statement on behalf of NCN at the beginning. Did you
read his statement?

MR. KULCHYSKI: I should say I read newspaper accounts of both of those
but I didn't read his statement.

MR. ABRA: But you didn't read his statement?

MR. KULCHYSKI: No.

MR. ABRA: I see. So you didn't hear Mr. Thomas' explanation for the
reason that NCN, from his perspective, has decided to go into a
partnership with Hydro as opposed to receiving lump sum compensation?

MR. KULCHYSKI: Well, I read accounts of and quotes of his statement but
I didn't read his statement itself.

MR. ABRA: Well, that was a newspaper article?

MR. KULCHYSKI: Yeah.

MR. ABRA: I see. Now, you also referred to the James Bay Project where
the decision was made to accept compensation of $70 million. What did
you read with respect to that arrangement?

MR. KULCHYSKI: Actually, if you had read that arrangement, you would
find it was $70 million a year for 50 years to a total of $3.5 billion.

MR. ABRA: Well, that may be but I'm wondering what you read, sir, in
preparation for giving evidence related to that arrangement?

MR. KULCHYSKI: I heard testimony from a member of Quebec Hydro, from a
staff person of the James Bay Cree and from one of the leaders who
negotiated the agreement. And I talked to them quite extensively about
what they have negotiated.

MR. ABRA: So in preparation for giving evidence today, you did read
evidence from the Quebec hearings and did talk to a number of people?

MR. KULCHYSKI: I didn't read any evidence from the Quebec hearings. I
heard papers, presentations given by people from the Quebec situation and
I had a chance to talk to them afterwards.

MR. ABRA: I see.
MR. KULCHYSKI: And I should say --

MR. ABRA: Do you know -- I'm sorry, go ahead.

MR. KULCHYSKI: The Summary of Understandings, here we have it. You might say, oh, we need to read 3,000 pages in order to understand this. I would say here it is. I have it. I looked at it. I read it quite closely in the context of my knowledge of Supreme Court decisions, Aboriginal rights, history and various other things. So I'm not apologizing for not having read the mounds that you want me to read. I have a specific area of interest. I look at nation to nation style agreements. I looked at this with the knowledge that I have.

MR. ABRA: No, sir, I am not being critical of what you've read or what you haven't read, I just want the Commission to know what you've read and what you haven't read.

MR. KULCHYSKI: It would take me a long time to tell you what I've read. I'll tell you that much.

MR. ABRA: Sir, I'm talking about this hearing.

MR. KULCHYSKI: Well, even what's relevant to what I've had to say today. For example, I didn't mention Hugh Brody's book "The Other Side of Eden" which paints a fairly compelling picture of the place of hunting cultures around the world. It will be a valuable resource for the Commission. But I appreciate the fact that you've already got mounds of hearing and you don't need another pile that I could give you. But I tell you that I come to this well prepared.

MR. ABRA: I see. And with respect to the agreement in Quebec related to the James Bay Project, you have read papers written about it? You've spoken to people that were involved?

MR. KULCHYSKI: That's right.

MR. ABRA: And you have their version of why they decided to accept what they did?

MR. KULCHYSKI: Yes, including Quebec Hydro.

MR. ABRA: Including Quebec Hydro, I see. Have you talked to anyone from Manitoba Hydro here related to this project?

MR. KULCHYSKI: Yes, I did actually. There were some people from Manitoba Hydro and of course I heard from the Minister as well at our -- at the conference at the University of Winnipeg.

MR. ABRA: I assume you didn't read any of the evidence that's taken place over the last three weeks related to their --

MR. KULCHYSKI: No, I haven't. As a matter of fact, I've had a very busy last three weeks.

MR. ABRA: I'm just asking you, sir, whether you read the evidence. That's fine. I have nothing further. Thank you, Mr. Chairman.
THE CHAIRMAN: All right. If no other members of the Panel have any questions at this time? Mr. Bedford, do you still wish to take additional time or do you wish to adjourn at this point in time until after lunch?

MR. BEDFORD: Mr. Chair, I will wait. Thank you.

THE CHAIRMAN: You will wait until after lunch?

MR. BEDFORD: Yes.

THE CHAIRMAN: Are you available after lunch, Dr. Kulchyski?

MR. KULCHYSKI: I teach at 2:30 so I'm available after lunch.

THE CHAIRMAN: Is it possible to reconvene by quarter to one instead of one o'clock because it's only 20 to 12:00 now. So if we take an hour and five minutes, we should have enough time for lunch. It is agreed? We will reconvene at quarter to 1:00 instead of 1:00? All right. Thank you.

(PROCEEDINGS RECESSED AT 11:43 A.M. AND RECONVENED AT 12:45 P.M.)

THE CHAIRMAN: All right, ladies and gentlemen, we will continue, and I will ask everybody to get with it. We are ready to begin, Mr. Bedford.

MR. BEDFORD: I have no questions. I know Ms. Matthews Lemieux has some.

THE CHAIRMAN: As soon as Mrs. Matthews Lemieux gets here we will carry on.

MR. BEDFORD: I'm just informed that Mr. Thomas will ask the questions on behalf of the Nisichawayasihk Cree Nation.

THE CHAIRMAN: Thank you. You have the floor, Mr. Thomas.

MR. THOMAS: Thank you very much. I didn't quite get the name. Is it Mr. Kulchyski --

MR. KULCHYSKI: Yes.

MR. THOMAS: -- or doctor I should say. First of all, I want to explore what you mean by preserving a hunting way of life. You would agree with me that to do this our young people would need to be taught the following by our elders: The first item is how to trap, how to skin the animal -- first of all, I should say, would you agree with me on these particular things, the following being how to trap?

MR. KULCHYSKI: Sure.

MR. THOMAS: How to skin the animal?

MR. KULCHYSKI: I would rather hear the whole list and then I can --

MR. THOMAS: I prefer to answer the questions as I am moving along?
MR. KULCHYSKI: How to skin animals?

MR. THOMAS: How to skin the animal?

MR. KULCHYSKI: How to what?

MR. THOMAS: How to skin animals?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to tan hides?

MR. KULCHYSKI: Possibly, yes.

MR. THOMAS: How to hunt?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to prey for the animals?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to build a bush cabin?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to pick medicines?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to dry, store and use those medicines?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to make tools and use them?

MR. KULCHYSKI: Not necessarily, they can buy a lot of tools that they need.

MR. THOMAS: How to fish?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to smoke fish?

MR. KULCHYSKI: As long as I have a chance to respond to the whole list, I will say yes.

MR. THOMAS: How to choose the wood and the type of fire to build to smoke the fish?

MR. KULCHYSKI: Sure.

MR. THOMAS: And you will agree with me that preservation of culture includes following, which is not an exhaustive list; language?
MR. KULCHYSKI: Yes.

MR. THOMAS: How to make drums and how to use them?

MR. KULCHYSKI: I wouldn't say any one particular element like that I would single out and say, if you can't make a drum, you don't have your culture. I would certainly say that normally among a hunting community there are some people in the community who know how to make and use drums.

MR. THOMAS: Bead work?

MR. KULCHYSKI: Again, I wouldn't say that that is -- in Supreme Court terms - integral to the culture, but I would say it is important and certainly I would think there would be people in the community who would have that skill.

MR. THOMAS: How to make clothing from hides such as moccasins and mukluks?

MR. KULCHYSKI: Not necessarily.

MR. THOMAS: How to choose a site for a sweat lodge?

MR. KULCHYSKI: Sure.

MR. THOMAS: How to build a sweatlodge?

MR. KULCHYSKI: On the part of some, yes.

MR. THOMAS: How to pick the stones for a sweat lodge?

MR. KULCHYSKI: On the part of some.

MR. THOMAS: How to become fire keepers and what that means?

MR. KULCHYSKI: Yes.

MR. THOMAS: How to carry a pipe and about pipe ceremonies?

MR. KULCHYSKI: Yes.

MR. THOMAS: Dancing?

MR. KULCHYSKI: Yes.

MR. THOMAS: Are you aware of the following NCN programs: Country Foods, hunters, fishers, trappers and berry pickers are responsible for finding food and bringing it back to NCN, where it is packaged professionally and distributed to elders and others in the community?

MR. KULCHYSKI: Yes.

MR. THOMAS: You are aware of that program?
MR. KULCHYSKI: Yes, I am.

MR. THOMAS: What do you know about it?

MR. KULCHYSKI: I knew that there was such a program in existence basically, and that it was operating, and I have heard good things about that program.

MR. THOMAS: Are you aware that we have a place called Left Brook Lake which is a cultural retreat, and it is a traditional village that is used by our people for family and other cultural retreats?

MR. KULCHYSKI: No. Is that the only one or are there several?

MR. THOMAS: There is a number of them. Mile 20?

MR. KULCHYSKI: No.

MR. THOMAS: It is an important traditional site where we hold ceremonies.

MR. KULCHYSKI: I have heard of it, actually.

MR. THOMAS: We have a program for grades 3 to 9, where our youth are taught how to build cabins, make tools, hunt, trap, fish, tan hides, pick medicines, berry pick?

MR. KULCHYSKI: No.

MR. THOMAS: Do you know that we have a powwow club?

THE WITNESS: It doesn't surprise me, but I don't know of it particularly.

MR. THOMAS: Do you know that we have several dance and drum groups?

MR. KULCHYSKI: Yes.

MR. THOMAS: Are you aware that Cree is taught in our school?

MR. KULCHYSKI: Yes.

MR. THOMAS: And you mentioned Treaty # 5, and the $5 that my people are paid every year as a result of Treaty. Do you know what the $5 represents to my people?

MR. KULCHYSKI: It depends on which terms -- I could speak to you at some length about what the $5 may represent.

MR. THOMAS: I suggest to you that it represents the sacred bond of peace between my people and the Crown?

MR. KULCHYSKI: I would suggest to you that it also at one time represented a material way of the people, helping the people continue to have their well-being. At some time ago when the $5 was paid, that money was actually significant to people in their annual incomes. Today it is
not significant at all in their annual incomes. It has both a symbolic and a material value. It is a difficult question when you asked me what the $5 represents. I certainly agree with you that it does represent the spirit of the treaty, the pact that was made, the promises that were made, but I would also say to those people that accepted that money, it had very real material implications about how their way of life was going to be supported.

MR. THOMAS: You mentioned that you attended a conference that helped form your opinions about our project. Was that the conference at the University of Winnipeg in February of this year?

MR. KULCHYSKI: I would be misleading you to say I merely attended it. I helped to organize the conference.

MR. THOMAS: But that is the conference that you are referring to --

MR. KULCHYSKI: That's right.

MR. THOMAS: -- that helped form opinion, okay. You mentioned Thomas Berger. Are you aware that a conference in Thompson in November of 2003, where Mr. Berger recommended that to have peaceful coexistence between Aboriginal people and industry, partnerships should be established between them?

MR. KULCHYSKI: Not only am I aware he said that, but I agree with it. It is the nature of the partnerships that is the question that I --

MR. THOMAS: You mentioned that Aboriginal youth have problems coming to school in Winnipeg. Are you aware that as a result of this project that a post secondary training centre called Atoskiwin Training & Employment Centre is being built in Nelson House, or in Nisichawayasihk so that our children can be trained at home?

MR. KULCHYSKI: I have heard something to that effect, yes.

MR. THOMAS: I should point out that syllabics is also taught in grades 4 to 8. Are you aware of that?

MR. KULCHYSKI: No.

MR. THOMAS: Thank you.

MR. KULCHYSKI: If I can then respond to the totality of the questions. I am not doubting that you have a good deal of programs that support Aboriginal culture in your community, as there are in many other communities. What I am suggesting is that, unfortunately, this deal will go against the grain of many of those programs. There is no use training people to be out on the land if you end up destroying the land itself, or upon the water upon which people depend. Teaching young children the language in the school sounds very nice, but if they are not using it in the playground, if they are not using it outside of the school, nobody really learns a language by having it taught to them in the school. People learn the language by speaking it at home, by speaking it with other children.

So those are kind of, often, sometimes -- some of the programs that you mentioned I think are very valuable, some are band aid
solutions. And it is clear to me that the project being contemplated really works against virtually the whole terrain of all of those programs.

On the one hand you are doing some laudable things really trying to do what you can for your culture. On the other hand, if people don't have access to the land and the land way of life, I think all of those things will ultimately have no impact.

MR. THOMAS: Just as a supplementary question I guess; we have an agreement that we refer to as the implementation agreement for the NFA, that was ratified in 1996. Have you read this?

MR. KULCHYSKI: I haven't read it, I am aware of it.

MR. THOMAS: You are aware of it. Are you aware that many of the programs that I pointed out have been established as a result of this 1996 agreement?

MR. KULCHYSKI: That was my understanding yes.

MR. THOMAS: And my other question to you is, have you ever actually been to Nisichawayasihk?

MR. KULCHYSKI: Yes, I have. I should say, you know, the counsel for the Commission, I guess Mr. Abra, was asking me about all of the documents that I haven't read. One of the things that I didn't say in response to him, but your question allows me to say it, is: Instead of reading piles and piles of documents, I have travelled to many communities and spoke to many people, both about the broad issues that I have been dealing with here, and specifically about the project that you are contemplating. So I came here prepared to talk really, primarily based upon people that I have talked to.

I was in your community in the late 1970's actually, so quite a time ago, I will say that. And I have travelled to other Northern Manitoba communities since I have been back to Manitoba, and I look forward to the opportunity to go to your community.

MR. THOMAS: You have been in Nelson House in 1970 or so you say?

MR. KULCHYSKI: About 1978 or '79.

MR. THOMAS: Okay. That concludes my questions. Thank you.

THE CHAIRMAN: Thank you. Other questions? Seeing none, thank you, Mr. Kulchyski.

MR. KULCHYSKI: Can I make a concluding remark?

THE CHAIRMAN: There is no questions asked for you to -- you missed the opportunity to do so when the questions were asked. I guess the procedure normally is you speak at this particular time when you are asked questions.

MR. KULCHYSKI: Thank you very much for your attention.

THE CHAIRMAN: Sorry, I am advised that counsel for the Canadian Nature Federation has the opportunity to re-direct or ask questions of Mr.
Kulchyski. I mislead you, but involuntarily. But at the time I did, I think I was right.

MS. WHELAN ENNS: Thank you, Mr. Chairman, Gaile Whelan Enns speaking. I am going to make an attempt to frame a question that I thought was going to be answered a little while ago.

Mr. Kulchyski, Dr. Kulchyski, would you tell us -- and we do want to hear from Patrick McCully pretty quick -- would you tell us why you do what you do? What motivates you, in respect to your area of expertise, your studies, your work with your students, and the volunteer work you do with communities?

MR. KULCHYSKI: Sure. As I said, I went to Frontier Collegiate, a residential school, I went from Bissett. The school was mostly a high school for Aboriginal students. There were very few non-aboriginal people there, I was one of them. There were 400 kids in my grade 9 class, there were 36 kids in my grade 13 class. Of the 36, only one went to university, me. I didn't have -- I didn't come from a wealthy family. I didn't have more money than the other kids that I went to school with. I concluded that the only reason I went to university and others didn't had to do with the colour of my skin. So from the time I started university, I was interested in trying to figure out why that was the case, what was wrong with people who were just as bright as me, who were my friends, who somehow didn't have the kind of opportunities that I had.

As I went along in my studies, I started to travel to remote communities and I could see that the hunting culture was entirely, being entirely unappreciated, and part of that had to do with money. Whenever there is a resource development project, the people who are proposing it have a lot of money and they bring a lot of money to the table. Whenever Government is doing something to communities rather than with them, they do it with a lot of resources behind them. Since I grew up in a poor background -- I am a university professor, I am well paid now -- so I work for Aboriginal communities for free.

Particularly those that are faced with very large challenges with very expensive processes. So, I genuinely do it out of commitment and out of my life experience I suppose.

THE CHAIRMAN: Thank you. I just want to remind Ms. Whelan Enns as well that the questions that you are allowed on the re-direct have to be related to the information provided or responses provided to questions.

MS. WHELAN ENNS: I will work to be more specific. Thank you, to the chair.

I think that that is probably going to close today. And I appreciate the reminder from the secretary of the Commission in terms of re-cross. Thank you.

MR. KULCHYSKI: I want to take the opportunity to thank you, since I had to sit through this morning hearing you being personally insulted actually, I want to say that I think you have done a service to the Province of Manitoba and to this Commission by bringing those of us that you have brought forward. Thank you.

MS. WHELAN ENNS: Thank you. And thank you for being a volunteer today.