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## **Standing Committee on Natural Resources**

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**EVIDENCE**

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**Chair**

**Mr. James Maloney**



## Standing Committee on Natural Resources

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• (1620)

[English]

**The Chair (Mr. James Maloney (Etobicoke—Lakeshore, Lib.)):** Good afternoon, everybody. Welcome.

We are running a little bit late. I understand that there are some delays at security. We apologize to our witnesses, but we're grateful for your patience. We have one witness who, I understand, is still in line downstairs, but rather than wait for him, we will get going.

Before I get to the witnesses, I just want to formally welcome our newest committee member, Mr. Graham.

Thank you for joining us.

We have here three of our four witness groups. We have Mr. Brian Craik, Ms. Kate Darling, Mr. Duane Ningaqsq Smith, Mr. Graeme Reed and Chief Byron Louis.

Thank you all for joining us today.

The format is that each group of you, each organization, will be given up to 10 minutes for your presentation.

Then once all of the presentations are done—and, hopefully, Mr. Helin will be with us by that point—we will open the table to questions from members.

Mr. Craik, since you're first on the list, why don't we start with you, sir?

**Mr. Brian Craik (Director, Federal Relations, Grand Council of the Crees (Eeyou Istchee)):** Thank you, Mr. Chair and Madam Vice-Chair. My name is Brian Craik and I'm the representative for federal issues for the Crees. I'm here in place of Mandy Gull, who I was supposed to be accompanied by, but she's ill and couldn't come.

The Cree of Eeyou Istchee do not suggest that our experience with energy projects necessarily holds lessons for others. Each case is unto itself and must be examined by the people who are searching for ways and means of moving ahead in the development of their communities.

In the past 40 years I've seen a radical change in the Crees of Eeyou Istchee with regard to energy and resource development. Forty years ago, development in our homeland was initiated and carried out by others with virtually no consultation or involvement of the Crees. Today this would be unthinkable. How did we get here from there?

In telling this story, I will review some of the major milestones of recent Cree history, which involve the signing of the James Bay and Northern Quebec Agreement, the fight against the the Great Whale River hydroelectric project and the *paix des braves*. Before thousands of Europeans came into Eeyou Istchee, which means the people's land, the Crees were there winning their livelihood from trapping, hunting and fishing.

For centuries after the first Europeans had their presence in the Eeyou Istchee, there was minimal change, for approximately 400 years. The change came in the 20th century. The fur trade had fallen off and had been built back up again in the early 20th century. The Government of Quebec and the Government of Canada established basic health and education services in our territory. The Cree children were sent to residential schools, with all that those entailed, and we're still fighting against the problems those made. However, more positively, there was a beaver conservation program in the 1930s, 1940s, 1950s and 1960s that actually revived the economy in James Bay. People weren't rich, but they were proud of their livelihood.

In 1971, the Quebec government announced the massive James Bay hydroelectric project. It was an enormous project that would radically affect the Crees and their traditional way of life. At the time, most of our people spent most of the year in the bush, carrying out our traditional activities. From one day to the next, they faced an assault of airplanes, helicopters, bulldozers and heavy trucks. Roads were blasted through our lands, and our rivers were dammed and diked. To our people, this was an invasion.

Quebec did not consult us or seek our consent for this development. Quebec said that the Crees had no rights to land that they had occupied for thousands of years. It was seen that the Crees had no rights to our environment and our way of life, the Crees had no rights. That began a court case called the James Bay case, the Kanatewat case. In 1973 Judge Albert Malouf made a judgment that granted an injunction to the James Bay project.

•(1625)

This injunction was turned over after one week, but it scared the people who were financing these big projects. The Crees and Canada, the Inuit from northern Quebec and Quebec got together and negotiated an agreement. They spent two years negotiating it, and it was seen as a partnership. It was sold to the Crees and the Inuit as a partnership, a way to live together. The agreement is a complex document; it has 30 chapters. It has a land regime, local and regional government regimes. It has health, education, justice, police, economic development, community development and an innovative income security program to keep the economy of the Crees alive.

Section 22 of the agreement establishes an environmental and social protection regime, including the first environmental assessment and review process in Canada.

The Great Whale project is the next issue, and that arose in the 1980s and 1990s. Neither Quebec nor Canada lived up to the expectations of the Crees in terms of how Cree rights should be implemented. When Bourassa announced the Great Whale project, the Crees went to court against it, and they fought very hard to get this project stopped.

The Crees had signed an agreement with Canada and with Quebec, and although they signed an agreement, the agreement was not carried out by Quebec and Canada. The Great Whale River project was eventually shelved basically.

The *paix des braves* was the next issue. The Crees and Canada and Quebec were searching for a way to get together and to resolve their issues. Quebec and the Crees got together bilaterally and made an agreement. One thing you can take from this is that the Crees worked with the province, and they also worked with the federal government. They also, to some degree, worked with the Inuit in northern Quebec.

The *paix des braves* is a nation-to-nation agreement, and it's seen that way. Since the *paix des braves* was signed, the Crees have worked out other projects, and these projects have been basically designed to ease the fact that the projects before that, like the La Grande project, were causing huge problems. They cut off all of the flow in certain streams and caused problems for the ecology. There were problems with mercury in the fish and there were problems of all sorts, especially social problems.

Since the *paix des braves*, the Crees have found ways to work with Quebec, and it's been the difference between night and day.

Thank you.

•(1630)

**The Chair:** Thank you very much.

Mr. Helin, thank you very much for joining us. My apologies for the lengthy wait at security, but we started in your absence.

The process is that we're going to let each witness group do their presentation, and that will be followed by questions.

Mr. Smith.

**Mr. Duane Ningaqsiq Smith (Chair and Chief Executive Officer, Inuvialuit Regional Corporation):** I'll apologize in

advance if I am going a little quickly, because I think I have more than 10 minutes in my presentation here.

Thank you for the opportunity to speak before you today. First of all, my name is Duane Smith. You can just stick to the English name. I know my Inuvialuit name is a bit difficult. With me today is my general counsel, Kate Darling.

I come from what is known as the Inuvialuit settlement region. It's located in the very far northwest portion of Canada. It's only nine hours by jet, but you're still in Canada, so please come and visit sometime.

The area includes the land, ice and waters of the Mackenzie Delta, the Beaufort Sea and, of course, the Arctic Ocean. The area I represent is just under one million square kilometres, the vast majority of that, of course, is ocean or the Beaufort Sea. We have six communities in our region, either in the delta or along the coast. There are roughly 6,000 Inuvialuit beneficiaries.

In 1984 we signed the Inuvialuit Final Agreement, the modern-day treaty. It's a land claim agreement pursued in response to increasing development activities in our land and waters. It's the first comprehensive land claim agreement settled north of the 60th parallel and the second settled in Canada's history. It's also the first modern-day treaty to create a national park in mutual agreement. It also created a territorial park out of this.

The IFA belongs to the Inuvialuit and to Canada. I keep reiterating that, because Canada is a signatory to it. It has its responsibilities and obligations in regard to the implementation of that treaty, as do we.

In regard to our area, we're very resource rich but infrastructure poor. We hold trillions of cubic feet of natural gas, both onshore and offshore. It's a clean source of energy relative to other non-renewable sources of energy.

Since the construction of the Dempster Highway, infrastructure development in the Arctic has not had a strategic plan. There is a lack of commercial access to the ocean, local energy production facilities, adequate telecommunications, etc. I'm sure you've heard a lot of these issues and points made in the past already.

Regarding the energy insecurity in my region, as an example, we truck most of our energy needs from thousands of kilometres away, either from British Columbia or Alberta, to fuel the energy in the communities. This doesn't make sense to us when we're sitting on nine trillion cubic feet of gas.

The Dempster Highway is subject to frequent road closures and longer freeze-ups. There are two major water bodies that we have to cross, which don't have bridges, so there again is a lack of infrastructure. We have to wait for these water bodies to freeze up in the fall so that we can make ice crossings, and/or for it to melt away for the ferries to operate in the spring and throughout the summer.

Another example is the nearest city, if you can call it that—Whitehorse, with 24,000 people—is over 1,200 kilometres away on this road, so we're trucking the stuff roughly 2,000 kilometres to our community to provide energy. You can imagine the greenhouse gas emissions from that. We are subject, as well, to high transportation surcharges, and there's a limited number of companies that can supply this energy.

The region has very limited disposable income among residents and inability to pay more. Residents give up nutritious food, home repairs and opportunities for their kids so that they can pay for heat and power. The energy costs in our region are probably the highest in Canada.

There is a real desire to develop local energy resources, but infrastructure, again, is needed.

In regard to the geopolitical considerations, states with emerging economies and growing populations want cleaner energy due, in part, to costs associated with local pollution as well as international targets.

• (1635)

These states are already approaching indigenous organizations in resource-rich areas with offers of infrastructure development and competitive investment arrangements enticing to populations that are chronically energy insecure.

Natural gas from Canada should be a key component in the global transition from coal and diesel, maximizing local resources while helping reach carbon emission reduction targets. Clear rights frameworks, mutually respectful relationships and tangible strategic plans for infrastructure development in remote areas are required to control access and maximize benefits to Canadians.

In relation to engaging with indigenous organizations, Inuvialuit have decades of experience negotiating with multinational oil and gas conglomerates interested in developing oil and gas in our region. Based on this experience, we've intervened in Clyde River to argue that free, prior and informed consent as outlined in article 32.2 of UNDRIP is the most certain means to achieve predictable energy investment and development in Canada. Early consultation with rights holders facilitates common understanding of impacts on rights under a land claim agreement and alignment of mutual interests, such as the need for energy security and reduction of emissions.

FPIC applies to project design, implementation and expected impacts. Going through the process of achieving FPIC can demonstrate efficiencies that can be gained by developing a resource using local capacity. We argued that withholding consent must be reasonable in the circumstances and is not a veto. Lots of lead time is needed to achieve FPIC but this should be considered an investment in a project's success. This approach aligns with the performance standards adopted by the International Finance Corporation agency of the World Bank and voluntarily by Canadian banks.

Canada needs to work with indigenous organizations to prepare the foundation. In our case, we need to evolve our land claim agreement to reflect the current environmental, legal and geopolitical landscape.

By the way, in our region we have our screening and review board processes that have been very successful, and as I said, it's going on 35 years since the signing of this agreement. The IFA, for example, was negotiated in the late 1970s, early 1980s, and did not contemplate the opening of the Arctic seaways.

Engage with indigenous organizations to plan infrastructure investments that will benefit both local residents and the Canadian economy over the next 20 years and to determine what makes them vulnerable to extraterritorial interests as well.

In conclusion, I just want to say thanks again for the opportunity and we'll entertain questions when we're done. *Qujannamiik*.

**The Chair:** Thank you.

Chief Louis.

**Chief Byron Louis (Okanagan Indian Band, Assembly of First Nations):** Thank you.

First, I would like to acknowledge I am giving this presentation on the traditional territory of the Algonquin people.

Members of the committee, friends and relatives, thank you for the invitation here today to share the perspectives of the Assembly of First Nations on international best practices for engaging with indigenous communities in major energy projects.

I would like to start with the important point from our national chief, Perry Bellegarde, who said that first nations are not opposed to the development, but we will balance what is right for the economy with what is right for the environment and our responsibilities to our traditional territories.

Clearly, when we consider the energy and mining sectors and how important they are to our local, regional and national economies, I am again reminded how closing the gap must be part of the energy discussion.

A key component of closing this gap is fulfilling the promise of a nation-to-nation relationship with clear decision-making processes through partnerships. This is a key component of achieving consensus—to realize a process that all Canadians and first nations can have confidence in.

We have been working in partnership to identify and address transboundary mining issues that impact our territories. This is reflective of some of the collaborative work that has been occurring in British Columbia. One of the examples I would like to give is our relationship with the Colville confederated tribes who reside in Washington state. The majority of our people reside in Washington, Idaho and Montana. They are Nsyilxcen-speaking peoples who are still members of our tribal council. One of the issues that came out of impacts to mining was a resulting case in the United States where they took Teck Cominco to court and successfully had a lawsuit against them for downstream damages from Teck Cominco, which is located in the Canadian portion outside of Trail, British Columbia. They were dumping tailings into the Columbia River for well over 100 years.

This resulting court case that had been launched and was successful found in U.S. courts that the Canadian mining firm, Teck Cominco, could be charged with damages to U.S. downstream effects.

The other part of this is that to date, through the Columbia.... This was starting in about 1946, with building the Grand Coulee Dam in Washington state. Canada had identified that there were no upstream impacts, resulting in not only the building of Grand Coulee Dam—half of it on Colville Reservation—but leading to Chief Joseph. I think there are upstream treaty and non-treaty reservoirs that serve this high-head dam for energy production in the United States, which basically benefits Canada in that particular area.

What I find is that sometimes people say hydroelectric energy is clean energy. No, it's not—not from an aboriginal context and the impacts to aboriginal people when you change the natural hydrograph to one that is developed along filling reservoirs that slow down the speed of the water where what was usually freshets carrying smolt salmon to the Pacific Ocean. It also impedes upstream migration of Okanagan sockeye that travel through nine dams in the United States.

Two or three years ago, we had changes. What happens in the Okanagan system is that in the water column, deoxidized water happens at a certain level where fish, especially salmon, can't survive. You have what's called thermal blockage, where salmon in the Columbia River can withstand temperatures to 22°C. When you have a dam, the water changes; it almost decants, where it takes off the surface of the water and flows into the next reservoir.

In the summer months you also have heated water that's flowing down through the systems that ended up in the Rufus Woods Reservoir in Washington state. As a result of this squeeze, we lost 200,000 of a return of 400,000 sockeye. At one time in the 1990s we had fewer than 600 sockeye returning to the Canadian portion. The Okanagan system is basically the only system within the Columbia Basin where we still have anadromous species returning to Canadian waters, which happens in the Okanagan sub-basin.

• (1640)

This is an example of a measurable outcome or impact of what would be classified as a major energy project.

To move along in there, I think the fact that in a 2015 report, an independent working group on natural resources called for

immediate action to ensure all first nations participate and share in benefits of natural resources development in Canada. Recommendations included the establishment of a national round table inviting first nations, provinces, territories, industry and non-governmental organizations; the launch of a discussion on resource revenue sharing as the best means of eliminating socio-economic disparities; the establishment of central knowledge and information resources to support first nations; and the international forum to promote first nations trade and international partnerships.

First nations as rights holders, as owners and as a burgeoning labour market force must be participants in and part of solutions going forward. First nations businesses must be included in contracting processes and benefits from procedural procurement opportunities. Processes must bring together mechanisms that involve licensing, engagement and good practices.

The energy sector and, in fact, the broader Canadian economy is a much-needed partner and not excluded from the work towards a renewed relationship.

When we're talking about reconciliation, I think from a first nations perspective we really need to come to what is actually a definition of "reconciliation". You look in the dictionary for an example or a meaning of reconciliation, and it is a renewal of relations after a long period of hostilities, which basically describes first nations' relations with Canada for a long period of time, whether it's with Canada or the provinces.

What is the definition of what we're using for reconciliation? Is it more or less the international model that could be actually construed as being an example of what happened after the Second World War with Germany, Italy and Japan being able to rebuild socially and economically? Is that the type of reconciliation we're talking about, or is it something less? Because with first nations I think we need the opportunity to rebuild, not only socially but economically. Major projects play a large role in that.

Before we get into specific examples, I want to start by framing where we are. This is an opportunity for real reconciliation. First, as we're well aware, Canada has announced its full and unqualified support of the United Nations Declaration on the Rights of Indigenous Peoples. This declaration did not create any new rights as these rights are inherent or pre-existing; it simply affirms indigenous peoples' human rights.

Across government, including Bill C-262, we talked about realizing these rights and finding a better way to work together so that we don't have to spend millions of dollars and waste years in fighting the courts. Poor environmental processes lead to hundreds of unnecessary judicial reviews annually. Partnerships with first nations must respect and realize existing rights. It's about working with us to establish the laws, policies and practices needed to respect our rights and status as self-determining peoples.

Inevitably, the conversation will slip to the standard of free, prior and informed consent. To be very clear, free and prior informed consent was not created in the UNDRIP or the rights of indigenous peoples. It was not created in Bill C-69 or in Bill C-262. It was already existing in international law.

It is an essential element of the right of all peoples, including indigenous peoples, to self-determination, which Canada has recognized for decades. For example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, have, in their first article, that “All peoples have the right of self-determination.”

• (1645)

Consent is essential for nation-to-nation negotiation and for treaty interpretation, treaty-making in general. It is between self-determining nations. The first nations already have the right to participate in decisions that can affect their rights, property, cultures, environment and capacity to exercise their right to self-determination.

What does this mean in the context of this study? What is needed is a better process for major energy projects, one that is designed with first nations, one that involves first nations from the start. There is no need to reinvent the wheel here. Free, prior and informed consent exists around the world. There is already a lot of international jurisprudence to draw on.

On first nations leading the energy transition, when given the space, first nations have participated in and benefited from energy development.

As many of you already know, first nations across Turtle Island are achieving investments in clean energy and low-carbon economy. These investments are being supported by an aggressive Government of Canada approach to investing in energy sector projects that support the transition to a low-carbon economy: generation, transmission and export. For example, the federal budget commits \$2.37 billion over four years to Canada's clean technology industry. As well, the government outlines its plan to invest \$21.9 billion over 11 years in green infrastructure.

Our teachings have taught us to be stewards of the land. With that, first nations can be champions when it comes to clean energy and alternative energy moving forward. As a result, first nations are increasingly joining Canada's growing clean energy economy as a way to generate revenue in a manner that is consistent with our cultural and environmental values.

A focus of these efforts must be to encourage and support energy independence and assist with the transition away from diesel power generation for approximately 112 diesel-dependent first nations across Canada, 42 first nations in the territories and 70 first nations in the provinces.

One of the Generation Energy Council's five principles is “A collaborative transition ... integrating Indigenous values into the process at every step and creating opportunities for reconciliation and new partnerships with Indigenous peoples.” In this report developed by the council, it's recommended that indigenous peoples have involvement in energy governance, investment tools and capacity development.

Last year, the Assembly of First Nations hosted a one-day session in advance of the Generation Energy Council process. The consistent theme from that discussion was a need for collaboration with first nations, a true and meaningful engagement, and federal government and territorial policy.

There is more, but my 10 minutes are up.

• (1650)

**The Chair:** Thank you.

Mr. Helin.

**Mr. John Helin (Mayor, Lax Kw'alaams Band):** Chair, honourable members, ladies and gentlemen, I appreciate the invitation to come here today to share our insights into engaging in indigenous communities on major energy projects within our territories.

I will first provide some background on my community. Lax Kw'alaams is one of the largest and most progressive first nations in B.C. with over 3,800 members, approximately 800 of whom live in the village of Lax Kw'alaams. We have 83 reserves covering 16,497 hectares of land. Despite many hurdles, which I will broadly describe later, economic development has been a priority, and we have been able to pursue numerous successful ventures both within the community and off reserve. Most of our business opportunities are natural resource-based, including forestry and fishery operations.

More recently, Lax Kw'alaams has been able to successfully negotiate some financial and economic benefit from other uses of our lands, and we have developed positive working relationships with the province in some areas such as environmental assessments.

As you may know, Lax Kw'alaams is situated on the northwest coast of British Columbia. We are Coast Tsimshian people who for thousands of years thrived on the land and waters in the area surrounding what is now Prince Rupert. Our ancestors were an alliance of peoples or tribes from this region referred to as the nine tribes of Lax Kw'alaams. Together they governed an immense territory of over 1.2 million hectares on either side of the Skeena River, and an expansive ocean between the mainland and Haida Gwaii.

The alliance facilitated the development of a prosperous economy with a sophisticated government system and dynamic social and cultural environment. Unfortunately, as with other indigenous communities, we were heavily impacted by colonial encroachments into our territories. In 1834, at the invitation of our ancestors, the Hudson's Bay Company located at the site of the present village of Lax Kw'alaams. Initially our people continued to prosper with a virtual trade monopoly in the region; however, the introduction of illnesses such as smallpox and influenza decimated our people, and new religions that frowned on practices underpinning our social structures undermined our traditional government, dividing our people.

As Canada came into being, what began as mutually beneficial relationships evolved into a struggle by our people for economic and cultural survival. Successive federal and provincial governments imposed oppressive policies and restrictive laws to systematically alienate us from our territories. Our culture was undermined as the foundational protocols and ceremonies of our traditional government were outlawed. Like many indigenous nations in British Columbia, Lax Kw'alaams has never ceded or surrendered our territories, and while some Canadian court decisions support the idea that suppressive laws can extinguish the rights of our people, insofar as these laws were devoid of benefit to Lax Kw'alaams they are contrary to our law, and undoubtedly, an affront to the honour of the Crown.

Since the mid-1800s, the Crown has unilaterally granted rights to natural resources within our territories to third parties while restricting our peoples' access to these resources. We were even shut out or restricted from industries that had sustained our ancestors from time immemorial, and our inherent knowledge of resource management within our territories was ignored.

Commercial activities of Lax Kw'alaams fishers were severely restricted, and the knowledge of fisheries management imparted by generations before us fell on the deaf ears of government. Similarly, the trees within our territory were sold to corporate buyers for harvest, and lands were used or given away with no regard to Lax Kw'alaams.

Only in the last 28 years have governments, at the urging of the courts, begun to acknowledge the right of indigenous peoples to participate in the economy and to benefit from the use of lands and resources within our territories. The importance of this should not be minimized, since over a century of living under corrosive policies and laws has complicated both internal and external relations for our community, making engagements on matters such as major energy projects more complex.

• (1655)

Although the treaty process has benefited some first nations, Canada's attempts to resolve natural resource matters through treaties have a number of major drawbacks. While I won't get into too many details here, suffice it to say that various treaty policies have not adequately addressed issues relating to shared territories, such that the Crown has occasionally purported to grant rights under treaty that in the eyes of some courts override the unceded aboriginal rights of neighbouring first nations, even where resource management agreements exist.

Lax Kw'alaams is not actively engaged in the treaty process and at this time does not consider it to be a viable way to resolve natural resource management issues. While Lax Kw'alaams is not opposed to progressive, environmentally respectful projects in our territories, they must be mutually beneficial and able to accommodate our rights and interests. A key principle in the United Nations Declaration on the Rights of Indigenous Peoples stated in the recitals is the conviction that "control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs".

To enable respectful development, Lax Kw'alaams does not want to be treated merely as another interest-holder in our territories. As title-holder to the lands and territories, Lax Kw'alaams must be a full participant in all processes relating to a proposed project and must also be a beneficiary of that project. This goes beyond engagement and includes consenting to the project. This should include: compliance with overall land and resource plans; co-operative determination of what approvals may be required; actively co-designing and participating in the processes leading to any approvals; and, ongoing involvement in compliance monitoring, including decommissioning of projects.

Before we can properly participate in processes, Lax Kw'alaams must be able to consult with our membership. To do so requires the creation and ongoing review of internal policies, the maintenance of rigorous lines of communication and the establishment of internal administrative supports.

However, Lax Kw'alaams faces many challenges in this regard.

Firstly, many of our members live and work in different locations throughout the province, so even basic things such as maintaining up-to-date contact information is often challenging. Also, we lack resources to attract and retain qualified personnel. As well, our funding is often project-based, which does not support a stable administrative infrastructure.

Qualified members often leave the area for better jobs elsewhere, and even when we are able to attract qualified personnel, it usually is for only short terms. We often have no option but to utilize external consultants, which drives up costs, diminishes community connection and long-term planning, and does not support a vision of stable and professional internal Lax Kw'alaams government.

As stewards of the territories, the indigenous nation often has the most comprehensive appreciation of the state of the territory. This positions it well to understand the cumulative impacts of industry and development within the territory.

However, maintaining an overall record of industry and development within the territory requires considerable time and effort. A number of years ago, Lax Kw'alaams engaged contractors to draft a land use plan to help guide the kinds of activities that could be undertaken in our territories. That plan, which was never ratified, is outdated and needs further development. Investing in the development and maintenance of an accurate record of developments in the territory would enable us to better assess the pros and cons of proposed projects.



Lax Kw'alaams is committed to environmentally responsible energy development and, with proper resourcing, is willing to work with the federal government to develop the policies and processes necessary to enable appropriate development in the territory. As you may know, Lax Kw'alaams is one of the communities that supports an energy corridor from Alberta to the west coast. We have worked with proponents in the past to enable such projects to proceed, meeting with traditional leadership and holding a membership vote on the PNW LNG. We learned many lessons from that process that would assist in future development.

• (1700)

We cannot stress the importance of beginning work early, providing user-friendly neutral information, accurate assessments of risks and benefits, and plenty of opportunity for member involvement. We can also state definitively that it is important that proponents interface with the community early and provide regular updates.

I also cannot overemphasize the need to support our communities in building the administrative infrastructure, including retention of qualified personnel, to enable the development of policies and adaptable processes that permit meaningful community involvement in land use and project decisions. Without community support, no project can succeed.

Finally, I would like to make clear that, in the spirit of the UN Declaration on the Rights of Indigenous Peoples, if Canada wishes to consider major energy projects in Lax Kw'alaams' territories, it should ensure that Lax Kw'alaams' voice is represented in the laws and policy decisions that directly impact the use of land and waters within its territories.

In saying that, what's not included in the brief is that the government right now is imposing a tanker ban within our territories without consulting with us. The Great Bear Rainforest was imposed on us without consultation. That leaves us no choice but to probably end up in court, where nobody wants to be.

**The Chair:** Thank you.

We have time for one round of questions. It's going to take us a little bit over or past 5:30, which I assume nobody has any objection to.

Mr. Whalen, you're starting us off.

**Mr. Nick Whalen (St. John's East, Lib.):** Thank you very much, Mr. Chair.

I'd like to thank all of our witnesses for their powerful testimony. Obviously these historical wrongs are difficult to discuss. Thank you for bringing your frank views on those.

One of the key focuses of our study—which Mr. Helin has mentioned—is how do we resolve differences between different groups living in different areas when there are overlapping land claims and a desire from Canada on the one side to protect certain ecologically sensitive areas, and then there are mixed views among indigenous folks along those corridors to its development and best practice?

I know it came up in the last meeting.

I'm not sure, Mr. Helin, if you have a type of proposal on how to ensure that everyone's varied interests along that corridor could best be managed because half the groups are against development of the energy corridor and certain aren't. What are we left to do? We are caught between a rock and a hard place in the northern gateway. We're also caught between a rock and a hard place on the Trans Mountain expansion. Canadians want to see some economic activity occur. What is your suggestion?

• (1705)

**Mr. John Helin:** I would suggest that anybody wanting to do business understand the people in whatever territory they're looking at. We're having a dispute with one of our neighbours right now. There is a lot of interest on the coast again for LNG. One of our neighbours wants to buy some land within our traditional territory that's titled. The province is looking at it right now to do that with them. My suggestion to them was, don't make it a rights and title issue, make it a business proposition where Coast Tsimshian, which is Lax Kw'alaams and Metlakatla, hold that land with our neighbour in a corporation. We're not selling or giving land away, we're holding it and working on the project together. That should bring us together instead of us fighting over it.

**Mr. Nick Whalen:** It's so that the land can be owned not just by one indigenous group in Canada but shared between multiple indigenous groups in Canada.

**Mr. John Helin:** Yes.

**Mr. Nick Whalen:** The type of consultation that can happen in that regard requires what?

**Mr. John Helin:** Again, you have to go out and meet with the people.

I beg to differ with your suggestion that half the people are for and half are against.

**Mr. Nick Whalen:** Sorry, there are people for and against.

**Mr. John Helin:** One of the problems in our traditional territory is NGOs funding people in our communities, people representing hereditary leaders who aren't really hereditary leaders. Again, it comes back to understanding the people in the area.

**Mr. Nick Whalen:** Should there be any rules in place on limiting how third-party-financed entities participate in these negotiations, or have a voice at the table?

**Mr. John Helin:** I think everybody should have a voice, but I think it should be in favour of whose traditional territory you're in. I won't go to the Haida Gwaii and tell them how to do business, and I don't expect them to impose something on us.

**Mr. Nick Whalen:** Well, that's a good segue to Mr. Louis.

Mr. Louis, your organization represents a number of different groups across the country. When we try to get to the root of what reconciliation means.... You made a somewhat controversial statement, and perhaps intentionally so. Of course, Germany, Italy and Japan are countries that had well-defined borders in Europe before the Second World War, and fought hard through many wars. They existed as separate and sovereign international states. Are you suggesting that AFN territory should be a separate sovereign state? Is that the position of your organization?

**Chief Byron Louis:** No. I think that some things need to be understood. That comment is an example of what reconciliation actually happened. I beg to differ that boundaries weren't established pre-contact, and during colonial times. They have always been identified. We have the boundaries that are established between the Okanagan and the Shxw'ow'hamel, and then you have other processes like that. To say that there were no boundaries, or none similar to the states....

I think one of the things that need to be understood is that the boundary of Germany only exists because Belgium, France, Poland and other countries actually recognized that boundary. It's not because Germany stood up and said, "This is our claim." It's all based upon the fact that everyone agrees that this is where the boundaries are. To state that it did not exist in North America prior to contact is—

**Mr. Nick Whalen:** I did not say that.

**Chief Byron Louis:** I just wanted to make that point.

**Mr. Nick Whalen:** My question to you was, and without trying to put words in my mouth—

**Chief Byron Louis:** Yes.

**Mr. Nick Whalen:** —is your organization claiming that you want an apertness, or are you saying that you can stay and work within Canada? The explicit examples you gave of reconciliation—

**Chief Byron Louis:** Yes.

**Mr. Nick Whalen:** —proposed an apertness, not a togetherness.

**Chief Byron Louis:** Basically what I put in there is to look at reconciliation, and also the fact that, again, there is evidence in British Columbia that sits in the archives, is clearly defined by people like the Hudson's Bay Company, early explorers and all of these other ones, and delineates—

• (1710)

**Mr. Nick Whalen:** Again, sir, that's fine. If you're not going to answer the question, that's fine, because I have another question for Mr. Smith.

**Chief Byron Louis:** I am answering the question.

**Mr. Nick Whalen:** Okay, so are you asking for an apertness? Are you asking for separate and distinct sovereign states, or a togetherness, in terms of shared land?

**Chief Byron Louis:** No, I'm not asking for separate sovereign states, in the meaning of today. It's more or less going along the line—

**Mr. Nick Whalen:** Perfect. Thank you so much for clarifying that.

Mr. Smith, obviously, in the north, resource development is important, and for my area of the country as well—offshore oil and gas development.

What are some of the challenges your organization is facing in trying to get natural gas development? How can the federal government be a better partner in that, and what hindrances are you finding, in terms of the state of negotiations on natural gas development in your territory?

**Mr. Duane Ningaqsiq Smith:** Well, first of all, it's the remoteness, and the high cost of doing any type of business in that part of Canada, in the Arctic. Geographically, we're closer to Asia than to the rest of Canada, if you look at it.

Again, it's the high cost of conducting business where we are, as well as what I pointed out in my initial comments. Regardless of who the federal government is, there is a lack of clear planning, or a clear commitment to Canada's Arctic.

The four Inuit regions cover 38% of Canada's land mass. We have 50% of Canada's coastline within our four regions. There is no approach, strategy or plan with any of us to have development on a consistent basis. It's all ad hoc. It's all on a whim. There is no 20-year forecast, or vision, etc., regardless of what resource we're talking about.

As I said, we've been sitting on stranded oil and gas for 50 years now.

Part of the problem with Canada's system is that when it allows a company to explore—

**The Chair:** Mr. Smith, I'm going to have to ask you to wrap up, if you could, please.

**Mr. Duane Ningaqsiq Smith:** —it allows this company to sit on what we call an SDL, a significant discovery licence, forever. The minister has the discretion to tell a company to develop, but that has never been exercised. We need to do that.

**The Chair:** Thank you.

Ms. Stubbs.

**Mrs. Shannon Stubbs (Lakeland, CPC):** Thanks, Mr. Chair.

Thanks to all of you for being here.

As a member of Parliament from northeast Alberta, a big rural area, I certainly always enjoy the times when we can celebrate the ways in which indigenous communities are partners and owners in resource development. There are so many examples in the communities that I represent in Lakeland and that neighbour my riding to the north in Alberta.

I regret that we have limited time here. We have so many witnesses and such complex issues that our time is going to be limited.

Mayor Helin, I thank you for being here. Could you shed a little bit more light for the committee on your experience in terms of the development of Bill C-48, which you cited at the closing of your comments?

I'm just trying to get some clarity on a discrepancy of claims here. Last week, my office received a reply to an Order Paper question, and it said:

The Minister of Transport engaged directly with Indigenous groups.... The government held 20 meetings with Indigenous groups, including the Lax Kw'alaams....

However, a department official from Indigenous Services Canada said at this committee last week that he wasn't aware of or involved in any consultations with indigenous people before the Prime Minister imposed that initial ban after he was elected.

Can you just help me figure out what this discrepancy is? Maybe they met with your community on other issues not related to Bill C-48?

**Mr. John Helin:** You're talking about the consultation record?

**Mrs. Shannon Stubbs:** Yes, and whether or not there was consultation on the development of Bill C-48.

**Mr. John Helin:** Well, as far as I'm concerned, the consultation was right after the Liberal government was elected. The minister came to Prince Rupert and met with some of our groups. I wasn't at the meeting at that time, but he did mention that they were going to impose a tanker ban. The Coast Tsimshian, along with our village and with Metlakatla, delivered a letter that said we were against it. We were not consulted.

I've been to I don't know how many standing committees. When the government says that it has met with me 50 times, none of those meetings involved consultation on a tanker ban. As far as I'm concerned, it's just like the Great Bear Rainforest. That was imposed on us by the province without consulting us.

• (1715)

**Mrs. Shannon Stubbs:** Maybe we can talk about that. There is a member of your community, Calvin Helin. He said:

...what the chiefs are starting to see a lot now is that there is a lot of underhanded tactics where certain people are paid in communities and they're used as... spokespersons—essentially puppets and props—...to kill resource development.

He goes on to say:

It's outrageous. People should be upset about that, and the chiefs are [upset].

There are linkages of millions of dollars in foreign funding going into anti-energy campaigns in B.C., including for the explicit purpose of imposing Bill C-48 on B.C.'s north coast. I think most Canadians probably find that a little bit unbelievable. They don't know and they can't imagine that this could actually be happening.

Since you did mention it, could you expand on the experience of your community?

**Mr. John Helin:** I was elected into my position partway through a negotiation on a proposed LNG project in our area. NGOs infiltrated our community and there was controversy over where the project would be situated. That caused a lot of division amongst our members.

What I had to do was get the right information from people who had no skin in the game whether it went or didn't go. I got good information to our membership, and it turned from just about 100% saying "no" to over two-thirds accepting that project. I would encourage everybody to listen to Vivian Krause and follow the

money, follow how that money comes into Canada. There are individuals named in my community who received funding from those groups. You know, it's out there. It's alive and well, and it's well organized.

**Mrs. Shannon Stubbs:** Is that at all related to the confusion over claims of who are hereditary chiefs and who aren't, and then also with your being an elected leader?

**Mr. John Helin:** I would equate it to what the Russians did in the federal election below the border where they created confusion. I think there are people in the States who want our energy resources cheap and they're good at what they do. It's well funded and well organized.

**Mrs. Shannon Stubbs:** I think it would alarm most Canadians everywhere that resource development in Canada could be stopped by foreign interests, robbing indigenous communities of the ability to make decisions on their own territory for their own economic opportunities now and long into the future.

I have another question about the offshore drilling ban. Along the same lines, and given our discussion about the need for governments to engage with indigenous communities on resource development, it seems to me to follow that they should also probably consult on legislation and policies related to resource development too. Was there consultation on the moratorium on northern offshore oil and gas drilling?

**Mr. Duane Ningaqsik Smith:** Thanks for bringing it up. I didn't have it in my comments. Although the government doesn't call it a moratorium, that's what it is. It was imposed on us without recognizing our rights on the offshore. No, we were not consulted prior to it being imposed on us.

**Mrs. Shannon Stubbs:** What would you say should happen now? I think it would be within the government's power to revoke its moratorium and engage in meaningful consultation with you and with the territory.

**Mr. Duane Ningaqsik Smith:** For clarification right now, the territory doesn't have any jurisdiction in the offshore. It's all federal because we're territories.

**Mrs. Shannon Stubbs:** Yes.

**Mr. Duane Ningaqsik Smith:** Secondly, yes, I agree. You've answered the question yourself. We should sit down together and work this out because it isn't giving any comfort to industry itself as well. They've all walked away from their investments to explore within their region. As I pointed out earlier, some of them are sitting on trillions of cubic feet of gas as well as oil. The country is being held at ransom by this process that we have where we allow them to not develop as well.

• (1720)

**Mrs. Shannon Stubbs:** Those are huge lost opportunities obviously in your community that relate to all of Canada and to the benefit of the future of our country.

Thanks to all of you.

**The Chair:** Mr. Saganash.

**Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP):** Thank you, Mr. Chair.

Thank you to all of our witnesses this afternoon.

I would like to engage with all of you. Most of you mentioned free, prior and informed consent even qualifying in this as an investment for a project's success, if I heard you correctly.

I tend to agree with that but I want to start with you, Brian. We've worked many years together in the past, in my previous life. You say in paragraph 3 of your presentation that the Cree of Eeyou do not suggest that their experience with energy projects necessarily holds lessons for others.

I beg to differ on that. You mentioned section 22 of the James Bay and Northern Quebec Agreement as being an important chapter in the agreement that contains a recognition of a right to development to the territory for those acting lawfully in the territory. It's been part of the rules of the game in northern Quebec for many years now.

I understand that the Cree, over the years since they first signed the James Bay and Northern Quebec Agreement in 1975, have had over 80 agreements since then.

Would you qualify those 80 agreements that we signed with mining companies, Hydro-Québec, the two governments and so on, as free, prior and informed consent in action?

**Mr. Brian Craik:** I couldn't call every instance of an agreement with a proponent as being fully consulted by the community, for the community, although we're talking about fairly small communities; and they like to maintain their position in their own territories so that they can work out different formulas with proponents.

One of the challenges that the Grand Council and the Cree Nation Government have is to make sure these agreements are consistent with agreements in other places in the territory, not only so that they're like the others but so that they make the bar, they're within the range of what the Crees have negotiated in the past.

On the big issues, there's been a lot of effort put into people being informed. We've spent a lot of money on it. We've spent a lot of time on it as well. The results are important. We went from the La Grande project, which didn't have any real impact assessment, to the EM1A project, which is a project that includes close to \$1 billion worth of dikes being put along the river to maintain the water level at the natural level while at the same time diverting some of the water toward the La Grande project.

You have to take these types of questions one at a time and make sure you understand all the variables.

• (1725)

**Mr. Romeo Saganash:** Thank you.

Chief Louis, you were asked about the meaning of reconciliation in this era of reconciliation. It always reminds me of the Supreme Court decision in 2004 in the Haida Nation case, where the Supreme Court says, talking about reconciliation, that the objective is to reconcile the pre-existing sovereignty of indigenous peoples with the assumed sovereignty of the Crown. These are the words of the Supreme Court; they are not mine.

Would that be a good, fundamental base on which to start reconciliation in this country?

**Chief Byron Louis:** Absolutely, there needs to be some consideration of what the starting point is of that.

If you look at the last 20 years, you see it's been the Supreme Court of Canada that's been providing most of the guidance to government on how consultation and accommodation happen. There have been hard-fought cases by first nations. It's actually cleared the air on a lot of issues.

But now, as we're getting close to this era of consultation and moving on to accommodation. I point to one of the decisions that recently happened out of Clyde River, a very good decision. One of the decisions that came out of there—and I have a quick note on that—is what was described as the Crown failing to inquire into Clyde River's rights and specific impacts on their rivers, and yet focusing on the environmental effects.

Part of reconciliation must be the understanding of what the actual impacts are to an aboriginal right. If you go to any other sector in Canada, you find what's called upon is the development of a socio-economic analysis that actually measures impacts, what the impacts are of imposing a statutory decision or not. That comes out of the Statutory Instruments Act.

But you also look at other mechanisms. There isn't one for first nations that actually looks at what the impacts are of a loss of fisheries. Yet a loss of fisheries is huge to aboriginal peoples. When you look at it, you see there is nothing on the plate, when the guarantee of Canada is to ensure that we have access for our food, social and ceremonial use. If you look at the southern end of the provinces, you find there are very few traditional foods that are actually left upon our plate.

Part of reconciliation must be, can we actually recover those uses? I think reconciliation is, how do we actually determine how we're going to live together in the future? So yes, I do agree with your statement.

**Mr. Romeo Saganash:** Thank you.

**The Chair:** Mr. Graham, you're last.

**Mr. David de Burgh Graham (Laurentides—Labelle, Lib.):** I will use my time wisely. I have two questions. I'll try to get through them quickly, so I hope you can help me with that.

How do we deal with indigenous communities that are divided within themselves and between each other on whatever topic? If there's no consensus, there's no consensus. How do we arrive at a decision?

To build on that, in pre-contact culture, what was the process for arriving at decisions when a community was divided within itself?

I'll ask Chief Louis if he'd like to start.

**Chief Byron Louis:** There are a lot of different processes within the cultures. For us, at a point when there was a disagreement amongst community members, sometimes we would bring in an independent arbiter who could be from a neighbouring nation. It also includes examples of that in the past where disagreements amongst the communities could be resolved through arbitration of an individual or a non-partial....

When you mention this division between the hereditary and what now is under the Indian Act, one of the things that you find is that is some of the problem. In British Columbia you have the Campbell decision that says aboriginal rights are infringed but remain intact. I'm just paraphrasing that. Basically it says that hereditary laws still exist and still have full force. On the other hand, you have this Indian Act that's adopted where it's a vote by a majority.

• (1730)

**Mr. David de Burgh Graham:** Thank you, Chief. I'm enjoying this answer, but I'm already out of time, and I have one quick point that I'd really like to make.

**The Chair:** You can use all your time. We're going to go a little bit longer.

**Mr. David de Burgh Graham:** In that case, I'll make my other point, and I'll come back to that. Thank you.

My other point was, when we're dealing with communities that want to be involved in the project and, if there are no institutions already in place to work with, who do you work with and how do you build up the institutions within the communities to work with us?

**Chief Byron Louis:** I think the question is one of having a hereditary system against the elected body, and basically one says yes and the other says no. I think, at a certain point, is there a possibility of arbitration within that cultural context of those individuals within those nations? If not, is there the ability to bring in an outside independent body to reach that? Sometimes you just have to accept that no means no. I think that's where we come to the impasse.

**Mr. David de Burgh Graham:** What about the question of institution building within communities in order to have someone to talk to, not only to talk to but capable of acting on what's decided? If you wanted to do some significant resource extraction in a community that isn't in a position to do it or to work with it, how do we prepare an institution to do that?

**Chief Byron Louis:** I think one of the best ways to achieve that is to look at the Haida, for instance, who developed their community-based constitution that governs how these decisions are made. In that context, I think that probably provides the best opportunity for looking at resolutions that would be considered internal, like the example you gave of the disagreement between the traditional and hereditary. However, that's got to be something that needs to be built, because you look at over 100 years of this practice, and this is the result of that. Now these first nations, including ours, need that time to heal those rifts and bring that back together. Again, in a roundabout way, one of the best ways to achieve that is what the Haida have done through the development of their constitution, which all their members support.

**Mr. David de Burgh Graham:** Mr. Helin, you talk a lot about the divisions in the community and how the decision arrived at on the tanker ban wasn't the one that you wanted.

Per Chief Louis's comments, what's the best process for you for a consultation when there's a significant division in the community?

**Mr. John Helin:** I think the best process is to get the best information to all members. Dividing them between an elected body and a hereditary body is not a good way to go. I'm elected as a mayor in my position. I also belong to a tribe, so I am a tribal member. In our tribal system, we had chiefs, sub-chiefs and speakers. That has broken down over the years. People are claiming names that they shouldn't be claiming, so there's disarray and confusion.

For me, I don't want to label somebody as a hereditary chief or... We're all equal, and we should all have the same information, the right information, so we can make an informed decision on any project or proposed issue, keeping in mind that the environment is the most important part of anything that's being proposed.

**Mr. Brian Craik:** Perhaps I can add something to that.

You have to look at the makeup and the history of a particular group before you can understand how to basically do business with them or work with them. For example, in the Cree case in northern Quebec, we don't have one elder; we have hundreds of elders. They're all responsible for their hunting territories, their trapping territories. All of that has to be built into the way you approach that community.

As well, the Innu on the north shore and the Crees signed an agreement recently on how to settle issues like the one we're talking about today, about how to divide the benefit from any development that occurs in the areas that are disputed.

That's just one of the things going on.

• (1735)

**Mr. David de Burgh Graham:** Okay.

My time is up for real this time, I think, so I'll ask Mr. Smith if he has any last comments on the same question and then I'll call it a day. Thank you.

**Mr. Duane Ningaqsiq Smith:** As the second-oldest claim, we have an established process that's been in place for quite a number of years. As well, in terms of overlapping issues, when we were trying to develop the gas within our region we had proposed a pipeline from my area to Alberta. We created the Aboriginal Pipeline Group, which is made up of all of the indigenous groups along that corridor.

That's a good example of how we work together for the mutual benefit of trying to develop the resource. Unfortunately, the price collapsed and fracking started.

**Mr. David de Burgh Graham:** Thank you.

**The Chair:** Thank you all very much for coming today. We don't have enough time, as we never do—I'm grateful for your patience in waiting in security—so if there's more information that you feel you wanted to provide us with in your presentation, or you didn't have enough time to answer a question, please free to forward it to us. We'll consider it as part of our report.

Thank you all very much for joining us today. We're very grateful.

The meeting is adjourned.

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