Foothills Ojibway First Nation
Box 6395
Hinton, Alberta
T7V 1X7
Phone: (780) 318-1865
Email: fos1865@gmail.com

FOOTHILLS OJIBWAY FIRST NATION

Written Submissions to the Expert Panel on the Review of Environmental Assessment Processes

December 23, 2016

"*Our parents and ancestors kept us hidden to protect the Anishinabe education and the cultural values. Their teachings are universal. It is our responsibility to teach the future generation*."
Chief Jim O'Chiese, teacher and ceremonial leader

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I. Introduction

This submission is made on behalf of the Foothill Ojibway First Nation (FOFN), an Anishinabe community located in Hinton, Alberta, in the context of the review of environmental assessment processes undertaken by the government of Canada in late 2016.

Current federal environmental impact assessment legislation, the *Canadian Environmental Assessment Act*, 2012 (*CEAA 2012*) and other related legislation, were enacted without any consultation with Indigenous peoples and without any consideration of their particular rights and interests in the protection and preservation of land and resources. Such consultation, at least when policies are being developed, was required not as a matter of good public policy, but as a matter of law.

The Expert Panel has invited Indigenous peoples to participate in the review of federal environmental assessment processes, particularly with respect to the matter of Indigenous consultation and engagement in environmental impact assessments. While Indigenous-specific consultations are of undeniable importance to Indigenous peoples across Canada, we should not lose sight of the foundational principles of the underlying historic Nation-to-Nation relationship and need for reconciliation with Aboriginal peoples. Reconciliation implies bringing our Nations together, not just consultation.

Aboriginal people's right to self-determination involves a recognition of their communities' legal competences and decision-making powers in governing their traditional land and resources in accordance with their own constitutions, laws, customs and traditions. Canada's constitutional provisions and international obligations under the *United Nations Declaration on Rights of Indigenous Peoples* (UNDRIP) require that environmental impact assessment processes include mechanisms that empower Indigenous peoples to be involved in decision-making in all matters that would affect their rights and interests. This goes beyond mere consultation requirements.

II. Portrait of the FOFN

The Foothills Ojibway are an Aboriginal people of Anishinabe ancestry within the meaning of s. 91(24) of *Constitution Act, 1867* and s. 35 of *Constitution Act, 1982*, and an Indigenous community under UNDRIP, represented by their hereditary chief, Chief Jim O'Chiese, and headmen. The community is composed of five founding families: O'Chiese, Whitford, Bigjohn, Littlejohn and Beaverbone.

The FOFN has a long history of resistance against Canadian assimilationist policies, which has allowed them to preserve their culture, language, traditional teachings, knowledge and way of life to the greatest extent possible. The members of the FOFN originally came from the eastern parts of what is now Canada. Approximately five hundred years ago, when Jesuit priests arrived in the area with the mission to evangelise Aboriginal people, an Anishinabe community, along with some Cree, fled their homes to protect their sacred teachings and their traditional Indigenous ways of life. They travelled east until they arrived in the Alberta Foothills at some point likely near the beginning of the 17th century. For many generations thereafter, the group has led a semi-nomadic and traditional existence throughout the territory in and near the eastern slopes of the Rocky Mountains in Alberta, resisting assimilation, Indian Affairs policies, and the outlawing of their ceremonial practices.

The FOFN has never ceded any of their lands nor the exercise of any of their ancestral rights to the Crown. In the late 19th century, when Treaty 6 which includes FOFN traditional territory was negotiated, the hereditary Chief at the time refused to take part in the process. In the 1940s, Indian Affairs sought to move the FOFN onto a reserve and have them adhere to Treaty 6. Despite categorical refusal by the FOFN Chief to comply, Indian Affairs set aside some lands for the band, which they identified as the O'Chiese Reserve. In 1952, some of the band members broke away from the leadership to adhere to Treaty 6 and settled on the O'Chiese Reserve. Chief John O'Chiese – the grand-father of the current hereditary Chief – and his two principle headmen, Big John and Little John, remained opposed to signing onto Treaty 6 because of their profound distrust of the Crown's intentions and the undesirable muskeg lands being offered to them. When Chief John O'Chiese passed away in 1953, his commitment to remain non-treaty and to stay out of the Indian Affairs policies was passed onto the next generation. As a result, the

community remained outside of mainstream society, and the FOFN children did not go to Indian residential school, and the community was able to maintain its language, culture and original sacred teachings.

These acts of resistance, however, have also undeniably come at a great cost. As non-status, non-Treaty Indians, the FOFN remain a first nation without government recognition, funding or programs, and without a land base. This has a direct impact on their ability to survive as an Indigenous community, and to protect their traditional ways of life, territory, and sacred sites in the face of natural resource development and industrial projects. As a result of being "non-status", "non-treaty" Indians, the Government of Alberta wrongly considers that the FOFN does not have to be consulted in relation to land and resource development in their traditional territory. This is a perfect illustration of the lack of knowledge that governmental bureaucracies have of the Crown's obligations in Indigenous-Crown relations. The Government of Canada has also been irresponsive to the FOFN calls for recognition, although it has recognized its obligation to consult.

The Supreme Court of Canada's recent decision in *Daniels v. Canada* recognized the difficulties faced by non-status Indians as a result of the federal and provincial governments denying jurisdiction to address matters that concern them. The consequence of being non-status Indians is that "these Indigenous communities being in a jurisdiction wasteland with significant and obvious disadvantaging consequences".[1] This has certainly been the experience of the FOFN.

In these submissions, we will address the issue of how *CEAA 2012* fails to protect the Aboriginal constitutional rights, including the Crown's duty to consult and accommodate all Indigenous peoples when their rights may be adversely impacted. We will further outline suggestions for an environmental assessment model that incorporates Indigenous jurisdiction and legal orders.

III. *CEAA 2012 i*nfringes Aboriginal Constitutional Rights

The current environmental assessment process falls short of protecting constitutional protected Aboriginal rights and interests in many ways:

1. Prior to the Environmental Assessment Process

Under *CEAA 2012*, mid-size and minor projects, no matter how significant their impacts could be Aboriginal rights are exempt from environmental assessment, resulting in the "death by a thousand cuts" syndrome for Aboriginal lands and resources.

[1] *Daniels v. Canada (Indian Affairs and Northern Development)*, [2016] 1 SCR 99, at para 14.

It is unclear whether Indigenous rights and interests are taken into account at all in the screening process under *CEAA 2012*, when the Agency is deciding whether an environmental assessment is required. There is no requirement under *CEAA 2012* that Indigenous consultation occur and no reasons are provided for in designation decisions. This is contrary to the Crown's obligation to inform itself of potential impacts projects could have on the exercise of Aboriginal rights and to communicate the findings with the affected group.[2]

This aspect of *CEAA 2012* is inconsistent with the Crown's fiduciary relationship with Indigenous peoples and the Honour of the Crown. The Supreme Court has clearly held that "in light of the Crown's unique fiduciary obligations towards aboriginal peoples, Parliament may not simply adopt an unstructured discretionary administrative regime which risks infringing aboriginal rights in a substantial number of applications in the absence of some explicit guidance. If a statute confers an administrative discretion which may carry significant consequences for the exercise of an aboriginal right**,** the statute or its delegate regulations must outline specific criteria for the granting or refusal of that discretion which seek to accommodate the existence of aboriginal rights. In the absence of such specific guidance, the statute will fail to provide representatives of the Crown with sufficient directives to fulfil their fiduciary duties…"[3]

2. During the Environmental Assessment Process

i) The Environmental Assessment under CEAA 2012 fails to provide for a proper consideration of Indigenous constitutional rights

Subsection 19(1) of *CEAA 2012* provides a list of the factors that must be taken into account in an environmental assessment. This list includes environmental effects, comments from the public, mitigation measures, the requirements of follow up programs, the purpose of the designated project, and so forth. Aboriginal title and rights, including treaty rights, are largely excluded from consideration under the current statutory scheme, and could only be considered indirectly when assessing the extent of the duty to consult owed to affected Aboriginal peoples. One of *CEAA 2012*'s only requirement to consider Aboriginal interests in found in subsection 5(c) of the Act regarding the definition of environmental effects. It provides that:

> With respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on (i) health and socio-economic conditions, (ii) physical and cultural heritage, (iii) the current use of lands and resources for traditional purposes, or (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

This definition of environmental effects with respect to Aboriginal people is very narrow and fails to acknowledge that the Aboriginal perspective is needed to make this determination.

[2] *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388, at para 55.
[3] *R v. Adams*, [1996] 3 SCR 101, at para 54.

For the FOFN and other Indigenous communities across Canada, the environmental effects of a project are not limited to those matters set out in the provision cited above. Rather, they include the cultural impacts that changes in the environment can engender, insofar as these changes alter the Indigenous people's relationship with the natural environmental.

Many Indigenous peoples, including the FOFN, have a spiritual connection to their traditional lands. Although perspectives vary between Aboriginal groups, generally-speaking Indigenous peoples consider human beings to be an integral part of the natural world, and believe that the Creator has made them responsibility to care for all living and non-living things with whom they share this land.[4] Thus, the Aboriginal perspective regarding and understanding of the potential impacts of a project on the natural world may be very different from non-Aboriginals -- this cultural difference is not accounted for in subsection 5(c) of *CEAA 2012*.

The importance of taking into account the Aboriginal perspective has been, time and again, affirmed by the Supreme Court of Canada. According to the Supreme Court, "a court must take into account the perspective of the aboriginal people claiming the right… while at the same time taking into account the perspective of the common law" such that "[t]rue reconciliation will, equally, place weight on each" [5]

Another provision in *CEAA 2012* that contemplates Aboriginal peoples is found at subsection 19(3), which states that "[t]he environmental assessment of a designated project *may* take into account community knowledge and Aboriginal traditional knowledge" (*emphasis added*). That this is not mandatory is problematic. There is no guarantee that the Aboriginal perspective will be sought or taken into account.

ii) CEAA 2012 fails to provide for a consultation process in compliance with the Crown's duty to consult Indigenous people

Moreover, *CEAA 2012* does not provide for a distinct consultation process for Indigenous peoples whose rights and interests may be affected. When the environmental assessment is undertaken by the responsible authority, the only participation opportunity for Indigenous people provided in *CEAA 2012* is the general public participation provided under section 24 of *CEAA 2012*. When the environmental assessment is conducted by a review panel, Indigenous peoples may be able to participate if they are considered to be an "interested parties" within the meaning of subsection 2 (2) of *CEAA 2012*:

> (…) a person is an interested party if, *in its opinion* [the opinion of the designated authority or review panel], the person is *directly affected* by the carrying out of the

[4] Kent McNeil, 2007, *The Jurisdiction of Inherent Right Aboriginal Governments*, National Centre for First Nations Governance. Available online at: http://fngovernance.org/ncfng_research/kent_mcneil.pdf.
[5] *See* Delgamuukw v. British Columbia, [1997] 3 SCR 1010, para 81, citing R. v. Van der Peet, [1996] 2 S.C.R. 507, at para 49-50; R. v. Sparrow, [1990] 1 SCR 1075, at p. 1112.

designated project or if, *in its opinion*, the person has relevant information or expertise. (*emphasis added*)

Letting the designated authority or the review panel decide whether an Aboriginal community is directly affected, by a project, or whether the community has sufficiently relevant information or expertise is unacceptable when the designated authority or the review panel does not have special training to understand and consider the Aboriginal perspective. Further, there is a danger that the assessment of what qualifies as "expertise" will be Eurocentric.

By failing to provide an Indigenous-specific consultation process, *CEAA 2012* fails to uphold the Crown's duty to consult. As the Supreme Court of Canada held in *Mikisew*, Indigenous communities whose rights are affected by Crown conduct are entitled to a distinct Indigenous-specific consultation. The opportunity to participate in public consultation is insufficient to satisfy the Crown's duty to consult Indigenous peoples.[6] The Federal Court of Appeal also reminded us earlier this year that when the Crown knows, or ought to know, that its conduct may adversely impact Indigenous rights, the community whose rights may be impacted is entitled to "consultation based upon the unique facts and circumstances pertinent to it."[7] Generic environmental assessment processes fall short of this requirement, and do not fulfill the obligation to consult.

iii) CEEA 2012 created practical obstacles to proper consideration of Indigenous interests

CEEA 2012, as implemented, presents Aboriginal communities with many practical obstacles to allow them to express their concerns with a given project, which include the following:

- Insufficient, strict and inflexible timelines making it difficult for Indigenous communities to fully take part in the environmental assessment processes, provide sufficient input and engage in meaningful exchange.
- Insufficient direct communication of accurate information by federal authorities undertaking environmental assessments with other stakeholders and affected Indigenous communities.
- Lack of plain language versions of documents originating from the Canadian Environmental Assessment Agency and the proponents.
- Inadequate funding for Indigenous participants, making it difficult if not impossible for them to retain their own experts and undertake their own studies or, at a minimum, review the proponent's extensive data.

[6] *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388, at paras 64-67.
[7] *Gitxaala Nation v. Canada*, 2016 FCA 187, at para 236.

While many Aboriginal communities across the country face these issues, they cause insurmountable obstacles for communities such as FOFN, who also struggle with lack of financial and human resources to sustain their community.

A further problem arising from federal environmental assessment laws and policies is the lack of accurate information provided to proponents regarding affected or potentially affected Indigenous communities. In the experience of the FOFN, proponents are often misdirected, specifically by the Government of Alberta but also by Canada, about the FOFN rights and interests as a non-status, non-treaty community, on their traditional territory, which creates significant obstacles for these communities to have their voice heard and their rights respected by third parties.

3. At the end of the Environmental Assessment

The unfettered discretionary decision-making power of the Governor-in-Council is unacceptable

Pursuant to subsection 52(4) of *CEAA 2012*, if the environmental assessment reveals that a project is likely to cause significant adverse environmental effects, the Governor in Council will have to decide whether she deems these effects as "justified in the circumstances". However, *CEAA 2012* does not provide any criteria for making this determination. As a result, the Governor in Council is conferred unfettered discretion to decide to approve a project. The Governor in Council does not have to provide any reasoned account of her final and binding decision, including an account of how she took into consideration the impacts of Aboriginal rights. This derogates not only from the promise of section 35, but also from the Supreme Court of Canada's clear directions with respect to the duty to consult and its underlying principles.

By granting the Governor in Council such unfettered discretion, *CEAA 2012* not only completely removes Aboriginal peoples from the final decision-making process, but also sets out a process devoid of transparency. This makes a mockery of the legitimacy of the environmental assessment process for both Aboriginal peoples and the public at large.

4. Throughout the Environmental Assessment Process

i) CEAA fails to recognize and account for the Aboriginal Inherent Rights to Self-determination and Self-governance

CEAA 2012 fails to recognize and provide any substance to the inherent rights to self-determination and self-governance that Aboriginal people have with respect to the development

of their traditional territory, the use of their natural resources, and the preservation of their land, culture and ways of life. It does not provide for Aboriginal communities to be involved in deciding whether (1) an environmental assessment is required for a specific project; (2) the project might cause significant adverse environmental effects, and (3) the project should be approved.[8] That needs to change.

In Canada, all Aboriginal peoples have an inherent right to self-determination, which includes an inherent right to self-governance, protected by section 35 of the *Constitution Act*. For many Aboriginal peoples, including the FOFN, the Creator is the source of their inherent rights and jurisdiction. In their book, "Treaty Elders of Sakatchewan: Our dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations", Harold Cardinal and Walter Hildebrandt write:

> The Elders are emphatic in their belief that it is this very special and complete relationship with the Creator that is the source of sovereignty that their peoples possess. It provided the framework for the political, social, educational, and cultural institution and laws of their peoples that allowed them to survive as nations from the beginning of time to the present. In their view, it is part of the divine birthright given to their people by the Creator.[9]

Thus, from the point of view of Aboriginal people, sovereignty and jurisdiction cannot be given, taken away or negotiated. Indigenous people's vision of sovereignty and jurisdiction is informed by their understanding that human beings are an integral part of the natural world, and are not on earth to dominate or exploit it. Rather, they share the world with the rest of nature and have been entrusted by the Creator to take care of it.[10]

From the perspective of the Canadian legal system, Aboriginal inherent rights are based on the pre-existing sovereignty of Aboriginal peoples as Chief Justice Lamer explained in *Van der Peet*:

> [T]he doctrine of Aboriginal rights exists, and is recognized and affirmed by s. 35 (1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.[11]

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[8] This submission does not consider the situation of Aboriginal groups who have environmental stewardship agreements or other agreements providing them with some form of decision-making authority.

[9] Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000), 11.

[10] Kent McNeil, 2007, *The Jurisdiction of Inherent Right Aboriginal Governments*, National Centre for First Nations Governance. Available online : http://fngovernance.org/ncfng_research/kent_mcneil.pdf.

[11] *R. c. Van der Peet*, [1996] 2 SCR 507, at para 30.

The Aboriginal inherent right to self-government is considered an extension of legal systems that existed before the arrival of Europeans in North America. These systems include the customs, institutions, cultural practices, and they reflect the autonomy and sovereignty of Indigenous peoples. The right to self-determination thus necessarily entails the exercise of legal competence by Indigenous communities, including ensuring the protection of their traditional land and resources, and their people, in accordance with their own laws and traditions.

The Federal Government and Canadian courts have recognized that the Aboriginal inherent rights to self-determination and self-governance are protected by section 35 of the *Constitution Act, 1982* and that section 35 introduces a third order of government in the Canadian Federation. In its 1995 Inherent Right Policy, the Federal Government recognized that "the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*[12]". In *Campbell*, Justice Williamson explained that the right to self-government is akin to a legislative power to make laws, survived as one of the unwritten "underlying values" of the Constitution outside the powers distributed to Parliament and the legislatures in 1867. The federal-provincial division of powers in 1867 was aimed at a different issue [the preservation of diversity] and was "internal" to the Crown.[13]

Moreover, Justice Williamson recognized that the legislative powers are not exclusively distributed between the federal and the provincial governments, and rejected the idea that section 35 of the *Constitution Act, 1982* cannot create a new order of government as this would be inconsistent with the sovereignty of Parliament and the Legislative Assembly.[14] It is noteworthy that the BC Supreme Court decision in *Campbell* was not appealed from. In *Coon Come*, Justice Lebel, writing for the Quebec Court of Appeal, found that section 35 introduces in fact a "third component" to the functioning of Canadian federalism, which has to be taken into account in the division of powers between the provincial legislatures and the Parliament of Canada.[15]

If the Government of Canada truly wishes to renew its Nation-to-Nation relation with Indigenous communities and move towards reconciliation, it needs to start with recognizing the special place that Aboriginal peoples hold in the Canadian Constitution, their inherent jurisdiction, and the Aboriginal third order of government.

Public officials and decision-makers at all levels also need to learn and educate themselves about the different Indigenous Nations' traditional laws and cultural values. As the Supreme Court of Canada eloquently affirmed:

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[12] Government of Canada, "*The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*", available online at: https://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844.
[13] *Campbell v. British Columbia*, , 2000 BCSC 1123, [2000] 4 CNRL 1, at para 81.
[14] *Ibid*, at paras 113-114.
[15] *Hydro-Quebec c. Canada (A.G.) et Coon Come*, [1991] 3 CNLR 40, at p. 23.

> The Constitution of a country is a statement of the will of the people to be governed in accordance with certain principles held as fundamental and certain prescriptions restrictive of the powers of the legislature and government.[16]
>
> Those who quite legitimately insist upon the importance of upholding the rule of law cannot at the same time be oblivious to the need to act in conformity with constitutional principles and values, and so do their part to contribute to the maintenance and promotion of an environment in which the rule of law may flourish.[17]

IV. Environmental Assessment Model that Incorporates Indigenous Rights and Jurisdiction

The current statutory environmental assessment regime should be replaced by a model that affords full recognition of the Aboriginal perspective on such matters as Aboriginal title and rights, including treaty rights, and incorporates the Aboriginal constitutional rights to self-determination and self-government, and the Indigenous jurisdiction over their land, including for the Indigenous communities whose jurisdiction is not yet recognized. It is not only Indian bands that are recognized under the *Indian Act* that are protected under section 35 of the *Constitution Act, 1982*.

Some of the essential components of this model are outlined below.

An Indigenous board, designed to assist Indigenous communities in evaluating the environmental and cultural effects of a given project on their rights and interests as early as the screening stage, should be put in place. This board would not be part of the Canadian Environmental Assessment Agency (Agency). However, it would receive public or parity funding on a project-to-project basis. In order to reflect regional differences, the board would be made up of a number of local agencies which take into consideration the diversity of Indigenous cultures, traditional practices and socio-economic circumstances across Canada. Its members would be Indigenous, and they would be knowledgeable about the laws, customs and traditions of the specific Indigenous communities that they assist, as well as their ceremonial and resource-related issues.

This would also provide an opportunity for the proponents to hear and learn from Indigenous representatives and address their concerns.

Each project proponent will have to contact the board simultaneously with their application to the Agency to ensure that Indigenous communities are involved from the very outset of the assessment. This allows Indigenous groups the opportunity to determine from the outset whether

[16] *Manitoba Language Rights Reference*, [1985] 1 SCR 721, at p. 745.
[17] *Reference re Secession of Quebec*, [1998] 2 SCR 217, at para 95.

a given project requires an environmental assessment review based on their own criteria. Under *CEAA 2012*, if the Agency determines via the screening process that no review is required, Indigenous groups are denied any say as to the impacts of a given project. This must change.

Once the proponent has submitted a project to the Indigenous board, the Indigenous board will contact the relevant Aboriginal communities, and assist them with evaluating the impacts that the project would pose. This can involve, among other things, providing Indigenous groups with experts, assisting them in understanding complex impact studies, facilitating the communication with the proponent and the Agency, and potentially putting in place accommodation measures. For larger projects, the Indigenous board can assist Indigenous groups in negotiating an integration protocol with the relevant parties.

The revised CEAA needs to recognize the Indigenous jurisdiction at every phases of environmental assessment process, including at the decision-making stages, in line with Article 18 of *UNDRIP*, which recognizes that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedure, as well as to maintain and develop their own indigenous decision-making institutions."

Instead of allowing the Agency or Governor in Council to unilaterally and arbitrarily decide whether a project has significant adverse environmental impacts, and whether to approve a project, CEAA should ensure that Indigenous communities have a say in the final decision-making through the board and its local agencies. The decision on the Indigenous side should be made by the proper title and rights holders, in accordance with each Aboriginal group's rules of governance i.e. through community consultation or consensus. This means that the federal government and the Aboriginal groups concerned have to cooperate in good faith at each stage of the process, and they both have to consent to the approval of a project before an approval can be granted.

Collaborative consent reached through a truly participative process is easily distinguishable from a right of veto, as the concept of Free, Prior and Informed Consent could be interpreted under Canadian law.[18] The revised CEAA should reflect Canada's unqualified endorsement of the *UNDRIP* and commitment to uphold its most fundamental requirements through domestic laws and policies. It is worth recalling that Article 32 requires States to "consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" and "provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

[18] *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, at para 48; *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103, at para 14.

The FOFN calls upon the Expert Panel to incorporate meaningful provisions into the revised *CEAA* that recognize the importance of the Aboriginal perspective in the environmental assessment process. It also asks that these provisions make it explicit that the Aboriginal perspective is not limited to Indian bands that fall under the *Indian Act*. Although there is limited understanding on the part of governmental bureaucracies regarding the history of non-status and non-treaty Indian communities, it is important to remember that they still exist, and in the case of the FOFN, they have retained their traditional and spiritual practices, teachings, language and culture. The members of the FOFN have unique knowledge about the environment in their traditional territories that should be considered in an environmental assessment irrespective of their status under Canadian laws.