

**Expert Panel Indigenous Presentation Session**  
**Review of Environmental Assessment Processes**

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**Highliner Plaza Hotel and Conference Centre**  
**Prince Rupert, BC**

**Expert Panel:**

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

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**OPENING REMARKS**

**Johanne Gélinas:** So good morning. If you want to have a seat, we'll start in a  
minute.

So good morning, everyone. Welcome to our second day of  
presentation here in Prince Rupert.

My name is Johanne Gélinas. I chair the Expert Panel on  
Environmental Assessment. And I'm accompanied with my three colleagues, Renée  
Pelletier, Doug Horswill, and also Rod Northey.

Yesterday, we have — we had almost a dozen of presentations and we also had a workshop in the evening. Some of you were there. So today is our day dedicated to indigenous, so we have almost a dozen of presentation again and in the evening we will have what we call the open dialogue session.

So just to be brief, we are looking at the three processes, so the one of the National Energy Board, the one of the Canadian Nuclear Safety Commission, and also CEAA that you know a little bit better here in this area.

We have a web site which — where you can find all the summaries of the presentations and also the discussions that took place during our Canada tour. We have started in September on the east coast, and I think we will have gone to 19 different locations or 15 different locations during our journey. And we will end the consultation next week with Vancouver and Nanaimo. And after that, we will go home, celebrate Christmas a little bit, and then start writing our report, which will be tabled to the Minister of Environment as of March 31st.

So I think we should start. And before we start, I would like to turn to my colleague, Renée, for a word.

**Renée Pelletier:** Thank you.

Before we begin today, we'd like to recognize that we are in Tsimshian traditional territory and also recognize any Chiefs, Elders or community members who may be in the room. Thank you.

**Johanne Gélinas:** So I will invite our first presenter to join us. Her name is Anna Osborne. And as Anna is joining us in the front, I would like to give you a few — in fact, one rule for the presentations, which is to keep it short because we would like — the most valuable component of those consultation is to have a chance to enter into a dialogue with you, so the shorter your presentation is, the longer we have to talk.

And if you have given us a written submission or if you're planning to give us a written submission, don't worry. We will read them all. This is what we have as a plan for the Christmas holiday. Thank you.

## **ANNA USBORNE, METLAKATLA FIRST NATION**

**Anna Osborne:** Okay. Hello. And on behalf of the Metlakatla First Nation, welcome to the Panel and to the other visitors to Metlakatla territory. As members of the nine tribes of the Coast Tsimshian, the Metlakatla share this territory with Lax Kw'alaams.

Clearly, I am not Chief Leighton, who was supposed to present today. He sends his sincere apologies. He was unable to return from the AFN meetings in Ottawa on time, but he sends his welcome, greetings and regards to all.

It's a bit unfortunate he was unable to attend because he has somehow managed to steward his nation through an onslaught of increasingly complex and controversial environmental assessments in the last few years, and he would probably deliver his key messages in a much more succinct manner to the Panel than I. But for today, I will do my best to deliver Metlakatla's messages to the Panel in my own words.

I am Anna Usborne. I have been the employee of the Metlakatla Stewardship Society for the last six years as their environmental assessment coordinator. I've been involved from — in environmental assessments from early engagement all the way to scrutinizing final conditions.

I've done my best to try and integrate Metlakatla's members — Metlakatla members' insights and concerns into each environmental assessment process, so I'm quite happy to be here today to have this opportunity to present to the Panel, to hear from my colleagues and, ideally, dialogue on some of the best way forward.

To bring the Chief into the room just a little bit, I wanted to start with some of his words as delivered to the NEB Northern Gateway Joint Review Panel when they held their hearings here in Coast Tsimshian territory in 2013. He said, "The ayaawx, Coast Tsimshian traditional law, is clear that the territory owners of each generation have both the right to dictate use of the resources of their watersheds and an obligation to protect living things in the stewardship areas, a duty which the Coast Tsimshian people recognize and their leaders are obligated to respect."

In addition to the Enbridge Northern Gateway project, Metlakatla has been or is currently involved in over a dozen environmental assessments since 2010 under old and new CEAA legislation, Avanti Kitsault Mine, Fairview Phase 2 container terminal, Canpotex potash terminal, Westview Pinnacle pellet terminal, AltaGas propane terminal, Pacific Futures Energy Refinery, Kitimat Refinery, Pacific Northwest LNG terminal, LNG Canada, Prince Rupert LNG, Woodside LNG, WCC LNG, and the list goes on. And that's not including B.C.-led environmental assessments only.

Metlakatla leadership and those who work for them who may have been trying to uphold the responsibility bestowed on them by their ancestors through all of these environmental assessments. Our experiences in trying to do this with the federal and the provincial environmental assessment processes has been very challenging but, at the very least, we can say we have substantive experience from which we can suggest needed changes to Canada's approach to conducting environmental assessments with First Nations. So let's get to it.

At the Enbridge Panel, Chief Leighton also described the work Metlakatla has been pursuing in order to submit Metlakatla's strength of claim in the territory. He described DNA studies being done that show results of direct and genetic connection from human remains found at ancient village — ancient Coast Tsimshian village sites over 6,000 years old in the territory to modern-day Metlakatla members, including those still living in Metlakatla village. So it's no surprise when Chief Leighton responds in frustration when asked by CEAA, and I quote from the initial forms asking for input into each proposed project, "If you expect the proposed project may impact your asserted or established Aboriginal rights, please describe how."

Well, of course a project in Metlakatla territory will impact Metlakatla's rights and title, so let's leave that question. We all know there will be an impact on Metlakatla if a major project is proposed in the territory. This should be at the starting point.

We also know that Metlakatla's Governing Council's authority is identified in their strength of claim under the treaty process and enshrined in the Canadian *Constitution*, and has governing rights over its lands and waters. With this governing right, Metlakatla has the right to engage in government-to-government relationships with their elected counterparts at the provincial and federal governments. We further know that Metlakatla Governing Council and the federal government of Canada has supported and endorsed the UN Declaration on the Rights of Indigenous Peoples as well as the report and calls to actions of the Truth and Reconciliation Commission.

We know that the Declaration says that Metlakatla has the free — has the right to free, prior and informed consent to a project. This means that Metlakatla has the right to make a sovereign decision to accept or reject the project in their territory.

So to reflect the facts I've just spoken to, the federal approach to environmental assessments needs to be restructured. It needs to be remade and redesigned to encompass our goals of reconciliation and to support both governments to make properly informed, rigorous, respectful, respected and sovereign decisions on environmental assessments together. To do this, there must be the following.

The first is there — we must establish the formalized, proactive structure for government-to-government relationships at all levels during an environmental assessment at the technical, management and leadership levels and throughout all aspects of the EA, from the beginning to the final decision-making point.

The UN Declaration — secondly, the UN Declaration should be used as a framework for reconciliation with First Nations. The tenets of the Declaration should guide development of the new EA process and associated

government structure. Each government should have the right to make its own sovereign decisions on project that will be respected and upheld by legislation. If consent is not granted, a project should not proceed.

This means that environmental assessment process no longer receives input from First Nations; it must actually serve, inform and answer to First Nations and Canada's decision-making processes. With a strong government-to-government structure, it should also mean that consensus decisions must happen at each procedural decision point throughout the environmental assessment, which will strength the entire process, leading to rigorous and transparent decisions at the end on the project as a whole.

Consult — third, consultation must start well before the beginning of an environmental assessment by the proponent, which we see often, and by Canada. Too often, Metlakatla is asked to participate in an environmental assessment for a proposed project for land — for a project proposed for land that has already been disposed through a tenure to the proponent without proper consultation. Without consultation at these opening stages, the entire environmental assessment can be undermined.

Fourth, to have a meaningful government-to-government decision-making structure, First Nations must be resourced comparative to those undertaking the same work in Canada's bureaucracy. We have the same work to do, but we are extremely understaffed. It only makes sense that we need to support and grow our own bureaucracies to effectively execute all aspects of the environmental assessment to support — and to support Metlakatla's own decisions.

And finally, if a project is approved, Canada and Metlakatla must continue their relationship post-environmental assessment certificate to ensure EA commitment and Metlakatla's consent to the project are upheld throughout the lifetime of the project.

So keeping these five points in mind, I'm just going to move on to some other key highlights that Metlakatla would like to convey to the Panel based on our experience in recent environmental assessments.

As you surely know, this region has recently seen an environmental assessment become dominated by very frustrated communities, political wrangling, media battles, protestors, rights and title debates, Court filings, et cetera. We understand that an environmental assessment is supposed to use science and experts to understand, deliberate and make recommendations on potential impacts of a project, and though this process of doing this is far from perfect, as an environmental assessment professional, I think we can fulfil that mandate of an environmental assessment, but it seems of late that we're collectively, as governments and public, expecting the environmental assessment process to also deal with these highly

complex, high level and overarching issues that are steeped in history and infused with almost all aspects of First Nations relations on the north coast such as impacts to title, community rights, accommodation, jurisdiction, governance.

So we suggest that, parallel to a environmental assessment process, there must be a formal, structured and proactive government-to-government venue for the federal government to engage in high level consultation and reconciliation issues that arise during project reviews. Without these structured and parallel processes, we will see that these overarching and difficult issues continue to seep into the only formal process that is established, the environmental assessment process. We will see further frustrations and delays at environmental assessments unless there's a venue for addressing the other components that fulsome consultation should entail between two governments on a major project.

We recognize that the Enbridge Northern Gateway Panel was an NEB process. The CEAA 2012 uses panels as well. In Metlakatla's experience, panels cannot be considered adequate consultation and do not lead to meaningful accommodation. Consultation, by definition, includes productive dialogue, listening, addressing each party's concerns in a respectful, meaningful and appropriately timely manner.

The Chief has said to me before, "Panels must have been invented by a lot of lawyers". As soon as an environmental assessment is referred to a panel, it immediately becomes adversarial even if the First Nation may find — be somewhat supportive of the project. Participating in a panel for a First Nation is, by definition, convoluted, it's expensive financially and in employee and leadership time, it does not contribute to the nation's capacity or understanding of the project, it limits the ability to have meaningful government-to-government relationships at all levels, and it often results in much poorer or less detailed project conditions than can be generated by a productive, dedicated technical working group.

If CEAA continues to make use of panels, at the very least the impartial panel should have to provide the reports and recommendations to a collaborative working group of experts, including First Nations and federal and provincial agencies, for input and improvement and to a government-to-government leadership forum for further scrutiny and refinement before being forwarded to decision-makers.

Aside from panels, Metlakatla's recently witnessed several environmental assessments that may not — that should not have started as they did. After thousands of man-hours of studies, reviews, expert input, regulatory scrutiny, technical meetings, leadership meetings, agreements, commitments, Court filings and millions upon millions of dollars, the issues that were identified on day one of the environmental assessment in question still exist today. These fundamental issues are not those that could have been solved through an EA process that identifies mitigations



and develops technical conditions. Instead, they're high level and overarching issues of location, community risk tolerance, rights and title, and adequate consultation.

Given this recent experience, Metlakatla suggests that perhaps accepting a project for environmental assessment just because the project is deemed reviewable under CEAA 2012 and an application has been submitted by a proponent is the cause of many of our concerns. Metlakatla proposes that a project — that before a project is permitted to enter the environmental assessment process, some fundamental questions need to be answered.

Are the First Nations whose territory the project is approved for — or proposed for been properly involved and informed to date and are they supportive of the project proceeding to an environmental assessment? Can the proponent produce a thorough alternatives assessment for the location and siting of their project and transparently show their proposal as defensible, feasible and logical? Can the proponent show that the project is needed? And have all associated work supporting or forming part of the proposed project, for example, the pipeline that has to lead to the terminal, been sufficiently described to understand their associated impacts and can they, if not examined under one environmental assessment, proceed through the environmental assessment process at concurrent times with a similar working group so governments and communities, and especially community members, can fully understand the extent of potential impacts associated with what is essentially one project?

If these and perhaps other important filtering and screening questions cannot be answered affirmatively, let the proponent continue to work in the background to develop their plans so a productive and efficient environmental assessment can occur. If a project can be accepted by all governments to enter the environmental assessment process, Metlakatla will gladly work in a government-to-government capacity to fully understand its impacts, work to mitigate or avoid them, develop conditions and move the project to a decision in a timely manner.

Finally, some elements of the environmental assessment process here on the north coast specifically have not been able to achieve their desired purpose because other parallel and reliant federal processes are not advancing as they should, for example, marine planning, establishment of marine protected areas, shipping and emergency response planning, waterway management and governance, regional cumulative effects studies with clearly defined and collaboratively established thresholds, and clarity where jurisdictional overlap occurs, particularly with British Columbia and their environmental assessment process.

Working effectively across federal, provincial and First Nations jurisdictional boundaries is essential to having success in these arenas. The federal government has to go beyond commitments and do better to coordinate, support and invest in achieving results in these cross-jurisdictional exercises. In doing so, we

believe we will resolve many issues present at environmental assessment tables on the north coast of B.C.

Here on the north coast, we have the opportunity to look retrospectively at an extremely intense period of proposed resource development and environmental activity — environmental assessment activity, and to learn.

The final message Chief Leighton shared with me yesterday as we discussed this presentation was that we must learn from our mistakes. We must examine the experiences we've just had and fix the problems rather than allow them to be repeated, which they will be if the current system perpetuates through the next series of environmental assessments, which are shaping up to be just as or more controversial as the ones we've just seen.

In the final rush of the Pacific Northwest federal environmental assessment decision, we saw some novel improvements to the federal approach to engaging with Metlakatla. We had iterative and meaningful workshopping of conditions together. There was meaningful incorporation of First Nations third party expert input. We engaged in genuine dialogue at the leadership level, and there was — and established a commitment for long-term monitoring of the project by Metlakatla in concert with federal and provincial regulators.

These were all really big step forward — big steps forward, but we still have a long way to go. At the end of the day, Metlakatla is trying to manage all of the development proposals while honouring the responsibility bestowed by their ancestors and expected by their community members, and it's really difficult.

Through implementing some of the changes discussed today, we may both be able to meet the expectations of our respective governments and serve our communities and the lands and resources that they — with the respect that they deserve.

In the interests of time, I invite you to please read Metlakatla's written submission to the Panel, which is coming, for further details and local examples and experiences to illustrate the topics that we've touched on today and for additional points that focus further on the technical and procedural aspects of environmental assessments.

We thank you very much for listening, considering our input and travelling to Coast Tsimshian territory today. Metlakatla expects and looks forward to further consultation and ongoing dialogue with the federal government for improvement of the environmental assessment process.

Thank you.

**Johanne Gélinas:** Thank you very much.

One thing before I give the floor to my colleagues. If any of you in the room are making a presentation today and you haven't registered at the desk behind you, please do so so that we will know you are in the room. Thank you.

**Renée Pelletier:** So thank you, first off, for your presentation.

I'm wondering if you could say a little bit more about your points made in your presentation about the things that worked well. You talked about workshopping of conditions. Could you say a little bit more about that process, how it was initiated, when, who the players were at the table?

**Anna Usborne:** Sure. So I'll just take a step back to say that, prior to the Pacific Northwest environmental assessment, all the assessments that we've previously been involved in at the final stages, we received CEEA's environmental assessment report and proposed conditions, we put comments in on them, then a decision is made and then we get a letter from the federal government to say, "This is how we incorporated your comments in our final report and conditions".

In the Pacific Northwest assessment, due to a number of factors and pressures and delays and issues with the project, we managed to convene a group of First — a technical group of First Nations who engaged directly with CEEA and their experts who were drafting the conditions and went back and forth on key issues that needed to be included in the conditions, what kind of wording we wanted to see in the conditions, how the wording needed to work with CEEA's own needs for the conditions to be enforceable, you know, clear, the kind of wording they needed to include. And we saw several iterations of the written conditions that we were allowed to comment on that CEEA then read, and I personally saw changes in the conditions before they were issued as final. And I felt like that was — it was acknowledging the amount of input and thought First Nations had put in through the three years of environmental assessment of the project and I think, at the end of the day, we had better and more comprehensive conditions for it.

**Renée Pelletier:** Okay. That's helpful.

Just a quick follow-up to that. Was there — okay. I'll pass — maybe we'll get to a round two. Okay.

**Doug Horswill:** Could you describe collaboration among your neighbouring First Nations in respect to the — to the projects you've looked at? What — did it exist, first of all, and if so, what form did it take and how did it — how did your collaborative efforts kind of amplify your own efforts?

**Anna Usborne:** That's a fairly complicated question, but I'll try and give a short answer. And it relates to complications of strength of claim in this area.

On the Pacific Northwest project, there was definitely collaboration, both at the technical — there was a need for collaboration at the technical level, we felt, to get enough attention on the project to look at the key issues that nations and the communities were telling us were big problems. And coming together as nations to voice those concerns, I believe, helped ensure the concerns were addressed. There was pauses in the timelines to make sure they were addressed.

At a technical level, Metlakatla engaged with other Tsimshian nations under the Tsimshian Environmental Stewardship Authority to commission a third party expert review specifically on concerns around fishery, fish habitat. And we felt like the expert review was well done and it contributed to CEAA's final conditions and understanding of what was, is and continues to be a controversial and somewhat — issue full of uncertainty.

I'm not sure if I've completely answered your question, but without going into a whole lot of detail.

**Doug Horswill:** It's good for now.

**Anna Usborne:** Okay.

**Doug Horswill:** If you have written stuff to add to that, that would —

**Anna Usborne:** I think you'll hear more about this today as well.

**Rod Northey:** Yes. One of your early comments was that First Nations should get the same kinds of expert resources as government and that, to some people, we've heard, would be ironic because they don't think the federal government has enough resources to do what they're supposed.

So the question I want to ask is, taking that point out about as much as the feds, what would be a model of adequate resources for you to deal with these kinds of EAs? How many experts?

You mentioned a second ago the Stewardship Council, which I'm not sure we know about, but how do we answer your point? How do we get a better sense of what you need by way of resources? What's the way to start?

**Anna Usborne:** It's a good question, and I think it really varies nation to nation. Some nations — I think the Metlakatla have grown their capacity for being part of environmental assessments over the last six years out of pure necessity and would be considered, I think, as having quite a bit of capacity. But to look back, you know, when some of these federal environmental assessments started with the port, for example, Fairview Phase 2, there was nobody at Metlakatla that was an environmental assessment expert. And some nations still have that, and they have to — they have to contract out or they use, you know, folks who haven't got the training.

So at Metlakatla, you know, we started with none and then I was hired and we had one. And we had to — we went up to having one environmental assessment coordinator, myself, and two environmental assessment assistants plus full range of expert consultants and legal support.

And we know at Metlakatla that being able to bring some of those expertise in-house is much better than having to go to contractors and consultants, so the answer really depends, I think, one, on how many environmental assessments are going on in a region at the same time and their associated timelines. So for one environmental assessment having a team of three people, which is similar to what the federal government brings to the table with their folks who are behind them supporting them, but they'll have a project manager, sometimes a project assistant and a Crown consultation coordinator, we can bring the same to the table.

But when we have six environmental assessments, that goes out the window and there isn't that team behind us to support, to delegate to, to lean on, to — there's also a real capacity crunch as you go up the chain.

There's only one leadership, so if there's six environmental assessments, you do need their attention and their engagement on all of those projects. So I guess it's a combination of financial capacity, but also, I think, over time, the ability for an environmental assessment process to be flexible enough to recognize there are six environmental assessments going on and we need to ensure each one gets the attention that's necessary from the technical experts, but also the community and leadership.

And I honestly don't know what that costs, but it's — I think it's a combination, not just of finances, but of various different aspects to help build that capacity over time.

**Rod Northey:** Thank you.

**Johanne Gélinas:** With the impressive list of projects that you have been involved in that you presented to us, how you will characterize the different approaches, can be the Port Authority, provincial government, federal government, when it comes to engage with indigenous communities?

**Anna Osborne:** That's a really good question. I know there's a bunch of people standing behind me who'd really like to (indiscernible - cross talk).

**Johanne Gélinas:** We are among ourselves, so.

**Anna Osborne:** They're all different and they've all been changing over time to, I would definitely say, on all accounts, become more proactive to engage with First Nations. And I think that's because there's pressure, too, but also because First Nations are rising to the call to say we need to be in that — in those rooms.

It's been — it sometimes comes down to the personalities or individuals at the table. I'd say that, lately, the provincial government has come to us to be more proactive up front about engaging in a collaborative fashion on environmental assessments, and we haven't seen that yet from the federal government. We find that working with the Port Authority is probably one of the least transparent and collaborative processes, which is unfortunate, I think, because they're here, they're local, and we think we have a clear sharing of jurisdiction.

And the work is being done to improve the relationship. Without stronger guidance to what a Port Authority is and isn't required to do regarding consultation, it's a struggle, and I think that stronger guidance could probably be helpful, especially for projects such as section 67 environmental assessments that, you know, have one line in the Act and don't have a lot of clarity about what is expected to assess those impacts. So those are kind of outliers, and quite different.

And the provincial process, one of the major frustrations between the federal and provincial process that — what we like about the federal process is when you issue an IR or an information request, the clock does stop until the proponent can produce that information. In the provincial process, you can do that. You can stop the clock, but it seems to be — it's not an automatic. When you — when you issue questions, the clock keeps ticking without a formal order. And so on a timeline basis, just in recent environmental assessments, we were able to make the federal timeline work better for us and the provincial timeline marched on and was finished and we felt like a whole lot of questions and concerns were left on the table, and it was disappointing.

**Johanne Gélinas:** Thank you very much for your presentation. You set the stage for the rest of the day.

**Anna Usborne:** Yeah. It was a high level so everybody else can —

**Johanne Gélinas:** That's perfect. Thank you.

**Anna Usborne:** Thanks for listening.

**Johanne Gélinas:** Our next presenter will be Tara Marsden.

Good morning.

(PAUSE)

**Johanne Gélinas:** Anna, I'm assuming you've given a copy of the Chief presentation that you presented to us?

**Anna Usborne:** I will make sure you have it.

**Johanne Gélinas:** Thank you very much.

## **TARA MARSDEN, GITANYOW HEREDITARY CHIEFS**

**Tara Marsden:** Good morning. Thank you to the Panel for having me here today, and I'd like to acknowledge the Tsimshian First Nation, on whose territory we are gathered here today.

My name is Tara Marsden, and my traditional name is Naxginkw. I am the —

**Johanne Gélinas:** Can we get silence in the room, please? Thank you.

**Tara Marsden:** Thank you.

I'm the Sustainability Director for the Gitanyow Hereditary Chiefs Office. I apologize. I do have a very dense presentation today, and the reason for that is that we were not able to access any of the resources to participate in this review, but we did have a very strong interest in presenting. And given the timelines, we hope to submit a written, but we're not 100 percent sure at this point. If there's any extensions of timelines, we definitely would like to do that. But I've tried to include as much content as possible here today.

So I'd like to, today, introduce you to who we are as the Gitanyow Huwilp, what our approach and concepts are around Wilp sustainability, our territory and the rights and title that flow from that as well as some of the key issues and obstacles to sustainability in the Act, the Canadian *Environmental Assessment Act*, that we have experienced as well as obstacles to the protection of our rights and titles, and then to conclude with some recommendations to the Panel.

So the Gitanyow Huwilp, there are approximately 1,500 people. We're organized into 8 distinct Wilp or House Groups, and those House Groups are organized into two clans, which are the Wolf and the Frog Clan. As Gitanyow, we represent ourselves through the traditional hereditary governance system for the territory, and so the *Indian Act* Band Council do not manage or have any influence or involvement in the management of the territory. And this is recognized by both levels of government through provincial and federal environmental assessments as well as through our provincial government-to-government agreement.

Each of our Wilps has their own distinct territory, and the totality of those eight territories comprise the Gitanyow Lax'yip, or traditional territory, which is the basis for the consultation on any environmental assessments.

Territory that we have owned and occupied for thousands of years is approximately 62,000 (sic) square kilometres. It's situation in the mid-Nass

watershed as well as portions of the Skeena watershed, which is around the Upper Kitwanga and Kispiox Rivers.

The reference point for where we are, it took me about three hours to drive, so it's in the region, but inland and on the Nass River sort of through the centre of the territory there. And Highway 37 up to the Yukon goes through the centre of the territory as well.

So the way we approach our land stewardship and management throughout the territory is through the concept of Wilp Sustainability, and this is a term that we have arrived at a very clear definition that can be recognized and upheld both within our own decision-making and consultation with federal and provincial governments. And for us, Wilp Sustainability means the conditions under which ecosystem function, socio-cultural and economic well-being are maintained and risk to ecological integrity is low, thus providing the ecological foundation for the long-term socio-cultural and economic well-being of each Wilp.

And so when I showed that map of those eight individual territories, our system is based on those Wilps being able to support their membership now and into future generations on the resources that are within those territories, and so to go beyond the territory to support yourself and to generate wealth goes against our system, goes against our traditional laws. And so where there are heavy activities, industrial activities in one Wilp, it creates an additional risk and threatens Wilp Sustainability for that Wilp.

So similar to the Tsimshian that you heard from today, we have a similar language and we refer to ayookxw, which is our laws. And one of the main laws that we follow is gwelx ye'enst, and that's the right and responsibility to pass on our Lax'yip, which is our territory, from one generation to the next in a sustainable manner. And the way that we do that is through a number of different plans, policies, assessments and studies, and these all inform the decisions that are made by the hereditary Chiefs on behalf of the Huwilp.

And so I won't go into detail on all of them, but they are available publicly and I'm happy to answer any questions around those and how they inform our consultation and decision-making.

Focusing on sustainability and what that means to Gitanyow, the Act that we're talking about today was passed in 2012, so there's been changes since then. There's a new government. There's also a major Supreme Court decision in 2014 around the *Tsilhqot'in* title case and new precedents being set there.

And *Tsilhqot'in* talked a lot about future generations and how Aboriginal title lands are very distinct and unique within Canada. And so Gitanyow is



one of other — many other nations that are pursuing a declaration of title in the Courts right now.

This — these clauses from the *Tsilhqot'in* decision are very relevant. They talk about the land as not being — it cannot be used for purposes that will prevent future generations from benefiting from the land in the same way that our ancestors did, and this places an additional duty upon the Crown when you are in that pre-declaration phase to exercise extra caution and to ensure that decisions that are being made will not deprive future generations from the benefits of the land.

And so from what we've experienced is that the — there has not been any change since the *Tsilhqot'in* decision to reflect this through the environmental assessment processes.

Looking at the Act itself — I'll just refer to it as "the Act" from now on — there is a definition of "sustainable development" And when I read it, it very closely mirrors our concept of *gwelx ye'enst*, and that is that development meets the needs of the present, without compromising the ability of future generations to meet their own needs, which is a great definition. But when you look at the purpose of the Act, it's a little less strong and it really says that it's, you know, to encourage federal authorities to take actions that promote sustainable development. It's not an outcomes based directive that says sustainable development has to happen and no projects will be approved unless they meet that definition.

Similarly with the consultation parameters for Aboriginal peoples in the Act, the purpose, again, is to promote communication and cooperation with Aboriginal peoples. When we are coming forward to represent and protect our rights and title, the purpose there is not to protect the rights and title, but to promote cooperation and encouragement. And so again, not a very strong outcomes based commitment.

So some of the obstacles. We've been involved with three recent Canadian environmental assessment processes. Some of the obstacles that we've experienced is that there is — there's nothing in the Act or in the process that requires that projects follow or the assessment follow key regional plans and, where they don't exist, that they must be carried out. Those can include regional cumulative effects assessment, land use plans or just strategic planning where you have multiple pipelines or terminals all proposed at the same time and you have numerous calls for a common corridor or site selection and routing options as well. And so there is no requirement, basically, in the legislation for that.

There's also no requirement where there are scientific conclusions being reached either by the proponent or the — through the assessment report that those are peer reviewed. And so when we're looking at a process that is

supposed to be scientifically robust, peer review is one of the hallmarks of scientific study. And so that is something that is needed.

And finally, when projects may cause or are seen to have adverse environmental effects, they can still be approved. And so the decision-making authority of the Minister and Cabinet, they can refer to the project as — or the impacts as justified in the circumstances. And what does that mean, “justified in the circumstances”? Is there transparency in the Act on what that means and how a Minister or Cabinet would arrive at that determination? Are Aboriginal rights and title considered in that justification test?

And from what we have seen with recent cases is that it's a wholly economic test with little to do with sustainable development or any planning for future generations. And if we are to look solely at economic benefits, will those — what is in the legislation now to ensure that those benefits will actually outlast the impacts that are contemplated if they are significant and adverse? Do you have a lifespan of impacts that may last 50 to 100 to 200 years and economic benefits may last 20 to 30 years? Is there a legacy fund in place? Is that required?

So really, again, not matching what that definition of sustainable development is.

Within the Act, as the previous speaker mentioned, is that there is no pre-screening process that says, well, actually, this project could, on the face of it, pose an unacceptable risk to a First Nation or to a number of First Nations. And you can just look at the Northern Gateway example as a prime example of that, that there was opposition from the beginning, there was an initial assessment of the risks and the benefits and, you know, 10 or so years spent, \$500 million spent by the company alone — I'm not sure what the government and the First Nations spent total. But surely there must be a mechanism where, before projects actually get into the assessment process, that there is some criteria.

And the ones that she provided today are very good criteria to say is this project — should it go through this process or should it be relocated or should it be reconsidered entirely. And now we're looking at a coastal tanker ban which will prevent projects like that from being reviewed.

In terms of reconciliation and our efforts to reconcile with the Crown, both federally and provincially, within the Act there is no mechanism for a joint design of a consultation process, and so when we are approached to engage with CEAA, it's this is the process, these are the timelines. There may be extensions here and there. This is what we want you to comment on. This is the funding that's available. So it's a pre-determined process, and the Courts have been fairly clear that consultation — meaningful consultation includes talking about how you consult first.

And so there really isn't a mechanism in the Act that says that consultation should include that.

There's also no mechanism for consultation with the Minister directly on any conclusions or recommendations from the assessment report, and so the effort is all extended on the assessment report and reviewing that with the agency, and then it goes into this sort of black box of a Minister's decision, the Cabinet decision, and there is no legislated role for First Nations in a determination that a project should go to an independent review panel.

And those could include a First Nation or a group of First Nations appointing a panel member, being involved in drafting the terms of reference and receiving panel reports for decision-making.

Again, the participant funding is miniscule compared to the workload for meaningful engagement, and that has put Gitanyow at a disadvantage for many of the processes we've been involved with.

Within the Act, there isn't a direct link between environmental effects and rights and title. And so when we're looking at how we want to protect our constitutional rights through consultation with CEAA, we talk a lot about the environmental effects, whether they are significant, whether they can be mitigated or avoided, compensated. But rights and title is not — is not the subject of the assessment, and so the linking of, you know, significant effects on a salmon resource, how does that affect Aboriginal rights and title, is not linked directly within the Act and so it doesn't give a lot of guidance for the assessment practitioners.

So that's sort of the summary of the Act as we've experienced it. Now to turn to some recommendations.

So there are some, I guess, ad hoc or one-off examples within Canada that are very groundbreaking in terms of a different approach to environmental assessment. And I've chose to focus on sustainability assessment.

And one of the examples is around the Kemess North Mine Joint Panel. And so they were struck by the provincial, federal and one First Nations appointee to the panel. And so rather than going through the narrow scope of mitigation, of impacts and justification of impacts, they looked at five sustainability criteria and they assessed the project based on those criteria. And in the end, the project was rejected.

And again, you know, serious resources being expended by both the company and the First Nations. The issue there was the use of a lake for a tailings pond. And immediately, you know, the First Nations had opposition to that project but, you know, \$28 million later and the company has a rejected project. And so

there are some things that, if they are more stringently applied in the pre-screening process, could save a lot of time and resources.

But I think that these five sustainability criteria — I won't read them out — but they provide a much more robust criteria that really reflects our vision of sustainability as well as the definition that is used in the Act.

And so when you look at environmental assessment and the approach of mitigation, the approach of justification, sustainability assessment is much broader. And one of the definitions is that it's to ensure that every one of our potentially significant undertakings, those being major projects, is designed to deliver positive contributions to sustainability, multiple, mutually reinforcing, fairly distributed and lasting positive contributions, while avoiding persistent damages.

And so there are international and global models for these. There are examples where sustainability is more systematically implemented as opposed to in Canada where it's a little more ad hoc. And the criteria that have been arrived at as sort of an international standard are seen there, those seven points, and very much mirror what was determined in the Kemess North panel and the criteria that they used. And Kemess North is seen as one of the leading examples in Canada for sustainability assessment.

Another issue that we have raised through various EAs is around a climate test and full cost accounting for carbon and GHG emissions. And so it has not been provided to us through the EA processes. We may learn of it after a decision has been made. But having that full knowledge of the full cost of the carbon and GHG emissions of any project is very important.

First Nations — Gitanyow definitely has experienced significant effects already from climate change. We have both levels of government making significant commitments and climate targets. And so those two simple questions there, is the province or federal jurisdiction on track to meet its climate targets and is carbon pollution from the project being minimized.

And so if the answer to either of those is no, then the project should not proceed. It's a simple climate test.

And we need something that's permanent to a body of government-to-government indigenous climate action secretariat or something similar where the provincial and the federal government and indigenous nations are taking leadership together on climate change and climate action.

So in terms of a model where we could implement the United Nations Declaration on the Rights of Indigenous People where we could say, well, what does free, prior and informed consent look like, for Gitanyow, we start with our territorial

plan, which is our land use plan. And so that's the basis for how we determine if activities are sustainable and acceptable.

We also need regional and strategic environmental assessment or cumulative effects analysis to inform the decisions. And so again, where there are multiple projects being proposed in an area simultaneously or if there are critical thresholds that we are meeting in terms of fish or wildlife or water, we need those regional assessments done prior to any individual project decisions being made.

And then we have a sustainability assessment for major projects that is done, hopefully, in a government-to-government manner, a consent protocol where we are providing some assessment of our own and reporting to both the proponent and federal government this is our either support or rejection of this project based on all of the criteria and all of the assessment of the project in accordance with those plans.

And if a project is proposed, joint management — sorry, joint monitoring, compliance and adaptive management. And that feeds back — those results from monitoring feed back into our land use plan and information on thresholds and changes in baseline information.

We do have the capacity at each of these phases — it's not complete. We do need additional resources, but we have the capacity in terms of our own vision for sustainability and our own — based on the experience of working with the federal government how we could work better to achieve the outcome of sustainable development.

Just one more comment on the aspect of consent and salmon ecosystems. And so where we are today, we are within a major salmon ecosystem, and our territory is both in the Nass and the Skeena watersheds. And our people rely extensively on salmon for food security, for nutrition.

And so salmon, obviously, migrate and have a large territory of their own that expands in numerous First Nations' territories, and this can cause a challenge in environmental assessments where the scope of a project is defined not based on those values that are actually being affected. And so we have had to really push to be engaged on a couple projects because the project's not within our territory and we fully respect the right of our neighbours to have their own processes, consent and consultation. We don't seek to override those. But where there are critical impacts to salmon, to salmon habitat and those affect our nation, we need different mechanisms, we need different government-to-government relationships amongst ourselves and with the federal and provincial government.

But just noting in the federal consultation guidelines, it states that once one part of the Crown is aware that a First Nation has a right that the whole

Crown must act on that knowledge. And so what we have experienced is that we have Aboriginal fisheries agreements with Department of Fisheries and Oceans, they know where we fish. They know the stocks that we rely on, and they know where the habitat is for all of those. And so we shouldn't have to be, you know, fighting and litigating and forcing ourselves to be consulted through those where there's clearly knowledge on the Crown's behalf that we have those rights.

And just to conclude, I want to provide a little closing thought for the Panel.

And so in reviewing both the CEAA Act and the federal consultation guidelines, there is a strong emphasis on this duty to consult. It's a duty that's a legal imperative. It's not being done because the federal government necessarily wants to; it's being done because the Crown — the Courts have told them they have to.

And there's this pitting of Aboriginal rights against societal interests as somehow they're mutually exclusive, that Aboriginal rights are in the way of development. And I just really want to challenge the Panel to think about that differently as you're hearing all of the submissions and the presentations.

And in the research that I did for this presentation, there's these global case studies on sustainability assessment, and the Canadian ones, they were — 57 percent of those case studies were advanced and pushed because of Aboriginal people's interests and concerns, and they include Mackenzie Valley pipeline 1 and 2, Kemess North, Boisey Bay.

Those types of examples have really advanced where we're at in Canada with environmental assessment and sustainability assessment, and we always hear these negative statistics about ourselves. You know, we're four percent of the population but our incarceration rates are very high. Alcohol and drug rates are very high. But this example is a positive one, and I think it shows a bigger contribution that we can make to the discussion and to the findings that you're going to be reaching at the end of this process.

So I'd just like to close and to say thank you very much, and the references are available there and the PowerPoint's available for the Panel to keep.

**Johanne Gélinas:** Thank you very much.

I don't know what you would like to add in a final written submission, but I must say that what you are presenting here is a lot of information, and useful information for us. You can decide where you want to put your effort looking forward.

Renée?

**Renée Pelletier:** Yes. I was wondering if you could turn back to your slide entitled — I think it's the "Implementing UNDRIP" slide.

**Tara Marsden:** Okay. Sorry. I lost it here.

(PAUSE)

**Renée Pelletier:** Yes, perfect.

I'm wondering if — so this process, the regional strategic environmental assessment, sustainability assessment, is — are you proposing that that would be led by your nation by — jointly with or tripartite with, I guess, if the province is involved? Say a little bit more about that — this process here.

**Tara Marsden:** Sure. So we don't know the outcome for — the recommendations you're going to be making, and so going forward, the challenges that I've laid out in terms of the existing Act, hopefully some of those or all of those would be addressed. But in terms of how we want to proceed, how we want to proceed based on our experience and on our vision for Wilp Sustainability, I guess this process is an ideal process for Gitanyow. And ideally, there is reconciliation, government-to-government reconciliation, at each stage.

And so like the — so for the example, the land use plan, it's recognized by the province. Can the federal government recognize that as well? What type of reconciliation agreement can we reach with the federal government to say yes, we recognize your land use plan?

The regional strategic environmental assessment, cumulative effects analysis definitely needs to be led in some way by a federal and provincial entity or partnership, I would imagine. And the sustainability assessment would be, at a minimum, our own, and if there are major wonderful changes to the Act, then participation in that, ideally.

But yeah. So it's — I guess it's just an ideal situation not knowing what the outcome of this process will be.

**Renée Pelletier:** Okay. No, that's very helpful. I wasn't sure if you were suggesting that this is what you internally in your community would need to do for projects, but I see that you're saying that this could be sort of the integrated new approach.

So a question for you. If you can answer this now — this is kind of a follow-up question to this, would just be how your indigenous laws enter into this.

**Tara Marsden:** Okay. So starting again with the land use plan, that was — it took 10 years for that to be developed and to be negotiated with full involvement with the hereditary Chiefs. And we have since converted it into our own language and to reflect it in our own laws, and so we take the principles — and I just gave you the one example there with gwelx ye'enst — and we have applied it through these different, I guess, modern tools and mechanisms that are available.

And so we also have the Gitanyow Constitution which outlines our hereditary system and the processes that we have to undergo for decisions to be made and how decisions are made internally. And so that guides any of the additional plans or policies that we develop as well.

**Renée Pelletier:** Thank you.

**Doug Horswill:** I was very interested in your final comment that the notion of the systems pitting Aboriginal interests against community interests more broadly. And you referred to work that you had done in researching this that led you to a conclusion that it's possible to find a way to facilitate consensus-building and positive relationships. And I would certainly like you to elaborate on that.

And again, in your further submissions, should you make one, if you could point us to what research you did. But if you could elaborate that thought a bit and, really, the question is, how do we do that.

**Tara Marsden:** Right. Yeah. So I — the idea that the Aboriginal rights and title have to be weighted against — that's the common phrase, weighted against societal interests and so that they are not compatible, I guess, or that one must rule over the other or something like that. It's a very, I guess, adversarial framing of it.

And so when you look at those definitions, you know, there's three different sort of definitions, one from Gitanyow, one from CEAA and one from some of the academic experts on sustainable development and what it means and future generations. You know, Supreme Court also.

So what I see, I guess, is that First Nations, when we are trying to stop a bad project, are doing that for the benefit of all Canadians and not just for our own interest. Sustainability is about all future generations, I guess.

And so maybe it's more a framing and an understanding as opposed to a specific process for how that could be done perfectly because I don't — I don't know. It's a much bigger question.

**Doug Horswill:** Thank you.

**Rod Northey:** Just staying on this slide, the UNDRIP slide and the five stages, I just want to clarify. You call it a recommendation and an idea, but it sounds



like this is what you are doing. I just want to understand how much of this is now part of your decision-making.

**Tara Marsden:** Well, definitely the — I think the key missing piece there would be the regional strategic environmental assessment. And so we do our own studies and assessments basically in — at the same time as CEAA or the provincial agency is doing that. And we're, at the same time, trying to engage in a process that we really haven't been involved in designing or agreed to at the outset.

And so I think there are pieces that — again, it's — it's where the pieces are there in an ad hoc manner that we're doing it on our own, which is good. That's our job. But where is the federal, you know, responsibility to recognize that? And really, with UNDRIP, it's — it is about self-determination as well so that each nation when, you know, the Prime Minister is saying, "Well, we don't really know how we're going to — we committed to implementing this. We don't — we're not there yet, clearly". But it's up to each nation to say what that means to them.

And so I don't think I answered your question, though.

**Rod Northey:** Okay. Well, you're — I think that you started to answer it by saying you — in terms of your five stages, one is you've described, two you're not quite there yet on regional. And so just going through the circle, are you presently doing sustainability? It sounds like you are.

**Tara Marsden:** In a — again, it's doing our own assessments and studies but still trying to engage in a process where we're not being recognized. And so yes, the recognition piece is critical to having a successful process that is — the end result is respected, the decision at the end is respected.

**Rod Northey:** All right. My final is a comment. Thanks for the reference to the Kemess. I'd actually missed that. We've heard lots about other ones. That one I had not heard, so thank you for getting us there. I just went and looked at it.

**Johanne Gélinas:** You made a comment about having an indigenous representative sitting on a panel. If we were to take the example of an LNG project here, how you will work together to identify a person to sit on a panel?

**Tara Marsden:** Yeah. So the Kemess example, there was — there's three nations, and they managed to arrive at a determination. And so clearly, where you have a larger number of First Nations, that would be very challenging. Very challenging, indeed.

(Laughter)

**Johanne Gélinas:** Let's try something else to clarify that.

If CEAA, for example, was to propose an indigenous representative to sit on the panel, how you will see that as communities?

**Tara Marsden:** And I don't think it necessarily would be an indigenous person. I think with — I think with the Enbridge JRP, I think they had an indigenous person, but they didn't have — they were, you know, from Alberta or somewhere like that. And so really, where you're looking at our region and the issues that are constantly brought forward around salmon, around water and things like that that expertise might as relevant, and so I don't necessarily think it would be an indigenous person, but as long as there's a say in who that person is and that they have the right expertise to bring to the panel.

**Johanne Gélinas:** Thank you very much for your presentation. Very interesting.

**Tara Marsden:** Thank you.

**Johanne Gélinas:** And the good news is that we are on time. With some discipline, it works.

Our next presenter is Kyla Warren.

## **STU BARNES, DAVIDE LATREMOUILLE, KYLA WARREN, SKEENA FISHERIES COMMISSION**

**Johanne Gélinas:** Good morning. Kyla, I will ask you to introduce your colleagues.

**Stu Barnes:** My name is actually Stu Barnes. Kyla's one of our — yes. Trying to lighten the mood around here.

So my name is Stu Barnes. My Gitksan name is [other language]. I belong to the House of Dalmuuk(phon). I'd first like to acknowledge the traditional territory of the Tsimshian Nation and thank them for allowing us to conduct our business here today.

So I'm the Chair of the Skeena Fisheries Commission. Our mandate is to protect the right to fish. We realize that without the — without fish, there is no right. And so we find that — we found that science is the most effective way to carry out this mandate, and so we push a very technical agenda.

We got into the EA game at the — at the request of Lake Babine Nation, one of the member Nations that we work with. And it was to do with the Morrison Mine EA about roughly seven years ago.

So during the past seven years involved in EAs, we have identified some gaps in EA process and that hinder meaningful participation and decision-making for our First Nations people. And so today, we have some recommendations that we've come up with during these past seven years to share with you guys.

As we approach the 19th anniversary for our *Delgammukw* decision on December 11th, we still strive to achieve reconciliation and nation-to-nation governance.

So what does reconciliation mean, what does it look like in environmental assessment? The EA involves making decisions about what is going to happen on the land, and how. And a quote from the decision of *Delgammukw* captures that aspect in law.

So to be able to arrive at decisions that are supported by communities, the process and decisions around EAs needs to change in many ways. The recognition of indigenous peoples as decision-makers over questions of what is going on and happening in our nations' territories is essential.

The duty to consult is one model that — of EA decision-making, a consent-based model is another. The duty to consult is based on the assumption that the Crown is the sole decision-maker. This is out step with the Supreme Court decision of this — *Tsilhqot'in* decision which Tara alluded to earlier.

So Crown approval of projects can be cancelled when Aboriginal title is later proven if consent to proceed was not provided by appropriate indigenous peoples. And we've seen examples of that already.

So consent is the practical, honourable and reconciliation-based way forward. Both parties, the Crown and indigenous Nation, comes to the table as governments.

Our vision is that Nations on the Skeena River will be able to collaboratively — be able to collaboratively — be collaborative decision-makers for the EA of many projects — any projects proposed within our territories.

So two of our staff members that lead EA files are going to outline some of these solutions and gaps identified earlier as they've experienced it over these past seven years in the EA files.

**Johanne Gélinas:** Just for the record, I will ask you to introduce yourself.

**Stu Barnes:** I was just going to do that as well.

So this is Davide Latremouille and Kyla Warren.

**Kyla Warren:** Hi. Yes, my name is Kyla Warren, and I'm an environmental assessment biologist with Skeena Fisheries Commission.

So one of our recommendations is a broader use of strategic and regional EAs. Currently, the EA process is almost entirely based on project level EAs, and this has created numerous deficiencies.

Project level EAs are proponent driven, and proponents are incentivized to maximize economic profits while meeting the minimum bar required to get their approval. This leaves everybody else with no ability to plan, to explore options, to maximize their benefits or minimize risks.

Consultation usually, or often, occurs late in the process after key decisions have been made and, as a result, it's ineffective and shallow and does not — often does not address major issues.

This focus on project level EAs to the exclusion of all else has also meant that there's not really a table to have larger — or conversations about larger issues.

So this current practice has — creates conflict, it prevents reconciliation, it causes increased risk to resources and decreased trust, both in the process and in the government.

Environmental assessments on the — for individual projects also tend to become the table at which people have or attempt to have conversations about those larger issues. You see this right now with energy projects where they — the individual project level EAs have become the venue for debate about climate change policy in general, for which they are entirely unsuited, and regulators are unable or unwilling to have those conversations and it creates uncertainty for project proponents.

The strategic and regional EAs are well suited for addressing these issues. They've been well studied and often are recommended by experts. They've been used successfully to address similar issues, both in Canada and internationally.

We're sure you've heard mention or are well aware of what strategic and regional EAs are in general, so rather than, you know, give an explanation of what they are in general, I'm going to go into what we see as being some of the necessary characteristics that need to be in place for these to be effective.

The first and most important is early and broad consultation with indigenous groups. Also, that they need to assess both development plans, institutions and policies.

They need to look at long timelines beyond the 20 to 40 years. You kind of have a normal timeline for a major project, but during that period they also need to be open for review and modification, if necessary.

And importantly, they need to be undertaken proactively. It's not effective to wait until an individual project level EA has failed to bring in a strategic or regional EA, and it's not even really sufficient to do it once a bunch of projects have been proposed. By that point, it's too late. Ideally, these would be in place well beyond — well before that, and so would be able to guide those individual projects.

Our second recommendation is to focus on fish ecosystems and not fisheries. The Canadian *Environmental Assessment Act* specifically defines fish habitat relative to the *Fisheries Act* and, in practice, this means — seems to mean that impact is defined under the “serious harm” clause of the *Fisheries Act*. However, since 2012, the *Fisheries Act* only really considers impacts to fisheries — or to fish that belong to fisheries.

This is inconsistent with the Canadian *Environmental Assessment Act's* stated objective to maintain healthy ecosystems because it leads — it leaves fish habitat, aquatic species that are not fish and fish that do not belong to fishery vulnerable.

It's also inconsistent with how other VECs are treated in environmental assessments. For example, when looking at impacts in the terrestrial environment, they — environmental assessments look at things like plant communities, ecosystems, amphibians, birds, a wide range of mammals. If terrestrial systems were treated the way aquatic systems currently are, it — impacts would only be assessed based on whether or not there is still timber to harvest and moose to shoot.

Modern science and traditional knowledge both stress the importance of managing resources through an ecosystem-based lens. To manage aquatic systems solely through managing fisheries is really a 19th century idea that doesn't have much of a place in a modern environmental assessment system.

**Davide Latremouille:** Good morning, everyone. I'm going to talk to you about cumulative effects assessments as they're currently practised in environmental assessment as well as some of the problems with the current use of environmental consultants with — by project proponents.

So in the current framework, the cumulative effects assessment doesn't capture the overall impacts of many small projects which add up in the big picture. The way cumulative effects assessments are currently undertaken, they only evaluate the project effects that are considered significant unto themselves.

A revised cumulative effects assessment framework should include all project impacts, the impact history to a given geographic locale in question and potential future project impacts.

As Kyla was mentioning earlier, a regional and strategic environmental assessment approach is needed, and that would definitely help in the case of cumulative effects assessment. A regional and strategic environmental assessment approach would supplement the current case-by-case approach that both the British Columbia Environmental Assessment Office and CEAA take to environmental assessment.

This would allow for the consideration of impacts of many small projects. In essence, cumulative effects matter.

Cumulative effects need to be considered in a way that is quantitative to weigh risks posed by implementing a project versus its potential benefits, needs to be ecosystem based, meaning that habitat productivity, ecosystem processes need to be empirically measured. Include the history of the area and the ongoing impacts from projects in the area, and capturing the impacts from many small projects.

As we're all aware, we're all operating in times of fiscal constraint, but Skeena Fisheries Commission believes that that shouldn't be an excuse for doing the job the best way possible. So to improve a cumulative effects assessment process, two potential ways would be to obligate all project proponents that intend to operate in a given geographic locale to pay into a cumulative effects assessment working group process as part of their environmental assessment.

And two, further obligate project proponents to participate in and help fund research related to furthering an empirical understanding of cumulative effects.

With regards to environmental consultants, in the current system, essentially what happens now is project proponents hire environmental consultants to go out and collect data to support their application for an environmental assessment certificate. In the current arrangement, this basically provide — has environmental consultants have incentive to tailor their assessments to find results that are favourable to the proponent's end goal, which is, ultimately, to achieve a positive environmental assessment certificate. And this often comes at the expense of objective, transparent, peer-reviewed science.

And unfortunately, there are few mechanisms currently for holding environmental consultants accountable for the quality of their work and the accuracy of the associated predictions.

One of the key problems, of course, is that what's going on now is that the work of environmental consultants has been substituted for the work of

government scientists. This has allowed project proponents to control the information flow to limit the perception of impacts that their project might cause. This is a serious conflict of interest.

The conflict of interest with environmental consultants is also further exacerbated by the lack of a peer review process, the process that's considered a gold standard of quality control for science and, also, environmental consultants and their proponents being able to self-regulate, for instance, conducting their own environmental and reporting activities and then submitting these reports to regulators such as CEAA and the B.C. EAO that, from my past experience thus far, and I've been working with environmental assessments the past seven years, don't seem to receive a high level of scrutiny from the EAO and CEAA.

Some potential methods of addressing the conflicts of interest with the use of environmental consultants would be greater oversight by professional bodies such as the College of Applied Biology, First Nations and government agency control of consultant hiring and firing for a given project, and moving the task of collecting and interpreting data back to federal agencies rather than using environmental consultants.

One of the other problems with the current arrangements with the use of environmental consultants by project proponents is the flow of technical information during the environmental assessment itself, particularly with technical working groups. What this has allowed to happen is project proponents controlling the output of the information from their hired environmental consultant to limit the perception of the project impacts and the potential expenses of accommodating changes to the project for those impacts.

The flow of technical information needs to be changed from the current arrangement. Essentially, the current arrangement in a typical EA, from my experience, goes environmental consultant to the project proponent in question, then to British Columbia Environmental Assessment Office or CEAA representatives, as the case may be, then to further government sub-department regulators such as Department of Fisheries and Oceans Canada, Natural Resources Canada, then to technical working group members.

As you can see in the five-step process, there's a fair bit of opportunity for the project proponent to preen information before the technical review group gets to see it.

Essentially, the best way to overcome this problem if environmental — use of environmental consultants is going to be an ongoing practice in environmental assessment into the future is to obligate the environmental consultants to provide raw, unfiltered baseline data sets to the technical review group directly. This would be in addition to, if not augmenting, a peer review process.

And with that, we conclude the presentation.

Closing comments?

**Stu Barnes:** No, that's good, thanks. We look forward to any questions and we'll be submitting something directly.

**Johanne G  linas:** Thank you very much.

I don't know if you will submit something else than this, but if we can have that by the end of the day, that will be appreciated.

**Ren  e Pelletier:** So thank you, firstly.

Your last points about the technical studies and the problems around the proponent sort of taking charge of those, one of the suggestions that we've had from numerous groups is the idea of taking that out of the hands of the proponent and having either the government do the studies, an independent arm's length group do the studies. What are your thoughts on that?

**Davide Latremouille:** It's — well, I would say right now what has to be changed, and I know there's not an easy solution, is that, essentially, the way the proponent-environmental consultant relationship is a capitalist client performance model, and I've seen this in several EAs where, ultimately, environmental consultants are in the business of making money by conducting environmental assessments. They want repeat business. It's a lot easier to have the same customer over and over again versus having to chase a new one down each time.

And several projects that I've seen where — for instance, one mining assessment — the Morrison mine assessment that I dealt with, this issue happened but sort of on — I guess you'd say on the other side of things. They started out with a highly ethical consultant who gave them the results unvarnished and said, "Well, this is what they show". It wasn't favourable to getting the mine approved because of fisheries and water quality issues.

That proponent dropped that environmental consultant and sought out another that would basically them with results that were more favourable to their end goal.

So if and — so I would say probably the ideal short term would be — and I realize capacity issues are a problem all around within government agencies. But the most immediate solution I would see would be getting government scientists back into the business of doing the field work and collecting the data and interpreting it.

**Ren  e Pelletier:** Thank you.



**Doug Horswill:** I'd like to go back to your beginning, the consultation model versus a consent-based model, and the consent-based model leading to a reconciliation approach.

The substantive portion of your presentation was very insightful in a lot of ways, but how would you — how could you expand on the elements of the consent-based model as you've described it? What would be the features, in your mind, that would be key to putting such a model in place?

**Unidentified Speaker:** It's a tough question.

**Doug Horswill:** If you have any follow-up to this presentation, you can elaborate there.

**Davide Latremouille:** Well, going from my experience with environmental assessments, I guess the easiest way is to talk with direct experience.

So for instance, with the Pacific Northwest LNG environmental assessment, I was essentially involved with that one from the beginning. And at the beginning, the proponent came in and figured because the Prince Rupert Port Authority had given them the go-ahead for Lelo Island and Flora Bank area that they had the social licence when they hadn't actually talked to any of the First Nations that would be affected, any of the commercial fisher — anglers in the area. No one was actually talked to about before the site selection was made.

So it would — I guess to try and answer your question would be taking a different approach to the current way environmental assessment is practised and going out and seeking the social licence first about a given project idea for a specific site before you go to the time and trouble and expense of developing a project proposal.

**Doug Horswill:** I guess that would be one element. If you think of any more, you can come back to us. Thank you.

**Kyla Warren:** And we do have more on this point in our written submission that'll be coming in to the Panel in the next week or so.

**Rod Northey:** Over to me. So I wanted to go back to your cumulative effects suggestions, and one thing in particular, that all projects impact history piece.

There was a couple of slides. The one that I'm interested in is the one you were talking about after you said cumulative effects matter, you got to quantitative. There.

So the "should" is what I want to ask about. Not to disagree. The question is, are you guys able to do that now? And what I'm really asking is, can

you point us the way to how to do this in an existing model or is this a “should” as in, ideally, in the way forward?

It'd be great if you had existing.

**Unidentified Speaker:** That would be the most ideal, is that a lot of this information would exist and I guess relating it directly to fisheries issues, for instance.

So with the Pacific Northwest project, for instance, there's lots of fish habitat offsetting proposed, but there's no empirical proof that the offsetting measures that are being proposed to replace fish habitats will actually work, you know. So for instance, if — they're — I forget the exact numbers off the top of my head, but for the sake of argument, say they're destroying 50 metres squared of prime juvenile salmon habitat and they say they're going to create a new salmon habitat in a different part of the aquatic ecosystem. There's no way to determine right now whether that will work for the species that are intended and if it will, indeed, replace the fish that are lost, so — so ultimately — so that was part of my drive with the following slide about developing more research on cumulative effects.

**Rod Northey:** Okay.

**Unidentified Speaker:** Because that's an area where — and especially in a lot of areas of environmental assessment, a lot of mitigations don't have solid science behind them.

**Rod Northey:** Okay. So the — just to say the statement, similar to my colleagues, to the extent you have got places in your broad ecosystem even focused on fish, which is not a small topic, where you have got some quantitative data assembled into a model, whatever. To the extent you can give us what you do now that is quantitative, that would be helpful.

Thank you.

**Kyla Warren:** I think there are places already in the EA where this could be done quantitatively. A good example, I think, is acoustic disturbance, particularly underwater acoustic disturbance, usually is modeled by the proponents. But then their cumulative effects assessments seem to be done in a qualitative manner, so they've got their — their effects are quantitative, the next guy over has their quantitative effects, but because there isn't required information sharing and sharing of those — that modeling data between the proponents, they can't actually model what the cumulative impact of that will be.

So for things like air quality, acidification, acoustic monitor — acoustic disturbance, I think there already is the ability to make it a quantitative cumulative effects assessment. There just isn't the requirement for the data sharing that would be necessary.

**Rod Northey:** Okay. Thank you.

**Johanne Gélinas:** I don't know if I heard it well when you mention earlier about original assessment, that it was too late when the project were approved, but here in the region, do you think that it's still time to do a regional assessment or it's already too late?

**Kyla Warren:** I think it's too late to do an ideal one. I don't think that means there's still no value to doing a regional assessment.

I think, obviously, ideally, the best time would have been 10 years ago before all of these LNG project proposals came in, but it's not like these LNG projects are going to be proposed and then there's going to be no more development in the Prince Rupert area or no more development in the Skeena watershed. Development is always ongoing, and the Port has plans for how they want to develop the port, and that includes, you know, building more container shipment — shipping facilities and identifying areas for dredge and other sort of disposal areas. And those have been worked out in a port plan, but they haven't been — they're not part of an environmental assessment and they're not really taken into account in the EA process. And I think there is still a lot of benefit to doing a regional assessment in something like the Port of Prince Rupert that could — that could help with that future development as well.

**Doug Horswill:** From a different movie, involvement with Vancouver Aquarium a year or two ago, there was, I think, an undertaking to do a cumulative effects study in this region. Is that — did that happen? Is it under way, or how did that — and were you a participant in that work?

**Kyla Warren:** There's actually a couple ongoing or that have been done that have looked at pieces. You know, there was an air shed quality study. There was a process led by the federal government. There was a process led by the provincial government, and then there was the Vancouver Aquarium one that you are referring to that we were involved in. SFC was one of the driving forces to get that in place.

And that one is quite a — there's not a lot of financial backing to that one. There's a small bit that came from the proponents of some of these LNG projects. It's certainly not enough to do a huge regional cumulative impact assessment, so right now it's focused on more — get more information gathering and — that would somewhat support a cumulative effects assessment or other assessments in the future.

But because you've got all these multiple processes that are kind of doing the same thing but not quite and they're being led by different levels of government, by different groups, it hasn't resulted in a really effective and broad scope

assessment. It's just a bunch of piecemeal things that I think that has kind of hampered their ability to really capture cumulative effects.

**Doug Horswill:** And that particular one is funded by just one proponent?

**Kyla Warren:** I think it is. I'm not sure.

**Johanne Gélinas:** So again, thank you very much. That was a very, very productive morning.

We'll take a 15-minute break and then we will have two other presentations before lunch. And our presenters will be Spencer Greening and Mike Ridsdale. Thank you.

(BREAK)

**Johanne Gélinas:** I will invite you to take your seat, please.

(PAUSE)

So those who are outside the room, please join us, as we are starting.

So Mr. Greening, good morning. You just press the button.

## **SPENCER GREENING, GITGA'AT FIRST NATION**

**Spencer Greening:** Okay. I don't have to hold it.

**Johanne Gélinas:** No.

**Spencer Greening:** I like to talk, so I'd get a pretty tired finger if I had to hold it all the time I'm talking.

**Johanne Gélinas:** Okay. But because you mention that, I have to remind you that shorter is better —

**Spencer Greening:** Oh, okay.

**Johanne Gélinas:** — so that we can have an exchange.

**Spencer Greening:** You might have to remind me again.

**Johanne Gélinas:** I will be pleased to do that.

So we have your presentation, so the floor is yours.

**Spencer Greening:** Thank you.

First I'd like to say thank you for listening, thank you for being here. This is a key part of our relationship as a nation and to you as a nation. This is a step for the better, and though this process has proved to be very — at times very frustrating and hard for us, we thank you for making the step and listening.

As mentioned, my name's Spencer Greening. I'm an elected Councillor for the Gitga'at First Nation. I'm also, at times, a research coordinator and, in the past, I have been an environmental assessment coordinator. So I've got, I guess, two perspectives that I can bring to the table in that I worked as a coordinator in between proponents, governments to the Gitga'at First Nation leadership in hereditary table and, currently, I sit on the elected leadership with the hereditary table.

So yeah, that's just a bit of my background and the perspective I'm bringing to this.

So I — when we were talking with our leadership, we sort of figured that we — I think there's understanding and it's obvious that there's frustrations with the data that's presented in past environmental assessments, the funding, the timelines and all those things that I think everyone here struggles with. And so we decided that we were going to talk about what it means to us to really be in relationship with a government who's putting on this process. And we hope that, by the end of this presentation and specifically with our written document, there will be more opportunity for the federal government to recognize how to make that relationship stronger.

And so it's kind of like stepping out and looking at it, where do we start from scratch in this. So I'll start.

We, as the Gitga'at, we have rights and title. To us, that rights and title implies management, management of territories that we've lived on for thousands of years, management that involves a very complex hereditary legal political system that we've used to govern and manage that territory.

This implies there's legal and political processes in decision-making. That decision-making, we believe, has legal effect and force under Canadian law. We believe that our title, our laws, our processes are just — they're just as valid and important when it comes to the decision-making process.

So as leadership, it is our responsibility, as hereditary leadership, and as — me as elected leadership who takes a role and acts as a voice person for hereditary, it's our responsibility to make decisions on our territory. That's one of our fundamental laws. It's our responsibility to make that decision.

If we don't have the right or the opportunity to make that decision, it demeans our law, it demeans our standing in title, it demeans everything we

stand for in Gitga'at. And so far in this process, we feel we've been demeaned through that whole — that whole situation, that whole relationship.

I like diagrams, so for the rest of the slides it's just a diagram.

This is — this represents process. This represents — I think, in this case — actually, I know in this case, for me, this represents methodology. Methodology, in my eyes, is a way that we address a question or try to solve a problem or try to address an issue. We have methods and processes that we use to do so.

For the Gitga'at, we've had our own legal processes, political processes since time immemorial, and those have worked for us. We believe that the government of Canada has their own processes, their own methodologies that they employ to get — to answer the questions that they have to solve problems, they have to build relationships that they have. We accept that. Both of us have our own methodologies, as you see on the slide.

When we are able to express ourselves through our own process, that's when Aboriginal title, Aboriginal law is respected and recognized. Aboriginal title and law comes from our own methods. Our methods, again, is this process.

So if we look at the relationship, let's say we want to ask the question, "How is this project going to affect the people?" Both nations want to come to an answer. They want to solve that problem. We have our own process to solve that question, you have your process. But that hasn't happened — or that hasn't been allowed.

We are continually pulled into your own process, your own methodology of solving the question, the question of whether this project should go through. For us, we believe we have — again — I'm repeating myself, but we believe we have the right to come to conclusions through our own process. And again, we have the right to make decisions on territory that we have governed and have legal title to since time immemorial.

This diagram, this process disrespects that whole thing. We have not been given a voice through our hereditary structure. We have been given a voice, at most, through your methodology, your process.

That's why you see on the diagram here we're getting pulled into your process. And where's the outcome?

Never has the outcome met at middle ground. Never, for us, has it met at middle ground. If it did meet at middle ground, it would look a lot different.

I think middle ground is the bare minimum that the federal government should be meeting at.

I'll have a diagram that explains that further, but that outcome, it represents a goal, an end goal for the federal government. Does it represent an outcome for us? No. Did we ask for that outcome? No. Did we ask to be engaged in that process? Did we ask to create that process? No.

So for us as leadership, we feel if we are going to be a part of government-to-government relations, if we, as a nation, Canada, want to represent United Nations Declaration of the Rights of Indigenous Peoples, if we want to talk about truth and reconciliation, we need to talk about government-to-government relations.

This is not government-to-government relations. This is you choosing your own methodology, your own process and saying, "You can join us if you want", but we're not given any other options. This is the fundamental flaw of the whole process in that the ball is always in your court. It's your game.

And I'm not saying you shouldn't have a game, but what I'm saying is that as long as it's in your game, your process will continue to colonize. Well, it will do more colonial damage than it will do de-colonization. And that's a fundamental issue for us because you are pulling us into your process and we aren't given any strength or any encouragement to do our process.

What this would look like in an ideal situation is like this. You can see the Gitga'at First Nation or any indigenous nation, for that matter, is allowed their own process. They're allowed to express themselves, and deliberation and communication is met at a middle ground. Right now, we're not even meeting at a middle ground.

I like to think of fish all the time, so if I think of that middle ground, that line there as a big gill net, there's a whole bunch of fishing coming through and they hit that gill net, all that fish is our words, our ideas, the things we wish to express. How many fish are actually making it through the gill net to the government of Canada's process? Maybe a couple voices. And in the end, when it gets to the agreement, right now we don't know what extent those voices are represented.

We're not sitting at that table. We don't know where our ideas, where our representation — we don't know how it's talked about. We don't know how it's represented after we give our feedback. All we are are recommendations right now, and that is not government to government.

So like I stated before, at the bare minimum, if the federal government wants to talk about nation-to-nation negotiations, if they want to talk about strengthening their ties with First Nations people, they better meet the bare minimum, and that's that middle ground of deliberation. And that's what we expect in this process.

So ideally, for us, we would be able to express ourselves and sit at the table with you. Right now, that option's not there. Right now, we can express ourselves and our thoughts go to your table, but we're not allowed at that table. We don't know who makes the final decision. We're not sitting at that room. We're sitting at homes watching the decision made on TV.

But I'll bring it back to a place where we believe that we have the responsibility to make decisions on our territory. That comes with our title and rights. That comes with everything that the United Nations Declaration of the Rights of Indigenous Peoples represents. We deserve that right. We deserve that chance. And we're not given that chance through this process.

I'm going to go back a couple just because I'm kind of cranky right now. I'm going to go back to the cranky slide.

**Johanne Gélinas:** Be mindful of the time, though.

**Spencer Greening:** Okay. Like I said, how much of — I've got about five minutes, I'd say, because I want to give you guys a chance to speak.

Let's look at the parallels between the environmental assessment process and this Panel today. They're the same fundamental flaws because it's rooted, embedded in the same colonial process.

I come today and I have 20 minutes to present. We submit a written document, and we're not sitting on those tables after that. We want to be on those tables. Our words are pulled into your process, and then you get to decide the outcome. It's the same fundamental flaw that's happening right now in this review that happens with the environmental assessment process, and it's because this relationship is rooted in flawed methods. And we need to improve those methods.

Before I end, I want to talk about goals and outcomes. As I mentioned earlier, the outcome and the process, the means to the outcome and the means to that process comes from the government's goals. Those goals are not the same as ours.

The Gitga'at have a pretty intense history with — well, the last few years, I mean, we went through the big ordeal with Enbridge. And I'm going to try to quickly read out what CEAA relayed to us in 2009 about their goals.

One is to ensure that environmental considerations are explicitly addressed and incorporated into the development decision-making process. Two, to anticipate and avoid, minimize or offset the adverse significant biophysical, social and other relevant effects of development proposals and to protect the productivity and capacity of natural systems and the ecological processes which



maintain their functions. And finally, to promote development that is sustainable and optimizes resource use and management opportunities.

That last line is the key one because I think all those other goals are just the aftermath of the first — that final goal of promoting development that is sustainable and optimizes resource use and management opportunities.

That is not a goal of the Gitga'at. A goal of the Gitga'at, as we stated to the federal government when we were in discussions with CEAA in the JRP with Enbridge, was sustaining our community's relationship with the lands and waters and ensuring the cultural strength of our people.

We have two different goals and outcomes. The process that we have lived for thousands of years has ensured our outcome. We need to make sure that that goal and outcome is always represented for us, and the best way it'll be represented is through something that looks like that, something where we are — both our goals are met halfway, not we only have the chance to discuss your goals and outcomes.

Our only voice is in regards to your goals and outcomes, not ours. That's one of the most frustrating parts, for us.

I'm going to end with an example of how we've — our relationship with neighbouring nations under traditional law. Traditionally, if a neighbour wanted something from our territory, if they were to propose something in our territory, they would come to us, they would invite us to their table. It's on their dime, by the way. They would feast us, they would potlatch us, and they would give us room to discuss, deliberate and have an answer. It's their proposal. Not once have we asked for this. Not once have we asked for these projects. You, as another nation, are coming us with a — coming to us with a proposal.

Under our traditional law, there's enough respect that when you propose these things to us, the option for the answer of "no" is there. The option for us to sit on the table and reflect and problem solve with you is there, not through emails, not through documents.

The process to represent both our goals is there in a traditional context under our law. We hope some of that law in the future could be incorporated to our relationship with the nation of Canada because, to us, it's the same thing; it's government-to-government relations.

**Johanne Gélinas:** Thank you.

Let's hope that we are a little bit different. I mean, I hope we are a little bit different.

We haven't written anything yet because we are here to listen and to ask you what do you think should be done differently, so on that, I will ask my colleague to get a little bit more clarity on what should be done.

**Renée Pelletier:** So thank you, firstly, for your presentation.

And just one point of clarification. We're an independent Panel, so we are actually — we're not in the government or working for the Canadian Environmental Assessment Agency, so we're making recommendations to the government. So very interested in what you've — you have to say.

And I'm wondering, your slide that has the — I think it's the one just before this. That's right. Sort of the ideal process. In your view, is there a way to respect the nation-to-nation relationship, incorporate your process so that it's not yet again Canadian government pulling in First Nations into their process, but still have one process? Do you think that's at all possible?

Like in a — in the way that federal and provincial governments, for example, will sometimes have one process for an environmental review, is there a way, in your view, to have one process that would be kind of tripartite but that still makes it your process as well?

**Spencer Greening:** Yeah. I feel like that process is the middle ground. And these arrows going to each side might represent how we collect data, how we relay our — for us, how we relay indigenous knowledge, how we deliberate with each other. That middle ground is that process where our knowledge can sit at a table, where there's a space, a space for us to discussion — discuss and sit with each other. And ideally, that's one process. But we also have to be respected in the fact that we feel that when we are collecting that data, when we are coming to those decisions, there's — there's an indigenous methodology, there's an indigenous way of doing that. And for us, it's the Gitga'at way.

And just like the government or a proponent will come to their conclusions, this side is just coming to our own conclusions and having the space to do that. The middle ground is just a space where we can come together. That middle ground is that process, that one process.

**Renée Pelletier:** Thank you.

**Doug Horswill:** Did you have any interaction with the proponent during the Enbridge case and, if so, what sort of interaction and how did that fit into your thoughts around the process?

**Spencer Greening:** I wasn't working for the Band in a professional way when they were knee deep in — neck deep, I should say, in the Enbridge process. But what I've seen is the aftermath of it.

And so the aftermath has been — the Enbridge process was almost as if there was no recognition at all of title and rights and decision-making power on our end. It was a JRP. The Enbridge Joint Review Panel came in to our territory, listened to us, and that was about the extent of it.

At the beginning of the Enbridge — when they first proposed the project, they actually stated that we would have — we would have the ability to stop the project and it would not happen without our consent. After we stated that numerous times, after we stated that in the JRP and the fact that the federal government went ahead with the project after that, it gave us very little faith in these processes that don't bring us right to the table, that don't create that middle ground that we're talking about today.

So even though, in most cases, environmental assessments have given us more time to talk — I'll say that. They've given us more time to talk. But they haven't met us on that middle ground, just like the Enbridge project. And they haven't given us the ability to say "no", just like the Enbridge project and the process that came with it.

**Rod Northey:** I very much appreciate the slide and what — the effort. The diagrams do say 1,000 words sometimes.

So one question I have is on the Canadian side — I won't call it our side because we're independent of that — but on the Canadian side, there is a concern, fairly widely expressed, of lack of transparency. It's all black boxes leading to something.

The question I have for you is, how do you see the ability of if one of our recommendations is for the right side of this to be way more transparent, is that something that works for you also and is it transparent what happens on your side? And I'm just trying to figure out how this works.

And I don't mean that to take your word colonially, I mean it, how does this work. I can see your middle ground, and there's a lot that we can say about the right side of the diagram, and we will be, but I don't really feel the left side is for us to say much about, but you could.

**Spencer Greening:** I'll get you to ask that question one more time.

**Rod Northey:** Okay. The right side is Canada. The middle ground, you said, is where Canada meets a First Nation, yours in particular. The left side is your side of this. We are being invited by many people to make the right side far more transparent and do many things to it. I'm asking you and saying that we have a mandate to look at the right side of that diagram and certainly to try and find that middle ground that you're talking about, but the left side is really for you to tell us what, if anything, we can do and how it affects.

I'm just trying to ask you what — how does this work? Does this — is it a requirement — as you see it, is it mutual transparency? And again, I'm not trying to be colonial; I'm trying to understand how to do this.

**Spencer Greening:** Right. I think I get the question, and I'm going to rephrase it just to confirm.

I think what you're asking me to expand on is what does — is transparency mutual and what does transparency look like for us.

**Rod Northey:** That would be a good — sure.

**Spencer Greening:** Okay. Yes, I think transparency is mutual. And something — when — it's really interesting because we're talking about that in our mandate of self-government right now. We have — if we had the ability to submit — which I think we will in the future — a longer description of governance and process in the EA review, we would do it. But given the limited amount of time and capacity to do it, we aren't ready to do that within this process. But what we can do in the future is outline governmental steps and what that looks like, outline what decision-making processes look like us because, in a sense, we do follow a Gitga'at Constitution and we do follow Gitga'at legal order. And in our — as we move towards self-governance, that's going to be a very open document, a very open way where everyone we're in a relationship will understand this is how we operate.

We operate with a hereditary system, and that follows an order. And that order is going to be known to anyone we're engaged with to make that relationship as smooth as possible.

I hope that answers the question.

**Rod Northey:** Yeah, absolutely. Thank you.

**Johanne Gélinas:** Thank you very much for your presentation, Mr. Greening.

**Spencer Greening:** You're welcome.

**Johanne Gélinas:** Thank you.

So the next presenter for this morning is Mike Ridsdale.

As a reminder for those of you who intend to present a written submission, you have until December 23rd to do so.

(PAUSE)

**Johanne Gélinas:** Good morning.

## MIKE RIDSDALE, OFFICE OF THE WET'SUWET'EN

**Mike Ridsdale:** If you don't mind, I'll be reading my presentation and I won't be looking at you through the whole presentation.

Hadih, dinī ze' & ts'akē ze', the Panel. I would like to say good morning to the male Chiefs, female Chiefs, and those in learning. I would — I am Mike Ridsdale. I'm from the Tsayu Clan of the Wet'suwet'en. I would like to thank the Tsimpsean people for whose territory we are in, and for allowing me to speak here today. Missiyh.

The Wet'suwet'en Hereditary Chiefs hold the responsibility to ensure the land and waters within their territory will always support the needs of their Clans, Houses, and the Nation overall. This submission from the Office of the Wet'suwet'en is to help the federal government realize that they, too, have a responsibility to First Nations and to uphold First Nations' protected rights.

In order to be able to ensure First Nations' needs are met, be accountable for upholding constitutionally protected rights, the structures are needed to demonstrate the diligence, Canada's leaders are taking to uphold these responsibilities.

Aboriginal rights, which include the ability to access food, social and ceremonial resources, can only be practised if there are actual resources available to support the health and well-being of the First Nation. Mechanisms to determine the abundance, distribution, health of habitats and the pressures on these resources need to be developed, and processes need to be in place to determine the level of impact to these resources when major industrial projects are proposed.

We have the opportunity to create an effective system to demonstrate accountability and be leaders in responsible nation building and ecologically sustainable development. A close examination at the changes that have been made to a number of federal Acts such as the *CEAA Act*, *Fisheries Act* and the *Navigable Protection Act* and the enhancement opportunities in redefining these Acts is a path to achieving this.

Under the process heading of Project Scope, I have:

Project Scope establishes the framework to be discussed in an environmental assessment for an open process. There must be a thorough and true integration of First Nations in this phase of a process review.

The Wet'suwet'en found that there is no legislated role for First Nations in this early part of the process. Determination of a project scope by the responsible authorities need to recognize the administrative boundaries and the

jurisdiction of the Wet'suwet'en such as the Wet'suwet'en House groups and their house territories. For the Wet'suwet'en, adaptation is needed on a case-by-case basis for inclusion of our House territories and the House groups.

Although the Office of the Wet'suwet'en does not — although the Office of Wet'suwet'en does participate in the environmental assessment process, it is the House Groups who have the decision-making powers on their House territory. The Wet'suwet'en continue to implement our traditional system of governance, and we demand that the Crown recognize and respect our traditional systems.

The Wet'suwet'en have five Clans, 13 House Groups that exercise their right towards the protection of their 38 House territories. We feel that there is a disconnect when trying to describe our governance system to the Crown, and a lack of meaningful consultation and accommodation per Wet'suwet'en House Group. Each House group is unique in dealing with their specific House territory and, therefore, must be reviewed individually. This does not fall within the regulatory process, and was never addressed by the Crown.

In Terms of Reference, an extremely important omission under the Environmental Assessment Terms of Reference is the need for the project proponent to prepare component studies where there is need to obtain important additional information to determine the potential effects on select Valued Ecosystem Components, or VECs, and to provide necessary baseline information for monitoring programs. It can be anticipated that a number of VECs within a study area currently have only limited available data, and therefore require further research to effectively inform the environmental assessment process, namely, the existing environment, potential impacts and the proposed mitigation measures.

We therefore strongly suggest that Terms of Reference elaborate which Valued Ecosystem Components will be required to develop component studies, as well as a brief description on the research objectives for these component studies utilizing standardized study methodologies and the data output formats.

Consistent data requirements need to be in place to ensure the data collected by the proponent is compatible with provincial and federal databases. This is essential to achieving the effective impact assessments, monitoring and track change over time.

The Wet'suwet'en are concerned that the serious negative effects of a project will be overlooked, as they do not amount to "significant adverse effects" as defined in the Application Information Requirements. A better approach would be to have the determination of significance be the balancing of the various factors.

The significance of an adverse effect is a matter of scale and abundance, and should be viewed in a manner of availability to support an Aboriginal right. In the Wet'suwet'en territories, project descriptions should reference the House territory proposed to be crossed or affected, determination of area an proposed, the significance of the value to the House territory or House group to exercise a right, the current state of the value, and identify stressors or impacts from the project. The determination of individual House territory impact assessment must be conducted, then connected House territories assessment to determine collective impacts, if any.

Under the section 11 Order, the environmental assessment applications has to describe how the analysis results for each criterion used in combination to determine significance of an adverse effect on a project. It is felt by the Wet'suwet'en that the environmental effects definition is too narrow and does not provide room for Aboriginal rights-based values to be assessed; hence, the significance based on current state and abundance are under-rated or completely overlooked at times. The process may not be designed to account for rights-based values, hence do not uphold Canada's constitutional principles.

The environmental assessment process fails to understand Wet'suwet'en House group's rights do exist, and have implications ways of the government and industry and Wet'suwet'en House groups do interact.

In the Eyford report of 2013, "Forging Partnerships Building Relationships", he says "Canada needs to adopt a broader approach rather than strictly satisfying the legal duty if it hopes to obtain greater Aboriginal support for projects".

The ability of each House to exercise their rights requires the conservation of sufficient plants and animals and conservation of enough habitat for the plants and animals on each of the House territories to enable each House to hunt, fish, trap, harvest and gather plants for food, social and ceremonial purposes for the short and long term.

In the environmental assessment process, proponent-led consultation plans would allow proponents to create First Nation consultation comments which may be inaccurate. Proponent-led consultation or engagement is constrained by industry interests and does not enable effective land-based management if rights-based values are not identified. When consultation responsibilities are delegated from the crown to industry without identifying rights-based values, the Crown is neglecting their fiduciary duties, hence do not uphold the *Canadian Constitution*.

Legislated timeframes need to be re-examined to allow for sufficient time for Wet'suwet'en and others to address the materials supplied to them, respond to the information, determination as to if the information fits within the affected Wet'suwet'en House groups territory or answer their concerns. Standardized baseline study methodologies, consistent data report formats would create efficiencies.

The EA timelines don't reflect the amount of extra workload placed on a First Nation. First Nations' offices often become overwhelmed by larger projects which require consultation, review and reporting.

When reviewing the literature supplied within an EA, the First Nation has to deal with additional environmental studies being conducted, permit applications tied to a project, forestry referrals, monitoring meetings requested by region authorities, proponents and other interested parties. Should something occur that is significant to the First Nation such as a death, then everything must stop to allow the Nation to heal. This is depending on cultural protocol of that Nation.

A solution is creating a respectful understanding to allow a Nation to heal. Additionally, more importantly, as in this process we are conducting, we find that the requirements for First Nations are completely under-resourced to conduct the requested assessment review.

While environmental assessments, project descriptions, environmental impact assessments are often initially incomplete and expected to be refined through the EA process, a large project may be left with too many questions at the end of the process to properly assess the full extent of the project. Reference data needs to consider the shifting environmental baseline caused by other projects that effectively degrade the environment. Consequently, the true cumulative effects of a project may be unknown.

While baseline conditions are already significantly degraded, incremental effect of a project's disturbance may be misleading and appear to be relatively minor. The existing state of the environment might already be affected to a point that thresholds for acceptable effects are exceeded, especially for some Wet'suwet'en House territories which are rather small.

So in my recommendations of this process, I've named off a few, and if I may.

Wet'suwet'en are wanting First Nations determined alternatives to their territories written into the decision made by the Minister rather than relying on information derived by proponents themselves.

The EA process must consider more than specific projects but, rather, realize how best to incorporate all existing, proposed and potential projects to minimize negative effects. Valued Ecosystem Components is required to look at current state, which should include abundance and distribution of populations. It must incorporate ecosystem responses, reactions to losses of an ecosystem, and conduct pressure analysis.

Proponent information often has proprietary restraints, necessitating other interested parties or government agencies to collect duplicate



information and is used as a reason to restrict the sharing of information with the public. We look to require confidentiality agreements for sharing the raw data and for in-depth analysis. That way, it's shared, the data is available and it's open to the public.

To have a First Nations Technical Working Group or committees based on representative regions created that includes a range of First Nations experts in EA processes and information management that can be involved in ongoing engagement with federal and provincial to ensure First Nations' interests are properly being incorporated into the new proposed project descriptions and permitting processes as they are being developed. Such a committee should be linked to recommendations within a certificate on continued evaluation and monitoring of a project.

For consultation purposes specific to Wet'suwet'en, proponents must require an assessment of cumulative effects of past and existing activities on both Wet'suwet'en culture as per House territory and the environment. Here is an example.

When a baseline condition is already significantly degraded and the incremental effect of project disturbances can be misleading and seem relatively minor in the overall scheme for the House territory that it's positioned on, you still have to have that availability of the First Nation to go there, collect their food and provide it in a feast hall. And if we can't do that, then we are expected to go to another House territory adjacent to it to do that. And when we supply somebody else's food off of their House territory, it makes us look poor in the feast hall and degrades our authority amongst our own people.

Industry is found to be self-regulating, and it is felt government has passed on responsibilities. We need to reduce the reliance on industry self-regulation, monitoring and self-reporting on the compliance of a project. Incorporate First Nations' recommendations and suggestions with determinations as to how they are utilized or not. Baseline data must be — must be accurate unless you have the local First Nations expertise, which would make it more accurate and more to the point of that area that is being monitored or reported on.

Require proponents to seek First Nations' confirmation of what they are having to say within their communications and information efforts towards the First Nations prior to submitting their Aboriginal updates and other materials under CEAA and other agencies.

Ensure appropriate funding is made available to any First Nations willing to participate based on representative regions. This is the biggest and most impeding issue found. First Nations struggle with the inadequate funding and limited capacity. Capacity is required to coordinate responses, requests of information, establish internal feedback to our people that they represent.

So in my region, we have 38 House territories, we have 13 hereditary leaders. We have to do that internally to get their feedback on and get the information to them on a specific project, and then we take that information and we feed it back to the government. And that way, we have our internal structures that are in place that we follow through our Wet'suwet'en law.

Relationship-building should be key to conducting a proper EA. First Nations should be able to see themselves participating throughout the development process as partners in development planning ahead of a project.

Capacity development for training, planning, oversight, review and response to address issues that First Nations experience within the EA process. Each Nation is unique. Customization to address regional and cultural requirements is needed.

Example, as I said, Wet'suwet'en have 13 House Groups, 38 House territories. Each of those have to be looked at as to which House is being affected and then align that project to that specific House territory so that the effects can really be seen.

Improved baseline data inventory within the First Nations system helps direct understanding of values and correlate recovery and/or compensation opportunities, and it also creates unity, unity in respect to we see the data, we see the way it's affecting on the land, we know how that data and the effect is working in unison.

First Nations may require funding for equipment to lead the monitoring, sampling, data access and related fieldwork capacity. This would enable them to fulfil their role as stewards of their House territories. First Nations are government within their territories and, as such, should have the partnerships and collaboration with the Crown on revenue for fulfilling their stewardship roles and responsibilities.

When projects are approved, there may be between 20 and upwards of 500 certificate commitments. Interpreting the commitments is a skill unto its own. A recommendation is to create an interpretive table for commitments linked to the specific condition on a project.

The meaning of the wording within a commitment may vary depending on who is interpreting the commitment. An example of misinterpretation would be to conduct water quality sampling. What are the parameters? What are — what is to be sampled? What is the timing? And does this include groundwater sampling within that? So how you describe a commitment must have that interpretive table so that you can see it where it's outlined, and that also plays into First Nations and the interest groups having their say in how that commitment is fulfilled.

Having an interpretive guideline will help individuals follow the basic aspects of the commitment for compliance and describe exactly each commitment condition means and what is required. Common concerns and questions arise in regards to the commitments, and these should fit within the interpretive guidelines.

Require data checks for both First Nations and governments linked to an administrative report. This will back up the accuracy of the report.

We have identified a series of issues that must be the topics of meaningful consultation, government-to-government discussions and negotiations that satisfy constitutional and common law requirements. These discussions must be completed and the issues addressed in a manner that ensures project cumulative impacts will be avoided. We require a process that is proactive to consultation, and not reactive to policy that is already decided on.

These recommendations to the existing Canadian Environmental Assessment Agency's EA process are interim solutions to a decision-making structure that is needed to support First Nations and national interests.

Understanding the function that raw data plays in a representative First Nation and the community values at various scales is a fundamental step to achieve informed decision-making. This will also support the ability to plan further into the future. The ultimate goal should be to empower regional decision-makers, including First Nations, with informed and collaborative process to determine and solicit development projects that align with local landscapes of a Nation's territory.

We must recognize the challenges we face with the current regulatory process and how it is driven. By having industry forcing their interest on a communities is not the way to go. We need the ability for First Nations building projects with industry, and not the other way around.

We need to — we have wasted far too much time defending our territory from irresponsible development projects. There is a need to work together to make a better future and not as — not all resources are renewable. And we have a responsibility to our children yet unborn. The Wet'suwet'en interest is to work within the regulatory process, but the process has to work within Wet'suwet'en interests for sound decision-making.

I have a little additive at the bottom here, and it's regards to what one of our Wet'suwet'en Elders said during a past process.

"We gather from our traditional territories. We bring our — we bring to our feast hall the bounties that we have gained in our territories. Without those opportunities, if we can't go to our territories and gather fish, gather roots and

herbs from the banks of our rivers and lakes, we diminish our culture substantially. The river that is only a river to your people, but it is a lifeblood to us.

And if you choose to go and ignore what Wet'suwet'en people say and recommend without us, you're going to diminish our governance structure, you're going to diminish our ability to fulfil our responsibilities in the feast hall, and you're going to diminish the view of our young people and the authority of our Hereditary Chiefs."

These are the words that I bring forward from my people, the Tsayu. We have a great structure within our House, and it's only one House. We have 13. And we have a Board of Directors under the hereditary system, and they then guide us on how we mandate ourselves and how we address ourselves in the public.

Missiyh.

**Johanne G  linas:** Thank you very much for your presentation.

Ren  e?

**Ren  e Pelletier:** Thank you.

I wanted to ask some questions about your comments on the importance of utilizing local First Nation expertise in monitoring, and wondered if you could say a bit more about that. Specifically, I'm wondering if what you mean is just to have First Nations people conduct the monitoring. Does that also include integration of traditional knowledge? If you could say a few more words about that, that would be great.

**Mike Ridsdale:** I think a lot of First Nations now have a good handle on how to conduct the assessments on their land. They got a good handle on what their Valued Ecosystem Components are and where they are.

Like if you look at a mountain, certain sides of the mountain get sunshine first thing in the morning, you know what plants are growing in that area, you know what is available for that certain area and then what is required. So in — when you start looking at the monitoring activities, right now, certain proponents would bring in monitors that were people to conduct the monitoring from neighbouring Alberta or other provinces where they're not really integrated into the region and knowledgeable. And they may bring different — like Alberta has different risk standards and — from B.C., and so their risk standards might be incorporated into their methodology.

So what we need is a First Nation that has the ability to conduct the information gathering on their own territories and have the knowledge of the house of their House territory and where those boundaries are. That is a more

comprehensive way to go, and it also plays into how do we interact with our own people as well.

**Doug Horswill:** I'd like to explore a little bit your — the notions that you raised around Terms of Reference and the — what you call the important — omission of key issues. It just sort of creates problems for the environmental assessment in the first place.

I think we've heard that repeatedly. What are your thoughts on how that should happen?

**Mike Ridsdale:** Well, I think one of the things that we always talk about is trying to gain the public trust and trying to get unity in a project so that everybody's on board. And the problem that we feel as First Nations is that — I go back to that legislated role for First Nations. We need a legislated role within government themselves so that we're part of the government to make decisions and not a party to. We need that ability to work together and, if we have that ability to work together, then you're going to find that trust, you're going to find that unity in decisions on certain projects.

And if we create that trust and we give you suggestions towards alternatives, then you're not going to have so much conflict. So if we have the ability to have that unity, the trust and standardized methodologies of how that data is utilized, so even though they — a proponent may say it's ours, I'm sorry, we're not going to trade — well, we have the ability as a First Nation to get these agreements in place and say now give us the data. And they do that.

And so what we do then is take that data and go to certain databases of the provincial and federal government and say here's the data — recent data that we could submit, not on behalf of the proponent, but on behalf of ourselves, and then, that way, it gives better informed decision-making for the government because now they've got the data that we've supplied to them that we've collected from the proponent and it gives us a more wholesome decision-making process.

**Rod Northey:** Yes. I, too, just want to follow up on the issue of scoping and Terms of Reference.

So an interesting phrase in the bottom of your page 2 talking about stressors from the project related to VECs, and I wonder if you could just elaborate a little bit what that might be with an example. If a VEC, for example, was fish or something, how would you go about doing a stressor? That's my first.

And have you had success translating what you've put here as your ideal process into an EA?

**Mike Ridsdale:** What I was trying to get to in regards to the stressors is the government doesn't really play into the Wet'suwet'en, and we're only one of three recognized First Nations that have the hereditary system recognized and utilized in our governance and decision-making. So when we break it down to a certain House territories, where is that project going to be in regards to that House territory and how is it affected. So the stressors may be not just that project, but what's already occurring on that land.

There could be a highway, there could be a township. If a House territory is now a town, we've lost the ability to do our food, social and ceremonial. So what kind of stressors does it have on — they may also have other House territories, which we do, but we can't go back to that one to do our gathering, so that's a major stressor.

And trying to get government to recognize that and — and get the ability to say, well, here's what you're doing to our House territory, that project that you're proposing may have a detriment — we've seen this in the past.

The Equity Mine is a great example of a stressor on a House territory. It's where the government gave permission to a mine to conduct a mine activity, but that mine activity created a lot of acid rock drainage, and now that acid rock drainage is going to be cleaned up forever because they put \$62 million into it to continually add stuff to the water so that it — the pH is 7. And for us, we're looking at it, but it's not allowing us to go back and conduct our food, social and ceremony because we don't trust the water any more. We don't trust what it's doing to the animals and the plant uptake, and we're still hesitant because it's still being cleaned up.

**Rod Northey:** Okay. Thank you very much.

**Johanne Gélinas:** Thank you very much for your presentation.

That will end our morning session, and we will be back here at 1 o'clock this afternoon, where we still have seven presentations before the end of the day.

Thank you.

(BREAK)

**Johanne Gélinas:** Okay. So is everybody ready to start?

So Mr. Watkinson, welcome.

**Bruce Watkinson:** Thank you very much.

**Johanne Gélinas:** The floor is yours.

## **BRUCE WATKINSON, GITXAALA FIRST NATION**

**Bruce Watkinson:** Okay. Thank you very much.

My name is Bruce Watkinson. I'm a fisheries manager for the Gitxaala First Nation, work at our Gitxaala environmental monitoring office that's based here in Prince Rupert. I could go on and on with a bunch of boring details about that stuff, but you'll get it in our written submission.

I'm also a Gitxaala citizen. Within our traditional governance structure, I belong to the Gitnwagwinaks House under the Gispwudwada, the Killer Whale Clan, and my name in our feast halls and around our village is Woodimess(phon).

So it's really my pleasure to be here today. I'll have a bit of remarks in the closing part of the presentation, but really quickly — we've got, what, 65 minutes? Is that the allotted time?

(Laughter)

**Unidentified Speaker:** Oh, yes, of course. And we're going to be here until midnight.

**Bruce Watkinson:** I paid 300 bucks for someone else's half an hour, so bear with me.

So quickly, in our allotted time, we'll just quickly go through an introduction to Gitxaala Nation. I'll give you a brief overview of who we are and some of the work we do. We'll go through a bit of our experiences with potential projects ranging from small things like park use permits to the great big pipelines and the huge energy-related projects.

We're going to go into details about two or three things in relation to the question at hand. We're going to go through the title and strength of claim and how that's used in assessments and some of the problems and issues with that, and we're going to have a couple of other examples that directly relate to concerns with the Act and how it was changed in 2012, and then we'll briefly summarize some of the recommendations that relate to the issues that we've presented.

So very quickly, we'll see a map on the next slide, but extensive traditional territory on the north coast, Gitxaala, People of the Salt Water, is kind of how it's always been translated. We've always been on the coast. We always will be on the coast, and we're very proud of our traditions, our culture and our traditional territory.

About — currently, right now, we have about 1,910 members registered. That's via the kind of Band list that's managed by (indiscernible) and B.C. The actual membership, Gitxaala citizens in the traditional sense, is probably a lot higher than that, but that's the number you'll see used by government.

Our primary village is Lach Klan. We'll see that on the map. Dolphin Island on a map. And we have about 450 people living there on a permanent basis, and that number fluctuates seasonally as different jobs and employment opportunities present itself to our people. As the crow flies, about 54 kilometres southwest of Prince Rupert.

One of our — as I say, Gitxaala, translated to People of the Salt Water, our current village of Lach Klan is considered to be one of the oldest continuously-occupied villages on the north coast and in B.C. Prior to that, we had several villages throughout our territory, but for various reasons throughout our history, it was decided a long, long time ago to amalgamate in one central place, and that one central lack, Lach Klan, is still considered to be one of the oldest continually-occupied villages.

You know, access is limited to float planes, boats, personal watercraft, things like that. We'll just quickly go to the map, and you can see nice current picture of our village showing our administration office there, one of the church buildings and, just in the background, one of our halls. You can just barely see our school, too. We had kindergarten to Grade 12 now. We also have an adult education program and whatnot.

But as you can see on the map, on the left-hand side you can just make out the edges of Haida Gwai. That boundary has been arranged with the Haidas for a long time now, I think when the Haida went to Court, so that's the middle of the Hecate Strait up and down the coast from Prince Rupert right down to Aristobel Island, including the big chunk of Princess Royal Island, aka, you know, the Great Bear Rain Forest, and up through — up to Gardner Canal encompassing a lot of Douglas Channel and then up to the Skeena River where we — part of our traditional territory is the Lower Skeena River.

Obviously, you know, a lot of that is shared with other First Nation Communities, and we continue to work on those relationships around sharing and management and governance but, you know, it's a big territory and it's our place in the world. Like I say, we're not going anywhere.

And this is it. Our origin stories, our religious beliefs, all of that stems from the territory that's outlined on that map, so we're very proud, and I come here today with a lot of optimism and hope that the current government will help us in correcting a wrong with the CEAA 2012 and allow us to look after this territory with



the economic aspirations, the environmental considerations that our community has to make sure that we continue to live and thrive within that traditional territory.

So within our Gitxaala environmental office, we deal with a lot of different things. Some of the examples in our current developments that we deal with.

And when I say we, we're talking about a team of four or five, and we answer to an elected Band Council and a table of hereditary leaders that could be in the numbers of 15 to 20. With our House structure and our Clan structure, there's still a very active hereditary government structure in place.

Things like the Tel Mine, Banks Island Gold project. We have all kinds of issues with commercial fishing, recreational fishing, tourism, guided hunting and fishing outfits, various logging operations. You know, we have somewhat of a relationship with the Port of Prince Rupert and the operations that are happening at Ridley Island with the grain, the coal, the containers, all sorts of those things.

And then proposed development, as we've seen in the last several years, where we — you know, we're currently dealing with seven proposed LNG terminal facilities, four related LNG pipelines, a Yellow Giant Gold property development, Port of Prince Rupert expansion and the Enbridge Northern Gateway pipeline project, so you can imagine we see a various degree of projects in scale and size in terms of their life span and things like that. So we're quite busy.

In our experience, through the scale of things, there's — sometimes there's no clear guidelines on the regulatory authority, specifically with substitution, different review panels. It's — I think previously that under CEAA there was a lot of different — there was a lot more tool at the government's disposal to classify what type of assessments needed to be made, and it's not so clear now.

Disconnect between VCs and First Nation values — and VCs, for those that don't know, are the valued components, and it's often — the proponent often outlines we're going to look at air, water and fish. And a lot of the times, those valued components don't align with the First Nation values or the perspectives on the potential impacts or effects of those values don't align with First Nation values.

Regulatory overlap. Sometimes we don't know which regulations or which agency is the primary lead or who's involved, and that often leads to gaps, smaller projects being less accountable for their impacts, especially with shipping and section 67 projects.

Rights and title. We'll get into that in a bit more detail, but that's often been ignored to a large degree.

Project splitting. We'll talk further about that, I believe, too.

The use of traditional knowledge. I'm sure you've heard from other First Nation presenters through your travels that the use of traditional knowledge is — there's a lot of — there's not a lot of acknowledgement and value placed on that information that we bring towards these processes.

There's not a lot of clear definition on the effects, what constituted environmental effect, what constitutes current effects or future effects in regards to some of the information that we receive. And there's not often a lot of consideration given to co-management and decision-making as we move into the future on some of these projects.

So rights and title. Rights and title is often used to define someone's — a nation's strength of claim. We are told that this doesn't often play in a factor in assessments, but inevitably, when we start asking the tough questions of government or a proponent, we find out it comes back to this strength of claim and the impact on assessments.

Next slide. So we believe that strength of claim is an appropriate — inappropriately used to determine the depth of consultation. We're told we're an Appendix A First Nation, we're an Appendix C First Nation, and I don't know what the heck that means. And it's very, very difficult to go back to our community to do our internal consultations and tell Elders and house leaders and people that have lived here forever that you're — you're a Level C consultation appendix First Nation. Huh?

That means we don't have the same rights as other First Nations in this area. What?

You know, it's — it can be very insulting when someone from the government or a proponent's consultant comes and tell us — tells us our history. It's insulting when someone comes and tells me my culture. Oh, no, your ancestors didn't live here. What? I'm going to go to my Elders and my historians and my matriarchs and my Chiefs. They're going to know our culture. They'll know our history, right. And we believe that.

And I have no clue. It defies logic when other people can't understand that concept. If we want to know about Gitxaala's history, we should go ask Gitxaala. It's pretty simple. Pretty simple stuff.

So the strength of claim is — you know, we found it to be unproven. It's unvetted process that lacks transparency. No consultation with First Nations. And the information used in the strength of claim assessment is not even provided to us.

So when these people make mistakes about our history, we can't — we don't even have the chance to correct them because they won't give us that information. And I don't know how many consultants have ready how many books to tell us who we are and where we lived, but history is right there in front of them in our community with our Elders, with our historians.

It does not account for the current residency and use patterns. You know, of our membership that's on our Band list, 450 people live in our permanent village, there's probably 1,000 people that live in Prince Rupert-Port Edward, you know, northern area, and then we have handfuls scattered throughout the lower mainland and other parts of British Columbia. We have folks that have gone to Alberta and, you know, for economic reasons, and people all over the place. But it doesn't account for the current residency and the current uses and the things that we do here now in this area.

You know, they like to say, "Well, your Reserve is 500 kilometres away from the project area. There'll be no impact to you guys". Now, it's just old-fashioned — sorry, I was going to curse, but I promised my wife I would not curse today, so I will stick to that.

The strength of claim statement does not account for the project's impacts on our rights and title. It's a tool for title claims, but it should not be — and not a very good tool at that, and it should not be used in environmental assessments.

Used early in the assessment process before traditional use studies are completed. Again, they've kind of determined our strength of claim before they even come and talk to us and ask us for information.

And one of the critical things it does is it shapes the proponent's expectations. It's — how can you use a corporate model, well, if your strength of claim is only 50 percent, well, we're not going to consult with you on this or we're not going to provide as much money that we provided to the other First Nation because they have a higher strength of claim. It really, really starts to shape their expectations before they even sit down and talk to us. It limits the consultation. It constrains the capacity funding discussions, and it leads to assumptions of minimal impacts.

It's a very, very skewed interpretation of the depth of consultation by proponents and it leads to proponents to prioritize over one Nation over another. And it's unbelievable that — what this has done to our internal and external relationships with First Nations. It creates this kind of musical chairs of business arrangements with our neighbours for all the wrong reasons. It's very disrespectful of some of the protocols we have in place with our First Nation neighbours and how we've

done business. And it — yeah. So that, you know, effect alone is very, very detrimental to what we're trying to do here.

It — you know, sorry. Just on that point, like, you know, the First Nations around this area, you know, we all believe that — we all have very, very similar beliefs about some of the environmental values. And if we could be working on those together, we'd probably go a lot farther, but the current process with the strength of claim, it can lead to us fighting amongst each other and spending a lot of energy where it shouldn't be spent instead of looking after the environment or looking at economic opportunities.

Furthermore — yeah. As a result, nations are left arguing. Talked a bit about that already. Nations are segregated by their need to look for their own statement of claim interests. And the government-led process ends up pitting individual First Nations against each other. So it makes it very difficult to assess the impacts to our community and results in an inefficient process based on dividing the nations.

So some of our recommendations — and obviously you'll be getting a very comprehensive written submission from us as well. But the assessments should not be using the strength of claim. Consultation should be based on traditional territory information from the nations and impacts to those nations. I mean — and it should not start with an assumption of seriousness, like how, you know, serious is this First Nation or, their strength of claim, it's not that serious or, you know, whatever, ever.

You know, the bottom line is, proponents and government gotta come and talk to the First Nations. They've got to come, and they've got to listen to us, you know. It's just very simple respect for one another.

I remember going back to the Enbridge Northern Gateway project, having a team from the proponent come out to our village and they sat up front in our hall and said they were happy to be there and they wanted to learn about the Gitxaala people. I mean, we were not even an hour into it and they were all — you know, it looked like they were going to fall asleep. They're checking their watches, when's the plane out of here, you know. Nothing was sticking with them. They didn't have one question.

If someone were to — wanting to come and learn about our people and hearing presentations from so many community members, you'd think there'd be someone on that proponent panel with a question about us. Nothing, right.

So it's very important that we are heard and we are taken seriously. I mean, I'm not a guy to repeat myself. If I say it once, I respect you to hear me. And if you don't understand, please ask a question, right.

So moving on, a second example, we're going to focus on the increased shipping and the lack of federal participation. And we kind of think there's three things: regulatory overlap; project splitting, and smaller projects, say expansions, that are escaping through the cracks of CEAA 2012.

Quickly, just a good example. Shipping. The yellow lines indicate the main traffic route that comes off the northern part of Haida Gwai through Brown's Passage, Triple Islands where they pick up the pilots, coming in to the Port of Prince Rupert toward Ridley Island or, you know, a couple of those red dots indicate proposed projects.

The black lines are from a use study that we did asking participants, Gitxaala citizens, to outline where they go, whether it's for fishing, whether it's traveling back and forth from Prince Rupert-Port Edward to our village, whether it's resource harvesting, gathering beach wood and logs that have drifted down the Skeena for firewood, you know, what we would do on a — you know, in your normal life. And so you can see there's a lot of overlap with the travel that our Gitxaala citizens do with the proposed and the current shipping route. And so, you know, you start talking about increasing shipping, increasing traffic, one or two vessels including turnarounds per day with LNG facilities, it creates quite a nightmare.

And really, there's no — we haven't found a real way to deal with this issue. There doesn't seem to be any clear regulatory framework. We have *Shipping Act*, *Navigation Protection Act*. You have CEAA 2012 that just creates a lot of confusion.

Sometimes there doesn't seem to be a lot of clear federal authority. The Ministry of Transportation, Prince Rupert Port Authority, and often we get directed to this thing called TERMPOL, which, I mean, man, oh, man, we had one project, we had to fight tooth and nail just to get in there. And we finally got in this TERMPOL room, what, this is it? We fought to get in this room? Holy crap. Nothing goes on here, you know. It's voluntary, it's non-binding. Yeah.

So I mean, TERMPOL thing, maybe there should be another panel, another road show to go around and talk about TERMPOL because there's a whole 'nother — that's a whole 'nother half an hour conversation, so I just wanted to flag that.

Project splitting. You know, projects often attempt to discount the shipping part of it. And like I say, we've had to argue and argue and argue for inclusion in the assessments.

There's no existing examples that we can find of assessments just for shipping. Hey, I just built a pipeline. That's only my part. Oh, I just built a facility. That's just my part, right. And there's this interconnectedness that

nobody can ignore. The product has to come from somewhere through a pipeline or alternate methods to a facility, and it's going somewhere. Let's not kid ourselves, right. And we all know where this is going, so let's include that shipping part in the assessments.

Again, with shipping, smaller projects, increased shipping. Increased shipping of existing projects with no requirement for consultation. Again, I think CEAA 2012 stripped a lot of the tools that allowed smaller projects to get through the cracks and get away with whatever they wanted to get away with.

Proponents often offload the shipping effects to the Prince Rupert Port Authority, which always isn't native friendly, and there's no real assessments done. And there's no chance to argue for the shipping's inclusion in some of these assessments, depending on who we're dealing with.

Regulatory participation and gaps. Again, no clear framework for participation resulting in a lack of participation from federal regulatory. You know, so-and-so's not at the table. Well, under this Act, we don't have to bring in this agency and we're just — it's — again, it creates migraine headaches. I should have invested in Tylenol 10 years ago because we have so many headaches about information not being able the table, certain people not being at the table.

We're dealing with marine species and fish and the Department of Fisheries and Oceans and Coast Guard, can't even provide people at the table to work on these files full-time. You know, it's really problematic. And you know, this leads to federal requirements not being fully addressed.

And again, I think it's also in fairness to the proponent. You know, if this stuff was cleaned up and set up properly from the get-go, the proponents would have a clear idea of what they have to do, but I don't know how many times we've asked questions of the proponent, we've put in information requests. They're not — they're not done. Well, then we have to argue and argue and argue with the government. The government finally says, okay, Mr. Proponent, go and do those studies. And it just creates a lot more time spent on these projects. It creates a lot more energy and money, and I don't think that's always the best case.

You know, I think one of my colleagues earlier presented the process and the gillnet analogy about setting up properly. And if you set these processes up properly, everybody knows the playing rules and everybody has a fair chance to participate. It might require further investment up front from the government or from the proponents, but in the end, it's probably a better strategy to get to that kind of consensus or co-decision at the end of a review.

So just on the couple of examples that we've presented, some recommendations. Canadian *Environmental Act* should include guidelines for

assessing impacts without relying on strength of claim, should be clear definitions regarding the potential effects, provisions for stronger co-management and decision-making, acknowledgement of indigenous resource management protection, stronger guidelines for consultation, clear and more in-depth cumulative effects requirements.

Yeah, we didn't even really talk about cumulative effects, but believe me, that's a big issue, too. And clear guidelines to avoid project splitting.

Just before I turn it over to you, I just want to say that I'm very proud to be here today. I come here with a lot of hope and a lot of optimism. It's funny. I was just — the other bookend of my work week on Monday, I was on call with some other First Nation colleagues and we had the opportunity to speak to a couple of Assistant Deputy Ministers from Fisheries and Oceans and Aboriginal Affairs, Northern Development Canada. And we were talking about infrastructure on the coast. It was in our communities.

We were talking about oceans governance and management, and we were talking about reforms to fisheries management. And it was very — a very positive conversation about some of the signals that the current government has sent. And I think I have that same positive optimistic attitude about today. I think — I commend the Liberal government for setting up this Panel, committing to come out and talking to us.

And yeah, I'm very optimistic that — I know it's a tough job. I wouldn't want to be in your shoes. I'd rather sit here and throw darts. But you know, I'm really optimistic that, through your deliberations and through the information that you guys are going to receive that we can change this. We can change what's happened in the last I don't know how many years, five, seven or — the blue years of a Conservative government because it's just been ridiculous.

It set First Nation relationships back I don't know how many years. We worked so hard with the Province of British Columbia, with the government of Canada to do things that respects both parties' interests, and we've made substantial progress. And I think having the opportunity to present at this Panel is — it gives me a lot of optimism that we will make positive changes moving forward with the current Trudeau government.

Having said all that, we need to see actions. We've seen all the right signals, but we need to see actions. And at the end of the day when I report back to my — to my Chiefs and to our Elders, you know, it's actions that will prove the most beneficial, not just a lot of talk.

So I'm all talked out. Thanks very much.

**Johanne Gélinas:** I'd like to say that we share your hope that, all together, we can make a different.

Renée, you want to go first?

**Renée Pelletier:** Sure. Thank you for your presentation. And yes, I think we do — we share your optimism, so it's good to see. Thank you.

I wanted to touch on your point about the strength of claim and your suggestion that — your recommendation that we move away from that. And I think the important point you make that it results in nations having to describe potential impacts before an assessment occurs.

So I'm wondering how — how do we move away from that? So imagine you have a project, presumably part of the idea — assessment of impacts on rights and title is to — so that the government can mitigate, possibly accommodate and, in so doing, possibly get to a First Nations consent.

So if you — how do you sort of marry that idea with the need to engage early? I don't know if you want to elaborate, maybe, on your thoughts on that.

**Bruce Watkinson:** Yeah, I'll briefly touch on that. Obviously, any questions you guys give us, if I can't address them today, we'll make sure they're addressed in our written submission.

You know, it's — for us, relatively small community, relatively small nation, we're — in accordance with our traditional laws and our governance, we're really a relationship and a lot of our governance is based on relationships, relationships with people. You know, we do not like getting binders of paper with maps attached that are already coloured in. And I know these things are time sensitive. Yes, there's global markets and other countries are rushing to get on the LNG train and all that stuff. We're very cognizant of that. But you have to invest the time in the relationships. You have to come to us early, and the proponents have to understand is they have to come to us early and spend the time with us and respect our processes.

You know, if I sit here today and promise you I will get you a document, I will get you a traditional use study or whatever, whatever, we will deliver that, but respect that sometimes our timelines don't match with government timelines. It's a 365-day clock, or whatever that CEEA 2012. That's irrelevant.

You know, when we have feasts, when we govern and have our governing feasts in the village, it's not scheduled 6:00 till 10:00 p.m. Sometimes they can go till 3:00 in the morning. But we get the business done, right.



And — but knowing that a lot of that work can be done up front, again, it might be more of an investment than what people want to make, but I've been around long enough to know you make that up-front investment in the relationships, in the people, understanding the benefits farther down the line will make up for the perceived loss of time or perceived investment up front. It's really about that.

And when you come to our people with the respect and wanting to know what's — wanting to know what's important to us, the other benefit is it will make the rest of the process smoother. When we feel that we've been shown a certain amount of respect, yes, I will want to work with you. And then when time crunches come in later on down the process of who — we will work to make those. But if I feel disrespected off the bat, I don't have an appetite to work with you. I can kick that 365-day clock as far as I can kick it, right. You know what I mean?

So it's about relationships and it's about — it's about developing that respect for each other. And when you work to respect each other, I think it's amazing what you could accomplish.

So that's just my thoughts. I hope that answers your question.

**Renée Pelletier:** Thank you.

**Doug Horswill:** I've got a whole bunch of areas I'd like to go into, but the Chair's only going to let me ask you one question, so I'm going to actually stay in the same vicinity that my colleague, Renée, is in.

You talked about the current approach pitting First Nation against First Nation and creating divisive — and clearly, we would like to come up with recommendations that create, facilitate consensus-building and cooperation. Can you give us any view on collaborative possibilities among First Nations in relation to single projects or groups of projects?

**Bruce Watkinson:** Yeah, absolutely.

We've — and we've — I think we've been quite proactive on this front. And I think one of my colleagues is on the agenda for later this afternoon to speak on behalf of an organization called the Tsimshian Environmental Stewardship Authority.

So that's one of the more current things that we as First Nation partners have agreed to come together. Obviously, every First Nation considers themselves to be sovereign and will have their bilateral processes with the federal government and proponents, but when we start to look at what's important to us as First Nations collectively, you know, there's certainly a long list of environmental values, cultural values, social values that we have in common. And we know that we — by

working together, it can strengthen our ability to address these issues. It can also help to — sorry. Your question's gotten me all choked up.

It strengthens our ability to share capacity, share resources, share information and so, again, it gets to efficiencies. There's a lot of efficiencies that we can gain and that we are gaining by working together. So yeah, when there's common things, we are willing to put certain things aside, certain political issues aside and work together for the common good.

You know, it's not an inter, you know, national thing, but Northern Gateway — I mean, we're no different than any other First Nation in Canada. We have our internal politics and things like that, and some of our Clans and our Houses don't always agree and things like that. But Northern Gateway was a lightning rod. It brought everybody together. We're all pushing in the same direction.

And if you go through the recent history books, you'll see the impact that Gitxaala had on that decision, not only with our presentations to the JRP Panel, but also our work in the Court on the consultation issues. So I just wanted to put a plug in to the Prime Minister for — Gitxaala Nation thanks him for his recent decision on that.

But the example is that LNG and the development that we're facing in the north has done the same thing for First Nations in general in this area. It's a bit of a lightning rod, and we have to protect those values that we have in common. And we are willing and we are currently working together on those things under initiatives like the Tsimshian Environmental Stewardship Authority.

**Doug Horswill:** Thank you.

**Rod Northey:** Yes, I'm hoping you can take us back to your map of the shipping lanes. And the first is the production of this map. Is this your map?

**Bruce Watkinson:** Yes.

**Rod Northey:** So somebody's got some GIS capacity, and can I just — can I ask you, do you have the capacity to do that kind of a map to cover the various issues of concern to you? Is this sort of an unusual event to have that kind of detail, or is this —

**Bruce Watkinson:** No.

**Rod Northey:** — what you do?

**Bruce Watkinson:** We have — we have some internal in-house GIS capacity. We also have — one of our consultant groups specialized in GIS. And so we've done a tremendous amount of similar type of mapping exercises, traditional use.

You could pick a species out of a hat, salmon, halibut, ling cod, sea urchin, sea cucumber, abalone, and we could produce a map that shows where we have the traditional knowledge, where our people have gone.

Myself, I have GIS Friday, which I'm missing today. I know enough about —

**Rod Northey:** What is GIS Friday?

**Bruce Watkinson:** I know enough about GIS to keep consultants enough. And we have all this type of information.

It's funny because when we started mapping traditional use and traditional ecological knowledge that's acquired through interviews of our community members, the group that we have working on this, the Stekalio(phon) Group, they're based out of Calgary, and our maps look nothing like the maps that they would previously work with. The information that our people have is just — it's enormous.

**Rod Northey:** Okay. So I — my question — I'm breaking my —

**Johanne Gélinas:** That was not a question?

**Bruce Watkinson:** Part B, right?

**Rod Northey:** When do you share this? Have you ever had an opportunity to share this kind of information early with proponents or governments, or does this come out late? And that's my question.

**Bruce Watkinson:** It varies, and I think that's one of the problems. Some proponents don't want to see this stuff. Some proponents are better about coming to us early. You know, it — unfortunately, when we have those tight timelines, it can be — sometimes it's last minute. Sometimes it's too late. Sometimes it's up front. It varies by process.

It all kind of gets around back to, you know, strength of claim. While you're — if you're in Appendix A, you might get more money if you're Appendix C, right.

So our process is — we've always tried to make early contact with proponents, and part of those early conversations is, is we have a very good outline of what it would take us to run a parallel or a co-managed environmental assessment process. So we have a lot of the elements that we targeted. We need to do this by this date internally so that we can provide the proponent with this information.

Some proponents are better at responding to that recipe or that methodology than others, so it does vary. And I'm not trying to shake your

question. Sometimes this — we have to fight tooth and nail to get this in after a deadline. Some of them, whether they agree with it or not, will look at this stuff up front.

I mean, that's one of the problems with — it's — you know, and I'm sure a lot of the other First Nations on the — that are presenting today have the same issues. It's — at the end of the day, we have to be accountable to our community, and so a lot of these projects are presented to our community, vetted through our community and then have to go through confirmation processes with our community. And what proponents do with it, well, again, I won't curse. But it's very frustrating. It's very, very frustrating sometimes.

**Rod Northey:** Thank you.

**Johanne Gélinas:** I will not ask you that question to respond now, but in your final submission, I would like you to be — to elaborate a little bit more about your notion of co-management, how that can translate in the kind of day-to-day reality of environmental assessment.

And I think that's it. You can also say to your wife that you kept your promise. Thank you very much.

**Bruce Watkinson:** I know that. If I promise this guy, I don't care about breaking that promise, but she's the ultimate one on me.

You know, I'll just — we will respond to that. Co-management, again, it's just like what I outlined. If we had the opportunity to present an outline of how an environmental assessment co-management comes into play there, co-management comes into the technical details about how studies are designed, when these field studies takes place and who's involved and, you know, his experts, my experts. That's co-management.

Co-management comes in at the end of the project with whatever conditions, whatever arrangements are made under monitoring of the projecting, evaluating social, environmental, cultural criteria. Start to finish, co-management. Co-management's a big piece for us, and we're not seeing that in the current regulations.

**Johanne Gélinas:** Thank you very much for your presentation.

**Bruce Watkinson:** Thank you very much. I really appreciate the time and to present to you guys today. Thank you.

**Johanne Gélinas:** Next presentation will be made by Rina Gemeinhardt.

Can you pronounce it for me, please? Next time, I will know.

## **RINA GEMAINHARDT, KITSUMKALUM FIRST NATION**

**Rina Gemainhardt:** Good afternoon. It's started to snow.

My name is Rina Gemainhardt, and I work with the Kitsumkalum First Nation. I do anything to do with environment, lands referrals, consultation. I have no leadership with me today from Kitsumkalum, neither *Indian Act* nor traditional, so I will keep this very technical.

I brought a map of our territory with the current environmental assessment projects that we work on. And the only thing I'll say about Kitsumkalum, maybe, is that they used to have seasonal rounds from inland in the summer out to the coast in the winter back and forth through the Skeena Valley to the coast back to the inland, and that most of the villages from Kitsumkalum were destroyed in the early 1900s from when the Grand Trunk Railroad went through, and very little of the ancient villages remain today.

As you can see, we deal with a lot of environmental assessment projects from federal and provincial to substituted to just provincial, and one right now we have that is a section 67. And I yesterday here when the Port gave you a presentation, and I'd just like to quickly mention that I absolutely disagree with the Port. They were saying how section 67 works really well.

I would just like to comment that the authority looking after that is the Ridley Terminal, who are a federal agency — I don't know if that's exactly the name — who work with the Port of Prince Rupert and Transport Canada to assess this project and that RTI, Ridley Terminal, the lead, has a direct financial interest in seeing AltaGas, the section 67 project, go through. So we do not agree with a — section 67 being a good process.

I just have a few slides. You'll get a detailed report from us, too.

So right now, there's no regional strategy. Everything is helter-skelter, coming at us. Some come early, some come late in the game. We think that governments, neither provincial nor Canadian, are prepared for the quantity of projects that are coming up at us, nor for the complexity of these projects. The process does not allow for meaningful input from First Nations or the public. Well, at least First Nations get a little bit of — very little — financial help. But many of the public don't get any at all.

So a possible solution is for government to do a regional strategic — and I don't know exactly how that would look like, but a regional or strategic or a regional strategic environmental assessment to start with. And I would emphasize that this should be done in cooperation with First Nations and local governments and

proponents. What is needed, though, is a trigger on when this is done. You can't do that when maybe just one project comes to town, but when there's seven or 10 projects, there needs to be a risk and benefit analysis and there needs to be a question to the region, do you accept the risks and benefits of this influx of projects coming at you.

We have a lot of issues with the substitution process. What we see — how it looks like from our side, this is a done deal already, so when we get the question from the government, "What do you think about this project going through substitution?" it seems to us the decision is already made. And then, when it goes to substitution, we never get any rationale as to whether it actually — you know, why was the decision made.

We, so far, have not ever said yes to substitution, but every time substitution goes through, and we have not been able to find a rationale of how those decisions are made. What ends up, often, is when the province takes the lead is that a lot of the federal jurisdiction matters go to permitting, like DFO, *Fisheries Act*, that kind of stuff.

So some of the solutions is — this solution, our first solution, is more like in every one of our issues. We would like to see a much more cooperative decision-making process for the EA. We would like to see a revised MOU between B.C. and Canada, and we would like to see a more transparent process where, if we're asked a question and asked to comment, we want to then see the results of how our comments were taken and how, then, the decision was made, either against or for our comments. We would like to know why and how. We would like to see some transparency.

Consultation. So I bring up two issues here. It very much feels like a ticking box approach. Right now, the question is, it seems, that CEAA asked the proponent, "Have you told First Nations?" As you can see, my very first slide — I just kind of went through, but you could maybe see how I was standing on a set of boxes that went almost to the ceiling. Well, that was one project and one part of a project that, of course, we don't get paper copies any more because we don't have the space, but — so we are inundated with this information, thousands and thousands of pages. Yep, check, told the First Nations.

It should be added there, maybe, that the question to the First Nation, "Did you have an opportunity and capacity to review this information and are you satisfied with the response from the proponent and from the federal government on your comments?"

The strength of claim approach, just like Bruce was just talking about, it is — what is happening now is that the process somewhat is being derailed by the strength of claim approaches. I don't even know if that is anywhere in legislation, but really, what it is saying is that section 35 and the UNDRIP — how people

pronounce it — is stronger for some than for others. Section 35 is more applicable to some than to others. We don't understand it.

Again, one of the solutions would be a cooperative governance approach. A suggestion to the federal government also would be like stop delegating. Take responsibility. If you stick with the consultation, I would say a cooperative governance approach would be much better.

Modernize the process to adhere to UNDRIP. And Canada and the First Nations should sign off in a project where the First Nation says, "Yes, I agree we have been consulted adequately".

I want to give you an example of one of the projects here where six First Nations claimed shared territory. Two of them were deemed as a higher strength of claim by the government. This is a substituted process, so B.C. — I don't know if Canada did, too — said two have a higher strength of claim. And right now, the other four are not allowed in the field to participate in any fieldwork because the two who were deemed higher have told the proponent to not include the other four and they, with complete knowledge of B.C., have agreed to do so. So this process has been going on for years, and officially — like, of course, we go over there and have a look for ourselves, but officially, the proponent has not invited any of our people to participate in any field reviews.

Socioeconomics. Canada does not deal with socioeconomics. Only through the section 51(c) does it come out a little bit. The province does — deals with it. But on reserve populations are not included in the assessment because the province does not look at any federal lands.

We also don't seem to see any apparent economic assessment to help make determinations on what the environmental impacts are — like so it's somewhat of a political answer. So let's say there is any significant effects still found and it goes to Cabinet, and then they make a decision, well, okay, so there's some environmental effects, but it's in the best interests of Canadians to bring this project forward, like PNW that we just saw.

Well, is it in the best interests of Canadians? I'd like to see is it in the best interests of the province, the region, the First Nations. But how can that — how can that assessment be done if there is no real socioeconomic work or assessment done?

Part of the solutions, we propose, would be to — well, it's kind of like a little bit after the project is approved, but implement a full monitoring program to evaluate if these promises of jobs and, yeah, don't worry, the housing prices are going to say the same and — you know, whether all of this actually came true, the benefits and the costs. Social — monitor social costs, cultural costs, economics costs

to the region and province and for Canada and come up with kind of management decisions what you would do if the — some kind of threshold is reached.

We just had the experience with Alcan in Kitimat, we saw prostitution, domestic violence, all kinds of stuff, rent evictions. Our members who lived in town get evicted so the — they could say they were renovating the places and then the high-paying migrant workers from Alcan were renting those houses.

So we have seen one project go through and the incredible boom and bust cycle that came with it, so there needs to be more work done on assessing and then monitoring socioeconomic stuff.

So as part of this regional or strategic or both environmental assessment, there should be an opportunity for the region to say what is your vision for your — for your area and how do you want this to look like.

We also need to see a benefits and burden distribution assessment. So okay, maybe the Malaysian mother company takes a lot of financial risks, but is most likely going to reap all the benefits, so what about Kitsumkalum. We will most likely hold most of the environmental and cultural risks as neighbouring First Nations as well. So I think there needs to be an assessment on the distribution of benefits and burdens.

The whole mitigation assessment, I think, is a very faulty process, but it is so, so important because it forms a basis for the significance determination. Really, mitigation is supposed to avoid, minimize, rectify or then, if you can do any of that, accommodate for effects. We don't see that.

Project splitting increases the need for mitigation because it just makes everything look so much easier and simpler than it really is. Today — and now Kitsumkalum has been in an EA for many, many years. We have not really been involved in any mitigation development.

I'd like to read you two mitigation examples that we have come across. And there's many more like that. One — I should have brought my glasses. I'm still in denial.

So one mitigation from one proponent is, "We will adhere to all relevant legislation". Oh, really. Well, another one is, "We will provide timely and ongoing information regarding the status of the project to the local community and Aboriginal groups". And that's — I mean, I can bring you more examples like that.

I think CEAA should strengthen the guidance or policy on what mitigation should be and how mitigation is come up with. Like I say, nobody's ever talked to us about mitigation. And again, cooperative governance would probably solve a lot of this.



Significance determination. So there's two different kinds, so there's the significance determination for individual values and then, of course, for the project as a whole.

The determination of this is not transparent. Like I still do not understand how this is done. The process is not measurable and, well — see, I can't pronounce that word. I always say duplicatable, but it's duplicative. This kind of process is based on science, on scientific findings, and it should be measurable and duplicative. But to this day, I don't see that. Project splitting, again, lowers the impact of the significant determinations because it spreads it out.

Solution, make the process transparent, measurable and duplicative. Make the significance determination for a final project decision transparent and then understandable to lay people like us. Why is the project in the best interests of Canadians? And develop a policy for statistical relevance, confidence limits, and ensure it gets brought in to substituted assessments, too, because B.C. definitely is not a fan of statistical relevance and confidence limits. But there needs to be thresholds, these are the thresholds that are acceptable. Anything above that will cause some kind of a reaction, whether it's a work stop order or you will have to redo something.

There needs to be good guidance on that. Well, more like a policy or a legislation.

Cumulative effects. Of the 191, I think, conditions for PNW, one was about cumulative effects and it said PNW has to participate in a cumulative effects group, but it's not clear with who or who will lead this.

Project splitting, again, is — see, cumulative effects is sort of internal to one project as well as to many projects because the cumulative effect of all the impacts to all the values is not being assessed within one project and then with all the other project isn't assessed, either. So of course, to do a regional and/or strategic environmental assessment, there needs to be cumulative effects. There needs to be a trigger of projects like the — right now, there's projects excluded that we think need to be included in a cumulative effects, but the trigger right now is just like a big huge project. But there's just a stab by 1,000 deaths. You know, there's tons and tons of smaller projects that don't make it.

One of the solution is give the federal agencies capacities to tackle this. We had, last year, the cumulative effects monitoring initiative was funded and, you know, all my colleagues here and I were in the — in the room trying to develop that. It was actually a phenomenal step in the right direction by the federal government.

They had different departments. People were kind of stepping above their mandates and working together. It was fascinating. And then the

funding was cut, so — well, we don't have officially the notice that it was cut, but that's kind of what we hear.

In the meantime, a couple of days ago, just us — just Tsimshian First Nations and Haisla, too, had a meeting amongst ourselves, how can we tackle this, how can we come up with a plan for cumulative effects assessments.

Before CEAA 2012, there used to be something like a screening review for smaller projects. Bring that back. Legislate Canada to do cumulative effects assessments for our region. Legislate proponents to do cumulative effects assessments for their projects.

Cumulative effect is one thing, but holistic approaches is another thing that's completely absent. A proponent assesses silos of values and then the government assesses silos of projects, but what's needed is a holistic approach on both of those levels. Project splitting, again. Pipelines, plants and shipping are separate, just like Bruce was talking about.

Even right now, Canada's looking at revising the four environmental protection laws in silos. Hopefully, you guys work together a little bit.

Some of the solutions are, again, regional strategic assessments, especially when a new industry is invading a region like this LNG. Canada, the Canadian — CEAA needs more capacity to deal with this.

What I'd also like to see is that all relevant agents — so this is, again, pre-CEAA 2012 when there were responsible authorities. I would like to see sign-off from federal departments that their mandate has been dealt with. I remember being in a meeting — well, several meetings where Health Canada representatives were asking questions that were dismissed, and because Health Canada did not have an authoritative role in the new CEAA 2012 assessment, I don't think their questions or concerns were even answered. Not that I saw, anyways.

And solution, bring back the responsible authority and make every one of the departments responsible for saying, yeah, okay, we're okay with this now.

So in closing, I would ask you to not finalize any CEAA 2012 revision recommendations until First Nations have had the opportunity to review and comment on the proposed changes. Please review all of the environmental protection legislation together holistically, not in the silos there appear to be right now. Develop rules to limit Cabinet — see, another word I can't pronounce — politicization of decision-making. We go through years and years of scientific rigour and assessments and then Cabinet, who has been, or maybe not been, lobbied by special interests makes a decision that I don't see based on scientific rigour. Well, I don't — I haven't seen any rationale, so that could be more transparent, too. And let's design a

cooperative government-to-government environmental assessment governance approach together.

Thank you.

**Johanne G elinas:** Thank you very much.

Just for clarity, our work is not review CEAA 2012 per se; it's much broader than that. And with respect to consultation, our report will be given to the Minister of Environment, who will start a broader consultation. So we keep saying that this is a little "c" consultation compared to somehow, somewhere a big "C" Consultation, which will take place, but the Panel will not be involved in that.

So question? You want to start, Doug?

**Doug Horswill:** Sure. I want to come to your slides on mitigation.

And you had — so the question is this. When you're — you had a lot of things wrapped up and then you had the project splitting, you had the non-involvement. And I'm just kind of focused on the non-involvement.

So I just want to understand a bit better when you say no one has ever engaged you in mitigation development. So you have been participating in how many EAs, then?

**Rina Gemainhardt:** Twelve (12), I think.

**Doug Horswill:** And so no one means no proponent, no province, no fed, no Port Authority. And what you mean by development is a face-to-face discussion where mitigation is the discussion point.

**Rina Gemainhardt:** M'hmm. We have seen documents with mitigation proposals, I guess, and we could comment on that. And we have tried to get into the room somewhere before that where we could say, you know, come talk to us; we have some ideas. And it has not happened.

**Doug Horswill:** Thanks.

**Ren e Pelletier:** Yes. "Cooperative governance approach", what does that look like for you?

**Rina Gemainhardt:** Well, as an example, I think it was already a pretty cool move by CEAA to invite us to participate — well, I wouldn't say — almost participate in writing the conditions for PNW. I was quite surprised at that, and that was very welcome. So there was a lot of dialogue back and forth like my colleague Anna already

talked about, and it worked really well. I mean, there were some pretty major glitches, too, based on strength of claim, again, but it was an excellent step.

And I don't have an answer for you. I mean, I have 1,000 ideas, but how these would work realistically, we'll elaborate a bit more in our written submission.

**Rod Northey:** In terms of the number of projects you've been through, can you talk about any good or in between experiences with the proponent directly and how that's related to the — to your work with the agencies and so on?

**Rina Gemainhardt:** I'll give you a comparison of two substituted processes where — the one I just mentioned before where the proponent then took the strength of claim assessment and shut out of the six First Nations, whereas another proponent very close to the one I just mentioned said, "We're not going to do that. We're going to talk to all of you".

I imagine they talked to some more than others, but they said, "Yeah, we're not going to take that as being our instructions, so we're going to deal with all of you".

**Johanne Gélinas:** You referred to a collaborative effort to assist cumulative effect, and you were referring to the fact that your funding was cut. Can you share with us what was the purpose of this get-together exercise? And if there is a Memorandum of Understanding or Terms of Reference for that, we would very much appreciate to have a copy of it.

**Rina Gemainhardt:** Well, Canada — it came from Canada, from the Minister of Environment, and they started it. But DFO was in it, NRCAN was in it. There were — they were pulling experts from all areas. Academia was there. There was people from universities trying to come up with a process on how this would look like.

Neither the province nor Canada seems to have a process for really assessing cumulative effects or for monitoring cumulative effects, so this was a great step forward in brainstorming like how — what do other jurisdictions do, how can we shape it for ourselves. And then funding was cut.

**Johanne Gélinas:** Yeah, but can — do you have a written document? When the Minister —

**Rina Gemainhardt:** I'll find —

**Johanne Gélinas:** — of Environment decided to go ahead with that project, there must have been a letter or something.

**Rina Gemainhardt:** I'll find something for you.

**Johanne Gélinas:** If you can.

**Rina Gemainhardt:** Yeah.

**Johanne Gélinas:** Thank you very much for your presentation.  
Our next presenter is James Witzke.

(PAUSE)

**Johanne Gélinas:** Please, sir, go ahead.

## **JAMES WITZKE, TSIMSHIAN ENVIRONMENTAL STEWARDSHIP AUTHORITY**

**James Witzke:** Thank you.

Thanks. My name is James Witzke, and I'm the manager of the Tsimshian Environmental Stewardship Authority, or TESA, as it's referred to. I know that a few of our speakers have alluded to or mentioned that name earlier in the day. I know that you had asked about it earlier. You're going to hear a lot more about it in this presentation. And we'll talk about a few things.

Before I start, I'd like to recognize and acknowledge all of the people that have spoken already. I found great value in the things that they had to say. And TESA is a group of Tsimshian Nations, so a lot of those — a lot of members of that — of this group have spoken.

And so you'll hear in our presentation, or my presentation, a lot of those same ideas coming up again because they are common concerns and common ideas to all of the Tsimshian Nations and, actually, common concerns to the Nations that are here today in general.

So I'm going to talk about why we're here, why TESA's here, but just, you know, why we're here from the perspective of the Nations. I think it's important for the Panel to understand what we actually go through when we have all of these major projects that are put in front of us.

And we've heard that throughout the course of the day through the different speakers, but I'm going to actually give you a bit of a visual, too, to look at it and see what that looks like. From there, I'm going to talk about who TESA is, and I'm going to talk about what TESA's concerns are with CEAA as it stands, again, TESA being a group of the Tsimshian Nations, so concerns that we all have at Tsimshian Nations with the Act as it stands, and then I'd just like to put up some recommendations on where we see things could be made better.

So the question is, why are we here. And I'm going to throw up some — this is the — historically, these are projects that the Nations on the north coast have had to deal with.

Linear development such as the Northwest Transmission Line, B.C. Hydro upgrades, Rio Tinto Alcan. Independent power projects such as Run of River and wind projects, forestry and logging operations. The Port of Prince Rupert operations and their expansion, and that includes grain, coal, container, container shipping, raw lumber, wood and pellet movement and traffic.

We're also continually dealing with commercial fishing issues such as, you know, various resource allocations and recreational fishing issues such as increases in sport fishing and things like that. And we're also dealing with guided hunting and fishing issues, the continual need for growth in the tourism sector.

So these are things that the nations in the north have always had to deal with, or they've been dealing with for a number of years.

In the last, you know, five to six or seven years, though, we've seen a dramatic increase in what we've had to deal with. And these slides are similar to the slides that Gitxaala presented a couple of presentations ago. So this is what we're dealing with now in the present day, and I say present as in, you know, in the last five to, you know, six or seven years.

So as what was mentioned earlier, the Enbridge Northern Gateway pipeline project. Seven LNG terminal facilities on the north coast alone. Four LNG pipelines. Two wind energy projects. A number of Run of River projects. Two oil refineries that are confirmed right now. There's a few others that are floating out there in the ether that we know of that might kind of crystallize into something. Gold mines, linear development, and the continued expansion of the Port of Prince Rupert.

So what I think that that says is that we are authorities in environmental assessment. If you look at what we have to deal with, and especially what we've had to deal with in the last, say, five years, this has been non-stop for us. We haven't even had a chance to let our foot off the gas and to take a breather. And we've just been going, going, going. And so I think that this gives us an authority on the environmental assessment process and where we find the weaknesses are in it.

But I'd like to take us back even one step before this and talk about what all of this means to each of the Nations. And so we're going to look at it through the eyes of a Nation.

So a project is put forward to one of the Nations, and it'll either be through the provincial process led by the B.C. EAO or the federal process and through CEAA. And now, first and foremost, you get a process that looks like this and you have to decipher what the heck it means. And there's different timelines, there's

different ways of engagement. There's different times where you have to submit something or respond to something or go to a meeting. And so, you know, right off the bat, you have to become a specialist in interpretation.

On top of that, you get a screwy process like a section 67 process that is — you know, that we find ourselves dealing with for the Port of Prince Rupert. I will go on the record in supporting Rina in saying that the Nations thus far do not support that process, mostly because we can't even figure out what the heck it means. So they come in kind of on the side.

Now — so we're — so we have, you know, these different processes that are coming towards us. So not only that, but we're in an area where there are a number of different Nations that all have overlapping territory, so we have to understand and respect their overlap as well.

Now, each of those Nations is represented by a colonial style of governance, which is the Chief and Council, represented through their Band offices. So each community has a Band office, and they have the elected Chief and Council who, generally, makes the day-to-day decisions on how the Nation moves forward. But each of the Nations is also represented by that more important formal process that has been guiding them for thousands of years, and we've heard about that earlier, and that's the hereditary system. And that is those Chiefs that have guided the Nations for — again, for thousands and thousands of years.

Each community and each Nation has their own unique structure and process by moving it — deciding things and making decisions and moving themselves forward, but they're all typically guided by this hereditary structure.

So now, on top of that, we start to put some — a few projects into place here, so we've got a project — this is LNG Canada; that's Shell — based out of Kitimat, BG Group, Prince Rupert LNG — proposed LNG project in Prince Rupert here, Pacific Northwest LNG. This, of course, is the recently approved — or EA approved project that's put forward by Patronas. TransCanada Pipeline that wants to plug in to that project. Spectra Energy, which is the west coast gas transmission line that wants to plug in to Prince Rupert LNG. Aurora LNG, which is put forward by Nexxon, which is just on the edge of the harbour here. WCC LNG, which is led by Exxon Mobile up the harbour this way. Woodside is a company that's proposing a project called Grassy Point LNG, which is just on the other side of the mainland here.

Interestingly enough, none of those three projects even have pipelines proposed for them yet, so we even haven't started to deal with that mess.

So — oh, and then, of course, we have a Coastal Gas pipeline project.

engagement. So you know, nice light load. Easy reading. Easy

**Rod Northey:** So if you're going to (indiscernible)?

**James Witzke:** No, no. You'll get the end piece.

Hey, that's exactly it. You know what; you can go through and decipher the slide in the same way that we have to go through and decipher these things on a daily basis.

So on top of that, the Nations are sometimes in a treaty process or in a reconciliation process where they are trying to come to some kind of resolution of issues with land and resources and things that they've had issues with for a number of years, and they're led by the province or by the federal government. On top of that, they're still dealing with their local issues like housing infrastructure and education and health care and roads. And they're trying to deal with those day-to-day things that sometimes tie in to the reconciliation process.

Now, when these major projects come along, the reconciliation process often makes it look like it's a really good idea to join into and buy into a project so that you can sign an impact benefit agreement with them because it bundles — allows them to bundle up more things for you, more land, more money, more access to things like jobs. So now, you know, we have projects that are saying, "Hey, let's get some jobs going on here. Hey, sign an impact benefit agreement with us and we'll get your community to work".

Now, Chief and Council are going, "We've got a 70 percent unemployment rate in our communities and we have to decide whether we like a project or not on behalf of our community. Putting people to work is a really good potential thing here".

So we get people out training for these projects even though we're not quite sure if we want them or not because half of the community is also split because they're saying we don't want this project. We're not interested in this kind of development in our territories.

On top of that, you have the concern, the deep concern for natural resource and the connection to natural resources. In this case, I think that this is kind of the token species for up here is the salmon and the interconnectedness that the Nations have for salmon and their need to have that be a strong resource. So they have a strong concern and a connection for it.

And then we have people like NGOs who come and say, you know what, you're right. You guys do need to protect your salmon. We're willing to work with you to develop those things. But sometimes that means that you don't want



the big projects, the major developments. So — you know, so what are you going to do?

Well, you have the media that comes to you and asks you how you feel about LNG. What do you mean, how do I feel about LNG? Do you mean taking it — fracking and taking gas out of the ground, putting in a pipeline, shipping it across the province, building a terminal right on the edge of our, you know, very sensitive habitats, trying to figure out the science of it, trying to determine what shipping means?

Some projects are in a horrible spot, some projects are in an okay spot, maybe. What do you mean, how do we feel about LNG?

And so what happens is that the media starts to get these little blips and blobs of information that only shows part of the information, so our community members are watching the news or are following social media and they get partial information. So now they don't know what the heck to believe. Am I getting everything? The answer is probably not.

And so it becomes our task to try and educate the Nation just to figure out if they like LNG, if they want development in their territories.

And then we have a federal government that says, hey, don't worry. We're going to go to Paris. We're going to buy in, we're going to become a leader in global climate again, so you guys don't have to worry about some of this stuff. But yet you have Cabinet, as Rina mentioned, that has a completely different agenda, that is not necessarily thinking about global climate change, but the best interests of — potentially of a nation.

So at the end of the day, then we have people that come to say to us, "So do you support LNG? Well, make a decision. Come on. Hurry up because we have to decide now".

And so that's what we deal with. That's what we've been dealing with for the last five to seven years.

And so, again, I — you know, go ahead. Interpret this because we've had to and we've had to become authorities on this process.

So I'm going to transfer to talking about who TESA is. So TESA, as I mentioned, is the Tsimshian Environmental Stewardship Authority, and it's comprised of five of the Tsimshian Nations, Metlakatla, Gitxaala, Kitsumkalum, Kitsalis and the Gitga'at.

And I guess the reason that TESA has come about is because of all of the engagement that, as individual Nations, we've had to do on these

major projects, the technical folks realized that we were seeing each other more than we were seeing our families because we were sitting in these working group meetings on a day-to-day basis. Same folks, day to day. Different Nations.

We are — you know, we're meeting to discuss these multiple projects through these formalized EA process and, through that process, we recognized that we had similarities in values and issues and concerns with the EA process. So we agreed to come together to work to address those issues and ensure that the common values that we all shared are represented in the EA process.

So I'm going to talk about a few of those common concerns that we've heard come up as a group time and time again.

I guess before I move forward, I do want to say and I really want to highlight the fact that I've heard it from a couple different people and Bruce, in his presentation, he made note of this, and I just want to again make note of it, the TESA group is — it's a group of us coming together to solve common issues, but each of the Nations still have — they maintain their sovereignty and they maintain their own bilateral agreements and relationships with the government. So TESA is a gathering place to deal with issues. It's not, say, a referral agency that would — that, say, the government would come to to — as — for part of consultation. So I just — I think it's important to make that clear.

So the first issue that we wanted to bring up — and again, these — we've heard these issues come up in previous presentations. Rina highlighted a number of these issues in her presentation, so we're just going to — I'm just going to dip into them again here a little bit.

But the first one is a lack of proper consideration of assessment of socioeconomic or I think, more importantly, social impacts to both on and off reserve communities.

So in past conversations we've had with the federal government, they say these projects primarily, they occur — or social impacts occur to towns or municipalities and so should be dealt with at the municipal or provincial level. And we disagree with that.

First of all, the federal government is responsible for those things that happened on Reserves, and there's a deep connection between the Reserves in this area and the municipality. And what that looks like is Bruce mentioned — or actually, you saw that map. You saw the use map of all of the — those are boat routes, and there's — the most heavily and dark area in the case of Gitxaala was the movement of boat traffic from the community 54 kilometres away from here into the hub city of Prince Rupert. And this applies to all of the Nations. This is a hub, so whatever happens here has impacts to the Nations that live out on their Reserves.

So it fails to address those impacts. It fails to address the back and forth migration. And you know, it fails to address the unique pressures that First Nations face in times of major development.

I'd like to use a bit of an example on that. A major project is proposed for the Prince Rupert Harbour area, and there's 70 percent unemployment out in Metlakatla, we'll say, for example. And so there's jobs. And so those people from those outlying communities are going to take advantage of that and they're going to either move to town to take those jobs or they're — permanently or on a part-time basis or a shift basis where they would come in and work a shift and then go back home.

And so the problem with that is there's a couple of things. Number 1, you're pulling people away from their communities. Large numbers of people are leaving for periods of time. It strains the ability for those Nations to function in the way that they have. You pull away somebody who used to work for your road maintenance crew and he comes in to get a better-paying job in Prince Rupert, now you're left with a hole to fill.

You pull away a number of different people to come in to town to work shift work, and you have to say, "Do we have enough daycare facilities to be able to look after all of their children in the long term?" Do we have — we have to look at emergency — the ability for emergency crews — all of these communities are serviced by an air ambulance. If there's a major issue out there, that's the way that they're — the response comes to that air ambulance. If there's a major accident in town at a project and somebody has a heart attack or goes into labour out in one of the villages, how will they be able to receive that critical attention that they need?

So this is completely overlooked in the federal process.

Not only that — and so I talk about those unique pressures, and Rina talked about those a little bit, too. We've done studies to show that Nations that are on the peripheral edges of major development areas, for example, Fort McMurray, they struggle. They struggle with these jobs. You know, they come in, they get a job, it's a high-paying job. They've never had to deal with money management before. They've never had to deal with substance abuse problems, you know, potentially, you know, physical abuse issues.

Rina talked a little bit about prostitution. The studies show that up in those major centres, the primary demographic of people that are engaged in the prostitution sector are First Nations.

So you know what; those people get lured in from their Reserves to come in to the community because that's where the development is. And this process fails to address those things. We're left at the end of the day going, "Who is going to champion this process? Who is going to truly look after our social needs in

the face of major development?” And the answer is nobody right now. It’s left to the province, and the province’s process is flawed at best because it’s still something that’s in its infant stages and is looking at the development through the spectrum of the municipality.

A second issue that we have is with — and this has been talked about in a number of different places, the cumulative effects assessment monitoring and management processes that are laid forward. So we heard about it from Davide in his presentation on the scientific side of things. We heard it from Rina on her presentation.

The cumulative effects assessment fail to identify First Nations’ values. And one of the reason is, is because the people that come in, the proponents that come in and hire their consultants don’t understand First Nations’ values because they don’t truly spend the time to sit down and work with the Nations to understand them.

First Nations’ values are subtle and they deal with governance. Mike Ridsdale, when he was talking about the House system that his — that happens in his territory, that governance structure is subtle. And he talked about the idea that if somebody didn’t have enough of a resource in their territory, they would have to go and ask permission to use someone else’s territory, and that would lower their status in the feasting hall.

Well, that applies to the Tsimshian as well, and it’s very subtle. And that’s a value. Governance is a value that needs to be addressed, but it’s not formally addressed.

The way that things are addressed right now in terms of cumulative effects and those valued — those valued components is we say we have a concern with salmon, and now that’s a very — that’s an easy thing to say. But it’s very deep.

So a proponent will come in and they’ll say, “Okay, we’re going to do a study on salmon biology”. And at the end of the day, they say, “Don’t worry. It’s okay. We don’t think that salmon are going to be impacted because we’ve done some biology”. But what they fail to understand with First Nations’ values is that it’s not just the ability for a First Nation to go out and harvest the salmon; it’s the access to that resource. It’s the access to that habitat.

So a proponent will come back and they’ll say, “It’s okay. Biology shows it’s okay. Now, we’re going to build a big huge bridge out into the ocean and you’re not going to be able to access your resources, but they’re going to be okay in that place”. So what they’ve failed to understand is the First Nations’ connection to it.

They need to be able to access it. And that is — that is, we find, is totally lacking in — right off the bat, the initial values that we use to define cumulative effects in the process.

So the other thing that we find is not only are First Nations' values not integrated into the process, but the values that are there, the assessment matrix falls apart. Now, if you can believe this, out of all of those projects that we showed — that I showed on the screen there, I think we are at one, two or maybe three, you know, residual impacts for major projects. That blows my mind.

So basically, all of these guys that are out here proposing projects have said, "Our project isn't going to have major impacts. The project beside us, you know, collectively, no. The next project, no". At the end of the day, we've had — we've had these guys come back and say there are maybe going to be three residual impacts. So as a result of that, there's not going to be a high degree of cumulative — of impact, cumulative effect.

That is staggering to me. And that clearly shows me that there is a major — a flaw in the assessment of cumulative effects.

**Johanne Gélinas:** I don't know if you are approaching your recommendation, but we have 10 minutes and we would like to ask you questions.

**James Witzke:** So the last piece of our — of our concerns that I'm going to talk about today is the lack of adequate long-term environmental monitoring. Again, this was also put forward as well.

There's no formal process to compel proponents to engage in cumulative effects monitoring or management over the life of the project and beyond. So there's a project that was referenced. It was the Pacific Northwest LNG project. We did go through a process of being able to engage in the project conditions, which was a fantastic process for us.

What we found in all of those 190 conditions was that there was one pertaining to cumulative — or to long-term monitoring but also to cumulative effects, and the cumulative effects one was that the proponent will engage in any cumulative effects initiatives that are out there. That was it.

So that's — that was a real struggle for us. And not only that, but — so we have no process to guide the development of monitoring values, threshold levels or monitoring triggers. So a lot of times we say there's no environmental monitoring proposed, but environmental monitoring is more than just going out and looking at something and seeing what's happening. Monitoring is understanding a value that's going to be used in the monitoring program, and it's developing threshold levels for what's appropriate change and then having management triggers that say if it goes over a specific threshold, then we can react to it and we have a plan to deal with it.

At this point in time, there's nothing out there that does that. There's no formal process that says here's what you are going to do. There's nothing prescriptive. And there's no process to integrate First Nations in long-term monitoring of biologically or traditionally designated values.

Davide mentioned this in his process as well, and there's a question that came back from that. And it's, you know, should First Nations be a part of this or how are they a part of it. It's the fact that they're — that they have this intimate knowledge of their resources, and I believe that they should be a part of the on the grounds collection of baseline data, the setting of those threshold levels, the development, in consultation with proponents and federal or regulatory agencies of management triggers and then the follow-through of all of those things.

Here's the recommendations. So in consultation with First Nations, to develop a formal process to integrate First Nations' values and concerns in a comprehensive socioeconomic assessment, including the assessment of values, social values, monitoring and follow-up management practices. So not just defining what values need to be looked at for social impacts, but setting — again, just like in cumulative effects or long-term environmental monitoring, social thresholds and social change over time and determining whether it's acceptable or not.

To modify the cumulative effects assessment process to identify and incorporate First Nations' values on a more reasonable level and to modify the cumulative effects assessment matrix to more accurately integrate the effects of multiple projects.

To develop a more formal process to compel proponents to engage in long-term cumulative effects monitoring and management over the life of the project and beyond, not just say proponent, you must engage in cumulative effects initiatives. What does that mean?

Develop a set of guidelines for the development of long-term monitoring values, threshold levels and management triggers, as I mentioned already, and to develop a strategy to integrate First Nations in long-term monitoring of biological or traditionally designated values.

**Johanne Gélina:** Thank you.

**James Witzke:** Thank you.

**Johanne Gélina:** Doug, do you want to go first?

**Doug Horswill:** I'm going to ask you something that's a little bit hypothetical, and it's getting at the word "consent". I'll pose a context for you for just a sec.

I used to work for a company that operates a very large zinc mine in the far northwest corner of Alaska. Ore body was discovered in 1978-79. The community spent five years in an internal process before they came to a conclusion to allow their leadership to enter into negotiations that would ultimately lead to the mine, so five year internal process to get them to consent, one mine.

If we were to halt any activity here, how long would it take for those kinds of processes to occur within First Nations communities here to get to a point where you'd find consent? And I'm not sure you'll be able to answer it, but I'd like your thoughts.

**James Witzke:** Well, I have to — you have to understand that I'm a representative of a number of Nations, and each of those Nations have their own formal process where you would have to — in this theoretical situation, you would have to, you know, receive consent from each of those nations. And given that each of them have their own process, I think that it would be — I think that it would be impossible to put a timeframe on it, and I wouldn't even take the risk of doing that. But I think that — I think that it would be safe to say that the sooner that those — you know, that information is produced for the Nations to be able to begin that process, the smoother the process is by engaging with each of those Nations on an individual level so that they truly understand that process, the faster that process of getting consent is, or lack of consent, is made.

So that's one of — we've heard that in our — in some of these other presentations, is that engagement is done at such a late stage in some cases by some of the Nations that you're always working from a place of trying to catch up and trying to — trying to manage and trying to understand.

It's one project, that's one thing, Doug, but when you have a stack on five or six and you're trying to keep it straight within the communities and the Nations' minds of what it is that you're trying to get through to them, it's really rough.

**Renée Pelletier:** I wonder if you can go to the slide just before this one. Thank you.

Okay. Your first bullet point, "develop a formal process to compel proponents to engage in long-term cumulative effects monitoring and management". What are your thoughts on — and we've heard this suggested to us in other places — having that kind of a program, monitoring and management program, being First Nations led? So paid for by proponent —

**James Witzke:** Yeah.

**Renée Pelletier:** — and plugging that stuff into the regulatory system, but having that delegated to local communities.

**James Witzke:** Well, I think that that's almost a rhetorical question, really.

**Renée Pelletier:** Because it's awesome?

**James Witzke:** Yeah.

**Renée Pelletier:** Sorry.

**James Witzke:** Absolutely. Yes, please.

**Renée Pelletier:** Okay. Thank you.

**James Witzke:** There's — you know, but that does fall into, you know, that there's also the — I mean, that's what we want. That's the place that we want to get to. We want to be a part of that process.

And we talk about collaboration, and that's part of the collaborative process, we're actually brought in to the process of the project and we — and where we can get our eyes on the ground.

Another — you know, this is another process that we've been working on is this is something that was fairly new to us and something that we're still working out, but the ability for First Nations to have the opportunity to set the criteria for how environmental consultants are chosen by proponents so that we feel like, you know, their integrity is up to the level that we think it should be and that we don't have these companies coming in and we don't have these parachute consultants that come in and make a buck or two and then head out again.

**Rod Northey:** I just want to come back to the — your slides on cumulative effects, so there are a couple things in there. I just want to make sure I understood it, that of all the projects and all the assessments using a significance framework, you've only got — I can't remember whether you said it was one to three or three total significant effects post-mitigation for all them. That's the way to interpret that.

All right. So if we were to start this again and said that framework was valuable, one of your other statements was, it's not done to recognize First Nation values. So I'm going to ask you, leaving out the end point of significance, does the VC framework, the Valued Components framework that seems to also apply widely, is that even that starting point valuable, recognizing values? Is that already the wrong path?

I'm just curious what one does to start to answer your question or your comment that it is not done to recognize First Nation values.

**James Witzke:** So you've asked if there's value — or if it's appropriate to use that system, the selecting of values, to determine —



**Rod Northey:** The valued component system. Yeah.

**James Witzke:** I think that it's — that it's of use. I think that the starting process from where we start, it — there's the potential for it to work better as long as the right values are plugged in to that system. And then, of course, you know, you said leave off the back end, so I won't comment on that.

But I mean, as a starting point, we have to start somewhere, and I think that that's — there's nothing wrong with it, again, as long as the right values are put into that place.

**Rod Northey:** Okay. Thank you.

**Johanne Gélinas:** Thank you very much for your presentation.

We'll take one more presentation before the break, and I will invite Mr. Dmitry Lisitsyn.

(PAUSE)

**Johanne Gélinas:** Good afternoon.

## **DMITRY LISITSYN**

**Dmitry Lisitsyn:** Okay. That looks good. I start with — I sit before you here with a wonderful kidney stone about the size of a dime. I cannot — because of vascular disease, I cannot take medication, so I brave through.

My copy was stapled backwards, but —

**Johanne Gélinas:** And we had a chance to look at it still.

**Dmitry Lisitsyn:** You've got the repaired?

**Johanne Gélinas:** Yeah.

**Dmitry Lisitsyn:** Okay, I'll start with the first email, and I'll read through. And where it says look at following and there's a link for the government assessment reports, we'll just skip through that and, at the end, I'll address — I'll address that.

This is Dmitry Lisitsyn. He sits at the head of Environmental Watch — (indiscernible) Environmental Watch in Russia. Sakhalin Island is an island that's north of Japan that is being explored heavily for oil and gas. They have currently a two train plant there that's been operating, I think, for about 10 years.

So when you were here in Prince Rupert giving your presentation, I was the older individual with the full grey beard that identified myself as a person with disabilities, Asperger's Syndrome, autism. I was the last person to pose a very significant question. I acknowledged the fact that Dr. Aleksander Ledenev(phon) had encountered and measured significantly elevated acoustic energies in the marine environment during the construction phase that turned out to be far above the intensity to have been proposed in modeling. I recall he stated the modeling indicated the expectation would be about a maximum 120 decibels, and he actually measured in excess of 160 decibels going up to 180 and even, in the odd case, 200. That is extremely loud.

For humans, 130 is threshold for pain, to give you an understanding.

I then posed a critical question, which was, once the LNG plant started operation and production, has or did anybody measure, record, evaluate the marine acoustics of the plant while in operation. This would have required (indiscernible) both on land and in the middle of the plant, in the ground, preferably on bedrock, or foundation concrete, which would require some procedure used — the same procedure used in the seismic survey using geophone for measuring frequencies and intensities and offshore at varying distances from the plant to establish how intensity diminishes with distance using a hydrophone or hydrophones.

All of you came away with a rumative response that, no, this has not been done to date, accomplished — this has not been to date accomplished, let alone even thought about.

A year ago, I discovered by going through the assessment report that was approved by the B.C. government and now the federal government that there is a major omission, and no one is really listening to me, so I have to find a way to prove this concept, which is why I asked your people that question.

Going down to the bottom, a sample test. Station a jackhammer at the centre of three trains with the geophone glued to bedrock. Have someone stationed in the middle of the Flora Bank bank with a hydrophone. Record both geophone and hydrophone to analyze intensity and the signatures — like the frequency signature, and/or have someone stick their head in the water with a jackhammer that's operating like out by the Flora Bank. Finding — find out the noise level a jackhammer in air and in rock and in water, you will and should be astounded with the intensity of the water.

I have another scenario where you go somewhere in the world where there is an operating LNG plant and do an actual recording, air, rock and water, and use that with an inducer. In other words, you have a computer and you induce the same amount of energy into the rock (indiscernible) island to — them using

an inducer on Lelo Island to propagate the energies into the bedrock and measure the same as in the jackhammer scenario.

This needs to be done not by Stantec, by — but by an independent to avoid conflict of interest.

P.S. BP Gas, now Shell, and Nexxen, which are proximal to Lelo, have to be equally considered in the scenario as both a no-go. The only LNG that can move forward is in the top end of Tuck Inlet, the Exxon Imperial, with the gas pipeline coming through the pass from Port Simpson but not through the Prince Rupert Harbour. That's ludicrous. Clearly, the B.C. government is totally out to lunch when approving.

A 1973 federal report clearly states that no major development is recommended to be allowed in this area of a vital salmon habitat. This was kyboshed by the federals.

Moving on, it is truly sad — it is truly sad, yet not totally unexpected, that our own government is creating — is treating you as foreign agents. I'm talking about the Russians now. Because they were given money by outside individuals and organizations, who got really upset with them because he needs the money from the oil and gas, and he's thinking that this would hinder that sort of thing.

We in Canada have similar scenarios happen under the previous government of Stephen Harper, people objecting being actually arrested and put on an undesirable list as — an undesirable list with CSIS as possible terrorists. There were Court cases where people were told do not divulge what happened in the Court.

In order to put an end to the LNG insanity in the Prince Rupert area and, for that matter, in your side of Canada area as to why and how you lost your salmon, would it be possible to ask you to brave the — be brave enough to do a marine acoustic survey conjunction with Dr. Aleksander Ledenev(phon) as outlined above?

At the salmon nation summit, which was held in January of 2003 — January 22nd, 23rd of 2016, I attended with my laptop. I sat next to the project and repeatedly asked to be able to give a 10-minute presentation, which is I have in hand here. I was refused on the grounds that I was not on the agenda. The Tsimshian people of Lach Klans accomplished through the good work of Dr. Moore that there are, indeed, abundant juvenile salmon of all species in this area which is contrary to what Stantec and our Department of Fisheries and Oceans have established — publicly stated. Not established; publicly stated.

What I was trying to show that these good people — to show these good people was how, once the plant starts production, how, within six years,

three cycles of returning salmon — that's four cycles — that we would be experiencing the extinction of our salmon. To date, there has been — has — to date, there has not been this kind of assessment done on any LNG facility anywhere in the world.

The saddest part of this whole scenario is some of the First Nation Houses have already signed off on the LNG so that they get the monies without realizing if the salmon gets screwed up here in Prince Rupert, then nobody — no one will have any salmon. The whole Skeena-Bulkley Valley watershed. Like selling one's soul to the devil for a few dollars, and history has a strange way of repeating itself.

I'm setting this as an addendum, but first I will give you two links relating to marine acoustics that you've used in your studies. This is only stuff I ever found on the web, you know, where people have studied how marine creatures other than mammals get affected by noise, you know, energies.

The first is their general web site; the second is like a pod cast related to marine noise effects on fish. There's another on marine mammals you can find in their web site. You just have to explore a bit.

Okay. I'll miss the next little bit.

I have a burning question in regards to your LNG plant via Google Earth. I'm able to see what looks like the plant has two trains, and I hope you can describe just how noisy that plant is while in operation because from what I listened — from what I listed above in the table that's going to be coming, anyone who set foot on Lelo would need to wear good ear protection when the plant would be producing LNG.

The lists of equipment that will be generating noise is not a static thing — this is important — but, rather, a constantly changing, in flux. This, coupled with the fact that there's two or more trains for Lelo, the frequency and the amplitude governed by the constructive and destructive principles found in physics. This imply that, at some harmonics, the energy can be greatly increased and that any living thing, especially those in the marine environment, can and will be dramatically adversely affected.

**Johanne Gélinas:** Just before you go too far, you have to keep in mind that we are looking on how to improve —

**Dmitry Lisitsyn:** Well, this is — I'm trying to show you what's wrong right now.

**Johanne Gélinas:** — how to improve environmental assessment, but not a particular project.

**Dmitry Lisitsyn:** No, this is — this is —

**Johanne Gélinas:** Because you're getting a lot into the detail of a particular type of project.

**Dmitry Lisitsyn:** Yeah, but you should be able to say, well, no, we're not looking at a project. We're looking at the process. The process is flawed. Why is it flawed? Something's missing.

**Johanne Gélinas:** Yes.

**Dmitry Lisitsyn:** Okay. I can live with the understanding that Stantec, which is the engineering company hired by proponent — by Patronas, is either not astute enough — the engineering company and Patronas either are not astute enough or they know very well and they don't want anybody to say anything about because it will be a big ooh-ooh.

**Johanne Gélinas:** But you see, we don't have to go into the detail. I mean, we understand your point very well.

**Dmitry Lisitsyn:** Well, how else can I describe this?

**Johanne Gélinas:** But you have given us the —

**Dmitry Lisitsyn:** I have a book, but you don't know it's a book, and I have to describe the book.

**Johanne Gélinas:** Yeah, but your point is more to say that — and I will paraphrase you, if I may — that there's a trust issue related with consultants who are doing environmental assessment. Is that what you're saying?

**Dmitry Lisitsyn:** Trust issue?

**Johanne Gélinas:** You have another word.

**Dmitry Lisitsyn:** It's a trust issue. I'm not following how this applies to what I'm saying.

**Johanne Gélinas:** But you're talking about Stantec —

**Dmitry Lisitsyn:** Yeah.

**Johanne Gélinas:** — as not — probably not having done the study properly. Is that what you're saying?

**Dmitry Lisitsyn:** Well, I'm trying to say to you is that my conclusion, my logic says to me either — one of two things. Either they are — the company and Stantec, the engineering, are — were not astute enough to explore this or they know exactly what all

this is, but they're not going to address it and nobody said anything about it, so nobody knows about it. It's a ghost.

**Johanne Gélinas:** And I understand your point.

**Dmitry Lisitsyn:** You starting to understand what I'm saying?

**Johanne Gélinas:** Absolutely.

**Dmitry Lisitsyn:** I'm trying to show you what's wrong —

**Johanne Gélinas:** Yeah, but —

**Dmitry Lisitsyn:** — in a particular assessment report so that you can carry it forward to other assessment reports because we got a lot of LNG proposals on the table —

**Johanne Gélinas:** I understand that.

**Dmitry Lisitsyn:** — in this province.

**Johanne Gélinas:** But we have your submission —

**Dmitry Lisitsyn:** Yeah.

**Johanne Gélinas:** — that you produced for us that you have given us that we can go into the detail. I prefer to get your views on this than just getting into the detail of the study itself. You see my point?

So if you were to convey a message based on this particular assessment that you have done, what that will be, as we have asked others?

I'll give you an example. Do you think that it shouldn't be the proponent who does the environmental impact assessment?

**Dmitry Lisitsyn:** No. Yeah, I think you're missing what the point I'm saying.

**Johanne Gélinas:** It's possible. Maybe my colleagues are getting it.

**Dmitry Lisitsyn:** The project has gone through environmental assessments, one in B.C. and a federal. How is it that both of them have missed this? How is it? That's what I'm trying to point out.

**Johanne Gélinas:** So there's a portion which is the assessment itself done by the consultant with the proponent and all the scientists within the government missed the point, too.

**Dmitry Lisitsyn:** Yeah.

**Johanne Gélinas:** Yeah.

**Dmitry Lisitsyn:** Yeah, they missed the point. They're stuck at a sidewalk. And yet this is being pushed through.

Now, the critical point I'm trying to make here is at some point at this summit, there were lawyers from the UVic, University of Victoria. I had some good conversation with them, and I asked them, "Well, what does it take to open this environmental access up again?" "Well, we have to go to Court", and blah, blah, blah, blah, blah.

Well, wait a minute. My understanding of law, if there's something that is deemed absent in presentation, information, knowledge or whatever, then it is the the — what has to be accomplished is discovery, the process of going back in to an assessment that has been proved, even though it — a person can show is flawed, there is a huge financial penalty or whatever on the First Nations to try to get this across, okay.

I'm a person, a Canadian citizen. I'm trying to bring this out. I'm bring to bring this to your attention so that down the road, when there is a problem — I hate the word "remitigating". That means something is broken and you're trying to fix it. In nature, that's extremely hard to do.

**Johanne Gélinas:** But your point is well taken because we have heard in our journey other examples like yours where something fell between the cracks, so to speak.

**Dmitry Lisitsyn:** Yeah, yeah.

**Johanne Gélinas:** And as we are looking on how to improve the environmental assessment process, we will try to address those kind of situations.

**Dmitry Lisitsyn:** Yeah, because you're starting to see that there's so many flaws in this whole thing that you're starting to wonder how does it ever get approved. Now, who rammed — like who pushed on this, is the — probably the correct word to say, you know. Who influenced — unduly influenced decision-making, you know.

Sure, there's 190 things they have to follow to meet the final yes, you know, but if there's — if they meet 190 and they don't meet the one I have just proposed to you, it kills everything. And the First Nations will be up in arms.

You have a large area. I think it's about 700 miles. You have a lot of people that rely on salmon. We as white people, we benefit from that, too, because of the essential oils, right. If we lose that — (indiscernible), as an example. It

was the third-largest salmon run in the world. Skeena here is the second-largest. The Fraser is the first. Hopefully, they will still be — still be that way. And if this thing goes through, this Lelo Island thing goes through, we won't have one salmon.

**Johanne Gélinas:** And I'm happy that you have taken that to our attention and to people's attention.

**Dmitry Lisitsyn:** But can I — are you saying I'm done?

**Johanne Gélinas:** It depends. If you want to get into the detail, I don't think that —

**Dmitry Lisitsyn:** I just quickly want to go through that, and I will show the people here the — Stantec was nice enough, I say, to provide modeled intensities of the equipment, okay. And I want to quickly run through that so you get an understanding of that.

**Johanne Gélinas:** Okay. But very quickly, I will ask you —

**Dmitry Lisitsyn:** Now —

**Johanne Gélinas:** — because I'm not sure we can all follow.

**Dmitry Lisitsyn:** When I talk about constructive-destructive harmonics, it's where energies come together and build, okay. And when you have a whole eight, nine, 10 whatever pieces of equipment all operating at the same time with their own song, to so speak, and they come together, they will create intensities that are extremely high, okay.

And what — the propagation of energy in air is diminished because why? The molecules are further apart. Rock is more dense, water is more dense, so therefore, the transmission of energy is very, very good, okay.

The location of this plant is extremely close to the water. It'd be on rock, it'd be on foundation. Everything is tied into a frame, a structure, so it's all going to be going through into the bedrock out in the water, okay. So it'd be like, I don't know, listening to a fire truck all night, but except it'd be 24/7, you know.

And the other thing I wanted to point out is the pipeline will be coming in the south end of Kitsen and goes through an area that is another bank. They have to dredge that up. And it's a main throughway for salmon when they come back, and also when they come down.

The pipe itself, I suspect, will be a conducting — the conducive to transmitting energy from the plant itself. It becomes a wave guide. There's the principles in higher frequencies, radar and so forth how to — to keep the



molecules together and propagate them. And so the whole area will be a — it's like the weirdest, jazziest thing you ever heard except it's 24/7 and it's obnoxious.

And if you can understand this, the small juveniles that have nowhere to go until they get to a certain stage, then they can tolerate the salt water, they are stuck in that area. And if they become stressed and distracted by this, they'll be eaten. You'll have high predation rate. So therefore, every cycle will be less, will be less, will be less. My way of thinking is by the sixth cycle of four years, DFO will say, "We don't know where the hell the fish are" and everybody will be up in arms. But that'll be too late.

So I walk you through quickly to the table.

**Johanne Gélinas:** We don't have more time to do that, but we have —

**Dmitry Lisitsyn:** Well, you can review — you can see the —

**Johanne Gélinas:** We have it.

**Dmitry Lisitsyn:** — individual and you can see how many and how — if you can imagine how they all come together and cot create a crescendo that would be driving you nuts.

**Johanne Gélinas:** I think it's much better when you explain it the way you just explained it to us. Thank you very much.

**Dmitry Lisitsyn:** I'm glad I got through.

**Johanne Gélinas:** Thank you, Dmitry.

(BREAK)

**Johanne Gélinas:** So whenever you're ready to start. .

## **LEONA PETERSON**

**Leona Peterson:** My name is Leona Peterson, and I'm here as a woman, a mother, a friend, ally and a Tsimshian. I speak and feel I represent many, not only myself.

I am scared. There are many that feel the same as I do. There are many that think and feel nothing. We all feel powerless to the process of invisible authority.

The lobbying of government by special interest groups that pay for government to listen is a problem. I want lobbyists removed from influencing

government. I don't want propaganda from government. In fact, I got rid of my cablevision because I got really tired of any level of government telling me that pollution projects were okay, that we need to do this for the economy.

I want no government-sponsored propaganda. I want to stop all fossil fuel subsidies and breaks. Let the market die.

True disclosure before mitigation. I want no by-product industries, example, fluoride. This is a huge one in my life. Fluoride is a by-product and an industrial waste that was incorporated into products and our water supply. Why? So this industry could dump its by-product and make a profit. Instead of having to pay for the toxic dumping, they chose to toxify us.

No more projects of pollution, no more tailings ponds, no more toxic dumping rendering land unusable. No government has ever allowed standards to be gutted, ignored or bypassed. I want to redefine national interest, means it benefits Canadians, not for export. When species will be put at risk due to development, do not consider. When projects come with no — with disposal at sea of contamination.

Do not consider accepting science, accepting standards as high as Canada's. We're not the highest standard. We're got standards all around the world that are higher than ours, and we get told over and over that, you know, we're still the best. Canada has been failing for a very long time, and it's been decades. And it's really — there's no hope with it. There's no hope with the current system.

And I'm not even talking about Harper. I'm talking about last 50 to 60 years, the slowly eroding of laws and protections that protect the people, the plants, the land and our air, plus our water. We're looking at industrial taking of our water to the tune of less than \$3 for, I'm thinking it's four million litres. I'm not sure on the numbers. But the discrepancy between paying for that resource and the taking of that resource, there's no balance. That's what we're really missing, is a lot of balance.

Acceptance of science. No more industry on panels. Experts can be found without their obvious leanings. Divide and conquer tactics used by government and industry, pitting community against community appeared a game show lottery was at hand when attempting to decide what community to be at the end of the line for Enbridge.

Standards. If one proposal suggests dredging and it is proven harmful, set a standard for that area and allow no other proposals to attempt their approach. The harm has been proven. Learn from the collective. Do not repeat.

Boom and bust cycles of industries, they hurt communities. This community is a prime example of the boom and bust cycles that have decimated

not only our community, but the province of British Columbia, let alone the other small communities that rely on boom and bust cycles.

We've gone with one industry failure and leaving from a population of definitely over 24,000 down to nine. That emptied out storefronts. That left a lot people without hope and without jobs.

Resource extraction ultimately means other resources are put at risk. Water appears the biggest concern. Air quality can and has been ignored.

Location of projects. Fukushima. World condemnation for putting a nuclear plant in a seaside locale where the sizeable earthquake took out the plant and endangered not only their community, but, over time, the whole Pacific Rim. Proposing a volatile project on a seaside in an earthquake zone doesn't deserve consideration.

Creating more and more authorities, blame-shifting. A standard is set by government when the spoken word is used to gain popularity. In that, I'm talking about any government leader that goes around the world spouting off how we are going to be the change and then comes back to devastate his own people by promoting projects that aren't seen as bridge projects. They're not seen as transition projects. They're only seen as special interest groups getting their way.

It is 2016, and we cannot afford to look the other way any more. We cannot afford to take and take and take. Much of what I have outlined takes the economy and its ability to thrive out of the equation. The time for acting and believing in blind faith, all will be okay, is over. The system is corrupt from head to tail.

If you look at Canadian government as a book, from beginning to end is corruption. To be asked to edit a few pages of the corruption and expect a different result, it appears a waste of time. I see this effort, the whole process, data compiled, report to Minister, the Minister's consideration as smoke and mirrors. More deflection. More and more becoming aware of the devastating reality, the citizens are no longer comfortable with the reality of what has been done in their name.

While contemplating the problems we face, I consider how it began, doctrine of discovery. The use of this was created to sidestep responsibility and take what was wanted. When your foundation is built upon seeds of corruption, there is room where exploitation occurs. Industries flourish with half truth. Industries flourish with cherry-picked revealing of information.

Ever since the disclosure of our damage done to earth in the late seventies, we have slowly eroded protections within Canada. To actually move forward as a society, we have to put into consideration how many people will be without a job.

Government strategy is a wait cycle. With government promises of decision based on science, science better be the factor, not flawed science provided in its entirety to sway to approval regardless of flaws. Approving a project with flaws to adjust to is a low standard.

Interrupted land use. Set aside 100 years for an over — for an area to be usable again is a low standard. Knowingly approving projects that are seen as adding to the worldwide problem, they don't deserve consideration. They should not be even given the time to breathe.

The corrupt system attains new laws to allow ever resource raper opportunity to flourish. The whole point of extraction is to fulfil a need. Our reliance on many resources is at the max levels. When contemplating a comfortable and safe life, I have no room for pollution. Right now, air quality is okay, sometimes speculator. There's areas in Prince Rupert where you get subjected to smells, and one industry was blamed for the smell that occurs in the Mountainview Trailer Court area. It smelled like rotten eggs, okay.

They kept saying it wasn't them, that it was the muskeg. Later on, we discovered that it's not the musket. It has to do with the piping of natural gas in that area, and the pipes have actually been fixed in the last five years, but it's not like it's an open, transparent and everyone knows that that's the reason why the eggy smell was happening down there. There's no accountability.

I know the Pacific Northwest coastal waters have seen a four degree Celsius rise in temperature. The Skeena River is warmer. I'm tired of the experimental processes used to extract, water abuse and contamination. They're uncalled-for at this time in our lives. Pretending, wishing, praying does not predict an outcome. The pandering, platitudes and promises are no longer acceptable.

My views stem from a life of less than. My experiences are that of the oppressed. I hold little hope for the outcomes of the process I have participated in. A corrupt system can only ensure a corrupt result.

When I consider fish farms, I consider extraction of LNG, I consider the extraction and shipping of bitumen, all I see are every single corporation trying to lessen their responsibility so they create these other sub companies that are shells to protect them from the liability of the accidents that are bound to happen, the problems that are bound to happen with the projects being allowed to happen.

I'm talking from mining of gold, diamonds, the extraction of natural gas. There's coal. There's stuff that they're taking out of Kitsalt that makes steel stronger. And that project, they were estimating, would cost 16 billion for, I think, a 20-year period, and their toxic mess that they would leave behind would be dumped in

one area and would be left there for 100 years to recover. So it would take 100 years for that land to be usable again.

It's not like that land is being used. It's up in Kitsalt. It's further away from our community. It's adding to the problem.

In this day and age, we cannot be adding to the problem any more. There's too much information that's out there, and we as Canadians really need to stand by the stance that was used during the summertime, you know, when he went to Paris and he spoke about Canada being a leader. You can't come back and pretend you're the leader when you're going to increase the pollution on the people, the people that had faith in this government and voted them in.

It was a landslide win for the Liberals. They got to form a government. And for the last year, I have watched them weasel out of everything.

There's a few things that I do know of. Ridley Island was under management from a guy from Texas, and he was the guy that was running the coal facility. Under his stewardship, there was a ship that went missing — not a ship. A shipload of coal that went missing. \$60 million worth of coal went missing from the port. This man was taken to Court. He had his fines paid for, his lawyers paid for, and the money was paid for the coal that was missing. And it was paid for by the Canadian taxpayers.

There was also a man that lost his job because of that. There was — someone had put a piece in what is called, I believe, the — it's a Rupert site. And the guy liked the comment and said, "A good read". This man has had his life completely dismantled. He has no pension. He has no job. All for an opinion.

The devastating reach that can happen just because you have an opinion, it's wrong. Our society is wrong. When you think back to the doctrine of discovery, we're classified as sub-human. That's still on the books. That's still a justification to not do nation-to-nation negotiations.

I look around and I see the devastating of the Tsimshian Nation. I don't know how to fix it. I don't know to fix what I'm actually here to help you find solutions for. I don't know how to fix anything. There's so much to fix.

The reason I was late is because I was at Tim Horton's listening to man that is 60 years old today. He'll be turning 61 tomorrow. He lost his home due to fire, and now he's in temporary housing and he's been told he only has that housing temporarily. And I just don't understand how this corrupt system can justify itself over and over and over again, saying that it's doing anything for the people when it is only accountable to the dollar.

And I want you all to know, for thousands upon thousands of years, the Tsimshian plus many other Nations upon North and South America thrived without a dime in their pocket, without the word of economy, without polluting someone else's land because it was very, very strictly monitored. You want to come on to someone else's land, you better have a good intention. If you don't have a good intention, watch out for your head.

We don't have those laws. We don't have ways of ending conflict the way it was ended before. It was seen as barbaric. But this long drawn-out process that just hurts, it's just as barbaric.

This paternalistic system that sees resource rape as the only way to exist is barbaric. I don't know how to suggest to fix this except for saying rip everything up and start all over because our foundation is very weak. Every single person across this land is starting to wake up, and they are waking up and they are disgusted at what has been done in their name.

I don't like being a Canadian knowing that there are bombs landing on other people's heads. The corruption is complete.

**Johanne Gélinas:** We cannot add much to your opinion, but still, you were here yesterday. I'm right?

You were there today in part. Don't you think that the solutions that your people are providing, that there is hope?

**Leona Peterson:** No.

**Johanne Gélinas:** Then I will try to —

**Leona Peterson:** Not when my community is being slated for projects that are going to hurt us, you know. They're trying to stop this project by saying the salmon, the salmon. But I'm going to be polluted. I'm put at risk of a facility being on that island in an earthquake zone.

I can't remember the date. All I know is my mother turned 69, and on her birthday, in the evening, we were celebrating in a hotel. It was a huge family event. And then the earthquake happened.

There's no strategy to help anyone in an earthquake. And no sooner did I realize that when I saw what was going on in New Zealand. There were people walking the streets. They had nowhere to go. They had no idea where to go. They're wandering around aimlessly.

Did they have water? They didn't even know. Were they okay, were they safe? They didn't know.

Putting a tanker ban on the coast would be ideal, but putting a tanker ban for bitumen is only solving part of the problem because those tankers are huge, and increasing traffic means that we're putting the species in the ocean at risk. Not just because of the traffic, but because of the pollution from noise and getting rammed in the head by a boat, being a whale, isn't fun.

**Johanne Gélinas:** Then give us a chance to try to look at solutions and keep some optimism.

**Leona Peterson:** It's a pretending process.

**Johanne Gélinas:** Jury's still out with that one. We'll see.

**Leona Peterson:** From my perspective, I've watched and witnessed in my lifetime of 50 years too much. I live a life of less than because of who I am. Not because I didn't go to university, not because I'm not a millionaire, but because I was born Tsimshian. I had no choice in that designation, but I've been judged. I have been oppressed. And I deal with that on a daily basis.

I don't feel safe in my own community because there are people that belittle my stats, belittle my beliefs and when those beliefs are standards that are very high but also standards that are met in different parts of the world, it's difficult to reconcile to hope, to keep hoping.

You know, in a flash of someone's will, we can change the face of Canada completely. There's no will for it.

**Johanne Gélinas:** Thank you for your presentation.

**Leona Peterson:** Thank you for listening.

**Johanne Gélinas:** So the two last presenters will be by phone.

(PAUSE)

**Johanne Gélinas:** So thank you for joining us this afternoon, and you can start with your presentation. And you don't know, but you are in the middle of a room with other participants.

**Will Micklin:** Thank you, Madam Chair. So I will proceed with my introduction. I have approximately eight minutes of a statement for submission as testimony and then I will offer myself to any questions that you may have. So with your permission, I will proceed.

**Johanne Gélinas:** Please do.

## **WILL MICKLIN, TLINGIT AND HAIDA TRIBES OF ALASKA**

**Will Micklin:** (Speaking in other language) Brown Bear Clan of the House of (indiscernible), the man who married the bear. (Speaking in other language) Child of the white man, grandchild of the Raven (indiscernible). My English name is Will Micklin, and I wish you (speaking in other language).

My friends, kinsmen to my ancestors, I bring you greetings from Richard J. Peterson, the honourable President of the Central Council of Tlingit and Haida Tribes of Alaska. I am 2nd Vice President of the Central Council that is a historical and traditional indigenous government representing over 30,000 of our Tlingit and Haida Indian citizens. We are indigenous peoples of our Aboriginal territory, and we bring you greetings from our peoples and (speaking in other language). Thank you for the opportunity speak to you today and your Expert Panel in consideration of the question of the review of federal environmental assessment processes and taking testimony through this indigenous presentation.

I have a short statement to make, short eight minutes, and I hope that should be — the detail of my presentation and then offer myself to your questions.

So with your permission, I will now proceed with the formal submission, and this is a written record that we will submit and have submitted on the letterhead of Central Council for the review of the Panel.

**Johanne G  linas:** Thank you.

**Will Micklin:** So my statement is as follows.

The Canadian *Environmental Assessment Act of 2012*, which I will refer to in my remarks as the Act, and its Regulations establish the legislative basis for the federal practice of environmental assessment in most regions of Canada. The Act describes the environmental assessment process as one project, one assessment. This is not protective of the overall values in a watershed or region.

The assessment of the impacts of any one project needs to be coupled with all other development in the watershed in the basin, including the aquifers, the groundwaters and ecosystem of the region. Infrastructure associated with these developments, including power lines, road access and water use and withdrawals, should be integrated and discussed holistically. This cumulative impacts assessment should be conducted by the federal Ministries and agencies, and not the — solely the province or proponents.

Sections allowing provincial equivalents and substitution for federal analysis should be removed. Allowing provinces and territories to conduct



cumulative effects analysis through their own environmental assessment processes has failed to achieve the goals of the Act. All environmental assessments should take a watershed approach to the impact analysis as the small scale of review.

Currently under the Act, any designated project in non-federal territory with no Aboriginal or transboundary implications or any effects on local or regional air, water or soil, climate, biotic interactions, ecosystem functions or wildlife other than fish and migratory birds are excluded from consideration and impacts analysis for all of these values should be reinstated for all projects and the effects considered cumulatively.

The procedural aspects of indigenous consultation are not adequately addressed and often left to the proponent. The Act should require a minimum prescribed level of consultation and include measurable benchmarks to evaluate the success of that consultation. Indigenous groups, including those such as Central Council, subject to transboundary environmental effects should be invited to participate on environmental assessment working groups which are tasked with leading a technical review of the environmental assessment information provided by a proponent. It should be a requirement both for direct with indigenous groups to determine how they want to be involved and for negotiations of impact-benefit agreements. Early engagement allows for an early understanding before the assessment begins of what traditional community knowledge exists, sensitive areas to be avoided, and considerations for the scope of the environmental assessment.

The Act should embrace the standards of the United Nations Declaration on Rights of Indigenous Peoples and include specific language concerning free, prior and informed consent to assure accessible, transparent and meaningful consultation, including the right to appeal and the right to consent.

The federal environmental assessment process should apply to all projects that have the potential for transboundary effects. In addition, an independent oversight body review, such as a panel, should be required for all projects in a transboundary watershed, basin, aquifer and ecosystem to bring credibility to the environmental assessment process and (indiscernible) and ability to assess the decisions. The panel should have the authority to amend the decision statements issued to proponents to allow for implementation of findings.

In the Act, explicit requirements for needs and alternatives analyses have been eliminated. A robust alternatives analysis should be reinstated. The operational policy statements under the Act should include the rationale for the selection of the project design among all viable alternatives that fulfil the project's objectives. This should include a consideration of alternatives, including the no action alternative, as well as the rationale for selection of the final project design and mitigation. Consideration of an alternative cannot be based solely on the cost to the proponent. Any consideration of costs should be accompanied by transparent financial

information from the proponent. Business confidentiality should not be a pretext for a proponent to withhold information in considerations of design and mitigation alternatives.

If any of these requirements are waived, the rationale for the waiving of these requirements should be published in the Act registry. Alternatives analysis should begin with an ecosystem services assessment and be based on a set of general principles that include the inherent rights to a healthy environment by including (1) the long-term impacts on communities from high risk components, (2) the human right to clean water, (3) protection of environmental, economic and cultural rights that does not permit a trade-off or offset to food, air and water security, and (4) human life and cultural practices equivalent or pre-emptive of profits, especially profits made excessive by externalizing the added cost of meeting environmental standards through best practices onto people and their ecosystem who would then bear the cost of pollution caused by discharges and accidents.

The operational policy statements in the Act should be strengthened to specify that all predictions about environmental effects and their significance be accompanied by (1) an explicit statement about the underlying causal hypotheses, (2) an explicit account of the project-specific evidence that, in the view of the reviewer, justifies the predictions, (3) an explicit assessment of the extent to which the predictions are consistent with the weight of current scientific evidence, and (4) if they are not, an explanation for their discrepancy.

All parts of the environmental assessment should be based on credible and accountable peer-reviewed science. Every environmental assessment that's concerned with (a) predicted effects and/or (b) predictions about the effect of mitigation measures on these effects, a residual adverse environmental effect is an adverse environmental effect of a project that remains or is predicted to remain after mitigation measures have been implemented. All too often, the scientific evidence for these predictions is lacking, and there is little consideration of error or synergistic effects between multiple predicted impacts arising from a single project while cumulatively with other projects in the watershed.

The rationale and/or evidentiary basis for these predictions is often weak, verging on non-existent. Without clear scientific evidence, these predictions are mere guesses that lack a factual foundation or justification. The hypothesis on which the impact prediction is based should be specified. All pertinent related science should be reviewed and referenced, including evidence that does not support the hypothesis. Environmental assessment should establish a clear cause and effect state based on evidence and data. Conclusions not based on actual evidence should not be allowed.

Mitigation plans also should be based on science and experience. Follow-up studies should be required to measure if the predicted outcomes

of mitigation are true. Mitigation measures should be implemented regardless of whether the residual environmental effects are predicted to be significant or not to help account for unexpected cumulative and synergistic effects.

That's the end of my statement. It is in writing with citations that will make it more understandable to the reader more than just hearing the oral testimony.

I will put — before I take your questions, and thank you again, put in context that Central Council is a transboundary party at interest as an indigenous government in our region (indiscernible) economic development. We are engaged in the consideration of mining in the transboundary and southeast (indiscernible) occurs in British Columbia and the Yukon provinces of Canada. At the same time, there are mining developments in the states of Wisconsin and Michigan that have transboundary potential environmental consequences to the province of Ontario. So we are on both sides of the boundary, either upstream or downstream, on these various development issues. We simply seek a standard that is — achieves the goals of the Act, the Canadian Act, and the environmental standards equivalents as part of U.S. domestic law that satisfied the requirements of the Boundary Waters Treaty of 1909 and protecting the environment is suitable to the requirements of economic development on both sides of the boundary.

So we are not opposed. We merely seek a process, a review of the environmental analysis that fairly treats the record and is predictive of outcomes based on scientific evidence and traditional ecological knowledge, indigenous knowledge, and protects the communities both for development purposes as well as environmental purposes.

So with that, I will conclude my remarks. Thank you, Madam Chair, for the opportunity to speak, and I present myself to your questions at your convenience.

**Johanne Gélinas:** Thank you very much, Mr. Micklin. Rob Northey would like to ask you a question.

**Rod Northey:** Yes. Hi. Can you hear me clearly?

**Will Micklin:** Yes, I can.

**Rod Northey:** Good. I'm trying to understand, just following up on your suggestion early on in your presentation on using the watershed as the unit for assessment, can you point us to some watershed studies on your side of the border that would give us an idea of the way we should be doing it on our side of the border?

**Will Micklin:** As part of the statement of cooperation between the State of Alaska and the Province of British Columbia and to which Central Council is a member

of the working group, we have developed a map of the watersheds in — between British Columbia and the State of Alaska, and it is instructive to us to see what the environmental consequence is for the various watersheds without regard to the international boundary, but with regard to communities. And we have our communities, both Tlingit and Haida, on both sides of the boundaries.

So those show, I think, a part of the picture. We think it is only a part of the picture. We can certainly send to you the map that we developed of the watershed that I think you will see, on review, gives some indication of what factors are important when we're talking about transboundary effects in the waterways that have the potential for environmental effects.

And we add to that things that we still are working on mapping, one of which are the aquifers, the groundwater resources, the basins or the river basins that are often grouped only into the transboundary rivers, but which are more complex as to the actual drainage for tributaries for the main water bodies (indiscernible) outlets downstream and the — within that context, what the overall boundary is for the ecosystems which include the integration of groundwater, the waterways, tributaries, the wetlands and the fisheries, the ground animals and the avian and bat species.

So it's a part of it. It's instructive to look at the maps from the outset and I — but it's only a part of that picture, and I would be glad to share with you the map that we've developed for the statement of cooperation.

**Rod Northey:** Thank you.

**Renée Pelletier:** Hi. This is Renée Pelletier, one of the Panel members.

And I was wondering if you could elaborate a little bit more on your comments on your recommendation that an IBA be mandatory.

**Will Micklin:** I'm sorry. On the — what was the mandatory?

**Renée Pelletier:** I believe that there should be a requirement for an impact-benefit agreement if development is to go ahead. I was wondering if you could elaborate a bit more on that.

**Will Micklin:** So I think we are really looking for are early engagements before a lot of work is conducted in environmental assessments with the communities at interest, and so I much appreciate your willingness to listen to the Central Council that represents Tlingits and Haidas and certainly many Tsimshians in southeast Alaska, although we are on the other side of the international boundary, but we think those communities — we are tied across the boundary, for one thing. For another, our communities have close contact and the — our natural resources, whether they are flora or a fauna or waterways, connect us intimately.

So getting that understanding of what we — in discussions of what our interests are in our communities and what affects our communities most significantly, I think, would inform the environmental process from the outset and, I think, obviate a good deal of what occurs in environmental assessments, which is a very objective view that does not subjectively account for the interests of communities that are so closely tied to the environment.

So in terms of what agreements could extend from that early consideration, early consultation, it really depends on the scope and purpose of the project that is put forward by the proponent, whether it is a — whatever the project could be really would define the terms of what could be an agreement. I think it should be mandatory in terms of consideration of the factors most important to the communities at interest. So it does not mean that there have to be mandatory exchange of financial consideration or mitigations from the environmental side. It simply means that there is a requirement to engage in that what we call free, prior and informed consent so that that consent can be reached based on the factors most important to those communities.

That, we think, should inform the scope of the environmental assessment that is then (indiscernible) scientific experts that would objectively consider those factors that would be established through that early consultation and a framing of the scope for that EA review.

I hope that answers your question.

**Renée Pelletier:** Yes. Thank you.

**Doug Horswill:** And just — what experience have you had or what involvement have you had with the Canadian environmental assessment process to date, and do you know what involvement is provided within the U.S. system for developments in places like Wisconsin, Minnesota where there are mining developments that would feed into the Great Lake waters?

**Will Micklin:** Thank you for the question.

Our experience has been mostly framed around the transboundary mining projects in British Columbia and the Yukon, so with regard to the Canadian law, it's a little, I'd say, turned upside down from U.S. domestic law. In U.S. domestic law, the statutory mandates are established by federal legislation, so the *National Environmental Policy Act* determines environmental law for most lands or lands that would have effect on federal lands and resources, and the state (indiscernible) equivalent environmental law that is based on the NEPA but which provides for the environmental priorities of the state principally on state lands, but if they have an effect on federal lands, it still comes under the NEPA and it becomes a concurrent environmental assessment.

So you — in most instances, and what's been occasions in projects that I've participated in directly, you have a concurrent environmental review by a state and an environmental assessment that could be an environmental impact statement by the federal, so those processes are distinct, but they proceed concurrently and must consider questions that are raised within each of the other scopes.

So it's fairly complicated. It leads itself to a lot of litigation. My understanding of the Canadian system is that the federal system really is pre-empted by exclusions to the state environmental — provincial environmental process, and even when the federal is implicated, it comes in (indiscernible) environmental process conducted by the province.

Our concern is that it changed — that a lot of that content of the EA is determined by the proponent, that it becomes a provincial document and then the federal Ministry comes in and certifies that provincial document. We think that, pursuant to our recommendations, there are more favourable interpretations to the Act — of CEAA 2012 which provide a more rigorous implementation of the Canadian — the federal Act that would provide for a greater scrutiny and assessment of the environmental factors that do not seem evident at this point and, in particular, the engagement of parties and interests in consultation such as indigenous groups. It seems it could be more rigorously implemented than currently.

So we are not experts on Canadian law. What we offer is a review of the premise under the expert analyst's request for submissions. We think it goes to our questions and is at least reflective of our concerns in our reading of the Canadian Act, and we are hopeful that it leads itself to further discussion between Central Council and the Canadian federal Ministry and the Expert Panel to further discuss those concerns that we may have and can be better informed by the experts on your Panel. And for that, we are most grateful.

**Johanne Gélinas:** Thank you very much. And we look forward to getting your written submission before December 23rd.

**Will Micklin:** We submitted a draft today, and we'll have a letterhead on Monday.

**Johanne Gélinas:** Thank you very much. Have a nice weekend.

**Will Micklin:** Thank you.

**Johanne Gélinas:** So we have one last presentation by phone again, so Martin.

(PAUSE)

**Richard Overstall:** Hello, everyone.

**Johanne Gélina:** Hello, Mr. Overstall. Johanne Gélina, Chair of the Expert Panel on Environmental Assessment.

**Richard Overstall:** Good afternoon, Madam Chair.

**Johanne Gélina:** Good afternoon. How are you?

**Richard Overstall:** I'm good.

**Johanne Gélina:** So you are closing this one-day presentation with indigenous communities. The floor is yours, so to speak, and we will let you go through your presentation and some of us may ask you question after. Does that work for you?

**Richard Overstall:** That's fine. Thank you very much.

## **RICHARD OVERSTALL**

**Richard Overstall:** Well, I notice you said I'm finishing up the day in indigenous presentations. I'm not an indigenous person, and I am not speaking on behalf of any indigenous client, so I'd just like to make that clear. In fact, I'm a lawyer based in Smithers in northwest B.C., and I am just speaking for myself personally, although my presentation is based on experience representing clients in environmental assessments under CEAA 2012, under the National Energy Board and under British Columbia environmental assessment processes as well as other environmental decision-making processes. So that's my background.

**Johanne Gélina:** Mr. Overstall, I didn't mention that, but we have received your submission. We have gone through it, so you don't need to read it for us, but —

**Richard Overstall:** Great.

**Johanne Gélina:** — highlight the key points.

**Richard Overstall:** Okay. So essentially, what I'm suggesting is that the present process under the federal *Environmental Assessment Act* is structurally unfair and my goal is to suggest ways to make the process more fair and, therefore, enabling better informed decisions to be made.

I took — as you saw, I break my presentation up into three sections. I look at the law as it's set out in CEAA 2012. I then summarize some of my experience with the practice of environmental assessment, and then I suggest some remedies.

The main point I make about the law in terms of where the responsible authority or the Panel gets its information — the main point I make is that it can use any information that is available to it. It has fairly wide-ranging powers to

require collection of information from anyone, and it also has the expertise and knowledge from federal agencies. The only role I note — the only statutory role for the project proponent, a project proponent is to produce a project description at the beginning of the process. After that, the Panel or the responsible authority has fairly wide-ranging powers, in my submission, to gather the information.

In practice, the agency, under its policies, requires the proponent to produce an environmental impact statement which typically is a voluminous report and what I say is that that report then provides most of the information that is available. It's the main information source for the agency to determine if there is going to be a significant adverse environmental effect.

But when you actually dig into the records, the back and forth information requests, correspondence and so on, public sessions, you find that, in practice, the agency and other government reviewers work intimately with the project proponent to make its — in my submission, to make its environmental impact statement immune from legal challenge. And I give a couple examples from the agency's review of the Pacific Northwest LNG project, and I won't read those through.

Essentially, what they're — the agencies admit they're doing is helping guide the proponent to finalize its model. And I won't go into the details of what that model is meant to show. And it says that its efforts had resulted in a defensible modeling approach.

So in other words, there's an intimate relationship between the federal agencies and the proponent to try to get the environmental impact statement into some kind of defensible form. And in my submission, that is fairly common throughout environmental assessments in other jurisdictions and in other environmental decision-making, statutory decision-making with respect to forestry, with respect to fish and other environmental legislation. It seems to be fairly common and is generally characterized as agency capture.

And essentially, what happens is, in my submission, that the agency and the proponent say, "How can we get, for example, an environmental impact statement to a stage where it can withstand a judicial review?" And that's what seems to be what the agency and the proponent are working on. And I give an example also of where the agency and the proponent are exchanging correspondence and they are essentially negotiating the conditions that the agency will put on the project. And all of this mitigates against — in my submission, against a fair, open process where all evidence and all interests are considered equally.

In terms of the remedies, one of the things I point out is that, generally, the Courts, either provincial or superior Courts or the Federal Court, will accord a great deal of deference to tribunals making these kinds of decisions, in this case, the Canadian Environmental Assessment Agency. And what the Courts require is



that the final decision be reasonable based on the evidence rather than correct. There's a reasonableness standard of review, and not correctness. As a result, it's very rare that a Court will overturn a decision that's made by a tribunal.

Given that, what I say is that if that's the case, if the superior Courts give so much deference to the tribunal, then the tribunal has to live up to that trust that is put in it. And right now, these sorts of tribunals and decisions in the agency report are essentially made by line bureaucrats, career bureaucrats who are very — often very sensitive to the political and bureaucratic climate in which they work. And what I recommend is that the decisions be made by qualified people who are separate from the line agencies. In other words, they are given the independence in much the same way as Judges are.

The second recommendation is that the information that the decision-maker considers should be able to be commissioned by the decision-makers as independent research that is paid for by the proponent but is independent of it. Essentially, what one finds in an environmental impact statement that, in fact, it's an argument for the project to go ahead. And there's a mixing of argument and information that is hard to sort out and is generally and often not trusted by other parties to the process. So independent decision-makers, independent scientific research and studies.

I recommend that all parties to a review, including the proponent, Aboriginal groups, have equal opportunities to provide information and knowledge. One of the things I note in the current Canadian *Environmental Assessment Act*, although government agencies and the proponent provide information and knowledge, in the wording of the Act, the public only provides comments. And of course, a comment can contain knowledge and information, but it shows that there's a bias whereby the core of the information that is being considered by the decision-maker is knowledge and the rest is just mere comment.

And then thirdly, that in considering such information and knowledge, the sole basis should be, as in a Court of law, on its relevance and reliability.

So in summary, I find in reviewing the Act that an environmental assessment responsible authority or panel has wide powers to get information and consider it — consideration information from a wide range of sources. In fact, the proponent is the main source of information and that the CEAA agency and other government agencies work intimately with the proponent and perfect its submission and, in my submission, its argument at the expense of other parties. And therefore, these are — this bias needs to be corrected.

So those are my submissions, Madam Chair.

**Johanne G elinas:** Thank you very much, Mr. Overstall. And my colleague, Rod Northey, will start with a question.

**Richard Overstall:** Thank you.

**Rod Northey:** Hi. Can you hear me?

**Richard Overstall:** I can.

**Rod Northey:** All right. So I'm just trying — I'm dealing with your remedies and your recommendations, and I'm just trying to understand how — what you mean by various terms.

So under the current Act, you're talking about preparing an assessment report for a decision-maker. So under the Act, the agency's not a decision-maker, the CEEA agency, the Minister is. So are you talking about the agency or the Minister?

**Richard Overstall:** I'm talking about the production of the report on which the decision-maker, be it the Minister or the Cabinet, relies.

**Rod Northey:** All right. So the agency would produce a report for the Minister.

**Richard Overstall:** Right.

**Rod Northey:** Okay. So then you want the agency to be independent of the other Ministries in the government?

**Richard Overstall:** That's right. Let me put it this way. The people who write the reports and who are responsible for the report should be independent, yes.

**Rod Northey:** So if the CEEA agency's writing a report on a mine, you don't want them to consult with Department of Fisheries and Oceans.

**Richard Overstall:** No. I want them to consult, for sure, and get information from the Department of Fisheries and Oceans, but I want them to be independent and be instructed to be independent and to be fair in much the same way as we instruct Judges to be independent and fair.

For example, right now, if the agency is the responsible authority, a report gets written but we don't even know who writes the report.

**Rod Northey:** Okay.

**Richard Overstall:** So I — as I suggest, that the report writers be identified and be independent outside of the regular line agencies.

**Rod Northey:** Okay. And what is your view? It seemed like the earlier part of your presentation, you were talking about the problem being too much cooperation between the writer of the environmental assessment and the writer of the environmental impact statement, which is usually the proponent.

**Richard Overstall:** Right.

**Rod Northey:** All right. And so where does that feature into this? Do you have any changes to suggest about what the proponent does?

**Richard Overstall:** Well, if you go back to the — what's laid out in the Act, there is no requirement for an environmental impact statement.

**Rod Northey:** Right.

**Richard Overstall:** So what I'm suggesting in my second recommendation is that a lot of that information that currently is relied upon by the report writers from the environmental impact statement be actually independently commissioned by the report writers.

**Rod Northey:** Okay. So the agency you would like to have be able to get its own research.

**Richard Overstall:** Yes.

**Rod Northey:** All right.

**Richard Overstall:** I mean, they can certainly commission it maybe sometimes even from the same consultants, but in that case, the consultants have an obligation to the agency and not to the project proponent.

**Rod Northey:** All right. So is that your — okay. Now I understand, I think.

Is your — then one of your key recommendation that there no longer be an environmental impact statement by a proponent; instead, we go to an environmental assessment done by the agency?

**Richard Overstall:** Right.

**Rod Northey:** Okay.

**Richard Overstall:** And then under the control of the independent report writers.

**Rod Northey:** Who are at the agency.

**Richard Overstall:** Yes.

**Rod Northey:** Okay. Thank you.

**Doug Horswill:** I guess I'm going back a little earlier than Rod's. He was speaking of the — your solutions. I was going to ask you about your problem.

In paragraph 12, you use a “for example” and then describe the interaction between DFO and PNW. How common, in your experience, is that kind of process?

**Richard Overstall:** It is quite common. I can give you another example which was from the Northern Gateway hearings. I was able to represent a client who produced a report on the effects of an oil spill in a salmon-bearing river. Not a coastal situation, but — that report was the only report talking about the ability of anyone to contain a spill in a salmon-bearing river. And I thought it was a good report, but that doesn't matter.

The proponent in that case did not bring on a report by a salmon biologist who could talk about the same thing. They just didn't discuss it. When it came to cross-examination of the salmon biologist brought on by my client, the proponent only questioned him on my client's source of funds. You may recall at the time there was a big political furor about U.S. foundations funding Canadian environmental groups. That was all of the questioning by the project proponent to my client. There was no questioning on salmon biology, the effect of a bitumen spill on salmon rearing and spawning areas.

The panel asked no questions whatsoever. So here again, you have a situation whereby important information is brought in front of, in this case, a joint NEB-CEAA panel, but because the proponent — it wasn't an issue brought up by the proponent, then no one has any interest in cross-examining the — in this case, the salmon biologist. So that's just another example.

**Johanne Gélinas:** Thank you very much, Mr. Overstall, for your presentation. Very helpful in our forward thinking. And if there's anything that you would like to know about the Panel, we haven't had a chance to share with you what is available, but you can go on our web site. There's a lot of material as we speak which is posted on the web.

So thanks again for your presentation.

**Richard Overstall:** Thank you, Madam Chair. And I'd just like to express my appreciation for the Panel staff in arranging for me to phone in and talk to my presentation.

**Johanne Gélina:** Thank you very much.

