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Chair

The Honourable Judy A. Sgro

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• (1530)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call the meeting to order of the Standing Committee on Transport, Infrastructure and Communities.

Pursuant to the order of reference of Wednesday, October 4, 2017, we are studying Bill C-48, an act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

Welcome to our committee, members and witnesses. We would like to start off with the Aboriginal Equity Partners, Mr. Dale Swampy, coordinator, and Mr. Elmer Ghostkeeper, steward. We also have from the Lax Kw'alaams Band, John Helin, the mayor.

Whoever would like to start off, you have five minutes. I'll try raising my hand when you're getting close to that time. If you can get your comments in within that time, we'd appreciate it so that the members can ask their questions.

Mr. Dale Swampy (Coordinator, Aboriginal Equity Partners): Thank you.

I'll start, if that's okay. My name is Dale Swampy. I'm from the Samson Cree Nation. I'd like to thank the government officials for inviting us here, and for the Algonquin territory that we're having this meeting on. I respect their land and their traditional rights to this area. I'd like to welcome the chiefs who are here today, as well as council members and community members from indigenous communities in B.C. and Alberta.

The Aboriginal Equity Partners were formed in 2013 as a group of supportive communities for the northern gateway project. We eventually accumulated 31 of the 52 first nations that were offered equity on the pipeline. The 31 first nations included first nation chiefs and Métis leaders—18 first nation and Métis communities in Alberta and 13 first nation and Métis communities in B.C. As coordinator, I was chosen to lead the group in their meetings, structure, and negotiations about northern gateway. I was also the manager of the terrestrial region for B.C., so the 13 communities that joined us in B.C. were members of my group of responsibility for consultation on the northern gateway project.

Our role is to protect the traditional way of life and environment, both along the pipeline and in marine operations, while ensuring our people in communities benefit from long-term economic benefits and jobs. Collectively, first nations and Métis communities stood to

benefit by more than \$2 billion directly from the project, including \$600 million in revenues as owners of the northern gateway project. A lot of the ownership was an investment that was carried by the funding partners, who were the oil and gas producers in western Canada.

Before the project was cancelled by Prime Minister Trudeau, the equity partners represented by the four stewards—one of whom is here, Elmer Ghostkeeper—were in the process of negotiating for one-third ownership of the pipeline, up from the 10% they originally had with the northern gateway group.

The AEP had a governance structure, basically, with the four stewards being elected from the 31 leaders. An AEP steward sat on northern gateway's management committee, which represents the ownership groups and has members from Enbridge and the project proponents, which were the oil and gas producers.

On May 3, 2016, we had an AEP all-leaders gathering in Vancouver, where the Assembly of First Nations National Chief Perry Bellegarde attended and spoke. The AEP had senior-level meetings with the Government of Canada, British Columbia, and Alberta. We were working collaboratively with governments on all critical Canadian infrastructure issues regarding the economy, the oil going to tidewater, and access to new markets overseas.

The AEP stewards met with Hon. Marc Garneau, federal Minister of Transport, in January 2016 and vigorously communicated our position that we expect to be consulted on the proposed B.C. coast crude oil tanker ban under section 35 of the Constitution Act, 1982, which ensures the duty to consult and our inescapable economic interests.

In February 2016, we launched our website, www.aepowners.ca, and our Facebook site.

We are here to oppose the tanker ban. We have worked hard and diligently. Our 31 first nation chiefs and Métis leaders invested a lot of time and resources to negotiate with northern gateway with the prospect of being able to benefit from the project, to be able to get our communities out of poverty. There are no current major projects going on in northern B.C. A lot of our mining has now deteriorated and been closed down. We don't see any real prospect in the future, other than what we can do if we re-engage with northern gateway and the pipeline.

Thank you.

• (1535)

The Chair: Thank you very much, Mr. Swampy.

We'll go on to Mr. Ghostkeeper.

Mr. Elmer Ghostkeeper (Steward, Aboriginal Equity Partners): [*Witness speaks in Cree*]

I'd like to acknowledge that we are on unceded Algonquin territory and also say hello to elected chiefs, elders, and elected representatives of Canada, members of Parliament.

We are here today to tell you that Aboriginal Equity Partners was denied the honour and duty of the crown to be consulted and to exercise its inescapable economic rights under section 35 of the Canadian Constitution. This consultation must take place before this bill can be implemented.

The Aboriginal Equity Partners' main role was to protect our traditional way of life and the environment, both along the northern gateway pipeline corridor and in marine operations, while also ensuring our people and communities benefited from this long-term economic opportunity.

We were in the process of negotiating a third ownership of this project and looking at it to be majority-owned by the 31 Aboriginal Equity Partners, and it would be the first Canadian-owned megaproject to be owned, managed, and operated by indigenous people. We were denied that right.

In November of 2016, the Prime Minister announced, without any consultation with any of our communities, the dismissal of the application for northern gateway, after it had already been approved two and a half years earlier. We were profoundly shocked and disappointed.

Some communities invested their own money in businesses to support construction. Individuals went back to school to train for jobs on the project that would allow them to stay in their own communities. Many leaders who invested time to make the project better had their efforts wasted, including my colleague steward, the late Grand Chief Elmer Derrick, who passed away this September.

Likewise, the AEP communities were never consulted on the tanker moratorium. In a September 7, 2016, meeting with Minister Garneau, and again in a September 30, 2017, letter to him, the stewards carried the assertions from the AEP communities that their economic rights under section 35 had been negatively affected by a tanker moratorium. As you know, many of our indigenous communities suffer from a high rate of poverty and its associated ills.

We carried the message that the communities needed to be consulted, as they were the inherent rights bearers, and that we stewards had no authority to represent them on their rights. We offered to help the minister to facilitate meeting communities, either individually or collectively. We never received a response to our verbal or written request to be consulted. We only received a letter notifying us that the federal government had decided to move ahead with the moratorium that would kill all our work and opportunities.

We must be consulted before this bill is implemented.

• (1540)

The Chair: You have about 45 seconds.

Mr. Elmer Ghostkeeper: Therefore, I'll end by saying that we strongly recommend that this parliamentary committee ensure that Transport Canada uphold the crown's constitutional obligations and the government's own stated principles and undertake deep consultation with our communities before implementing Bill C-48. We believe that, by working in partnership, we can enhance protection for the beautiful B.C. north coast area, while also allowing a viable aboriginal-led oil transport project that will benefit all Canadians.

Thank you.

The Chair: Thank you very much, sir.

We'll move on to Mr. Helin for five minutes, please.

Mr. John Helin (Mayor, Lax Kw'alaams Band): [*Witness speaks in Tsimshian*]

I'd like to thank you today for allowing me to speak before you. I'd like to acknowledge the traditional territory of the Algonquin people, on whose territory we're meeting today.

Like many first nations in Canada, Lax Kw'alaams is on the north coast of B.C. We're one of the biggest bands in B.C. We have over 3,800 members. We have nine tribes, and we've been living in that place for thousands of years. We have lived off the sea and the forests and everything around us, so it's in our best interest to look after the environment. In any proposed project that comes along, we work with the necessary people to ensure that we look after the environment.

As many of you probably know, the decision to cancel the PNW LNG project, which was just cancelled, was taken with a lot of regret by members of not just my community but all along that route, because our people are starving. In my community my members have to decide between paying a hydro bill or putting food on the table. That's the reality in a place like Canada. That was hard for them to take, because we had negotiated a good agreement with that project and that's not going to happen.

If you look at where our community is situated, right next to the Alaska border, that's probably the best port on the west coast of North America right now for development. It's the closest to Asia. It's a deepwater port, and it makes sense that at some point it's going to be developed.

Look at what's happening in Canada, where heavy oil is allowed to leave Vancouver harbour, a beautiful place like that, and it's going off the east coast. It's all over Canada right now. There are barges going to Haida Gwaii with diesel oil, all types of oil. There are tankers going down the west coast of Haida Gwaii from Alaska. What we're asking is, what is consultation? It has to be meaningful. It can't be a blanket moratorium.

If you look at our traditional territory and the Great Bear Rainforest, that was established without consultation with members from my community. The picture that was taken when they announced that, it was NGOs from America standing there trumpeting that accomplishment. We can't let people from outside our communities, NGOs and well-funded organizations that are against oil and gas or whatever they're against come in and dictate in our territories what we should and should not do.

We've been living here for thousands of years and we wouldn't compromise the environment. That's the most important thing to us. Salmon is right at our doorstep, all the sea resources. We have a fish plant in our community that, at its peak, will employ over 100 people. Our challenge is that because of DFO regulations and regulations controlled by Ottawa, we can't access quotas to put our people to work. That's what they love, being on the water. We have 60 or 70 gillnetters tied to our dock that can't afford gas to go out and fish. That's the reality, so we have to look at diversifying our economies and look at proposed projects that come along that make sense, and look after the environment while we're doing that.

Again, you look across Canada at the state of first nations communities. The third-world conditions in a lot of those communities are deplorable. I have one of the biggest communities in B.C. We haven't had new housing from the federal government in 15 years. Those are the challenges I have to face when I go to my membership.

All the ills that Elmer talks about, the social ills, the health, the education, how do we fund those? If we can negotiate with proposed projects like we had with the PNW project, that would have gone a long way to our addressing some of those issues with the resources necessary to do so.

• (1545)

We look forward to working with whoever we have to make these things work as long as we can look after the environment. It's not good enough for a government to say, we're going to put a moratorium in place in your territory, without meaningful consultation.

The Chair: Thank you very much, Mr. Helin.

Now we'll go to our members and Ms. Block for six minutes.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Thank you very much, Madam Chair.

I would like to welcome our guests here today. I have appreciated your testimony.

Mr. Swampy, you spoke about the investments made by the businesses within your community as well as the revenues that were expected to come from the northern gateway project. I'm wondering if you would just expand on what other benefits the Aboriginal Equity Partners were looking forward to as a result of that project.

Mr. Dale Swampy: We had an agreement with the northern gateway funding partners, of which there were 10, to allow us to participate in one billion dollars' worth of direct awards and set-asides for construction. When that opportunity was presented a lot of the first nations got together and developed JV partners. Some got together with other first nations to develop partnerships and spent money, and time and resources, in order to qualify their companies for this action, which was \$1 billion but not limited to \$1 billion. They were able to bid on any work over and above that.

There is a \$300-million community investment fund that the AEP group, including the stewards, would manage throughout the 30 years that the project would be in operations. This community investment fund would be used to fund different types of community investment projects: arenas, band buildings, schools, and so forth. It was based on a certain percentage of the revenue that's going to be received from the project throughout the 30 years.

There was training and job employment funding that included special consideration. We know that a lot of the community members would have difficulty in transitioning into a job environment so we developed a life skills program, which included hired members from all of the communities, to be able to train the people in being able to keep their jobs, to give them life skills so they can manage their transportation to and from the jobs, and then a group that was going to be formed by the AP, which would be a job employment services company that would place the employment into future projects either in northern B.C. or outside the communities.

There's also funding for specific initiatives that were developed as part of negotiations to the communities relating to other larger types of community investment projects that were included in the \$2-billion package. Then during the year of 2016, the AEP stewards were in negotiations with the funding partners to increase their proposed revenue from the 10% owners' equity to thirty-three and a third, one-third of ownership in the company, as well.

• (1550)

Mrs. Kelly Block: Thank you.

I'm wondering if you could just tell us if there are any future economic opportunities that would reasonably compare to the economic benefits that would have accrued to your members from this particular project.

Mr. Dale Swampy: We don't see any project that has given this type of opportunity. This project would have been unprecedented in the fact that the first nations would be owners of the project. As one-third owners they would take on both the benefits and the risks of this pipeline as part of the project's operations. The 31 communities would also have what they call the aboriginal environmental protection group, which would monitor the pipe on a 24-7 basis and commit themselves to protecting the environment around them to ensure that there was early warning if there was a spill of any sort.

It's unprecedented because the first 10% was a carried interest, which meant that the communities did not have to go out and get their investment monies in order to own 10%. The companies were ready to give them 10% equity in the program as part of the cost of doing business and out of respect to the first nation communities since it was a greenfield project and they were going through traditional territories that were not subjected to any type of development in the past or in the present. There was extra consideration for that.

The negotiations for thirty-three and a third per cent that were coming up were partly like that. It was a consideration of either carrying interest, or giving the communities the opportunity to gather their own investment monies.

Mrs. Kelly Block: I have one really quick question. Implementing this tanker moratorium was in the mandate letter that was given to the Minister of Transport right after he was appointed, so I'm just wondering if the Liberal Party, or any officials from the 2015 Liberal campaign, consulted with any of your communities prior to making this a campaign promise.

Mr. Dale Swampy: No. We were consulted after all the announcements and the mandate letter sent to Minister Garneau by Transport Canada. We expressed in those two meetings we had with Transport Canada, that consultation needed to be done individually with all 31 first nations that we represented as the Aboriginal Equity Partners group.

The Chair: Thank you very much, Mr. Swampy.

We'll move on to Mr. Hardie, for six minutes.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you.

I've lived up in that part of the world. It's quite spectacular in the Smithers through Prince Rupert area.

John, before you get away I'd like to grab your card, because you brought up the owner-operator issue. I'm on the fisheries and oceans committee, and I have a problem there too, so I'd like to talk to you about that.

Mr. Ghostkeeper, in the absence of the kind of consultation that you felt was suitable under the circumstances, can you briefly hit the high points, the key things, you would have told the government had you been consulted.

• (1555)

Mr. Elmer Ghostkeeper: I sat around the constitutional table from 1980 to 1982 as a young Métis leader from Alberta. Alberta is the only province in all of Canada with Métis land. We have our own provincial legislation called the Métis Settlements Act.

Mr. Ken Hardie: Mr. Ghostkeeper, could you keep it relatively brief because I only have so much time?

Mr. Elmer Ghostkeeper: I wanted to give you a backgrounder to show you that I'm familiar with section 35 as much as anybody.

Consultation has to take place within the context of the community that's being consulted, to take in their language, their culture, their lifestyle, the economic impacts, etc. It's based on their traditional land use, their prior occupation, use, and ownership that has existed for thousands of years.

As I recall, the National Energy Board's licence restricted that phase four consultation to be redone by the federal government on the west coast communities especially.

Mr. Ken Hardie: What I need to understand is what advice would you have given to government on how to proceed, given that we didn't have universal acceptance and agreement with this pipeline across that whole stretch of northern B.C.

Mr. Elmer Ghostkeeper: I think I stated in my opening remarks that I cannot speak on behalf of each individual community that requested consultation. That's their inherent right. As a steward, I respect that. I'm not going to say this is what should have been highlighted or not. That's for them to say.

Mr. Ken Hardie: Okay.

Mr. Swampy, did you want to add something?

Mr. Dale Swampy: I think it's important for the group. We wanted them to consult the 31 communities to express the point of view that the majority of the communities along the right-of-way approved and supported the project, and that the disinformation that you get from environmental websites and people Trudeau met on the west coast is wrong.

There is a lot of support for this pipe because it was going to bring economic development to the first nations who needed it, who were in poverty. Hundreds of young first nations men and women wanted work, and they were looking forward to this type of work. We wanted to prove to the government that when they say they're doing this because the first nations do not want this, it's a lie. The majority of first nations want it.

The only thing they're listening to is the loudest person out there, who is supported by environmentalists and the NGOs. The only problem we had was that we weren't so vocal. We didn't want to get into that type of back and forth. We wanted to have the government meet with these individual communities so that they would be assured they had proper support for this project.

Mr. Ken Hardie: The question then comes up, John, that the products that would not be allowed to be loaded onto tankers are pretty toxic to the environment that you folks honour and have respected and guarded for millennia, but there are other products that would be allowed.

Are there still opportunities to see the type of development that you were hoping for through the building of this delivery system, which was the pipeline?

Mr. John Helin: There are other proposed projects and entities that are coming to us now, but I'll go back to the LNG one that would have brought us \$2 billion in benefits over the 40-year lifetime of the project, in just my community alone. We negotiated that in the agreement.

When you talk about consultation, the government seems to download the duty to the industry, and they had a lot of difficulty doing that with us. One of the good things that came out of that negotiation was that we got a seat at the environmental table, federally and provincially. It was the first agreement of that kind in Canada on the west coast, so there are good things that come out of these things.

When you talk about the benefits and how huge they could have been, there are other things we're looking at, but I can't speak to bitumen because I'm not an expert on it. Somebody from the oil patch would have to speak to that.

• (1600)

The Chair: Thank you very much.

Mr. Donnelly.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Thank you, Madam Chair, and thank you to our guests for being here and providing testimony.

I want to speak about ministerial discretion, so I'll direct my first question to Mr. Swampy. Subclause 6(1) of Bill C-48 allows the minister, by order, to exempt identified oil tankers from the ban on any terms and for any period of time.

Subclause 6(2) says that the Statutory Instruments Act does not apply to such exemption orders, which removes requirements that such exemption orders be published and made easily available for public inspection.

Do you have any concerns about this broad ministerial power?

Mr. Dale Swampy: Definitely, the tanker ban moratorium and the tanker ban legislation and the conditions that apply to this legislation will inevitably put a stranglehold on all developments in northern B.C., which is probably one of the safest ports in world, one of the deepest. It will be applying to tankers that essentially have not ever had a historical record of failure.

I don't believe that the minister, as the chief and Elmer had pointed out, should have the ability to make such wide encompassing decisions on areas where it's proven that the majority of the residents in that area are first nations. Deep consultations should have occurred before there was any decision such as this. To make a decision such as this in such a wide scope is unprecedented and something that goes against everything we had hoped and Trudeau, when he was elected, had promised, which was to improve the relationships between aboriginal people and the federal government. One step to improve that would be to properly consult on a project such as this, on legislation such as this.

Mr. Fin Donnelly: Thank you.

Chief Helin, could you talk about the type of oil spill response regime that you would like to see, or would have liked to see, in your community or communities in the northwest?

Mr. John Helin: Before I was elected mayor or chief in my community, I was working with Eagle Spirit Energy, which is going to be up next. I try to make sure that I distinguish my role when I speak, because I might be in conflict.

However, what we were doing was working on a proposed project from Alberta to the coast. We got experts from Alaska, after *Exxon Valdez*, and what they have is considered now a world-class model for environmental issues. It's focused on prevention, not after the fact when something happens. I would point to something such as that to be in place in B.C., because right now we have nothing.

If you look at Haida Gwaii, when the freighter was foundering off Haida Gwaii, we had to wait for a tug from Alaska to come down and tow that freighter, so we have a long way to go in B.C. to be world class.

Mr. Fin Donnelly: I have two minutes and a last question.

Mr. Ghostkeeper, you talked about the duty of the crown to meaningfully consult, section 35. I think you touched on it in a previous question. You talked about traditional land use, language, culture, lifestyle, use, and ownership. That was going to be my question.

Could you elaborate a little more on what you feel meaningful consultation is? You've added a number of things, but is there anything else you could add to that in terms of what the government should be doing to meaningfully consult?

• (1605)

Mr. Elmer Ghostkeeper: I come from a community called Buffalo Lake Métis Settlement, and I was an elected councillor. We live in the pipeline corridor that comes from Fort McMurray to Fort Saskatchewan to Redwater, Edmonton, etc. The provincial government has a consultation policy for industry to come and consult us, and we have one of our own, too. When we consult and negotiate with industry, they've done their research. They hire their own traditional land use experts, they talk to trappers, and they talk to people who are still using the land.

It's our belief that I am the land, I am nature, and I am the environment. I don't see any separation. If I'm 70% water, how much more natural can I be than that? Our world view is different than the European world view, where, somehow through their science, they see themselves as separated from water. That's not a realistic view in our minds. When we sit down and consult with them, they ask us questions like that. We've done 15 years of traditional land use studies on our own, and we share that information with them.

Sorry, Judy.

The Chair: That's okay. Thank you very much. I try not to cut anybody off.

We go on to Mr. Sikand.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): Thank you, Madam Chair.

I'm going to pick up where you were just cut off.

First and foremost, I'd like to give you my condolences for the loss of your elder.

Could you continue to describe the relationship your communities have with the environment? I think you were already kind of on that track.

Mr. Elmer Ghostkeeper: We are the environment, so in our view, the way we believe life to be, we're responsible for ourselves and the environment, but we don't see a separation like a lot of people do.

I should tell you that I'm a cultural anthropologist as well as a civil engineer, but I've been a politician for many years as well. I'm currently working at the University of Alberta, and I get asked those same questions about the difference in world views, the way we view the world, the world we live in on a day-to-day basis. It's very difficult to explain that. I live on the land. I live with the land right now. I don't live in Edmonton, like some of my colleagues do. We live with the land, and so—

Mr. Gagan Sikand: On that note, could I ask what the devastation of an oil spill would be for your communities?

Mr. Elmer Ghostkeeper: Through Buffalo Lake, we have a 42-inch pipe, a 36-inch pipe, and a 24-inch diluent pipe. Our people are highly trained, and now with the latest technology with smart pipe, there are silicon chips embedded in the pipe, if you read some of the latest research being done in Calgary with the pipeline association. Just when there's a crack appearing, they can spot that crack and stop it. We're familiar with the technology, but our people are also well trained to be able to handle a pipeline spill. For myself, I've never experienced a pipeline spill.

Mr. Gagan Sikand: I was asking because Mr. Helin described in his testimony the dependence they have in relation to the environment. I was just kind of asking an overarching question in regard to that.

Mr. Elmer Ghostkeeper: Yes.

Mr. Gagan Sikand: I'm going to move on, because I do have to share my time.

The \$2-billion economic benefit that would have come out of the pipeline, was that a calculation from a third-party accounting firm? How was that number reached?

• (1610)

Mr. John Helin: I think you're addressing that to me on the LNG.

Mr. Gagan Sikand: I think it was Mr. Swampy who said that.

Mr. Dale Swampy: The \$2 billion was part of the negotiations that the stewards were able to get through the funding partners. There was additional consideration given to the communities, because they were going to be part owners. One billion dollars of that was going to be the procurements, the ability for the first nations to construct at least one billion dollars' worth of the construction costs of the pipe. The equity portion of it was a proposal that was forwarded by one of the first nation chiefs, who said, "If you really want this pipe, we want to be part of it, and if we're going to be part

of it, we want to own it. What are you willing to give us in terms of ownership?"

Mr. Gagan Sikand: That's where you get the 33, okay.

It may be a bit redundant, but Mr. Helin, could you quickly describe the devastation an oil spill would have on your community?

Mr. John Helin: It would all depend, of course, on the type of oil. We live in a very sensitive environment. It depends on what you put your emphasis on. If you had a world-class model, your emphasis would be on prevention, where you'd identify those certain sensitive areas and have equipment predisposed and people trained. In Alaska they have their fishing fleet training year-round. If there's a spill of any kind, they're ready to react to it and respond to it. The equipment's already in place. I would look to something like that, which should be in place in any place in B.C., no matter what—

Mr. Gagan Sikand: Thank you. I do have to split my time at this point, but thank you.

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Thank you for being here today.

John, I have a question for you.

Having expressed your concerns about the moratorium, can you share with us what the potential economic, social, and environmental impacts are of the moratorium on your respective communities' prosperity?

Mr. John Helin: I think I would start by saying I met with the minister again this morning, and I've met with him, Minister Garneau, a couple of times just on the tanker moratorium, talking about persistent oil and what that means. I don't know what would be allowed. What does that define? If LNG is allowed, that's good. If methanol is allowed, that's good, but heavy oil is going down our coast now from Alaska. There's a tanker a day going down that coast, and we don't have anything in place to respond to that.

Like I said, it would be a huge benefit if we were allowed some form of heavy oil, whatever that is.

The Chair: Thank you very much.

Mr. Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Madam Chair.

I, too, want to express my condolences at the loss of your elder.

The questions I'm going to ask can go to all three of you.

With respect to the engagement the ministry has embarked on throughout the past few years, starting in January of 2016, with the first nations community in general or the Métis community, I have a list of meetings and consultations that happened between January 1, 2016 and March 2017. Were you folks not part of that?

I have a list of all the different areas that were consulted with here, all the different nations, all the different areas, from Vancouver to Prince Rupert, right on down the coast. Were you folks not part of that consultation process?

Mr. John Helin: It depends on how you define “consultation”, I guess. A quick meeting is not consultation. Right after I was elected, the minister came to Prince Rupert and met with a representative from my council. I wasn't able to make that meeting. Again, there were meetings on LNG and on OPP, so they weren't all on the tanker moratorium. I think I've had maybe two meetings with the minister specifically on the tanker ban, so as far as I'm concerned...

Mr. Vance Badawey: I'm seeing about 25 meetings that were held here in that time frame. Now also there were 29 meetings held with the private sector with the oil and gas industry that I'm sure were opened up, too, between the January 2015 and April of 2017. I guess it goes back to section 35, when it states “meaningful consultation”. I'm sure that's a bit subjective. I'm just concerned over the fact that we've had over 50 meetings with both sectors, and you're stating that you haven't had enough consultation.

•(1615)

Mr. John Helin: It depends on what that meeting was for. Again, on the tanker ban, all I recall are two meetings.

Mr. Vance Badawey: Okay.

Mr. John Helin: There were meetings on different issues.

Mr. Vance Badawey: Okay.

My next question is with respect to the comment made about land use planning. I'm sure, as a mayor—which is a life I lived for about 14 years of my life as well—land use planning is probably of the utmost importance in trying to look at the present, and of course, the sustainability and future of the community.

With that said, and taking this issue into consideration, in terms of your official land use plan, which includes everything from your infrastructure, your emergency services, and your emergency preparedness plans with your different providers of those services—police, ambulance, fire—as well as those that operate your infrastructure, such as water, waste water, in particular, in terms of ensuring the quality of it, am I to assume that's all in place currently and takes into consideration projects like this?

Mr. John Helin: I can speak for my community that the last time I was the chief, in 2007-08, I signed a land use plan with the province, but nothing like this was on the table at that time. The Great Bear Rainforest is something that came after I was elected the last time, and they were working on it before I was elected this time.

I don't know what took place with our community members, but in all the questions I've asked of our hereditary leaders and our elected leaders, there was no consultation and nothing around tanker moratoriums, for sure.

Mr. Vance Badawey: Going back to my question about your land use planning, is there, in fact, built into your land use planning...? I'll give you some examples, and I'll use layers to simplify it. With respect to your water, waste water, roads, emergency preparedness, emergency infrastructure, a cost-benefit analysis vis-à-vis what it's going to cost to prepare for an investment like this, and then what the benefit of the revenue that is going to come in is and the net result, was all that ever done, and therefore, driving your ultimate opinion of whether this project should move forward or not?

Mr. John Helin: No. It never got that detailed.

Mr. Vance Badawey: Okay.

Thank you, Madam Chair.

The Chair: Mr. Chong.

I'm sorry. You still have time. Go ahead, Mr. Ghostkeeper.

Mr. Elmer Ghostkeeper: Okay, thanks.

The way I understand consultation policy, the provincial Government of Alberta has one. When you enter into consultation, and it's mostly done with industry, you negotiate a memorandum of understanding of how that is going to unfold.

Can I ask you, does this federal government have an indigenous consultation policy stemming from section 35?

Mr. Vance Badawey: Essentially, the short answer would be yes, but as I said earlier, the bottom line is that it can be subjective based on what people understand as being meaningful consultation.

Mr. Elmer Ghostkeeper: Can I...?

Mr. Vance Badawey: What I'm seeing here is that consultation has happened, but where I'm at a loss—and I'll be quite frank—is that there are opinions being given here on behalf of communities without any land use planning on which to actually give that opinion.

When we look at the infrastructure, the planning of a community, and the cost-benefit analysis—at least in my past experience—before I would give an opinion on something, I would actually do work to come to that opinion as it related to the planning ahead to be sustainable, but as well to have the proper infrastructure in place to actually be able to handle a development like that.

Mr. Helin, I'm sure you can understand what I'm saying as a mayor. You want to get to that point first before actually making an opinion.

Going to your point, Mr.—

The Chair: Your time is up.

Mr. Elmer Ghostkeeper: If I can follow up, if you do have a policy, can I have it, please?

Thanks.

Mr. John Helin: I'd just like to respond to the last comment made by the member.

The Chair: Can you try to engage that into your other conversation so that we can just keep on track?

Mr. John Helin: Sure.

The Chair: Mr. Chong, go ahead.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Madam Chair.

Thank you to the witnesses for appearing in front of us today to talk to us about your concerns around the duty to consult and accommodate. I think it's important to have your views on the record.

The government has a clear, constitutionally defined responsibility as outlined in section 35 and also outlined in court decisions from the Supreme Court in recent years about a very specific duty to not only consult but to accommodate. It seems to me that didn't happen, Madam Chair, in this instance on Bill C-48.

The duty to consult and accommodate doesn't simply mean having a meeting with aboriginal peoples whose treaty rights are affected by this project. It goes far deeper and is far more specific than that. For example, the government cannot act unilaterally in any regard. It needs to consult on what studies need to be done to assess the negative impacts on aboriginal peoples along the route, and it needs to consult with aboriginal peoples before information is taken. There are many other very specific requirements that the court has outlined in various decisions.

Other than the meetings that you've mentioned, it doesn't seem to me that a lot of those proper consultations and accommodations were made ahead of the introduction of Bill C-48. For example, did the government ask you what studies it needed to undertake to assess the negative impacts on your communities if Bill C-48 were to proceed?

• (1620)

Mr. Elmer Ghostkeeper: I'd like to start off by saying that, first of all, in the meetings we had with the minister and any federal officials, we stated up front that the meeting was not a consultation and that it was just a meeting to get an understanding from both sides. Consultation is a much deeper process. There should be a policy that we both have negotiated with one another, as we did with the province of Alberta. We always stated that the meetings we had were not consultation.

Hon. Michael Chong: Madam Chair, this is a pretty significant issue that has been brought to our committee's attention. This northern gateway project was a \$7.9-billion project. As I understand it, the Aboriginal Equity Partners were at minimum offered a 10% equity stake. They were offered the commitment to recruit aboriginal Canadians into senior management positions on this project. They were offered economic opportunities and jobs in the construction itself. That was at minimum. My understanding is that this equity stake may very well have instead found its culmination in a partnership that would have seen aboriginal peoples, Enbridge, and oil suppliers each owning one-third of this project, and seeing for the first time in the north a significant aboriginal ownership and investment of this pipeline.

Could you speak to the lost opportunities that your communities are facing as a result of decisions taken by the government not only in respect of the northern gateway project but also in respect of Bill C-48?

Mr. Dale Swampy: Before Elmer gets into it, I wanted to add something. I didn't mention in the benefits, the \$2 billion, that the management committee included one of the stewards, but also that in the future, as the northern gateway project was being constructed, there would be an aboriginal president appointed who would be from northern communities. It would be the 31 first nation communities

that would select that individual to operate the pipeline. That was significant, and that showed the commitment that the producers, as well as Enbridge, had provided to the communities and the kind of respect they had for the communities in the north.

Mr. Elmer Ghostkeeper: I can add to that. I sat on the management committee of northern gateway, with all the other partners. We started with a minimum of 10%, but I said right up front that this was just the start. We were at thirty-three and one-third per cent but were going to 50% or 51%, because we do have the expertise and the knowledge in all aspects of pipelining. Aboriginal people have been pipelining for 50 years or more, at least in Alberta, if not in other parts of Canada. It is not an unfamiliar industry to us.

Don't forget that the other partners.... I'll give Enbridge as an example. They are probably the world leader in pipelines, but they are also invested heavily—\$2 billion a couple of years ago, I think—in sustainable renewable energy, such as solar panels, hydro off the coast of France, wind turbines, etc. They have a whole division of green energy, because that's the way you have to shift in this world of technology.

At the same time, I have to point out that these other forms of energy, as far as I know, produce only electricity. Look at what's happening to Australia. It got itself into trouble because it went too green.

Anyway, we were on to other enterprises, not just this project.

• (1625)

The Chair: Thank you very much.

We are moving on to Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

How much time do I have?

The Chair: We are on the clock, I think. You have six minutes, if we have enough.... No, you don't. It's 4:26, so how about I give you two minutes?

Mr. Ken Hardie: If you give me two minutes, that would be great.

Did any of you consult with the groups? I understand there were about 130 of them that opposed the northern gateway pipeline. Did you enter into a dialogue or a discussion with them to try to connect the dots and resolve whatever difficulties they were having with the project?

Mr. Dale Swampy: We identified 52 communities that were along the right-of-way. The application included a radius of 80 kilometres. Originally, the National Energy Board used a 50-kilometre radius, but we decided to use an 80-kilometre radius. When we did the 80-kilometre radius, there were 35 communities that had reserve lands within that region.

We had 86 communities, including those 35, that expressed interest in being consulted. At some point in 2011 or 2012, as we were moving forward towards this equity offer, we decided that we would finalize a group within that radius, the 35, plus we consulted with the other 51 communities and asked them what the impact was, since they were far removed from the area. We got answers back from several of them, and we accepted another 17 communities, I think, and said that....

Mr. Ken Hardie: With respect, there were obviously people in your broader community who were opposed to this. What was the nature of the consultation? What kind of dialogue did you have with them to try to get them on side?

Mr. Dale Swampy: Throughout our consultation, we never had any formal letters. We never had any formal BCRs from any communities that actually opposed the project.

Mr. Ken Hardie: Okay.

Mr. Dale Swampy: We had verbal communications from some of them that they didn't want to be consulted on it, because they didn't feel their community supported a project like this.

When we talk about proper consultation, we talk about informing the communities about the projects. When you talk about land use studies, for example.... This is a greenfield project. The communities out there had never experienced or seen an oil pipeline, so there was no oil pipeline guideline within their land use planning for them to be able to follow that pattern. We had to inform them. We had to teach them about what oil pipelines are all about, what oil use is all about, and why Canadian society would benefit from this project.

The Chair: Thank you very much.

Thank you very much to our witnesses. Your testimony was very valuable, and we appreciate it very much.

Before I suspend for the other witnesses, given the fact that on our calendar we put in the supplementary estimates for November 9, and to replace the meeting that we cancelled, we need to make a calendar change. I can do it, if I have unanimous consent to make those changes to our calendar. The deadline for amendments would be November 23, and clause-by-clause would be on November 28.

Some hon. members: Agreed.

The Chair: Thank you very much.

We will suspend for a minute to allow our other witnesses to come to the table.

• (1625) _____ (Pause) _____

• (1635)

The Chair: Thank you all very much for joining us. I see we have a full table. I'm going to ask everybody quickly, starting with Margaret, to introduce themselves and whoever is going to be the spokesperson for the group.

Ms. Margaret Rosling (General Counsel, Nisga'a Lisims Government): Thank you very much.

Good afternoon, everyone. My name is Margaret Rosling, I am general counsel to Nisga'a Nation.

Ms. Corinne McKay (Secretary-Treasurer, Nisga'a Lisims Government): [*Witness speaks in Nisga'a*]

My Nisga'a name is Bilaam Neekhl, which, translated, means "Pearly Fin", and my English name is Corinne McKay. I'm the secretary-treasurer of the Nisga'a Lisims Government.

Good afternoon.

Ms. Eva Clayton (President, Nisga'a Lisims Government): Good afternoon. Thank you, Madam Chair.

My name is Eva Clayton, president for the Nisga'a Nation.

Mr. Brian Tait (Chairperson, Nisga'a Lisims Government): Good afternoon.

Thank you, Madam Chair.

My name is Brian Tait. I'm executive chair for the Nisga'a Lisims Government.

Mr. Collier Azak (Chief Executive Officer, Nisga'a Lisims Government): Good afternoon.

My name is Collier Azak. I am the chief executive officer for the Nisga'a Lisims Government.

It's good to be here.

Mr. Calvin Helin (Chairman and President, Eagle Spirit Energy Holding Ltd.): Good afternoon.

My name is Calvin Helin. I'm the chairman and president of Eagle Spirit Energy.

Mr. Gary Alexcee (Deputy Chief, Eagle Spirit Energy Holding Ltd.): Good afternoon.

My name is Gary Alexcee, hereditary chief of the Nisga'a Nation for the community of Gingolx. I'm the vice-chair with the B.C. first nations council of the energy corridor group.

Chief Isaac Laboucan-Avirom (Chief, Eagle Spirit Energy Holding Ltd.): [*Witness speaks in Cree*]

My name is Chief Isaac Laboucan-Avirom of the the Woodland Cree First Nation. I am also deputy grand chief of Treaty 8 Alberta and grand chief of the Kee Tas Kee Now Tribal Council.

The Chair: Welcome. Thank you all very much for being here with us this afternoon.

You know the procedures.

I guess we're going to start with Ms. Clayton, as the president.

Would you like to start off?

Ms. Eva Clayton: Thank you, Madam Chair.

First of all, before I begin, I would like to acknowledge the traditional territories of the Algonquin first nations.

We appreciate the committee inviting us to speak with you today about the Nisga'a Nation's position on Bill C-48. You've heard my team's introductions.

As you are all no doubt aware, the Nisga'a treaty was the first treaty with indigenous peoples in Canada, and perhaps in the world, to fully set out and constitutionally protect our right to self-government and the authority to make laws. Our treaty area covers 26,000 square kilometres of our traditional territory, the Nass area in northwestern British Columbia and we own approximately 2,000 square kilometres of land in fee simple, known as Nisga'a Lands, shown in purple on the Nass area map that you have before you.

When our treaty came into force on May 11, 2000, after more than 113 years of struggle, the Indian Act ceased to apply to us, and for the first time our nation had the recognized legal and constitutional authority to conduct our own affairs. Our treaty includes detailed environmental assessment and protection provisions applying to the entire Nass area, which has opened the door for the joint economic initiatives in the development of our natural resources. It is in the context of seeking respect for our modern treaty that we come before you today to express our concern about Bill C-48.

The details of the proposed moratorium were announced late last November after what can only be described as a general overview of various options for the geographic content, geographic extent of a potential ban on oil tanker traffic, the type of product and vessel that may be covered by the ban, and potential opportunities for enhanced ocean protection initiatives.

In the weeks that preceded the introduction of Bill C-48, we urged that the moratorium not be enforced before further consultation took place and that the moratorium should not cover our treaty area.

Much to our surprise, Bill C-48 was introduced before we had been offered an opportunity to review the detailed approach that the government decided to take, nor were we able to comment on the implications of the proposed legislation on the terms and shared objectives of our treaty even though the area subject to the moratorium includes all of Nisga'a Lands, all of the Nass area, and all coastal areas of our treaty. This lack of engagement with us and the failure to assess the implications of our treaty is contrary to the expectations of the assessment of modern treaty implications, a process set out in the 2015 cabinet directive on the federal approach to modern treaty implementation.

Clearly, engagement on this issue fell well short of what would be expected between treaty partners. The Nisga'a Nation does not support the imposition of a moratorium that would apply to areas subject to our treaty, because Bill C-48 flies in the face of the principles of self-determination and environmental management that lie at the heart of the Nisga'a treaty.

We aspire to become a prosperous and self-sustaining nation that can provide meaningful economic opportunities for our people. This aspiration is reflected in our treaty, which sets out the parties' shared commitment to reduce the Nisga'a Nation's reliance on federal transfers over time. The Nisga'a Nation takes this goal very seriously. However, it stands to be undermined by Bill C-48.

● (1640)

Our future prosperity and the ability of our people to enjoy a better quality of life requires the creation of an economic base in the Nass area that meets the requirement of our treaty. This is the first priority of our government.

In the 17 years since our treaty came into effect, we have successfully negotiated many environmentally sound agreements in the mining, hydroelectric, and liquefied natural gas sectors. We were the first indigenous nation to conclude an agreement with TransCanada to run a natural gas pipeline over 200 kilometres of treaty lands.

The Chair: Thank you very much, Ms. Clayton. My apologies, we have to limit it to five minutes because the committee members always have a lot of questions, which I'm sure you'll want to answer.

Mr. Helin, did you want to address the committee?

Mr. Calvin Helin: Yes. Thank you very much.

[Witness speaks in Tsimshian]

It's a real pleasure to be here today. I'm both a failed commercial fisherman and a recovering lawyer, so the time you've allotted to me doesn't seem like very much.

I'm here to tell you what took us five years to accomplish. In five years, we realized that, in dealing with first nations, the most important thing was the environment, stupid. In that context, first nations people, particularly the 30-plus communities that have supported our project, have told us that they do not like outsiders, particularly those they view as trust-fund babies coming into the traditional territories they've governed and looked after for over 10,000 years and dictating government policy in their territory.

They told us this over and over again, in the thousands of meetings we had with them over five years, in relation to establishing an oil pipeline, which originally was intended to go from Fort McMurray to Prince Rupert. Once we engaged the producers, the route was changed from Bruderheim, not to Prince Rupert but to Grassy Point near Lax Kw'alaams, John's community. They told us very clearly that the most important thing was the environment, and that they need the environment to be addressed.

We took two or three years, and we hired international experts from Norway and various places, and came to the decision that Alaska pretty much had the state-of-the-art environmental model in the world. We came back to the first nations and we had a bunch of community meetings with them over and over again, and when they were satisfied that we had met the standard that they felt would protect the environment, they agreed to sign agreements in principle to proceed with such a project.

At our first meeting to engage in this project, we set up a chiefs council that represented all of the chiefs from Alberta all the way out to the B.C. coast. They have had a position with a lot of power and control over the environmental aspects and over the project in general, so it was a fairly high hurdle that we sought to meet. They were so satisfied with the environmental model we put forward that they voluntarily voted at their first meeting to support an energy corridor.

This is a very, very difficult thing to do, given that most projects... I understand that the Kinder Morgan project has something like 30 first nations supporting it, out of 120. We have just about 100%.

What I would like to do at this point is to let the hereditary chief who represents the chiefs from B.C. speak on behalf of them, and then let Chief Isaac speak on behalf of the chiefs from Alberta who are involved in the project, please.

•(1645)

The Chair: Yes, sir. Please go ahead.

Mr. Gary Alexcee: Thank you, Madam Chair, and thank you, Calvin.

I come here today to support Lax Kw'alaams in the Tsimshian first nation against having this tanker ban.

I'll give you a few dates of why we're so against this tanker ban. In 1763 a royal proclamation was signed by King George III that gave recognition of the first nations lands and their right to plan what should be there. In 1960 the right to vote for first nations was very joyous among all the first nations. In 1968 we had the Davis plan, which completely changed the fishing industry of that day as we knew of it.

Today, without the meaningful consultation that has not been carried out with the first nations and with the B.C. Council of First Nations and Alberta, this is totally against what we want. There is no scientific reason for stopping the north coast projects. If there is, we haven't seen it. Therefore, we say that the Vancouver project of Kinder Morgan must be stopped also if you're going to force this Bill C-48 upon us.

With no consultation, the B.C. first nations groups have been cut off economically with no opportunity to even sit down with the government to further negotiate Bill C-48. If that's going to be passed, then I would say we might as well throw up our hands and let the government come and put blankets on us that are infected with smallpox so we can go away. That's what this bill means to us.

I further support the Tsimshian Lax Kw'alaams community to have this bill taken away so they, too, among the other 120 first nations in British Columbia, can sit down and have a way of life where they can at least govern themselves and be responsible for what they have in their lives.

Today, the way it sits, we have nothing but handouts that are not even enough to have the future growth of first nations in our communities of British Columbia.

Thank you.

•(1650)

The Chair: Chief Isaac.

Mr. Isaac Laboucan-Avirom: Thank you.

I'm here also to show support for my colleagues, my first nations brothers and sisters.

It's a very interesting era that we're in right now. Just to give you a little history about me, I'm also a journeyman millwright by trade. As one of my last jobs as a tradesman, I was the lead rotating specialist for Royal Dutch Shell. I come from Alberta, and I've seen about five

major national companies leave the oil game. I've seen towns in much of our region with shortages in their food banks.

What I don't understand about this tanker moratorium is that there's no other tanker moratorium on other coastlines in Canada. You have oil coming in from Saudi Arabia, up and down the St. Lawrence River right now.

I'm 100% an environmentalist as well, but I'm also 100% into the economy so that I can provide purpose and get people to work. This tanker ban is not just going to hurt us at the moment, which it is doing, but it's going to hurt future generations. I have four daughters at home, and I want to provide a better education for them. I can't do that on social assistance.

The government of today announced that it's going to try to build a new fiscal relationship between first nations in a nation-to-nation conversation. It shouldn't be played out in the media. It should be played out with actions. Actions speak louder than words.

There were questions on what happens when the oil spills. I've dealt with some of the largest oil spills in Alberta within our traditional lands. What I do is I make them clean it up. In Alberta, I tell the Alberta energy regulator that they have to change their standards, they have to improve their standards so that when something is cleaned up, it's cleaned up 100%. Right now, standards are low. They've lowered standards so they could increase production. We could change that. We're in an era where we need to think outside the box, where we need innovation and technology, and we have that.

Everything in this room is touched by oil. Somehow that oil gets to China and then we buy it back in products. This will affect everybody in Canada. We need to create jobs. We need to help everybody.

Yes, as first nations, we are stewards of the land. I'm a hunter, a fisher, and a trapper, and I teach my culture and my language to my kids. In Treaty 8 territory, we come from the wealthiest land among us. There have been trillions of dollars taken out of our natural resources and we haven't seen a fair percentage of that.

My colleagues and friends here have a project where we could start getting our own sustainability. I'm not one to look for a handout, not one bit. I want to have the ability to shape our own destiny. With this tanker moratorium, you guys are killing those opportunities for the future. I'm not placing blame, but there's a possibility of that happening.

Thank you.

The Chair: We'd like to be able to get an opportunity for the members to ask some critical questions. Is there anyone else who thinks it's critical to speak to the committee before we start the questions?

Ms. Margaret Rosling: Madam Chair, if I may, I'm not yet a recovering lawyer, and I was just wondering if we could seek the committee's indulgence to allow President Clayton to take an additional minute just to make clear the Nisga'a Nation's position on the moratorium. If we could do that before you started with questions, that would be very much appreciated.

Thank you.

The Chair: Yes. That's fine.

Ms. Clayton.

Ms. Eva Clayton: Thank you, Madam Chair.

We are still at the early stages and have not made a decision about whether the nation would support an energy project, but we believe the provisions of our treaty can be employed to consider an environmentally sound approach to such a project.

Needless to say, the Nisga'a Nation will never support a project that could result in devastation to our land, our food, and our way of life. However, we cannot support legislation as sweeping as the proposed moratorium that will have the effect of cutting our nation off at the knees from being able to implement our treaty to achieve that balance, to achieve sustainability, for which we have a treaty.

We cannot stand back and allow legislation to be passed without meaningful input from the only indigenous nation with a treaty in the moratorium area and which has much to lose. We cannot agree to our treaty partners slamming the economic development door shut on us and other first nations on the north coast, while preserving opportunities for our neighbours to the south, north, and east. Why should we be singled out for such unfair treatment?

We should not have to continue to see our way of life eroded and our children and grandchildren denied a chance for economic prosperity without being given an opportunity to determine whether, under the rigorous requirements of our treaty, the correct balance can be struck between building a strong economy and protecting sensitive ecosystems.

We urge you to defer your next steps on this legislation until appropriate consultation is undertaken with us and our first nation neighbours to see if we can strike that balance.

Thank you, Madam Chair.

• (1655)

The Chair: Thank you very much, Ms. Clayton.

Mr. Chong, you have six minutes.

Mr. Calvin Helin: Madam Chair, I would like to clarify our position as well. It will take me half a minute.

The Chair: Okay.

Mr. Calvin Helin: We're supporting the position and the request of the Lax Kw'alaams community that a northern boundary to the oil tanker moratorium be fixed at 54°, 30' N latitude pending the development of a lane separation scheme for oil tankers in Dixon Entrance equivalent to that in the Strait of Juan de Fuca.

The Chair: Mr. Helin, have you given that to us?

Mr. Calvin Helin: You have our brief, but apparently it's being translated into French.

The Chair: That's fine. Thank you very much.

Mr. Chong.

Hon. Michael Chong: Thank you, Madam Chair.

This testimony today is pretty explosive. I was not aware that there was such a lack of consultation and accommodation on the part of the Government of Canada and the crown in advance of the

introduction of Bill C-48. The testimony today that we've heard from this panel and the previous one is very important and valuable to members of this committee, and hopefully to the House of Commons as a whole.

My understanding on the duty to consult and accommodate is that there's a three-part test that the crown goes through to determine whether there's a duty. The first is whether the government knows that there's a right that exists. It's clear that there are treaty rights that exist here. The Nisga'a Nation has a right over its territory, clearly defined in a negotiated settlement and in legislation that was passed some 15 years ago by the Parliament of Canada. The second test is whether the government's decision has an impact on the traditional territory of the band, which includes traditional hunting, fishing, and trapping territories, but also includes directly held reserve lands. The third is whether the government's decision has a potential to impact on the treaty rights and constitutional rights of the aboriginal peoples in the area.

It seems to me that, clearly, Bill C-48 does have that impact because it prevents the Nisga'a Nation and other first nations in the area from developing those economic projects on their own directly held reserve territories in the way that they had planned to. It also seems to me that the scope of the government's duty to consult and accommodate with respect to Bill C-48 is huge. We're not talking here about building a minor road. We're talking about billions of dollars in economic development that could accrue to aboriginal bands along the route and aboriginal bands on the coast.

I don't think this is a small matter. This is a huge issue. One of the questions that's rattling around in my head as I hear this explosive testimony is whether there's going to be court action here because of the government's failure to consult and accommodate in advance of the introduction of this Bill C-48.

The Chair: Ms. Clayton, would you like to answer?

Hon. Michael Chong: I wonder if any of the bands or first nations in front of us today, or others that they know of, are considering court action to protect their constitutional right to be consulted and accommodated before major decisions such as this are taken.

• (1700)

Ms. Eva Clayton: It's a question we will take back to review our options.

Hon. Michael Chong: Are there any other...?

It's clear from the testimony that you do not feel you were consulted or accommodated as per the Haida and the Taku decisions of the Supreme Court, so what other avenues are you exploring to defend and protect your rights?

Mr. Calvin Helin: Thank you.

Most of B.C. is not covered by treaties. The Nisga'a is an exception. The case that applies in B.C. is the Tsilhqot'in decision, and I'm quoting directly from the decision, where on the limitations of governmental power over lands encumbered by aboriginal title, the court says:

The right to control the land conferred by Aboriginal title means that governments and others seeking to use the land must obtain the consent of the Aboriginal title holders.

...if the Crown begins a project without consent prior to Aboriginal title being established, it may be required to cancel the project...

In that same decision it said that the duty to consult on behalf of the crown “must also be justified on the basis of a compelling and substantial public interest”. The first nations have “the right to enjoy the economic fruits of the land” and “to proactively use and manage the land.”

The idea that it's just the people on the coast who are impacted by this—that have their section 35 rights impinged—is not correct because all of our partners all the way along our project will be directly impacted by a decision like this, but I think the recommendation that's been made by the Lax Kw'alaams council is essentially to establish a corridor, and the moratorium can exist below the corridor.

The Chair: Thank you very much.

I'm sorry, your time is up.

Mr. Hardie.

Mr. Ken Hardie: Thank you.

It's good to see you, and to hear your voices. Many years ago I was on the radio in Terrace, and I would give messages to the north, to places like Nass Camp, Kincolith, and Greenville, and I know what eulachon grease is. I know this is a special place. I've been up there on a fishing boat in the Portland Canal, and I know what that coastline looks like.

Ms. Clayton, I do understand your need for balance to ensure that if something gets shipped, it's going to be the right thing, that we're not going to contaminate the water in the event that the worst happens.

I wanted to ensure that you were aware of what the regulations around this moratorium contain because it's only—short explanation—the really bad stuff that we would not allow to be transferred onto a tanker. We're not banning tankers. We're just trying to influence what gets loaded onto the tankers. The sorts of things that would be allowed would include liquefied natural gas, gasoline, naphtha, jet fuel, and propane, which suggests that if there are petroleum products to be shipped, if those are the petroleum products coming through, there is no moratorium.

With that in mind, I would like the Eagle Spirit Energy people to tell me what they had in mind to ship through a port on the west coast. Could their plans simply include the things that would not be covered by the moratorium?

• (1705)

Mr. Calvin Helin: Thank you very much.

I would like to answer that with the question that our chiefs from the communities have put to us. How is crude oil such a bad thing in our traditional territory but not such a bad thing out of Vancouver harbour or the Salish Sea, which is up for designation as a world heritage site of some kind? It doesn't make any sense. It's arbitrary. It doesn't make sense that you can ship oil everywhere in Canada but in an area that is our traditional territory.

I am Tsimshian. I'm from Lax Kw'alaams. John is my brother. We undertook this project because we are concerned about the environment. We have developed an ocean protection plan that meets a standard that's much higher than what is being proposed for shipping bitumen out of Vancouver harbour. We wouldn't support that. We would support something that had specific differences from what is being proposed and was a much higher standard.

The communities that are supporting our project felt that what we had come up with as an environmental model had met a standard that was a balance and that protected the environment everywhere—not just in the ocean but on the land, too.

Mr. Ken Hardie: Mr. Helin, would you, then, ship bitumen out of a port if you developed it?

Mr. Calvin Helin: Why would—

Mr. Ken Hardie: I saw somebody nod. A simple yes would be fine.

Mr. Calvin Helin: Yes. Why would you limit it?

Mr. Ken Hardie: Okay. That's all I was asking.

Mr. Calvin Helin: Isaac has just asked to answer that as well.

Mr. Ken Hardie: Is the answer yes or no?

Mr. Isaac Laboucane-Avirom: Yes. My answer would be yes, as well. We are already taking in oil from Saudi Arabia and Algeria. There are oil rigs on the east coast of Newfoundland. What's the difference between the east coast and the west coast? Yes, I absolutely would, because I also feel, like Calvin, that we are in a state of... We have innovation; we have new technologies. I believe we could really have a high technical safety prevention measure.

Mr. Ken Hardie: Do you agree that bitumen is very different from crude oil?

Mr. Isaac Laboucane-Avirom: Yes.

Mr. Calvin Helin: I would agree that it's very different from crude oil. That being said, why is this government prepared to let it be shipped out of Vancouver?

Mr. Ken Hardie: I have another question for you. Are you contemplating another pipeline? As I understand it, the Eagle Spirit Energy plan was to put in another pipeline, but following a different corridor than the Enbridge line would have followed. Is that the case now?

Mr. Calvin Helin: Yes. You will see all that information detailed in the brief that will be coming to you.

Mr. Ken Hardie: Okay. Would the port for that be up in the territory, not in Prince Rupert?

Mr. Calvin Helin: It would be across from Lax Kw'alaams and Grassy Point. There—if you're talking about environmental and ocean safety—you are 10 minutes from open water, versus Kinder Morgan's project. First of all, they can use only Aframax tanker ships, which are limited to about 500,000 barrels. They have to allow them in, because they have to go under two separate bridges, and they can do so, I believe, only in certain tides. There is a very complex archipelago that they have to transit out of, so they are five hours to open water. If you want to talk environmental safety on the ocean—

The Chair: Sorry, Mr. Helin, I have to cut you off.

Mr. Cullen is the next questioner.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair. Thanks for the indulgence of moving time around.

Welcome. It's so nice to see everybody on this truly north coast day here in Ottawa. I hope folks feel welcome. I apologize for not being here. I had a speech I was obligated to give in the House. It's nice to be among so many familiar and friendly faces.

Where to start? I think this is the one-year anniversary of the government's new coastal safety strategy. As it is right now, there is a lot of traffic that moves up and down the north coast through your territories, through Lax Kw'alaams and Nisga'a waters.

Maybe I'll start with President Clayton and go to Mr. Helin or Mr. Alexcee afterwards. What's the status? From a gold standard to silver, bronze, or something below, how good do you think the safety conditions are right now in event of mishaps or tragedies that go on in the north coast waters? I don't know if Ms. Clayton or others might have an opinion on that. What's the state of affairs currently?

• (1710)

Ms. Eva Clayton: With regard to safety on the north coast, we don't hear about the mishaps on the north coast, about anything other than the oil spills, but there are no mishaps on the north coast.

Mr. Nathan Cullen: Corrine, do you want to...?

Ms. Corinne McKay: Thank you, and it's good to see you again.

We have a concern. We were happy to see the announcement for the \$1.5 billion last year for oceans protection. However, we do not feel that we are adequately protected, which is one of the reasons we took the position to ensure that the provisions of our treaty would be considered. If there is going to be a project in our region, we want to make sure that the highest environmental protections are taken, the standards are taken. We would insist on a rapid response capability.

Our colleague from Eagle Spirit Energy referenced the challenges that we have with ships in distress. We don't have the capability to respond. With regard to the diesel spill in Bella Bella, we were as concerned about that as the local people were, because we knew the devastation it would cause to their marine harvest. We know there are no protections that are adequate right now and—

Mr. Nathan Cullen: We're a year beyond the announcement that the coast would become better protected than it was. I'm getting the sense from your comments that you're not yet at all satisfied.

I don't know if Mr. Helin would have a similar...

Mr. Calvin Helin: Yes. We had experts address this extensively, and we have virtually no protections in the north right now, virtually nothing. If you want to deal effectively with an oil spill, you have to have assets on the ground right away.

In Alaska, they have assets situated all the way out the route that the tankers are transiting. There are big barges with equipment. They have a fishing vessel owner program. They have, I believe, 1,100 fishermen on a list of who can help to clean up the spill who they can phone immediately. They have state-of-the-art technology requiring all of the technology associated with cleaning anything up, but the most important thing about that model is that it's prevention-centred.

People used to think in terms of cleaning up spills and being organized to clean up spills, but the new state-of-the-art models in the world now are prevention-oriented so that you never have a spill.

Mr. Nathan Cullen: They get it all before it happens. Thank you.

I have a question about consultation, maybe for President Clayton.

I get the sense, having talked with the Nisga'a over the years, that the federal government has no idea, really, what to do with a modern treaty. Is what is exposed here in the creation of this bill, whether you're for it or against it in principle, that gap between the words about meaningful consultation, the commitments to the UN Declaration on the Rights of Indigenous Peoples, and then the reality that we see on the ground—again, moving aside the principles of the legislation itself and what it intends to do, whether you agree or disagree with it?

On those words and promises of meaningful consultation, how's the government faring right now in terms of the Nisga'a's and Lax Kw'alaams' perspective?

• (1715)

Ms. Eva Clayton: For this particular project of the government, you're quite right that there has been no meaningful consultation, as set out in accordance with the Nisga'a treaty. It has exposed the responsibilities of all of our treaty partners, in particular, Canada, with consulting the Nisga'a Nation on this particular ban that is going to severely impact the nation's ability to become economically prosperous.

If I may—

The Chair: Thank you very much.

You may complete your sentence, Ms. Clayton.

Ms. Eva Clayton: I was just going to ask my colleague before...

Ms. Margaret Rosling: I know we're restricted by time. I have only one more point to add to the comments that were made by our president. Because the Nisga'a Nation has a modern treaty, there's an additional obligation on government that's contained in the cabinet directive, and it has to do with the assessment of modern treaty implications.

It's our position that the Nisga'a Nation and the government did not have the opportunity to pursue the processes in the assessment of modern treaty implications before this bill was introduced. That is lacking, and that's why we're coming here today, to say that additional consultation is needed. We want to be constructive. This is an opportunity for a modern treaty nation to work with the Government of Canada to bring forward legislation that can benefit all Canadians, and that can respect the only modern treaty on the north coast of British Columbia.

We believe that further consultation is required before this bill goes any further. We're seeking the support of this committee to take this back to the House of Commons, do the consultation that's required with the Nisga'a Nation under its modern treaty, look at the treaty to see what opportunities exist in this treaty, and get the balance right between protecting the environment and creating economic opportunities in the north, not just for the south coast of British Columbia.

Thank you, Madam Chair.

The Chair: Thank you very much.

We'll move on to Mr. Iacono.

Mr. Angelo Iacono: Madam Chair, I'll be giving my time to my colleague Gagan.

Mr. Gagan Sikand: Thank you.

Ms. Clayton, in your remarks you mentioned that you have agreements.... I'm not sure what you said. I missed it. It was with energy providers or other petroleum providers.

Ms. Eva Clayton: It was liquefied natural gas.

Mr. Gagan Sikand: Can we get a list of those agreements?

Ms. Margaret Rosling: I can speak to that.

The president was referring to the number of agreements that the Nisga'a Nation has been successful in negotiating on an environmentally sound basis with proponents in various different resource sectors in the north. With regard to the energy industry, we were the first nation to negotiate an agreement with TransCanada to facilitate the natural gas pipeline that was proposed for Prince Rupert under the Pacific NorthWest LNG project. That's the only energy project negotiation we've undertaken, and it's the only agreement we have in the energy sector.

Mr. Gagan Sikand: You have a whole host of things here in being self-determined, which is great. I was just wondering if you have an environmental protocol, protections, or an arrangement with an association or council.

Ms. Margaret Rosling: President Clayton has asked that I respond.

Yes. Because we have a modern treaty, part of the treaty has a chapter called the environmental assessment and protection chapter. It outlines the rigorous requirements that would be undertaken in any project that's considered for the broader Nass area—that's the 26,000 square kilometres that President Clayton was referring to.

It requires a full assessment on the environmental impacts of any project in the Nass area, that there be a full assessment on the economic, social, and cultural well-being of Nisga'a people, and of course there has to be an assessment of the economic opportunities for Nisga'a people and the Nisga'a Nation to thrive in their territory. The treaty provides for that.

As we've said in our remarks, this is a modern treaty. It was negotiated after 113 years of struggle by the Nisga'a Nation, and it's protected under the Canadian Constitution. We're here to urge that before this bill goes further, the House of Commons considers ensuring that if a moratorium is to be placed on the north coast, which we say is unfairly discriminatory toward people in the north

but if there is, there should be a carve-out for the area that's covered by the Nisga'a treaty. We want to work with Canada as our treaty partner to see if we can get the balance right by using the treaty—

• (1720)

Mr. Gagan Sikand: Ms. Rosling, I apologize, I have to cut you off there.

Isaac, you said you dealt with a cleanup.

Mr. Isaac Laboucan-Avirom: It was with Plains Midstream, with what I call the “money oil”. It's basically where every producer puts the money into the main line and it goes up to a refinery, but it's not yet refined. I've also dealt with produced water, condensate itself, and some others within our territory.

Mr. Gagan Sikand: Thank you.

I'm going to give the rest of my time to Mr. Hardie.

Mr. Ken Hardie: Thank you, Gagan.

Like you, I tend to be a little sensitive about organizations from away with very deep pockets who come in and try to influence policy in Canada, but they've been successful and I want your comments and reflections as to why. It seems that there are divisions within your community that pit one group against another.

Clearly, as a government, if you all spoke as one voice, it would make our job tremendously easier. I understand that. However, what is going on? What kind of message are they selling that has created those divisions that are very evident when we look at the landscape across the north, between the various first nations?

Ms. Margaret Rosling: With the greatest respect, it's not because other people are talking. It's because people aren't listening. One of the points that President Clayton made in her remarks is that the only conversation we had about this proposed moratorium was very early on, and it was very much a general overview of a potential moratorium. That was really what the conversation was about in the summer of 2016.

Before we knew it, in November 2016, an announcement was made. We didn't know what the geographic extent of the moratorium would be—

Mr. Ken Hardie: Excuse me, with respect—

Ms. Margaret Rosling: We need to be talking to the modern treaty holder, the Nisga'a Nation, and the other nations on the north coast that are affected by this legislation.

Mr. Ken Hardie: I'm sorry, I wasn't precise in my question. It wasn't so much about the moratorium. It was about the pipeline, the Enbridge pipeline.

Ms. Margaret Rosling: There is no pipeline. We're talking about legislation that would prevent any conversation in the north about potential economic development opportunity. There is no project.

Mr. Ken Hardie: I'm still asking for your help on something. There was opposition to the pipeline. That opposition was founded on some people with very deep pockets and with some kind of interest coming in and influencing the attitude and position of various communities along that corridor.

Why was that so influential? What stopped the creation of a single agreement that would have covered the whole north?

Without a pipeline, of course, any kind of shipment is going to be much more difficult, so we would start with a pipeline.

The Chair: Thank you very much, Mr. Hardie. You got your question out there.

We'll have to see if we can find an opportunity for you to respond to somebody and get that answer out.

Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair. I'm somewhat going to go along the same lines. I'm going from the foundation or the basis that there was in fact a moratorium in place since 1985, albeit a voluntary moratorium.

As I said to the delegations that showed up earlier, from my past experience in the municipal sector, one of the things we did very diligently was ensure that we had proper strategies, land use planning, proper asset management strategies, and cost-benefit revenue analyses done. I fully appreciate the comments by Ms. Clayton earlier with respect to going down that road and really giving an opinion based on those analyses and strategies and that planning. I appreciate those comments.

That said, in June 2014 it was reported that the federal government had agreed to the northern gateway pipeline and that in fact it would be built. Following that, I believe it was a year later, the approval was then overturned based on lack of consultation by the previous government.

The theme today is somewhat around consultation. Going back to that date, were you actually consulted with during that process, recognizing your land use plans, your asset management strategies, as well as any cost-benefit analysis you might have had in place at that very time?

That question could go to any one of you.

• (1725)

Mr. Calvin Helin: I can only answer from the second-hand information I have. The reason there was so much opposition to the Enbridge pipeline had to do with concerns with the environment and lack of consultation. Their consultation in our community consisted of sending a \$5,000 cheque over to the community, and they never even visited.

There was also a lot of concern—and it's the reason Eagle Spirit Energy exists—that as individuals from the north in the community, we understood that oil is an important commodity to Canada. We understood that it is costing producers about \$50 million a day to send our oil and it was going to come some way, and that if the first nations people weren't fairly engaged and did not give social licence, it would be very difficult to deal with that commodity. We got involved in this project on that basis.

Mr. Vance Badawey: Are there any other comments?

Ms. Corinne McKay: Yes. The Nisga'a Nation was not involved with northern gateway. It wasn't in our vicinity.

Mr. Gary Alexce: Yes. I sat on the community advisory board in the Pacific northwest, when we met in Kitimat. There were various first nations from the interior of British Columbia and the Alberta

area, and we had asked specifically that northern gateway provide us with a safety plan, marine-wise and land-wise, for how they would protect the environment. What were those steps going to be?

They never came forth. They didn't deliver; therefore, they were kicked out of the area.

The Chair: Thank you very much. Your time is up, Mr. Badawey.

Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): Thank you very much.

I'm from Huron County and Bruce County, which are on the shores of Lake Huron. Through the years I've had an opportunity to establish a relationship with the Saugeen First Nation, Chief Randall Kahgee, Chief Vernon Roote, etc. What I found so interesting about the packet the department put out on who they consulted and how they consulted was that when I saw it, I knew they hadn't consulted at all.

In my area, there has been a project on the go since 2003 and they are still working with the Saugeen First Nation. Just recently, the last piece they were working on was physical and cultural heritage and the impacts the project is going to have on it. It isn't about how many meetings you have. It isn't about how many questions you answered or what you needed. It's about when everything is finally completed, and members inside your community agree with the project. That is what consultation has at least to start to look like.

I didn't ask the minister my questions about consultation two weeks ago because I knew he hadn't done appropriate consultation. What I asked him was if he felt like he needed consent from communities like yours to put a ban in, and he said no, he didn't need your consent. I have it here in writing. I also asked him about what kind of consultation he did. He said, "We did unprecedented consultation with groups, and I might add that I think we're setting a new standard in this government in terms of consultation." That shows you what the new government feels about consultation.

I agree with some of the members here today when they say this bill should really be pulled until there is appropriate consultation.

I'll leave it at that. I know some people on this committee feel some ways about this ban and some people feel other ways about the ban, but we all agree that in order to get there, you need to properly consult with those it impacts.

I'll leave it at that for now, Madam Chair.

I really appreciate your attending the committee today. Thank you.

• (1730)

The Chair: Thank you very much, Mr. Lobb.

To all of the esteemed guests we've had today, thank you so much for taking time to come here. You have certainly handled yourselves very well. You got your points across very well to all of the committee, so thank you very much and have a safe trip back home.

We have a motion to adjourn.

The committee is adjourned.

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