

**JOINT REVIEW PANEL FOR THE ENBRIDGE
NORTHERN GATEWAY PROJECT
COMMISSION D'EXAMEN CONJOINT DU PROJET
ENBRIDGE NORTHERN GATEWAY**



**ENBRIDGE NORTHERN GATEWAY PROJECT
PROJET ENBRIDGE NORTHERN GATEWAY**

Proposed by / Proposé par:

Northern Gateway Pipelines Limited Partnership

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**Panel Sessions held at
Séances tenues à**

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Kitimat, British Columbia**

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PANEL SESSIONS
SÉANCES

IN THE MATTER OF an application filed by the Northern Gateway Pipelines Limited Partnership for a Certificate of Public Convenience and Necessity pursuant to section 52 of the *National Energy Board Act*, for authorization to construct and operate the Enbridge Northern Gateway Project.

PANEL SESSIONS LOCATION/LIEU DES SÉANCES

Sessions held in Kitimat (British Columbia), Wednesday, September 1, 2010
Séances tenues à Kitimat (Colombie-Britannique), Mercredi, le 1 septembre 2010

JOINT REVIEW PANEL/LA COMMISSION D'EXAMEN CONJOINT

S. Leggett	Chairperson/Présidente
K. Bateman	Member/Membre
H. Matthews	Member/Membre

PRESENTATIONS/PRÉSENTATIONS

Mr. Randy Halyk

Ms. Cheryl Brown

Mr. Sean O'Driscoll

Kitasoo/Xai'xais First Nation

- Chief Archie Robinson

- Chief Leslie Neasloss

- Mr. Ron Robinson

Mr. Keagan Schopfer and Ms. Joan Leclair

Ms. Jasmine Thomas

Mr. Joe Matos

Gitxaala First Nation

- Mr. Robert Janes

- Chief Clarence Innis

- Chief Councillor Elmer Moody

Mr. Dave Shannon

Mr. Terry Vulcano

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**Opening remarks
Chairperson**

--- Upon commencing at 9:04 a.m./L'audience débute à 9h04

1866. **THE CHAIRPERSON:** Good morning everyone.

1867. If I could get you to take your seats and we'll be ready to start in just a minute.

1868. Thanks very much and welcome to our second day of this Panel Session in Kitimat.

1869. My name is Sheila Leggett, for those of you who weren't here yesterday, and to my right is Kenneth Bateman and to my left is Hans Matthews and collectively we're the Joint Review Panel that was established by the Minister of the Environment and the National Energy Board.

1870. If I could get quiet in the room, please. Thank you very much.

1871. Collectively, we're the Joint Review Panel that was established by the Minister of the Environment and the National Energy Board to consider the Enbridge Northern Gateway Project.

1872. I think most of you were here yesterday but in case we have people who weren't here yesterday, I just wanted to go through a couple of things that I covered in the opening remarks yesterday.

1873. One is that I hope that all of you who are -- have comments to present on the three issues, that are up on the chart to the left of me, have had a chance to talk with our secretariat staff to get a better understanding of what we are here to do and what we aren't here to do.

1874. We are very interested in hearing your comments on the three topics that we have on this screen so that the Joint Review Panel can be in a better position to figure out what process might like look like going forward. We also know that many of you are -- would like to tell us your thoughts about the proposed project and I want to assure you that you'll have many opportunities to do that.

1875. Today and this week in Kitimat is just to hear about these three topics and the reason for that is because we need to have these initial steps before we move forward and it's only -- it's the only right thing for all the parties to understand what stage we're at at any time and let me reassure you again that there will be many opportunities for you to provide your views on the project as we move forward.

1876. There's a registration desk outside and there are a couple of people there.

Opening remarks
Chairperson

One of the people at the registrations desk name is Ms. Collette Spagnuolo. She's from the Canadian Environmental Assessment Agency and that agency has assigned her to assist you and her job title from the perspective of this project is Process Advisor and she's here to make sure that you have all the process information that you need to meaningfully participate in this assessment.

1877. As you know, there has been no Hearing Order issued and so the process going forward hasn't been designed at this point but what I would encourage you to do is to introduce yourself to her and make sure she has your contact information so that you've got a connection established with her and you'll be able to communicate with her with any questions that you have.
1878. We also have a number of Panel Secretariat staff with us and they're jobs are to help both the Panel, as well as to be available to answer any Panel-related questions that you might have.
1879. We had a very full day yesterday and I want to thank everybody for your patience and perseverance in helping us. We all had a diet of fruit and cheese for lunch and I hope everybody managed to get a little more of the food groups for dinner last night.
1880. Today, we have a number of parties before two -- we have two, four, six -- seven parties in the morning and then we will, assuming that we finish in good time on that, we will take a break and we will resume again at two o'clock in the afternoon.
1881. If you have any written comments, if you filed written comments, there's no need for you to repeat those comments to us. We will be -- we are reading and we will continue to read the written comments that are filed up to the deadline of September 8th, as well as the information that you provide orally. So when you're providing us with your comments, if you've also provided written comments there's no need to talk about those when you present orally.
1882. The other aspect is if you have heard one of the other participants say very -- express your comments that you want to provide to the Panel on these three issues, you can just tell us that you agree with the perspectives that have been addressed by so-and-so and there's no need to repeat those.
1883. As we all know, this project has attracted a lot of attention and it's very important to us to be able to hear the broad variety of viewpoints and it's for that reason that we ask you to please cooperate and let's only have one person talking in this room at one time and that's my job as Chair, is to keep an orderly process going, and I really appreciate the cooperation that everybody showed yesterday and look

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Chairperson**

forward to the same going forward.

1884. We have a number of people who registered yesterday because they wanted to provide their comments to the Panel. However, they didn't leave us with any contact information and so I'm wondering -- I'm going to go through this list and if you're one of these people, I'd ask you to go to the registration desk and just chat with people so that we can find out what time we can fit you in and make sure that we do get your contact information.

1885. If you know any of the individuals whose names I read out and you know that they're not here, if you could help us with some contact information so that we could be in touch with them we'd really appreciate your assistance in that.

1886. So the people who said that they wanted to present comments on the three topics to the Board orally and we don't have their contact information are Mr. John Perdue (ph), Mr. Ken Minifie, Mr. John Bushell (ph), C.V. Grithaulas (ph) and Mr. Frank Wolfe.

1887. So if any of you are here, if you could go to the registration desk and they could help you figure out when you could speak. If anybody knows of these people, if you could let them know that we're trying to get in touch with them or even if you felt comfortable giving us a contact phone number, that would be much appreciated.

1888. That dispenses with the biggest part of me talking for the day and now we're ready to listen again and understand your perspectives on these three topics.

1889. So we'll start with Mr. Randy Halyk and I'm sorry, I know now it's Halyk, is that correct? I apologize for mispronouncing your name.

1890. **MEMBER BATEMAN:** Mr. Halyk, thank you for taking the time to come and present to the Panel today. Would you please state your name and spelling for the record?

1891. **MR. HALYK:** Randy Halyk. R-A-N-D-Y H-A-L-Y-K. I would also like to just make note -- on the paper there it says "District of Kitimat." I am here personally, not as a councillor. This is just a personal thing.

1892. **MEMBER BATEMAN:** Thank you.

--- ORAL PRESENTATION BY MR. RANDY HALYK:

1893. **MR. HALYK:** So if I may start. My information or questions or whatever refer to additional information requests for you to ask Enbridge.

1894. First off, I'm under the impression that there is some concern by the pilots about Caamano Sound and the draft on the large tankers. I think that's something that the Panel needs to look into.
1895. I really don't know all of the ins and outs although I just heard a comment from one of the pilots.
1896. The other comment from the pilot was the anchorage here in Kitimat -- the size of it; there is some issues with the depth here; and whether or not any number of tankers can actually anchor here and how many can, and whether it's large enough to support the kind of anchorage required for as many ships that are coming in.
1897. Now this is related to the pipeline. I really want -- I've never really seen this and I'm not sure if anybody's ever asked this question. I missed some of yesterday. But bear with me. If you've heard this question, please just let me know. Who owns the oil?
1898. I think it's important to know who owns the oil that's going through this pipeline and if the pipeline is -- if the oil is owned by Enbridge after it's put into the pipe -- if there is a concern for spill or some kind of emergency that might happen, who's responsible? Is it the owners of the oil that are flowing it through the pipe? Or is it Enbridge?
1899. And if it is Enbridge or the oil companies, I know the Canadian government has a maximum amount that companies need to spend on oil cleanups and I understand that it's just changed recently.
1900. I'm not sure of those numbers but my concern is after seeing all of the oil spills throughout the world recently, with the billions of dollars spent, is there a way for the Panel to request that Enbridge put up a bond of billions of dollars? Or is there a -- maybe legislation must be -- needs to be changed. And I don't know that a panel can do that, but the concern is what is the cost of cleanup and if the cost is exorbitant, how do we get that funding? Is it up to the province or the country to pay for that? I believe it should be up to the profit centres to take care of that.
1901. One other question that I'd like you to ask, and I've asked this of the -- again, a number of different players in this scenario. Traffic control -- controlling the tankers in and out of Kitimat.
1902. Now, I'm under the impression that there is a traffic control centre in Prince Rupert but I feel that that would be too far from the centre of the action and I

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think that's something that the Panel needs to look at to determine whether or not there should be a traffic control centre located within the channel somewhere, either in Kitimat or Hartley Bay or something like that.

1903. And it would also add some economic value to this whole thing if that was done -- and whether or not there is going to be -- I know that Enbridge in their brochures talk about this fancy traffic control centre but I don't believe that they're planning to build one. I know that we have one; the government has one. So it's a question I'd like to have answered.

1904. And really, that's all. Very quick and a few -- I just want to thank you for the opportunity. Thank you very much.

1905. **MEMBER MATTHEWS:** Thank you Mr. Halyk. The Panel has no questions for clarification. Thank you.

1906. **THE CHAIRPERSON:** Ms. Cheryl Brown?

1907. Good morning, Ms. Brown. If you could state your name and spell it for the record and then provide us with your comments on these three issues we'd appreciate it.

--- ORAL PRESENTATION BY MS. CHERYL BROWN:

1908. **MS. BROWN:** Yes. My name is Cheryl Brown. It's C-H-E-R-Y-L B-R-O-W-N. Thank you for allowing me to speak and welcome to the northwest. I've lived here for 30 years and it's a rather unique area.

1909. It's been interesting in the last day to listen to the various perspectives and I welcome that opportunity to have a greater understanding of what other people are thinking and how their perspectives are there, so thank you for that opportunity as well. It certainly has helped develop a sense of communication and conversation.

1910. I just thought I'd introduce myself a bit just so that you know where I come from and where my comments come from. I'm a health care professional so I don't have a background in this area. One thing I have been involved in though that's given me a perspective that has been developed is that I was a part of the Kalum Land and Resource Management Plan development over the 10 years of that piece of document development.

1911. I'm currently on the Plan Implementation Committee of that plan so, you know, I had some background. What I've learned from all these experiences is that all that should be said is not in documents. Science is not always right and is often

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incomplete and many things are not known and not understood, and governments have agendas and create legislation that sometimes have consequences that are intended or not intended. So that's kind of my experience.

1912. I'm going to talk about the draft issues and some gaps. There was a lot of gaps I found. I will probably, if I have time, put them in written form but the, I think as others have said, the timeframe has been just overwhelmingly too short, and the document overwhelmingly too large to be able to look at a lot of these things, but I've attempted to do that.

1913. The first item in the Draft List of Issues is rather vague regarding the need of the project and I'm not sure if that's been purposely intended. But my question is, how is this being defined? It opens a discussion to a number of areas that are profound for Canadians and are difficult questions but are long overdue. By leaving the question open I hope it was the intent of the NEB to discuss these difficult issues of need and also the assumptions that they operate from.

1914. Canada currently has no energy plan, so who is deciding the need and how it should be played out, is my question. Currently it seems to be corporations and profit that have the plan in mind.

1915. How is the need defined within the context of climate change and our use of hydrocarbons? And how is it being defined within the development of the tar sands and its huge carbon footprint?

1916. Also, how has the need been defined within the petro-state economy that Alberta has and Canada is fast becoming?

1917. So those are my concerns about what we are discussing in terms of needs.

1918. **THE CHAIRPERSON:** Ms. Brown, just as you're continuing forward, you might just want to move the microphone a little further away and that might be more comfortable.

1919. **MS. BROWN:** Okay. Thank you.

1920. Environmentally there's the issue of crude oil being transported on the coast. A restriction of this traffic has been honoured for the past 40 years. The risks were not understood but fortunately we recognized this and allowed no transport of crude oil during these times.

1921. Our understanding of the impacts of oils spills has increased but remains quite limited as demonstrated by Valdez and the current situation in the Gulf.

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However, our ability to create larger spills has increased. Technology has improved but has not negated the potential oil spill.

1922. Our confidence to manage has increased but it's a false confidence as demonstrated by the history of our ability to manage spills.
1923. The issue regarding the impact of lifting the moratorium needs to be examined in all its aspects including further development that it would spawn, and also the consequences on current and future populations.
1924. As a place on earth, the B.C. coast has had limited exposure to hydrocarbons. A strong baseline needs to be in place for our understanding of what is here. It would also provide key research information for other areas that have been impacted by oil. As presented by others, baseline information is limited within the proposal.
1925. My experience within the LRMP process showed that baselines are often non-existent, particularly in this area, and are difficult and costly to get. Lack of government resources was often the culprit and many asked for baselines that could not be produced. The question for me is how do we get baselines developed independent of the Proponent to ensure that they are unbiased and also complete?
1926. Reading the portions of the document left me with many questions. I have not included these in the document but there's many gaps and very strong areas that are vague, as many people have already discussed. As to the coastal marine transport spill data, it either was not available or vague, as previously shown.
1927. It's also stated in a document on page 5-16 of Volume 7C that Enbridge is not responsible for a spill from a tanker moving to and from a marine terminal or from an escort tug, and that the response spill to that will be initiated and managed by -- and implemented by the vessel owner and representative.
1928. As an individual, I can see why the data may be vague within that context. It indicates to me that the gaps could be a result of a non-committal of Enbridge, because Enbridge has no responsibility. Perhaps the elephant in the room is that there is in fact no Proponent for the coastal portion of this project.
1929. Overall, I am connected. I'm concerned about the accumulated effects of various projects and the insults on the land and the water base, and people have talked about that and there needs to be a really strong discussion on that.
1930. A discussion on the effects of the project and the quality of life issues beyond salary need to be asked. Asking people why they live here and choose to

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stay, organized forums to enable people to speak their interests and their values and see how they may be impacted by the development of the oil project needs to be considered; how they see the effects of this project and potential spills on themselves and the future generations on fish, wildlife and quality of life.

1931. Another gap within the project is that there's no comments about how many jobs will be affected or lost as a result of this. There's only questions about, or comments about, how many will be created. But what's the current impact on what's already there?
1932. And regarding acts and legislations, they refer continuously the document and establish a protocol and procedure for the project. As a person of the public, I see that -- I hope that the NEB will examine the current legislation, et cetera, to determine its actual adequacy, what needs to be added before the project can proceed. In other words, the status quo is not good enough.
1933. For example, what is the current legislation regarding spill management and who's responsible for that? I don't feel it's inadequate in what's there.
1934. When I read the document I was confused and concerned when I read that the layout and designs of pipeline routes included watercourse crossings, are considered and approved under the *Petroleum Natural Gas Act* and are not subject to the *Forest Practices Code*. In other words, the *Petroleum Natural Gas Act* takes precedence over other acts that are out there. Is that adequate? I don't know.
1935. I'm also concerned about the document because one Act is overriding the other and what this can mean is the *Forest Practices Act* is being considered best practices, but I'm also confused by the fact that the *Forest Practices Act* is no longer in existence, so the document is really confusing on these areas.
1936. The Kalum LRMP was developed by many sectors and interests through consensus over a 10-year period. It developed in areas regarding fish, water, forestry, cultural, recreation, grizzly bears, access management, ungulates, tourism, visual qualities, et cetera. There were many.
1937. The Kalum Plan was adopted as a higher-level plan within the B.C. Government legislature. I believe in 2004 it was finally passed, but only a portion of the plans have been legislated into legal language and others are currently being developed and are going to be presented. There's a question for Enbridge: will you honour the intent of the entire Kalum LRMP Plan, or are you only going to honour the areas that are currently being legislated?
1938. Regarding safety, as a public person I expect the NEB to examine the

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adequacy, accuracy and timeliness of the science that has set the protocol for the pipeline, the vessel, terminal construction and maintenance and marine transport of oil and spills. Are the current standards adequate? The issue of adequacy of science and -- of hydrocarbon clean-up for the environment and for the safety of workers.

1939. Also I have a question of whether or not, within all this whole context -- what the principle is currently in operation? Are we operating under the precautionary principle or are we doing a harm-reduction model? I'm not sure.

1940. I want to thank you for the time and attention. The proposal is massive and it's daunting and it's immense, and your task is big. I hope that you have the resources at your disposal to do the investigation of areas that others do not do or financially cannot do.

1941. As a person of the public, I was dismayed and I was actually insulted by the token offering of financial help within a \$5 billion project. How can one possibly begin to look at this project, look at the gaps or the science behind this proposal in a realistic way? How can one consider this a fair public process?

1942. As a citizen I'm concerned about the ability of the process to proceed. There is a collective obligation as a society to determine the rights and title of Aboriginal peoples. You have a complicated issue of tanker transport impact.

1943. There is more impact or potential impact in this area -- huge -- which means there's an impact on the strong connection of culture and the rights and title of the Aboriginal people. You really need to figure this out before you proceed or before a Hearing Order takes place.

1944. And thank you.

1945. **THE CHAIRPERSON:** Thank you, Ms. Brown.

1946. Mr. Matthews?

1947. **MEMBER MATTHEWS:** Thank you, Ms. Brown.

1948. Could you please spell the name of that plan; Kalum -- the Kalum Plan. How do you spell that please?

1949. **MS. BROWN:** The Kalum Land and Resource Management Plan; so it's called the KLRMP as an acronym.

**Oral presentation
Mr. Sean O'Driscoll**

1950. **MEMBER MATTHEWS:** Great, thank you. That's good.
1951. **THE CHAIRPERSON:** Thank you very much for taking the time, Ms. Brown.
1952. Mr. Sean O'Driscoll? I understand you had to leave and now you're back again. Your timing is impeccable.
1953. **MR. O'DRISCOLL:** Beg your pardon?
1954. **THE CHAIRPERSON:** I said I understand you had to leave and you're back again, so your timing is impeccable.
1955. **MR. O'DRISCOLL:** Yes.
1956. **THE CHAIRPERSON:** Take a moment to collect yourself if you've been racing around.
1957. **MR. O'DRISCOLL:** Better get out the old glasses here.
1958. **MEMBER MATTHEWS:** Okay. Good morning, Mr. O'Driscoll.
1959. **MR. O'DRISCOLL:** Good morning.
1960. **MEMBER MATTHEWS:** Okay. So when you're ready, please proceed with the questions.
- ORAL PRESENTATION BY MR. SEAN O'DRISCOLL:**
1961. **MR. O'DRISCOLL:** Oh yeah, I was here yesterday.
1962. **MEMBER MATTHEWS:** Okay. You must have been at the back of the room.
1963. **MR. O'DRISCOLL:** Yeah. It was more exciting yesterday than today.
1964. **MEMBER MATTHEWS:** Thank you.
1965. **MR. O'DRISCOLL:** Yes. Well, anyway, to start off, thank you for giving me this opportunity to address the Panel today. I believe our community should support the Northern Gateway Project for the following reasons.
1966. Number one, oil is industry's life's blood. Alcan, as it then was, and other

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industries who are not here, would not be here if it were not for oil and petroleum products. For over 50 years Alcan has transported coke and liquid pitch, both petroleum products required for the smelting process up the Douglas Channel for the modernization smelter.

1967. For over 50 years Alcan has used technology which was old, even when the Kitimat smelter was built in 1950s and has polluted the Kitimat Valley even up to the present day. Alcan's environmental permits still continue to be violated, yet no-one has ever suggested that the Kitimat smelter be shut down despite its impact on the environment.

1968. In fact, this community supported taking Alcan to court for fear that it was more interested in power sales than aluminum production.

1969. Supporters of the core case argued that Alcan should produce more aluminum, thereby increasing the -- by increasing its environmental footprint. Now Rio Tinto Alcan is in the process of completing the long-awaited modernization of its Kitimat smelter.

1970. A new modern smelter will produce fewer emissions than before, even with greater aluminum output, but those emissions will not be reduced to zero. Some environmental impact is a certainty. No-one is suggesting that the modernization project should not go ahead; if anything, we hear that the modernization project should be larger.

1971. However, opponents of the Enbridge pipeline, many of whom are Alcan's employees, say that the pipeline project should not go ahead because of the potential of an environmental impact.

1972. The modernization project itself will be supplied by oil and construction supplies will be shipped up, trucked and railed to Kitimat. Anything -- sorry, I'm getting all mixed up here now.

1973. To Kitimat -- like the modernization smelter, Enbridge will be utilizing the latest technology for its project. Anything less would be unacceptable. Lessons have been learned from recent events and the potential -- and I repeat -- potential of an accident will be greatly reduced.

1974. There are two types of oil; dirty oil, tar sands oil, and blood oil; oil from the Middle East. Given a choice, I would prefer to rely on the so-called "dirty oil" which is produced here in Canada.

1975. The petroleum industry, including the Enbridge Pipeline Project, has and

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will provide many good-paying jobs. How many of those protesting the construction of the pipeline are out of work and in desperate need of a job to provide for their families? I support more good-paying jobs and prosperity in my community.

1976. Tanker traffic passing through the Port of Vancouver -- I beg your pardon, tanker traffic passes through the Port of Vancouver without any problems. There is no reason to think the same cannot be done here.

1977. Do the benefits outweigh the negatives for the use of oil? Clearly the answer is yes. Canadians should be thankful for the resources we have which we can send to market all over the world; the revenue from which provides us with the world's most enviable standard of living.

1978. Will people give up driving their cars if there's an order to prevent the pipeline from being built? The answer to this is no.

1979. Our ability to assist other countries in need, such as Pakistan, Haiti, is fuelled by oil to fly or ship in food and other humanitarian necessities. Even the fishing boats, now back at work in the Gulf of Mexico, are powered by oil products.

1980. Oil has allowed people to travel all over the world. Before coal or oil was on the scene people rarely travelled more than a few miles from where they lived. I have travelled -- personally, I have travelled to many countries all over the world, including Europe and Asia. Do you think I would give up the ability to travel because of a few radicals who are against using oil, even though they themselves use it? I am not prepared to give up the benefits of using oil.

1981. I support the pipeline and I will continue to drive. I will say no to the pipeline if I see those who are against it stop driving. How then will they go to the grocery store and back? Cars are the biggest polluters in the world.

1982. Those who are against the pipeline are worried about a spill and I re-emphasise there is only a potential of a spill but what is certain is that the cars belonging to those fair-weather environmentalists do cause environmental damage. Their attitude is one of "not in my backyard".

1983. I would like to see all tankers in the Douglas Channel escorted by two tug boats and of double-hull construction. If not, then there should be no tanker traffic in the channel.

1984. Those families -- those familiar -- sorry, I beg your pardon -- those familiar with the Second World War would be aware of the fact that during the war

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Chief Archie Robinson**

there were hundreds of tankers sunk all over the world. Hundreds of commercial ships were sunk; aircraft carriers, battleships and destroyers were sunk. These events resulted in huge amounts of oil being spilled into the world's oceans, unlike any we have ever seen since, without any clean-up; I add, without any clean-up. Did these events destroy the marine environment? No, they did not.

1985. We look upon oil as if it were radioactive, which it most definitely is not. At this point in time the benefits from oil and its influence on our quality of life are far too great for me to consider giving up.

1986. And with that, I conclude. Thank you very much.

1987. **MEMBER MATTHEWS:** Okay. Thank you, Mr. O'Driscoll. I don't have any questions. Do you have any?

1988. Thank you very much.

1989. **MR. O'DRISCOLL:** Good. That's what I like to hear.

1990. **MEMBER MATTHEWS:** Thank you.

1991. **THE CHAIRPERSON:** Chief Archie Robinson?

1992. Your delegation has just arrived. You know, you can go later if you want. Are you sure you're ready to proceed?

1993. Why don't we just let you two talk and figure out if you'd like to go know. Go ahead.

1994. **MEMBER MATTEWS:** Chief Archie Robinson, thank you for attending today. I see that you have a guest with you. Would you both state your names and spelling for the record?

1995. **THE CHAIRPERSON:** The white button, there we go.

--- ORAL PRESENTATION BY CHIEF ARCHIE ROBINSON:

1996. **CHIEF ARCHIE ROBINSON:** Good morning, Panel. I'm glad I made it here to present our concerns.

1997. **MEMBER MATTHEWS:** Thank you.

1998. **CHIEF ARCHIE ROBINSON:** My name is -- I'm the Hereditary Chief

**Oral presentation
Chief Archie Robinson**

Archie Robinson. My Chief name is Nei-Los.

1999. **THE CHAIRPERSON:** Could we ask you just -- would you mind spelling your hereditary name for the record?
2000. **CHIEF ARCHIE ROBINSON:** N-E-I - L-O-S. Nei-Los.
2001. **THE CHAIRPERSON:** Thank you.
2002. **CHIEF ARCHIE ROBINSON:** That's my Chief's name. I am here, the Head Chief of the two tribes that reside in my community. They are the Kitasoos who are the main island people. And the other tribe is the Xaixais who are the mainlanders -- Marshall and Kent and Kynoch Inlet. In the early 1800s, my people was moved to Klemtu. Then when we first arrived at that time was called China Hat.
2003. The reason why we were moved there -- that's when the reserve system started by INAC. My people lived all over, scattered about my territory, lived there. And the people -- chiefs -- owned the fishing stream, berry picking grounds, picking medicine. My people moved about then until the early 1800s. That's when we were moved to Klemtu, now called Klemtu when the reserve system came about. And that's been our permanent home since.
2004. I am here on behalf of my people, people of Klemtu which is located on the east side of Swindle Island. Swindle Island has the population of 500. That's the amount of people I represent. Klemtu is only accessible by boat and float plane only -- float plane and boat.
2005. It was a fishing community one time owned by J. H. Todd and Sons. In the '50s and '68 -- had a fish plant there across our north side of our community which the J.H. Todd employed a lot of the people up and down the coast. People from the Haisla, all over the coast came to work at Klemtu, even people from Haida Gwaii. Different nationality people came to work there, to work when our cannery was still in operation.
2006. But it shut down in '68 -- 1968 the cannery shut down. My people were left on the beach with no jobs, absolutely nothing to do after the company closed down. Nobody came to our aid to create employment for my people -- nobody. So the leaders of my community started to create jobs for my people.
2007. First, as I said, we're a fishing town -- it was a fishing community but no longer after J.H. Todd and Sons moved out. Left us on the beach with nothing. There were all the ladies of the community worked at the fish plant. And all the men of the community -- they worked aboard about 10 sailboats which the company had.

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It wasn't only my people. There was people from Kitimat, people from Bella Bella, Hartley Bay, elsewhere that came to man those same boats with J.H. Todd and Sons.

2008. The leaders of the clans, as I said -- the leaders of the community started creating -- looking to create jobs for the community. We started very very small. When I say small, I mean 50-75,000 pieces of cohoes and springs. We're now a fish farm community. Fish farm -- that's what we're doing now.
2009. As I said, we started very small, 50-75 pieces, cohoes and spring salmon which we started with, our very, very own operation. Nobody came to our aid. All the funding was supplied by the -- so we worked at that for a few years. Never went in the home, never made too much money but we kept at it until such time we had to quit.
2010. On a count of the cost of the freight we had to bring in to feed the fish with, it cost too much for us to carry on ourselves. Then we quit for a few years. Then we got into partnership with Marine Harvest which we're still with today.
2011. We've been working with them for over 20 years now, over 20 years in our community. It also creates a lot of employment for 20-25 men. Leslie is one of them. They take it in shifts, once a week -- one week out, one week home, taking turns, taking shifts. We have four sites that we now do fish farming with our partner in the marine harvest. We have four sites: Sheep Pass, Goat Bay, Kit Bay, Jackson Pass. That's where we have our sites which creates employment for my people.
2012. My people, since the employment that my leaders found for the community, not on welfare. If they were on welfare a single person would get \$185 a month. What can you live on with \$185 a month? So the fish farming has meant a lot to the community. Nothing has happened yet. We're still there, we're still operating and it creates employment for my people. We've been there for 20 years.
2013. Now I have two boys that work in the farm. They harvest a lot of our resources around the area adjacent to the farms: cucumber, clams, cockles and prawns right adjacent to our fish farm. Not far away from there, so we are very, very careful when we started to go partnership with our partner now. We have a very, very strong agreement with them.
2014. Because we are concerned about our resources. We don't want our resources destroyed. Up to today, nothing -- nothing -- has happened. We're still harvesting, we're still eating all our resources adjacent to the sites we have.
2015. Not too long ago, personnel of our partner came to my house, as being the Head Chief of the tribe. He came to see me and tried to ask for permission to expand.

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He wanted to expand the operation and I just told him no -- no, no way you can expand. What we have and operating now is enough to keep my people busy. Why are we going to expand? You could only export it out to Port Hardy so there's no expense in -- of our fish farming operation.

2016. As I said, we're a fish community. We just started, some of my men, local men, are out on training to be loggers. That's what they're doing now. We had -- last year we operated -- we do heli-logging on account we have no certified fallers. We're in partnership with Western Forest in the logging industry.

2017. That's the reason I say we hire -- but none of my people are certified fallers or work in the bush -- not certified yet. So our partner, Western Forest, hires people far up as the Nass and that's to hire fallers, truck drivers and other things. That's what we've done. I have no opposition against it because we're not certified loggers yet but we're working towards that.

2018. I'd say we're almost a sufficient community -- self sufficient. Pretty close to it. Like I said, we employ 20-25 men out in the farm sites, 40-50 ladies working in our fish plant. We have our own fish plant which we put up a few years ago. As I said, we have an almost self-sufficient community.

2019. We have fish plant, we have fish farm site, the band store, the oil station, café, post office, a fire station, band school operated by -- just like anywhere else, we elect our school board every other year. Our school teaches from K-4 to grade 12. We own our own TV system, we have our own band administration office, a new health centre which is going to be officially opened at the end of the month.

2020. All the home units in the community are under CMHC. Myself, I pay a low \$300 a month for rental for the unit I got. We have a day-care centre, one salmon seine boat that the band owns, one packer, and we also operate spawn-on-kelp, which we're able to obtain from DFO. They allow us -- that licence allows us to spawn eight tonnes of fish and we put our kelps in there and they're ready to harvest. We harvest them and then they go out in the market.

2021. When we first started the operation a few years ago, we got \$54 to \$45 a pound, first few years, so that operation meant a lot to the community because it helped purchase a lot of the buildings I mentioned. That's why we almost say we're almost self sufficient.

2022. We have our -- like I said, we have our own forest company, we have our own Klemtu tourism. That's the reason why some of my Chiefs are unable to be here with me, because they're out there minding the operation tourism. It's that season. They take our guests out looking for the famous white bear. That's why the rest of

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my Chiefs are unable to be with me today.

2023. The other person that's supposed to be sitting here is one of my Council members. I don't think he's arrived yet. That's why we are very, very concerned. I don't have to mention the figures, the damage that is done up and down the coast, Alaska, Mexico -- I don't have to give you the figures. You know the figures with these tankers and tanker routes can do to my people's resources. That's why we are concerned about it; the damage it's going to cause, the oil spill, the plan for the oil tanker route.
2024. It is a great threat to my people; not only to my people, to people far up as the Nass, my friends from Haisla, because we come here annually to trade, be it grease, be it moose meat or whatever, because we don't get the moose meat where we live. We don't get the grease either.
2025. That's why I mention it's going to affect my people at Kitimat and people far up as the Nass and also the Skeena, where we trade annually with the food we could not get at home, with the herring eggs and the cod, the halibut, which our neighbours up in the interior don't get. We trade with them.
2026. So that affects the whole Province of B.C. That's why I say that it's a great threat to my people, what I hear, this tanker plan that is out there.
2027. All the food resources that we harvest -- that we harvest annually. We started with sockeye, seaweed, herring eggs, salmon, berry picking, getting medicine, trapping -- which is our shores, outer shores on my territory, it's going to be also damaged too, to what I see and hear on the TV -- the destruction that is happening out there to the outer coast of my territory.
2028. This is Ron Robinson.
2029. **MEMBER BATEMAN:** Welcome, Ron Robinson.
2030. **CHIEF ARCHIE ROBINSON:** He's a member of the Kitsoo Band Council.
2031. **MEMBER BATEMAN:** Thank you.
2032. If I could just assist here, just at this natural break, what we have done is scheduled 30 minutes more or less for each presenter. We want to make sure that -- all of the points that you have come to cover with respect to the three issues on the screen. If either colleague has any comments that they will add, if you could also build that in.

2033. And what I see is that we have about 10 minutes left.
2034. **CHIEF ARCHIE ROBINSON:** As I said, what's happening, the Panel is trying to find out what -- how which can effect -- it's going to affect all the people of British Columbia, especially the Aboriginal people. We get all our resources from the sea, all our resources. We harvest annually. It's a great, great threat.
2035. My territory, Kitasoo/Xai'xais territory, go out far, way out far in the Hecate Straits leads together with our neighbours, the Haida Gwaii, lead together out in the Hecate Straits. That's how far our territory goes. You're talking about a tanker route going through my territory. You better ask permission to go through there. That's what's supposed to happen.
2036. To any Aboriginal community, you plan any kind of industry you want to start, you must come to the Aboriginal people to consult with them what you're planning to do. Okay? I hope you hear that loud and clear. Go to the Aboriginal people first to seek their -- consult with them.
2037. As I said, it's a great threat to my people. It really is; not only to my people, all the people that's here, the Haisla people that are here and all up and down the coast. Bella Coola; we go up there and trade too with the herring eggs and other resources.
2038. We trade because they get the oolichans there too and also the oolichan grease which we don't get at home. We trade with that, either with herring eggs, be it salted, be it dried, whatever. We trade with our neighbours over at Kitimat Village, up the Nass.
2039. We, the Kitasoo/Xai'xais people, nation, do not support -- do not support -- what is on the table. We do not support because it's too great a threat. If this thing happens, it's going to destroy everything of our resources that we harvest out on the shores in my territory.
2040. We want to, we are -- we want to protect what little we have left. We want to protect what little we have left. We ask the Panel, whoever you're representing, stop the tank line and the pipeline because we do not need it. We don't need another industry to destroy the resources we use from the sea.
2041. And it's time, it's time that you listened to the First Nations people. It's time that you listened to the First Nations people and also treat us equal -- and also treat us equal.

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Chief Leslie Neasloss**

2042. The reason why I'm saying that -- I'll just give you a little background, the reason why I'm saying that you must listen to the First Nations people; because in my territory we have all kind of industry, fish herring and everything, it's not too far away from my community there's a place called Kitsoo Bay where we harvest our herring eggs and all our groundfish.

2043. Year after year we ask DFO to stop the industry from taking our resources away. They don't listen. That's why I'm saying it's high time that you listened to the Aboriginal people and also treat us equal.

2044. I will leave it. Any one of my colleagues, if they want to say anything do so now.

2045. **CHIEF LESLIE NEASLOSS:** My name is Leslie Neasloss. I'll be very brief.

2046. **MEMBER BATEMAN:** Mr. Neasloss, would you spell your name for the record, please?

2047. **CHIEF LESLIE NEASLOSS:** My first name is Leslie L-E-S-L-I-E, my name is N-E-A-S-L-O-S-S.

2048. **MEMBER MATTHEWS:** Please proceed. Thank you.

--- ORAL PRESENTATION BY CHIEF LESLIE NEASLOSS:

2049. **CHIEF LESLIE NEASLOSS:** Yeah, okay. One of the Hereditary Chiefs, also from the Kitsoo, and I wasn't listed as one of the speakers but seeing as a I got a little bit of an opportunity I just wanted to voice my opinion on that too, on the tankers going through our territory. Because as everyone else has said, it is a big threat if anything happens, just by the history of what has happened in the Gulf of Mexico and Valdez and things like that.

2050. We need to protect what resources we do have. Maybe not for me but for our future generations.

2051. Thank you.

2052. **MEMBER MATTHEWS:** Mr. Mike Robinson, will you have a comment you would like to make as well?

--- ORAL PRESENTATION BY MR. RON ROBINSON:

2053. **MR. RON ROBINSON:** Yes. My name is Ron Robinson, Kitasoo Band Council.
2054. I'm here just to support my colleagues here, my Hereditary Chiefs here in respect of what they have on the floor, what they gave to you.
2055. And just one bit information -- we have a Kitasoo Marine Use Plan, which is not complete yet but we will complete it and it will be available at -- we're in the process of working on that and like I said, I think Archie -- unless has our land use plan Xai'xais and Archie is mentioned a lot here.
2056. The only thing I have as a Band Council rep here is, number three, locations for the oral hearings. I would like to have an oral hearing in our Band, Kitasoo, just to solely inform our people as to what's happening, you know, keep them informed. That's what I'd like to have and I'm glad to have this time here.
2057. Thank you.
2058. **MEMBER MATTHEWS:** Thank you.
2059. We have noted all of the comments that have been made and we'll take them into consideration. Thank you for taking the time to participate today.
2060. **THE CHAIRPERSON:** Mr. Keagan Schopfer and Ms. Joan LeClair?
2061. Welcome.
2062. **MR. SCHOPFER:** Thanks.
2063. **THE CHAIRPERSON:** Again, I think you must know the process by now; if you could just spell your names for the record, appreciate it and then proceed with your comments on the three topics that are listed.
2064. Thank you.
2065. **MR. SCHOPFER:** My name is Keagan Schopfer, K-E-A-G-A-N S-C-H-O-P-F-E-R.

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2066. **MS. LECLAIR:** And my name is Joan Leclair, J-O-A-N L-E-C-L-A-I-R.

2067. **THE CHAIRPERSON:** Thanks very much. I'm sorry I mispronounced your name, so it's Mr. Schopfer?

2068. **MR. SCHOPFER:** Schopfer, yeah.

2069. **THE CHAIRPERSON:** Schopfer; thanks very much.

2070. Please proceed.

--- ORAL PRESENTATIONS BY MR. KEAGAN SCHOPFER AND MS. JOAN LECLAIR:

2071. **MR. SCHOPFER:** Okay. Microphones make me a bit nervous so I've prepared something here.

2072. **THE CHAIRPERSON:** No need to be nervous. Take you time. Sometimes when you are nervous there's a hesitation to rush through things which makes it very difficult for both the translators and the court reporter.

2073. So breathe, pour yourself a glass of water. We're interested in hearing what your comments are. As you know, 30 minutes is the rough guideline and I'm sure you'll be able to express yourself within that timeframe.

2074. **MR. SCHOPFER:** Hope so. Thank you.

2075. I'd like to thank the Panel for coming here today and providing us with this opportunity. I'd also like to thank the Haisla people for allowing to have a rally outside yesterday and for inviting us to their territory to lend voice to this process and I'd like to thank the representatives of Enbridge for travelling to this part of the world.

2076. As issues of this nature always serve to remind us up here we, as the Northern people, stand united in a lot of respects and we really are a nation of Northerners. So as a member of that nation I'd like to say to all you folks, welcome here.

2077. I'll start off with the first topic of discussion, the Draft List of Issues. As I understand, the Panel has "A broad mandate to assess the potential effects of the project and determine if it is in the public interest". This is a really broad mandate and so I think that with this mandate it leaves the door open for consideration of some

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very important issues that are not necessarily directly related to the pipeline, one of them being the tar sands project in Alberta.

2078. According to the Pembina Institute, the Enbridge pipeline would facilitate at least a 30 percent increase in tar sands daily output, resulting in an additional 6.5 mega tonnes of greenhouse gases being released every year. This would mean consuming natural gas to heat 1.3 million homes and polluting enough water to supply a city of 250,000 for a year.
2079. When looking at the environmental impacts of the Enbridge Project, the Panel must take into account the upstream effects of the increase in tar sands production. This must become a part of the discussions surrounding this pipeline.
2080. While we're talking on the national level I'd also like to bring up a couple of other points. When looking at the need for this project which is also in the Draft List of Issues, I would urge the Panel to take into account effects this pipeline would have on the economy of Canada, the exportation of raw and natural resources has been decried from economists from all ends of the political spectrum and yet there seems to be a troubling trend favoured by the provincial and federal governments that are currently in power.
2081. Exporting raw materials robs all Canadians of much needed jobs, especially important in these last few years of economic hard time. According to the Toronto Star, TransCanada's Keystone Pipeline, which ships 400,000 barrels per day to the States, costs the Canadian economy 18,000 processing jobs a year.
2082. Enbridge's pipeline will move more than 500,000 barrels per day which would, by extrapolation, result in at least another 18,000 jobs leaving Canada and I believe this is something the Panel must consider when looking at the need for the project.
2083. The other less concrete question the Panel should look at is the question of whether we, as a country, want to encourage the cancerous growth of the tar sands industry at all. It's been called by many as the most destructive industrial operation on earth. Its effects can be seen from space.
2084. At a time when Canada should be transitioning away from a carbon-based economy altogether is it right to approve a project that would encourage not only very destructive and wasteful method of extracting oil but encourage the burning of fossil fuels in other parts of the globe? This is a global problem with global results.
2085. We heard yesterday how China's pollution is showing up in cedars and hemlocks on our coast here. So this is something that must be looked at.

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2086. We've heard again and again that those of us up here are really concerned about if there's a spill who is going to be on the hook for it. I don't need to go through that again, everybody said it but I'd like to bring it up. And especially, everybody talks about a spill on the water but as we've so recently seen in Michigan a river spill is a very real possibility when operating crude oil pipeline that crosses rivers. This also must be looked at. Who will be responsible for a river spill?
2087. In terms of another thing that should be on the Draft List of Issues, the long-term maintenance and operation of this pipeline. If approved, the pipeline will very likely be shipping crude oil for the next 50 years or more. You're probably aware of the spill in Michigan and for brevity sake I won't go into all the details of that spill.
2088. The pipeline that ruptured, Line 6B, was 40 years old when it failed. In recent weeks it has come to light that Enbridge operated this pipeline despite numerous known structural defects.
2089. As soon as the rupture happened Pat Daniel, their CEO, said the line would be restarting in a matter of days. However, this last week Enbridge was told by the U.S. authorities that it may be months, if not years, before the line reopens and only after they fix the numerous dents, cracks and weaknesses that are known to exist on Line 6B.
2090. I bring this up not to demonize Enbridge who probably doesn't stand out from the rest of the industry in this regard but to highlight the situation surrounding the regulation and policing of pipeline companies.
2091. As we heard yesterday, the regulatory situation here in Canada is even worse than it is in the States, with pipeline companies left largely to police themselves. You simply cannot have the fox minding the hen house. It will not work.
2092. My point is that the regulations surrounding this pipeline and its operation must be considered by the Panel when looking at potentially future environmental impacts. The failure of regulation or the failure of its enforcement can have disastrous environmental consequences as we've so recently seen in Michigan.
2093. My questions -- Are the regulations as they stand sufficient to ensure that the pipeline will be operating in a safe manner in, let's say, the year 2065? How can I as a downstream resident of this pipeline know that it will not be corroded or operated in an unsafe manner?

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2094. Are the policing measures in Canada effective? And most importantly, will there be a vehicle by which the public will be able to have input on the pipeline and its operation once it has become operational? Will there be a public oversight body created to allow those of us living downstream to sleep without fear of a Kalamazoo-type spill in our own watershed? What that type of a body look like?
2095. Another thing the Panel should be looking at -- the spill in Michigan brought to light the fact that there are inherent dangers in transporting bitumen-derived crude that go over and above the dangers of transporting conventional oil. The investigation into the spill in Michigan is still ongoing.
2096. However, it's been alleged that the reason it was so hard to detect that leak for so long -- the pipeline gushed for at least five hours, as far as I know. It's been alleged that the reasons for that is because there are -- it's difficult to transport bitumen and the sensors that have been designed to detect pressure drops are confused by the viscosity of the bitumen oil. So I don't know the science surrounding this but it think this is something that should be looked at.
2097. Will the committee be looking at the increased risk of pipeline transportation that comes with the moving of bitumen-derived oil? What will Enbridge do to mitigate these effects?
2098. Also, will the review process take into account the recent Michigan spill in its entirety, make reference to its causes and examine how Enbridge plans to prevent a similar rupture on the Northern Gateway line? I feel the findings of the official U.S. investigation must be taken into account and discussed as a key part of the Northern Gateway project.
2099. I think the public has lost a lot of confidence in Enbridge after this Michigan spill and I think that it would be good of them to bring this into light and discuss it to restore public confidence in the company.
2100. Just a quick note about something we heard yesterday regarding aquatic invasive species -- I recently spent four years living in Newfoundland and there are, of course, all sorts of social and economic parallels that can be drawn between -- and lessons to be learned from a place that saw such devastation because of a collapsed fishery. But the one thing I want to talk about is invasive aquatic species.
2101. In 2007 the European green crab arrived in a place called Placentia Bay in Newfoundland. It came in the ballast water of tankers fuelling up at the Come-By-Chance refinery. Within three short years this crab has devastated the shellfish fishery which is what many local fishermen had to turn to with the collapse of the cod stock.

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2102. The crab -- on the crab's voracious menu are clams, mussels, scallops, other crabs and even lobsters. By the time I left Newfoundland in 2009, the infestation was so widespread that in some of the communities where I worked, the shellfish fishery had totally collapsed and fishermen had to move elsewhere or commute long distances in order to prosecute their livelihood.
2103. So I just urge the Panel that this is -- these invasive species are a very real and very serious threat to the coastal ecosystems and the people who rely on them and it should be something that's part of the discussion.
2104. I haven't read the full 8,000 pages of the Enbridge submission yet but there are certainly a number of documents which definitely need to be submitted by Enbridge before any Hearing Order should be called by the Panel.
2105. First, it's ludicrous to me that the Enbridge would be allowed to submit their Emergency Response Plans only six months before the start-up of operations. How is it that the application is anywhere close to being sufficient without these very important key documents?
2106. And how can there be true public consultation if the public doesn't know how Enbridge plans to respond to a spill or a leak?
2107. Just a little anecdote here -- in the wake of the BP spill in the Gulf of Mexico the U.S. EPA asked all the pipeline companies to review their spill response plans. Five days before Line 6B ruptured, Enbridge submitted a report claiming that their plan was, and I quote:
- "...appropriate for responding to a worst case discharge according to the agency's timeline."*
2108. Within hours of the spill, however, Enbridge's lack of preparation was tragically evident. As a result, the EPA asked Enbridge to submit a response plan, their clean-up response plan, which was rejected wholesale because of, and I quote again, it was rejected for being "too vague" and containing "gross deficiencies."
2109. So I don't think I need to harp on this much more. Enbridge must make their spill response plans public before a public hearing can go ahead, and this includes not only spill response plans for a disaster at sea but for inland waterways spill response plans as well.
2110. Pat Daniel, the CEO of Enbridge, has said he cannot guarantee there will not be a spill. In order for the public, for Aboriginal groups, for all affected parties to

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participate fully in any environmental review process, we must know what the risks to our health, our environment, our economy and our future would be were there to be a small or a large spill.

2111. For example, we live downstream from the Morice River crossing in the Coastal Mountains. What would the scenario be if there was a, let's say, four million litre spill into the Morice River during the spring flooding in May or during the dynamic and volatile ice jams in March, or during the chinook salmon run in the fall?
2112. What would happen to the invaluable fish and wildlife habitat? What would happen to the recreational potentials of the Morice River valley? What about water quality in downstream communities like Toquaht or Smithers? Who would be compensated for the loss of property value along the spawning channels in the Morice River or the loss of property value of Crown land?
2113. Enbridge has spent millions coming up with their best case, no spill scenarios for the economic future of the region. But residents deserve to know what the possible effects of a spill would be on their health and economic welfare. How can we be expected to shoulder the risk or to make decisions about whether or not to shoulder the risk without knowing what the risks fully are? And as Mr. Daniel himself has admitted, a spill -- and as we've seen in Michigan, a spill is a very real risk from this pipeline.
2114. So Enbridge needs to fund and to make public an independent third-party scientifically conducted analysis of the effects of a worst case or of a worst case spill on the health and economies of affected communities, a large or a small spill.
2115. Items that they should be looking at are impact on the economy, impact on the loss of jobs, loss of tourism, impact on the environment, health impacts -- what would be the effects on food chains with people at the top, because in this part of the world there -- a lot of the food chains have people at the top of them which is maybe unique to this area of the world. So that should be looked at.
2116. What would immediate as well as lingering effects of toxins released into the environment be on human and other populations?
2117. Very importantly, how would a large or small spill affect Aboriginal rights and title? What would the legal implications be were there to be a large or a small spill in this region?
2118. And also looking at the socio-economic impacts of a spill -- we heard yesterday about a lot of the effects that have been seen up in Alaska after the Valdez spill, the problems with suicides in the communities. All these sorts of things should

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be taken into account when doing a study of what the risks for a spill would be. And this must be considered in regards to an inland waterway discharge spill as well as a tanker spill on the coast.

2119. And I repeat, Enbridge must fund an independent third-party and scientifically conducted study of what the risks are.
2120. Those of us who talk about the risks are often called -- we get called fear-mongering and whatnot. But the risk of a spill is there and how can we discuss what the effects would be if nobody does this study? I think that should be part of the documents that Enbridge is required to submit.
2121. In terms of locations of the hearings, third point, this pipeline is colossal in scope and importance, as you can see from the number of people who came out here to give presentations. It's a really important issue so public consultation must be conducted on a similar scale. If this project goes ahead it will affect a huge number of British Columbians, both those living downstream and upstream from the pipeline, those living in the north and the south.
2122. As you may or may not be aware, in this part of the world rivers flow both ways. It's true that water always runs downstream towards the sea, carrying with it any contaminants introduced along the way but, as those of us who live up here know, there is every year a huge movement of upstream -- a huge movement upstream of resources that move on the backs of salmon; food resources as well as economic resources in terms of commercial fishing, tourism. Everybody who will be affected by this project deserves to be heard.
2123. Those of us who live in the north do so with the understanding that travel is tough at times. We live with the reality of long commutes to get to services, to interact with each other and to interact with our land. So we understand that inconveniences of travel are a part of doing business up here but I'd like to say that respectfully that goes double for government bodies and industry who are interested in doing business up here as well.
2124. So I therefore request that oral hearings be held in every community in the north -- every -- up and down the affected waterways. This would include all the larger towns in Northwestern B.C. such as Prince Rupert, Terrace, Kitimat, Hazelton, Smithers, Houston, Burns Lake, Fort St. James, Vanderhoof, Prince George, as well as smaller native communities and all the communities along the coast.
2125. We just heard from the Klemtu Chief that some of his Chiefs weren't able to make it here today because the commute is too far so, in the fairness of public participation, oral hearings must be held in every affected community.

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2126. And that's all I have to say.
2127. **THE CHAIRPERSON:** Thank you very much, Mr. Schopfer.
2128. Ms. LeClair, do you have anything to add?
2129. **MS. LECLAIR:** Yes, just a few points. I represent and I'm part of the Friends of the Morice-Bulkley of which Keagan is a member, and many of us who have come here from Smithers and that area. We do not support the Northern Gateway Pipeline Project or the tanker route -- period.
2130. We want to have the next review panel held in Smithers. We're very concerned -- I must talk about our backyard -- for the Morice River and Bulkley Rivers of which the pipeline is going to follow alongside the Morice River for a very long distance.
2131. It, the spill -- there will be a spill, as we can see by what we've read in the news and heard about in other locations -- when there is a spill it will hugely affect and impact the salmon runs, particularly the spawning beds, that exist in the Morice River, particularly around Gosnell Creek, and I believe that you should have more information about that.
2132. In Smithers, there are a number of scientists, wildlife biologists, fish biologists who have done -- spent years supporting this area and supporting the fish, the wildlife and the water quality. Those folks need to have an opportunity to speak.
2133. The rivers and the creeks that this pipeline will affect, the proposed pipeline, are approximately 1,000 or more. The maps that we see that are displayed whenever there is a presentation do not list the names of the rivers and the creeks, and they must.
2134. We must be brought to the reality of all these rivers and creeks, where they are and what their names are, so that we can start to assess and you folks need to get research to start to affect what the impact will be when there is a spill. So these rivers and creeks must be named continually, publicly.
2135. The rivers and the creeks are the lifeblood of the north -- of the salmon, of the wildlife and of the people. When there is a spill, the silence will be deafening.
2136. Thank you.

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2137. **THE CHAIRPERSON:** Thank you very much, Ms. LeClair. We have no questions of clarification. We thank you very much for your presentations.

2138. **MR. SCHOPFER:** Great, thanks.

2139. **THE CHAIRPERSON:** I'm going to propose that we take a break now and reconvene at 11 o'clock. Thank you.

--- Upon recessing at 10:39 a.m./L'audience est suspendue à 10h39

--- Upon resuming at 11:11 a.m./L'audience est reprise à 11h04

2140. **THE CHAIRPERSON:** The next individual to provide us with comments on the three topics is Ms. Jasmine Thomas. Ms. Jasmine Thomas?

2141. Oh, terrific, thank you.

2142. **MEMBER MATTHEWS:** Good morning, Ms. Thomas. I'll let you boot up your computer. Okay.

2143. Okay. Thanks a lot for coming and, as you know, there are three questions that we've asked you to comment on so please share your comments with the Panel. Thank you.

2144. Okay, sorry, could you -- just for the record -- could you please spell your name for the court reporter? Thanks.

--- ORAL PRESENTATION BY MS. JASMINE THOMAS:

2145. **MS. THOMAS:** My name is Jasmine Thomas, J-A-S-M-I-N-E; Thomas, T-H-O-M-A-S.

2146. Hadi denais-ah say kay sah skai-sa (ph).

2147. I first of all would like to honour the Hereditary Chiefs in the room, honour the traditional territories of the Haisla people. Thank you for allowing us to come and do business here and allow me to share my story for my people.

2148. I come from Saik'uz, one of the communities located along the proposed Enbridge pipeline route. My father comes from ground zero, which many of us have heard of; ground zero meaning the Alberta tar sands.

2149. We have all heard just how large and huge this tar sands issue is and how it is so related. It has been dubbed the most largest, destructive industrial project

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known on the face of the Earth and I'm here to tell the Board and everyone else here that the world is watching.

2150. They are seeing how this tar sands experiment is going here in Canada -- many countries around the world, not just the marginalized indigenous countries denied in international forums looking at climate change, for example. But they are seeing Canada and they still view Canada as country to go to -- the golden ticket -- to escape the marginalization from their own communities because they are being displaced from things such as climate change, which is everyone's concern.
2151. But the Board needs to make those links. This pipeline cannot be viewed in isolation. The tar sands issue alone cannot be viewed in isolation. The ports and tankers that will be threatening our beautiful coast here in B.C. is not an isolated issue -- they are all connected.
2152. So they're just waiting to see around the world if this project will go through; if the tar sands will continue to expand which will be enabled by the pipeline systems that Enbridge is a part of all over the world.
2153. This Northern Gateway Pipeline is just one of the many pipelines. It is the one going west but there are pipelines going south, going east and going all over the world.
2154. And as Canada, with one of the largest remaining tar sands deposits in the world next to Saudi Arabia, they're waiting to see with -- you know, everyone's view of Canada as -- with the highest environmental standards, with human rights standards, that if a country like Canada allows the development of the tar sands operations that it will allow the other 70 countries around the world to follow Canada's model.
2155. Well, Canada's model of regulating these projects is out of order. We're here looking at procedural order. You know, I come here thinking with the mindset of my ancestors and my people trying to catch up to all this language with these processes when we've had our own processes for many generations.
2156. My great-grandmother, who recently passed, Sophie Thomas, said the traditional -- who was a traditional healer for the Carrier Nation -- she has taught me the processes of Mother Earth. She has shown me the medicines that they have preserved for me for hundreds and hundreds of years, for millennia, to treat now these unheard sicknesses and diseases that continue to plague our communities.
2157. We look at how this project is being reviewed; cumulative impacts at my father's communities in Northern Alberta, where he used to hunt, fish and gather.

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You know, there are now open pit mines that you can see from space.

2158. My family in that area, before he moved to my mother's territory -- it's like us here in B.C. -- they were displaced from those communities. They are diagnosed with rare cancers and diseases that I am having a hard time trying to treat with my traditional medicines because they are being destroyed. And how these projects are being viewed, like I said, in isolation? You have the mismanagement of many resources happening on all levels.

2159. So those cumulative impacts -- how can I go to where my grandmother showed me, where that medicine only grows in that one area? How can I go there when it's being logged out to clear right-of-ways? Or my ancestors' burial grounds now having stakes from different companies.

2160. This process that many of us at ground zero in Alberta all the way along the pipeline route to here have voiced their opposition, but I just thought I would ensure you -- and let you know that the world is watching.

2161. I have travelled the world, as my grandmother has sent me to learn from what other people are doing and how we can all stand together, but they are pointing the finger at Canada, these marginalized countries around the world who are seeing their islands being sunk because of climate change. They are blaming Canada and the regulatory systems for these happening.

2162. But I just thought I would share a little bit of that before I go into some important points that I found within the -- an important document here by the Pembina Institute. So:

"Enbridge, a key corporate player in the Alberta tar sands has been called the most destructive industrial energy project on earth. The tar sands energy project mines the lowest-grade oil in the world, the bottom-of-the-barrel oil, extra heavy, the consistency of sand and thick mud."

2163. So if anyone in this room hasn't seen, you know, what it looks like; it is not oil. It is dirty bitumen. It is a really rough sand that cannot be piped through pipelines, which is why Enbridge is proposing the dual-twin pipeline: one, to transport toxic diluents to the tar sands to refine it, and just for one barrel of oil it takes four barrels of fresh water just to make sure that it's pipeable, and then it goes back from Alberta to our coast here.

2164. I hear stories of my family there when they talk about just how bountiful, how much that land there would produce for our families, how much it would feed us,

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how we did not have to depend on the Western markets for our food. But now you go into our communities and we have our people who are afraid, who are already afraid to eat their salmon, to eat their foods from the ocean, to eat that moose because they see cancers and boils and things that are so scary -- double-headed fish.

2165. These are what family and many of our peoples are seeing all over, and these aren't being considered. These are sideline issues, residual issues, because it's tied directly with our inherent Aboriginal rights and titles. Those are our concerns and they are tied.
2166. We call ourselves Et Ndohoneh, People of the Land. There's no distinction, there is no separation. I am that land and that land is me. The fate of that land, that water, that air is also the fate of me and my people.
2167. So when we are seeing our resources being wasted so foolishly, the last -- the largest freshwater resources in the world needed to refine that little bit of dirty bitumen is not the economic benefits that not only my people or other indigenous people see, but many non-indigenous peoples feel as well.
2168. Those high rates of cancers and diseases, those misplaced animals, the salmon that have nearly disappeared from us -- those aren't the economic benefits that we see from this project. The high social rates -- we look at executive, like Patrick Daniel, who makes an annual salary in 2008 of like six point -- six million in 2009.
2169. So there are few people that are benefiting and those are his numbers, and some of Enbridge as well. They have some great numbers out there, in their view.
2170. Enbridge Incorporated was ranked number 18 on the Financial Post 2008 list of Canada's biggest companies by revenue. Enbridge Energy Partners, owners and operators of Enbridge's U.S. liquids pipeline, including the Lakehead System, was ranked 268th on the Fortune 500 list of the United States largest companies by revenue. Those are some great numbers.
2171. **MEMBER MATTHEWS:** Excuse me, miss, can you ---
2172. **MS. THOMAS:** The Government of Canada has -- we have listened to for 100 years. You will listen to me for 15 minutes. So these are my issues. These are some of my list of issues that my people have come to raise awareness to.
2173. So when we look at those kind of numbers we look at my communities that are close to -- like Prince George, who don't have those kind of numbers to be proud of but now have the highest rates of HIV in Canada, where the highest crime rate is in Canada, and these are all social issues that are cumulative that need to be

considered from other destructive resource-extractive industries.

2174. So how is this Joint Review Panel going to consider all those cumulative impacts? That's just one of my concerns but I also wanted to mention that First Nations and indigenous communities are most directly affected by the flow of fumes and toxic sludge coming out of the tar sands.
2175. As communities that have the most to lose and who have traditional and historical relationships of respect, reciprocity and responsibility with Mother Earth, they also have the most to fight for. Communities as the Mikisew Cree and Athabaskan Chippewa are actively organizing for the health of their peoples in the face of heavy poisoning of their waterways, deforestation, disruption of traditional food sources and other environmental devastation.
2176. So I feel, as a young woman here, this is like the David and Goliath battle. You look at these multi-national companies such as Enbridge who throw out 8,000-page documents at our people who have only had contact with the Western world for not even 100 years here, and we've got to catch up. We've got to pool all our resources to try to review this project to see if it is something that we would like to pursue, or if it is not.
2177. But to have the capacity to deal with that when we're burying members of our family every week because of these unknown cancers and diseases, tell me how can we meaningfully be a part of this process in such a constrained time limit, especially when time has never been an issue for us, as we have been here since millennia?
2178. But seeking ways to limit landowner resistance to their projects, Enbridge has occasionally depended on claiming that a project has eminent domain or requires an act of land expropriation.
2179. An eminent domain is based on the argument by Enbridge that their pipelines need to pass through private property, serve the greater public good and are accompanied by adequate compensation. And for the greater public good I've kind of already stated -- you know what -- we're facing on the front lines of these projects.
2180. And just to stand in solidarity with our relations and Nadleh Whut'en Chief Larry Nooski has been noted, and I agree with this: our territory has never been surrendered to the Crown.
2181. We are seeking a true government-to-government process with the federal government, further review of the Enbridge project. We are prepared to defend our rights and title through all necessary means, including through the Canadian courts.

2182. This project is legally bound to adhere to section 35 of the *Canadian Constitution* which mandates the reconciliation of pre-existing Aboriginal sovereignty with assumed Crown sovereignty and imposes a duty of honourable consultation and accommodation on the Crown which has not happened to date.
2183. So as affected First Nations communities have expressed the concern that the Gateway Project demonstrates a complete lack of recognition of native title and land holdings given that the project should legally adhere to section 35 of the Constitution which recognizes and affirms existing Aboriginal treaty rights.
2184. Indeed, First Nations communities assert that developments will have to stop because of the failure to respect Aboriginal title. So our land has never been surrendered to the Crown. Enbridge seems to think that all they need is approval from the federal government but we want to be clear that this project will not proceed without the free, prior and informed consent of our people.
2185. And free, prior and informed consent is an international standard for development on the unceded indigenous lands protected under the United Nations Declaration on Indigenous Rights. Canada is in the minority of countries that have not signed on to support and adopt this declaration but Canada has also not seen the need to declare water a basic human right as well.
2186. Although this is not just the pipeline project that -- it is also directly related to the tar sands which is using so much of our water and water is life.
2187. So we have conducted our own independent environmental studies. We interviewed our Elders, our Keyoh holders, and we produced a report and the conclusion of this report was -- in the words of Anne Marie Sam -- "Thank you very much, Enbridge. You are not welcome in our territories".
2188. And we are pushing and we have been pushing for an independent joint review process, an independent First Nations review process, outside the JRP, but still, we keep fighting for that same wish.
2189. Cumulative impacts; it seems to be a big one around this project as the world is watching. You look at Enbridge's involvement around the world. They own 65 percent of the pipelines; British Petroleum 35 percent of the pipelines that were in the Gulf of Mexico. So we look at just what happened there and Enbridge played a big role with that; their name was all over it.
2190. We looked at what happened with Exxon spill and then you see reports coming up of when that spill happened, how many people didn't live past the age of

65 because of cleaning those toxic chemicals that enter the water.

2191. And we've all heard about what happened in Michigan, with Enbridge's spill there and just some media that I've seen in terms of why was their response so slow. Well the line was busy.
2192. So, you know, I'm very worried when projects such as this, of such massive global scale, are being proposed but then you have companies who aren't being accountable and that's worrisome.
2193. In terms of my list of issues with Enbridge's green washing of the Northern Gateway Pipeline -- despite intense criticism for environmental groups across Canada, the U.S. and now the U.K. and the world, and many from affected First Nations communities, they are sharing their stories and we have seen it here in B.C., the green washing that is happening to support such a project.
2194. Enbridge's strategy to advance the Northern Gateway Project has utilized an aggressive public relations outreach campaign which has consisted of a dissemination of newsletters to affected communities, the development of nature trails, Aboriginal community investments, Aboriginal traditional knowledge studies about the ecology of the region and public advertising, include websites dedicated to demonstrating the environmental protection and positive community legacy that the project will encourage.
2195. On their Northern Gateway website Enbridge explains, "We have decades of experience in pipeline construction and environmental protection", claiming the project is environmentally sound.
2196. Their photos of wetlands, pristine riverbeds mountain ranges, oceanscapes and forest expanses, supposedly demonstrate that the pipeline will have limited impact on environmentally sensitive areas such as parks, wildlife habitat, protected areas, Aboriginal traditional territory and areas of community land use and that in affected regions the land is rebuilt, to be quickly rejuvenated after pipeline construction.
2197. So lurking behind these green images and commitments is a much dirtier reality of ecological destruction regularly occurring from oil spills and a construction process along Enbridge's extensive network of pipelines.
2198. So observations that have been made with Enbridge's pipeline construction process in Wisconsin, Enbridge projects have involved massive amounts of soil disturbance, trench digging, excavation through hundreds of miles of wetlands, hundreds of stream crossings, clear-cutting of forests and more.

2199. Trees are not allowed to regenerate above the pipes, meaning many forested areas, included wooded wetlands are permanently stripped of forest cover and habitat. Pipeline construction is inherently messy and compliance with environmental permit conditions is often poor.
2200. So Enbridge's green gateway commitments seem particularly deceiving in light of extensive studies completed by teams of scientific experts which document the statistical probabilities of oil spills and demonstrate that spills would be inevitable with the risk of ship strike and of chronic oiling or a catastrophic oil spill high in the case of the Northern Gateway Project.
2201. Moreover, it is notable that while the company commits to creating a green legacy it holds membership in lobbying coalitions seeking to lower current environmental laws and regulations.
2202. And just to touch note on, on some false solutions that have been proposed to our peoples, not just here but all over the world and I'm talking about carbon market mechanism and its direct role that it plays with the Northern Alberta tar sands and the proposed Northern Gateway Pipeline.
2203. And we've heard other concerns of upstream impacts. Pembina goes on to estimate that the increased tar sands production made possible by a new half million barrels per day pipeline from the tar sands would consume the amount of natural gas consumed by 1.3 million Canadian households each year, disturb 11.5 square kilometres of boreal forest, consume 200 million barrels of processing water and create over 4 billion litres of toxic tailings of which 455 million litres will leak into Alberta's watersheds. And many of our people are still concerned that our water sources will be impacted as well on many levels.
2204. So every year Enbridge strives for the lofty goal of zero releases or no spills, leaks or ruptures that could send toxic poisons, chemicals and hydrocarbons into the environment. In spite of its stated objective thousands of litres of dangerous fluids are released from the company's pipelines and holding tanks into the environment each year.
2205. Between '99 and 2008, across all of Enbridge's operations there were 610 spills that related close to 132,000 barrels, 21 million litres of toxic hydrocarbons into the environment. This amounts to approximately half of the oil that spilled from the oil tanker, the Exxon Valdez after it struck a rock in Prince William Sound.
2206. So based on the number of spills and the current spills that have been noted in the last few months by Enbridge, Enbridge causes every year, despite what

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the company says about pipeline safety, a rupture, leak or spill is inevitable. It's not a matter of "if", it's a matter of "when".

2207. And when we look at how this project is being regulated, it seems that in this process as we have never agreed to participate in this process as a nation, but I am here as a member and voicing the concerns of our hereditary peoples.

2208. We do not agree with it and I say here that additional information -- I've given you plenty. Location -- we have stated that this process is flawed on many levels. It does not have the authority to define what are the entire lists of issues and how is that going to honour our inherent rights and title when you will not agree to sit down with us at our own independent review processes.

2209. So I just would like to thank everyone for voicing their concerns and I stand in solidarity with the grassroots Wet'suwet'en people, with my family in Northern Alberta, and from all those other people being impacted by oil and gas projects and climate change around the world.

2210. I stand in solidarity with you and we will be here stopping this project as our Nations have not consented to this project.

2211. We will be here and we will never go away. And that is all. Mahsi.

2212. **MEMBER MATTHEWS:** Thank you, Ms. Thomas.

2213. Are there any other questions?

2214. Thank you.

2215. **THE CHAIRPERSON:** Mr. Joe Matos?

2216. **MEMBER MATTHEWS:** Welcome, Mr. Matos. Will you first begin by stating your name and spelling it for the record?

2217. **MR. MATOS:** My name is Joe Matos -- J-O-E M-A-T-O-S.

2218. **MEMBER MATTHEWS:** And please proceed and present your comments with respect to the issues of the Board.

--- ORAL PRESENTATION BY MR. JOE MATOS:

2219. **MR. MATOS:** Well, I just have a couple of comments. It's going to be brief, not very long.

2220. First of all I'd like to say that I've lived in Kitimat for almost 50 years and I've never seen this situation in our town so badly.

2221. My father once told me, "If you never take any risks in life, you'll never get anywhere."

2222. My question is a two-part question. How many jobs would Enbridge create with the building of the pipeline? And how many jobs would be created locally?

2223. That's it. Thank you.

2224. **MEMBER MATTHEWS:** Thank you for attending today.

2225. **THE CHAIRPERSON:** We are at the end of the list that we had registered for nine o'clock this morning. I'm just going to see if any of the other participants who had registered are here and able to present their comments on these three topics.

2226. Mr. John Perdue (ph)?

--- (No response/Aucune réponse)

2227. **THE CHAIRPERSON:** Mr. Ken Minifie?

--- (No response/Aucune réponse)

2228. **THE CHAIRPERSON:** Mr. John Bushell (ph)?

--- (No response/Aucune réponse)

2229. **THE CHAIRPERSON:** C.V. Grithaulas (ph)?

--- (No response/Aucune réponse)

2230. **THE CHAIRPERSON:** Mr. Frank Wolfe?

--- (No response/Aucune réponse)

2231. **THE CHAIRPERSON:** Seeing that these people aren't available to speak to us at this point, we'll adjourn and we will recommence at two o'clock this

afternoon.

2232. Thank you everyone.

--- Upon recessing at 11:33 a.m./L'audience est suspendue à 11h33

--- Upon resuming at 1:59 p.m./L'audience est reprise à 13h59

2233. **THE CHAIRPERSON:** Good afternoon, everyone, and welcome back.
If I could get everyone to take their seats we'll get ready to get under way.

2234. As we are getting under way, I just wanted to let you know that it was brought to our attention that there were a number of articles that were left in the room yesterday, and so if anybody is missing things they're in the lost and found over at the reception desk of the facility, and so that's where you'd go to find out if there was anything there that you were missing.

2235. I see we're all set with our first group of the afternoon, so what I have written down here is Mr. Robert Janes and Chief Elmer Moody and we have a third individual as well.

2236. **CHIEF CLARENCE INNIS:** Clarence Innis.

2237. **THE CHAIRPERSON:** Clarence Innis.

2238. **CHIEF CLARENCE INNIS:** C-L-A-R-E-N-C-E I-N-N-I-S.

2239. **THE CHAIRPERSON:** Thank you very much, Mr. Innis.

2240. So Mr. Janes, I understand you're going to be leading the group through.
So we'll turn it over to you and ask everybody if you wouldn't mind spelling your name for the record. Thank you.

--- **ORAL PRESENTATION BY MR. ROBERT JANES:**

2241. **MR. JANES:** So it's Robert Janes, J-A-N as in November E-S; Robert.

2242. So we're here today essentially to speak to point number 1 on the three issues listed and perhaps, if time allows, to speak briefly to issue number 3. We'll be filing more comprehensive written comments with respect to issue number 2 by September 8th. We'd need much more than the half-hour allocated to really deal with issue number 2.

2243. And to focus the issues somewhat, we're here really to speak to you in

your capacity as the National Energy Board part of the Panel. Since you do have two capacities, that of to duly to carry out the CEAA review but also that you're the National Energy Board, and most of the comments we'll be making will be directed at what we believe should be on the issue list for you to deal with in your capacity as the National Energy Board making a decision under section 52 of the *National Energy Board Act*.

2244. We, in summary, say that there are two issues that you should be adding to the issue list and we'll be providing these in writing. I've got notes that we'll provide afterwards -- in fact, we've provided it to counsel already.

2245. The first issue is this: We say that you should explicitly consider the question of rights, and that is would the issuance of a section 52 Certificate of Public Convenience and Necessity unjustifiably infringe the rights of Gitxaala or potentially any other relevant Aboriginal group protected by section 35(1) of the *Constitution Act* of 1982.

2246. And then the second issue that we say should be added to the list -- and this is framed very particularly with a view to the *Standing Buffalo* decision as it stands right now, which is, has there been sufficient consultation by the Crown with Aboriginal groups for it to be in the public interest to issue a Certificate of Public Convenience and Necessity for the proposed project?

2247. We've called those respectively the section 35 rights issues and the consultation issue and they're quite distinct issues.

2248. And I'd like first just to comment on the filings that we've already made because you may be aware that we've filed a rather lengthy collection of summary statements, of witness statements of various witnesses, and I just want to make it clear precisely what that's filed for and what the extent of those are. Those statements are summary statements that are directed to you for the purposes of being satisfied that the issues we're describing are real issues for you to consider.

2249. Should this matter go on to a full hearing -- when it goes on to a full hearing -- we'll have quite a bit more evidence, much more detailed witness statements, we'll have expert reports, but the materials we filed are for this determination that you're making now, so that you can at least have some sense that there is a real issue being raised here and that this is not a fanciful issue or one for which there's no real evidentiary basis. You know, given some of the things that have happened in other cases, we are really doing this out of an abundance of caution.

2250. With that I'd like to turn to the question of the section 35 rights issue. And it may be suggested and I suspect that there are others involved in this process who

will suggest that the issue that you've described of considering impacts on Aboriginal rights sufficiently speaks to the issue. And in our view that would be a serious mistake in terms of the task that you have at hand.

2251. What Gitxaala is trying to convey to you today and what is absolutely important to Gitxaala is that it is of the view that this Panel, in determining whether or not to issue a Certificate of Public Convenience and Necessity -- I always mix up which one it is -- has to deal with Gitxaala's rights as rights; that is as legal rights that exist within a legal framework and for which there are certain legal tests that are brought into play when issues affecting those rights are at hand.

2252. And in our view you are considering a matter which puts at risk, in the form of tanker traffic and the potential of an oil spill and also with the potential interference by tankers with harvesting activities, which puts at risk Gitxaala's section 35 fishing rights and its Aboriginal title and as the evidence will show, its traditional system of governance.

2253. You will be deciding whether or not to authorize a project that necessarily entails the tanker traffic. No one believes that Kitimat is going to use 100,000-odd barrels of bitumen a day. It is going to be taken out of here in tankers and those tankers are going to pass through Gitxaala's territory.

2254. They're going to pass through the areas in which Gitxaala practises its rights. It's going to pass through areas that are critical to the identity of Gitxaala, and we will hope to say at the hearing that the effect of this is such that -- so severe and so potentially severe -- that you should not issue the Certificate of Public Convenience and Necessity.

2255. So that's the framework. We have delivered a Notice of Constitutional Question reflecting this and that's again really out of an abundance of caution. In our view, you can actually deal with this by -- ultimately by not having to decide a constitutional question.

2256. You can find that within your statutory mandate you haven't been authorized to act unconstitutionally; that really your mandate is to remain within the framework of the constitution and that includes respecting the rights of the Gitxaala people.

2257. So let me just break it down into a few pieces here. Our central contentions at the hearing will be that, as I've indicated, the issuance of a certificate will unjustifiably infringe Gitxaala's rights, and I want to highlight that there are really two components to that.

2258. One is that by putting them unnecessarily at the risk of damage by an oil spill, essentially the catastrophic event, that in and of itself is an unjustifiable infringement.
2259. I mean it's really going to be Gitxaala and perhaps a few other of the nations in this area that are going to bear those risks in a way that is different than the rest of Canadian society will bear those risks.
2260. The second way in which we say it will infringe is that the increasing tanker traffic through this area will pass through areas that are used for harvesting and will interfere with the actual harvesting practices from time to time and that in itself also will constitute an unjustifiable infringement.
2261. Our second submission that flows from that is that section 52 of the *National Energy Board Act* does not empower you to issue a certificate that's unconstitutional. That was not the intention of Parliament to empower you to act unlawfully.
2262. That, in fact, the correct understanding of the *National Energy Board Act* is that you should assess your actions; you should assess the authorizations that are being made with a view to ensuring that they are constitutional and respect the constitutionally protected legal rights of the Gitxaala people.
2263. Alternatively if you find that the *National Energy Board Act* hasn't addressed that issue in the way I've suggested, but to the extent that the *National Energy Board Act* purports to give you a jurisdiction to actually infringe, we will argue that the *National Energy Board Act* Section 52 is unconstitutional and that's why we've delivered the Notice of Constitutional Question.
2264. Now I want to highlight that this is quite distinct from the task that you are undertaking under CEAA. This truly is a National Energy Board task. Under CEAA you are carrying out a pure statutory mandate which involves making assessments that are defined in the Act and making recommendations that are defined in the Act but you're not actually authorizing any particular activities under CEAA. That will be ultimately the responsible authorities who get your report under CEAA who will be making that decision.
2265. That's quite different than what you're doing under the *National Energy Board Act* where, subject to the consent of the Governor General in Council, you will actually will be issuing an authorization which is classically the situation where the duties to remain within the constitutional framework come into play.
2266. The second distinction with respect to CEAA is, of course, that under the

National Energy Board Act and in sitting in that capacity you have much broader range of powers than a Panel would acting solely under CEAA. The National Energy Board sits as a court. You have the power to make findings of law. You have all the -- you are, in fact, a court of record which a panel under CEAA isn't.

2267. And the reason that that's important is that the Supreme Court of Canada in a very recent decision called *Conway* made it clear that what's at the core of determining whether or not a tribunal can deal with constitutional questions like the ones that we are raising -- if push comes to shove on the Section 52 issue -- is the ability to decide questions of law and the ability to grant the remedies sought.

2268. And to be clear, the simple remedy that we're seeking in this case is that you do not authorize the activities; that you don't issue a certificate and that's clearly within your jurisdiction. And clearly, given the words of the *National Energy Board Act*, the ability to decide questions of law are equally within your jurisdiction.

2269. And what the *Conway* case makes clear is that in those circumstances where a body such as yourselves has been entrusted with that power, one of the reasons you have been entrusted with that power is to make sure that you act lawfully and constitutionally. That is not just that you have the option to deal with genuinely raised constitutional issues but that you have the duty to deal with genuinely raised constitutional issues.

2270. I hate to be too lofty, but in a sense it's all part of living with the rule of law that just as you've been part of the price of being given such broad plenary powers to deal with legal issues and to deal with matters that have such a profound or potentially profound impact on people is that you have to exercise those powers within the idea that we act -- that we live in a society that's bound by the rule of law and bound by the duty to respect the rights guaranteed in the constitution.

2271. And that point with tribunals is not a new one and there's a case -- an old case called *Slaight Communications* -- S-L-A-I-G-H-T -- which makes the point that wherever possible tribunals such as yourself will be understood to have a jurisdictional limit to act within the bounds of the constitution.

2272. Now these cases were Charter cases and decided in the Charter context but there's a case called *Paul v. British Columbia* which, back in 2003, made the point that the same sorts of principles apply in the Aboriginal context, that tribunals have the power and have the duty to come to grips with Aboriginal rights issues when they properly arise and that in this context they can't be just sent off to the courts.

2273. That may not be happy news but it is the news and it is what the Supreme Court of Canada has told tribunals and First Nations.

2274. I'll say that in general, First Nations are not always happy with that. I mean, many First Nations say, you know, why should we put our rights into the hands of somebody other than a judge?
2275. The reality is that with views to efficiency, administrative efficiency, and with a view to sort of orderly progress of matters the courts have said no. Where the body has the proper power should be the tribunal that deals with those issues and so we say it's going to have to be dealt with by yourselves.
2276. There's a corollary of this and the corollary is that in your planning for this hearing we say that you have to make sure that you set aside enough time and establish adequate procedures to deal with these issues and Gitxaala is particularly sensitive to this.
2277. Gitxaala, which is also our -- has also been known as Kitkatla -- took a case to the Supreme Court of Canada many years ago where -- I guess 2002 is not that many years ago -- where they raised various constitutional issues and in the context of that case, the Supreme Court of Canada were actually critical of Gitxaala for trying to get their evidence in in a summary fashion; for using affidavits, for trying to do things the fast way in many cases.
2278. And the Supreme Court of Canada made it clear that cases such as this have to be dealt with on a proper record and what they said as part of their ruling is that in such cases, oral evidence of Aboriginal values, customs and practices is necessary and relevant.
2279. In the *Osoyoos* case, the Supreme Court of Canada complained about a fact that the tribunal sent a matter to them effectively on a stated case without an adequate record and when you get our written materials you'll see there's a number of other cases where the courts have over and over again said you've got to deal with these matters on a proper record.
2280. But there's another reason for that, and I'm not going to go through our evidence but I do want to highlight an important feature off the Gitxaala rights which we're going to ask you to focus on and it's something which matters to these Hereditary Chiefs who are here today, it matters to the Chiefs here at the table. Gitxaala's rights, their harvesting rights, are not just about subsistence.
2281. There is this impression that's left sometime that if only the food can be replaced or if only you can catch enough fish somewhere else or if you could only get your seaweed somewhere else or if you could get your herring roe and kelp somewhere else, everything would be okay.

2282. What the evidence will actually show is that Gitxaala society is structured around a traditional house system with Hereditary Chiefs who have specific territories that they both draw their resources from and for which they are responsible for and which their identity as Hereditary Chiefs, and the structure of their clans and their families, are intimately tied up with those territories.
2283. They're not generically Gitxaala and so that there are territories done at Campania Island and the bottom of Banks and the bottom Gil and at the various groups like the Estevan Archipelago, you know, get in the path of where these tankers will be passing, which are associated with particular Chiefs, with particular families, with particular houses and that that is at the core of their cultural identity and that, in assessing and understanding the rights and the potential impact on the rights, you've got to take that structure into account.
2284. It's not just a question of food. It's a question of cultural identity. And there's no doubt that the tanker traffic carries with it the potential to put it at risk. And we put in evidence of Peter Wainwright, who's an expert biologist who's worked extensively with oil spills, and he highlights the potential extent of these spills, potentially thousands -- up to 1,500 kilometres of coastline has been affected in certain spills -- and the importance of how you have to go about assessing these impacts.
2285. And I just want to pause for a moment because this actually does go to something we will have to say in section two and it picks up on something that you heard this morning, which is that Mr. Wainwright's evidence highlights how, in order to assess the potential impact of an oil spill, you need a lot more than you've been given. You need to have an idea of what the inventory of sensitive habitat is and we'd say that's intimately tied to the question of house territories.
2286. And you also need to know what is the emergency plan. How is it that this is actually going to be dealt with? I mean, these are areas which in the wintertime spills can develop very quickly and it can take a long time for somebody from Prince Rupert to get there. And it's not a light issue to say, "What is your plan to deal with a disaster if it happens?"
2287. Saying that it will come somewhere in the future after this Panel has made its decision is not good enough. It doesn't allow Gitxaala to know what's going on and it doesn't allow you to know what's going on.
2288. And so, in all, these issues are going to be squarely before you. And what we think is that it's important at this stage in identifying the list of issues both so that Gitxaala knows that its issues will be legitimately heard and dealt with -- no

guarantee about outcome. But just to know that they are going to be properly dealt with and also for the other parties, such as Enbridge, to know what they're dealing with, to have this identified as a distinct issue that's squarely on the table.

2289. The second issue that we ask to be added to the list is the consultation issue. And this is an issue that really is a timing issue and it's different than the issue that was raised in *Standing Buffalo* where this Board was asked to address the adequacy of Crown consultation at large.
2290. You've got a conundrum. The consultation doctrine says consultation is supposed to happen in a context that's open where the Crown is free to act, where the Crown has flexibility, where the Crown can respond to concerns without being constrained by previous decisions or decisions that were made without consultation.
2291. The difficulty is that once you've issued your certificate with its conditions, there will be constraints placed upon the Crown's freedom to move and they will be constraints that inform your decision about things such as what is the economics of the project? Does it make sense? Is it necessary? Is this practical? All these kinds of things. Say, for example, with routing, with maybe issues around what the costs are in terms of compensation to nations along the way.
2292. So either you're in the situation where the Crown can make decisions after you've issued your certificate, which could profoundly affect the nature of the project, or alternatively -- for example, force them to take a different route because of infringement of Aboriginal title -- or alternatively the Crown is going to have to come to First Nations and say, "We're sorry, our freedom to address the issues you are raising in consultation is constrained by the fact that the Board has made a decision which we have to act within."
2293. So in our view, one of the questions that you have to answer, based upon evidence that had to be adduced by the parties, is has the Crown consultation reached a sufficiently advanced point that it is essentially safe -- I'd say in the public interest -- to issue a certificate in the knowledge that further Crown consultation will not be either compromised by that or alternatively be -- the underpinnings of your decision undermined by that.
2294. And that's not a question really of whether the Crown's duties generally have been discharged. You're not being asked to review the Crown. What you're being asked to do essentially is -- has the process reached a point where you can safely carry out your statutory duties?
2295. So then the last point I'll make very quickly is just that in our view there

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should be a hearing at Laxklan which is the community on Dolphin Island that's the main Gitxaala reserve. There is a facility there which can host the Panel. There is a community hall which has facilities like this. There's not a huge amount of accommodation there but certainly there would be accommodation there for the Panel -- if nothing else, the Panel and the staff.

2296. And it's accessible from Prince Rupert. And the reality is that many of these -- these chiefs have come down today from Dolphin Island. That's involved flying, taking a bus from Prince Rupert to come here to hear this. That is -- there are other people who would have loved to have come here but it's not easy for people from a small remote community on an island to come to hearings remotely.

2297. And it's going to be their way of like that's at stake. So we would hope that you could have hearings on the island and also we'll have to have some discussion about issue of translation because many of the Elders actually speak English either poorly or as a second language or in some cases barely at all.

2298. And so with that, I will turn it over to the chiefs.

--- ORAL PRESENTATION BY CHIEF CLARENCE INNIS

2299. **CHIEF CLARENCE INNIS:** Thank you, Robert. My name is Clarence Innis, Kakiet-i-wyo (ph). My Gitxaala name, Kakiet (ph).

2300. First of all, I'd like to thank you for hearing us out. I basically just wanted to introduce you to our Simgegets which are sitting in two rows here. I just wanted to express to you that we still do practice our traditional way of governance. We still follow our protocols. We do follow our aiyal (ph) which is our laws, and we follow etoah (ph) which is our stories and our histories and we still follows our gugwilx'ya'ansk (ph) which is inheritance.

2301. I, Clarence, follow that protocol. My uncle before me was the leader of my house and I just wanted to express that I had to follow protocol and the responsibilities that I inherited from him was basically you look after the territory that may be impacted in the future year.

2302. Each one of these gentlemen behind me here are here to support and they all have their individual stories. In our community, in our nation, we have an aiyal (ph) that I can't really speak for the tribe. They need to speak for themselves.

2303. So we do have laws that we follow. They all have responsibilities to their territories, to their houses, their clan. There are many people that are members of

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each house. There are four tribes in Gitxaala: the Killer Whale, the Eagle, the Wolf, and the Raven and all these Chiefs that you see sitting behind me here all belong in those tribes. And there are so many houses in each tribe.

2304. We feel a huge threat coming on what's been proposed in our territory, a threat against our way of life, our culture, our governance. We are very connected to that resource that you are -- that we are talking about today and I just wanted to express that.

2305. Like I said, I can't really speak for all the Chiefs here. The time that's been allotted doesn't allow for that but hopefully in the near future you're going to give time for them to speak, to hear what they have to say.

2306. Basically, I just wanted to thank you for hearing us out. Thank you.

--- ORAL PRESENTATION BY CHIEF COUNCILLOR ELMER MOODY

2307. **CHIEF COUNCILLOR ELMER MOODY:** Good afternoon. My name is Elmer Moody, E-L-M-E-R M-O-O-D-Y. I am the elected Chief Councillor for Gitxaala Nation. I also wear their hereditary name, Lee-Dan-Luxti (phonetic). I am of the Wolf Clan.

2308. I wanted to speak to a couple of issues and basically it may seem as a reiteration from our legal counsel but I felt it very important that we all develop an understanding that what was represented was a statement in relation to Aboriginal right.

2309. As Clarence indicated, as well as our legal team, we have a number of our hereditary chiefs present here today and by all indications, through both presentations, our hereditary chiefs have a vested interest in the statement that's being provided today, your deliberations and ultimately your decisions.

2310. Because from the viewpoint of Gitxaala Nation and each of their Hereditary Chiefs, what is at issue and what needs to be discussed, what needs to be decided on, is whether as a Panel who are going to a full hearing-type process, whether you have an ability to make a decision that has an adverse effect on Aboriginal right as defined under the constitution.

2311. From Gitxaala's perspective, we do not consider this type of a process as a process of consultation. It isn't one where we're engaged in discussing about a definition of Aboriginal right. Gitxaala culture and society is intact. The maintenance of our Hereditary Chiefs, our processes of inheritance, remain intact today.

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2312. There is that understanding through this type of a process and mechanism that the concepts, as Clarence alluded to, of authority and jurisdiction in relation to each of these men that are sitting here today, that they are real concepts that have been maintained, they are real structures that are maintained.
2313. It is impossible through this type of a process -- even if we were to go through a full hearing, there is a limited ability to contextualize the concept of Aboriginal right in relation to our hereditary governance and our structures.
2314. Our society, our right as defined under the constitution, should not be minimized in relation to food harvesting. There has to be a clear understanding that when Gitxaala talks about Gitxaala right, it is hereditary right, it is a process of governance. It is a collaborative approach with elected government.
2315. But there always is that understanding that for our hereditary leaders, our Hereditary Chiefs, that they do retain autonomy in the lands that they own. We don't embrace the concept of stewardship when we talk about house territories.
2316. When Clarence talks about law, protocol and inheritance, its ownership. This is an Aboriginal right, it is a Gitxaala right. It is a Gitxaala right that has not been ceded through any process, which is why again we don't consider this type of a mechanism as a process of consultation.
2317. We're here to state to you today that you need to give full consideration to your abilities to make a ruling in relation to Aboriginal right and the potential infringement upon that right.
2318. So in relation to that point, specifically to number 2, one of the things that I'd like to see in your rationalization after your deliberations is a statement from this Panel in relation to your ability or your inability to make a decision that would have an effect on an Aboriginal right, and more specifically Gitxaala.
2319. Because when we start to talk about the issue of our rights that are protected under the constitution, it is a constitutional issue. It isn't an issue, in my opinion, as to a measurement of what would be in the greater public good in terms of defining a greater scale of economy or social structure that when you start taking a look at it in the context of the greater good, or for the good of the public, that you have give full consideration to the spirit and intent of section 35.
2320. Section 35 does not say you are a bunch of Indians and you are entitled to harvest foods. Section 35 says Aboriginal rights are hereby recognized and affirmed.

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2321. The only people that are capable of defining those rights are Gitxaala through aiyal (ph), etoah (ph), gugwilx'ya'ansk (ph). There is no other mechanism that provides for that ability to distinguish what an Aboriginal right, more specifically Gitxaala right, is.
2322. Through this type of a process and government agencies, governments themselves, each of you are appointed to a process; that is to do a measurement of what would be in public interest.
2323. So therefore, as an agent of a government agency, you are entrusted with the responsibilities of public trust and confidence in our governing structures, our legal structures and the maintenance of our society in terms of Canada.
2324. We need a clear distinction in terms of your abilities, through your deliberations, on your ability to make a ruling in terms of the list of issues you're going to hear, as well as a rationalization around the issue of Aboriginal right.
2325. Aboriginal rights are not generic. Gitxaala have rights. Gitxaala maintain rights. Gitxaala exercise rights, and our exercising of our rights may be unique, would be distinguishable from any other First Nations, either within this territory or any other region of Canada.
2326. We can demonstrate, and we will demonstrate, that we are a unique people and that because we are a unique people we do have the protection under the constitution and we will exercise all available options to us in order to protect those rights.
2327. Because it is not just an infringement upon Gitxaala right but increases the level of vulnerability in relation to governments, government agencies, and industry maintaining public trust and confidence in Canadian society and Canadian processes. That's what's at issue. It's not just whether Gitxaala is going to be infringed in terms of a food source.
2328. What we are going to represent and what needs to be clearly understood is that Gitxaala is a society. We have a culture that is founded on principles, aiyal (ph), etoah (ph), gugwilx'ya'ansk (ph).
2329. We have law, we have history, we have boundaries; we have a governing society, all tenets under international law that cover authority and jurisdiction in regards to recognition of a nation.
2330. Gitxaala have never ceded the concept that we are not a nation. We always maintain through our hereditary structures and our process of inheritance that

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we have an Aboriginal right, that our culture is protected and that we are responsible for the protection of that culture.

2331. There are a number of challenges in terms of trying to weigh out what would be the common good. And basically, my reiteration of where things are at for you today, and specifically in regard to Gitxaala, is that by all accounts we've given indication, we've had opportunity to have Patrick Daniel in the community -- I believe it was August of last year -- and we gave indication at that stage.
2332. This is going to be a political challenge. This is going to be a constitutional challenge and any notion of the ability to weigh out what would be in the public interest in terms of Canadian economy and industry is ill-conceived, misguided because our intention is to ensure that we have an ability to maintain our hereditary structures, thereby maintaining our society.
2333. Because our society is not just dependent on food resources, it's not just dependent on food harvesting; there is a hierarchy to our structure and we seek to maintain that hierarchy with an understanding that this has been practice for countless generations.
2334. It is impossible to contextualize for you today an understanding of culture and society, and more specifically Gitxaala, within a day, within the half-hour. I think we've gone over the half-hour but it is impossible to do within that allotted time.
2335. Each of these men represented behind me as well as beside me have spent a lifetime developing an understanding of culture, society roles, and responsibilities; a lifetime to develop that understanding.
2336. That understanding has its foundations in thousands of years of maintenance in terms of traditional law. This process, your deliberations and your decisions, are going to have an effect on that. We cannot minimize that or allow anyone to minimize it as a process of infringement upon food harvesting. It's a governing structure, it's a society, and we are a society that is unique. We are a society that is distinguishable from other First Nations.
2337. So in relation to this project, Enbridge may at some point make submissions. Your Panel will hear submissions from other First Nations. We support Enbridge -- we don't support Enbridge but we need to reach accommodation agreement. Or if we don't reach accommodation agreement you need to provide compensation.
2338. Those aren't issues Gitxaala Nation are going to explore. Our intent is to

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ensure that we uphold our traditional law, that we uphold our culture and our society. Our expectation is that government, government agencies and industries respect the understanding that it's not just going to have implications to Gitxaala but to Canadian society as well.

2339. So you may hear other First Nations say they have an agreement, they reached accommodation and they like the project, and you may in your deliberations try to balance, "We hear Gitxaala doesn't like this agreement, they don't like the project," but on the other hand we have five, six First Nations that express an interest. Those First Nations, by very virtue of any other nation that is not Gitxaala, do not have a right to impact our rights and title.
2340. You have to consider Gitxaala circumstances as unique circumstances, our submissions as unique submissions, and we will prepare, represent and submit a greater understanding of what Gitxaala culture looks like, what the concepts of authority and jurisdiction are, but it is going to call into question the integrity of Canada, governments or society in its treatment of First Nations in relation to protecting those distinct societies.
2341. And again, I just wish to reiterate, our distinct society should not be minimized as food harvesters. Our distinct society is founded on generations and generations of law, history and governing structures, and that's what we seek to maintain.
2342. **THE CHAIRPERSON:** Thank you very much.
2343. I thank you very much. All of you have been very clear and the Panel has no questions of clarification for you. Thank you for taking the time -- to all of you for taking the time to come and be at our meeting.
2344. Mr. Dave Shannon? Welcome, Mr. Shannon, wherever you're comfortable. We'll just let the room settle back down again before you start, so that we'll be okay to -- be able to understand and listen to you.
2345. **MEMBER MATTHEWS:** Good afternoon, Mr. Shannon. Could you please, for the record, say your full name and spell your last name?
2346. **MR. SHANNON:** My name is Dave Shannon, D-A-V-E S-H-A-N-N-O-N.
2347. **MEMBER MATTHEWS:** Okay, thank you, and could you please proceed and answer those three questions for us, that would be very helpful.

--- ORAL PRESENTATION BY MR. DAVE SHANNON:

2348. **MR. SHANNON:** First of all, thanks to the Haisla Nation on whose territory this meeting is being held.
2349. Most of my comments are based on having read section 8 of Enbridge's submission, the marine portion, and I've done a review as well of a TERMPOL study that was conducted for the original Oil Port Inquiry of 1976. So I'll start of with comments on the Draft List of Issues, and I think I gave you a copy. It was provided at the table.
2350. **THE CHAIRPERSON:** If it's been provided, sir, we'll make sure that -- just make sure that you talk to one of the staff to ensure that it's on the public registry.
2351. **MR. SHANNON:** I left it at the front there.
2352. **THE CHAIRPERSON:** Okay.
2353. **MR. SHANNON:** Under "Safety, Mitigation and Prevention" in terms of reference on the marine transportation of oil within the confined channel assessment area, most of the points will be covered on -- the comments of the draft will be on that section.
2354. Port State Control gives the port receiving a tanker the right to inspect and turn away the tanker, should they decide it's not fit for journey. Many of the ports around the world pay pretty much lip service to this and send a coastguard inspector on board, who does a cursory inspection of the deck surfaces.
2355. What one really has to do in this case is prepare one of the cargo tanks for inspection by the coastguard inspector, and the best way to do that is to inform the tanker's captain prior to arrival that one tank should be emptied, purged of the inert gas that's normally in them, so that the inspector can have a look inside.
2356. It's a dangerous process but it has to be done to be sure the cargo tank is randomly representative of the cargo. So my suggestion for an issue that could be included is what provisions are in place to ensure that these random internal cargo inspections will be carried out.
2357. The second point I'd like to make; attempts to adequately clean up oil spills of lesser toxicity of that which will be coming from Kitimat to Asia, typically, have met with very little success. Typically 15 percent are cleaned up. The methods that are used today are no more successful than they were 30 years ago. I refer to

Ixtoc in the Gulf of Mexico, 1979; the Exxon Valdez in 1989; the Hebei Spirit Korean oil spill in 2007 and the recent Deepwater Horizon Gulf of Mexico oil spill in 2010.

2358. So the comment I'd like to add to a list of issues is, with difficult access to challenging shoreline topography and the relative rapid tidal currents in the CCAA, what are assurances that a moderate crude oil spill could be accessed in time to prevent lasting impacts of the region's very sensitive marine ecology?
2359. The third point I'd like to bring up is should an oil spill occur, there will be a need to close off access to other marine traffic to Kitimat in order to contain the spill. Should this spill occur closer to the outside portions of the north coast access, this would upset such things as bigger ships taking the inside routes; for example, ferries, cruise ships and traffic to Rio Tinto, Methanex, et cetera.
2360. So my question or comment to be added to the list of issues is, should an oil spill occur, lasting several months or more, how will other marine shipping customers gain access to their markets in the interim?
2361. My fourth point is the Cosco Busan is a container ship that recently ran into the San Francisco Oakland Bay Bridge in 2007. What this accident highlighted was that communication across barriers of culture and language resulted in a casualty which spilled 11,000 barrels of fuel oil into San Francisco Bay.
2362. The Cosco Busan was arriving in San Francisco during fog. The ship's captain -- Asian -- used -- his culture assumed that the pilot in charge was to be unquestioned. Even though the pilot was not completely interpreting the digital chart readouts on the bridge, the Captain of the ship did not interfere because his culture was one that didn't challenge authority. So that's one point.
2363. It's not enough that a tank ship's officers can speak English. If the non-officer crew does not also understand the safety directives that are delivered in something other than their working language, during an emergency you could have a real mishap.
2364. In the case of the Cosco Busan, the safety manual, which was poorly explained, was in English and not the working language of the container ship's crew. So my suggestion for an addition to the Draft List of Issues is what provisions will be in force to ensure that a pre-transit procedural and safety briefing will be mutually understood by everyone concerned -- that is the crew aboard the tugboats, the pilots, the ship's officers and the entire crew?
2365. The final point under Draft List of Issues -- just grab a water here -- at

least two oil spill events in the recent past have been linked to pilots on the job whose judgement was impaired by the medication they were on, the drugs they were on or the overwork. They'll be very busy if this Enbridge proposal comes to town.

2366. The 2007 collision of the Cosco Busan in San Francisco, mentioned above, in the point above, was one such example. The pilot in that case had a medical problem that his doctor was not completely aware of and the oversight commission didn't take notice of the pilot's condition either.

2367. A further example is the collision of the freighter Petersfield with a loaded asphalt barge in Mississippi in 1986. In this case, the pilot had a history of substance abuse that the oversight committee overlooked. A reference to that is in the Times Picayune under disciplinary action -- this is a New Orleans paper. The article is 11th of the 4th, 2001.

2368. Both incidents bring into question the effectiveness of the pilot oversight system, so my suggestion for an addition to the Draft List of Issues is, what will be the makeup of an effective pilot oversight system that will regulate the unprecedented piloting activity that would be the outcome of this project?

2369. The second point that I'd like to talk about is additional information which Enbridge should be required to file. Most of what I've got to say in here is the result of Section 8 of the application and reviewing TERMPOL 1976. I would request that Enbridge submit a modelled simulation of a worst case oil spill scenario.

2370. This was also recommended in the 1976 TERMPOL study for the Kitimat oil port study. Similar examples have been provided by Living Oceans who have done a winter-summer simulation of a tanker running aground on such things as Nass Rock which is in Camano Sound. The simulation showed over time how the oil spill would paint the shores up and down the coast including Haida Gwaii. So I request that Enbridge submit a modelled simulation of a worst case oil spill scenario.

2371. I also submit that Enbridge provide a detailed qualitative risk assessment of the transport of oil by tankers on the north coast. As an example, a review of TERMPOL '76 showed one such distributed risk problem.

2372. When you take, for example, a storm arriving, every ship in the area will take cover until the weather clears. After the weather clears, all the ships that took cover will get back on the ocean; so this gives rise to a congestion that didn't occur before. So this is just one example of what a qualitative risk assessment would tell you. I'd like to see one.

2373. I also request that Enbridge provide the current TERMPOL analysis.

2374. Fourth point, I'd like to request that Enbridge provide evidence that the tugboats crew sizing not be compromised. I attended a session in Vancouver City Hall on July the 5th in which Brad McTavish of the Canadian Merchant Service Guild said that the crew aboard the tugboats escorting ships out of Vancouver Harbour -- in one case the engineer was replaced by a deckhand.
2375. The engineer on the boat would have had four years service, the deckhand probably could have done with three weeks. So it's bad that tugboat crew sizes can be reduced. I'd like to see an illustration that this won't happen here.
2376. The same Brad McTavish at the same meeting in City Hall was discussing tugboat crew experience levels and that's the same topic that I just mentioned -- four years service down to a few weeks experience. These are delicate issues.
2377. I'd like to also refer to the Chamber of Shipping coming to Kitimat and having a conference in Mount Elizabeth Senior Secondary School theatre looking for recruits to sign up for tugboat training. The room was nearly empty. About the only people that showed up were those with the Chamber as well as some environmental groups. The response was kind of scary. So I'm a little bit worried about experience levels on tugboats.
2378. In 1976 there was concern of experience level on tankers so jobs at sea are -- I don't know why they're so unpopular but it's a scary thing to consider.
2379. I'd also like to request that Enbridge provide evidence that a sufficient oil spill levy will be imposed on shipments of crude oil leaving the port of Kitimat. Puget Sound, for example, has an oil spill levy that dates back to the '90s. It's been unchanged for decades despite inflation at the request of industry.
2380. They've asked the amount being paid to the levy to be dropped. The need for this levy is to ensure the burden of a future oil spill in the coastal communities is not left in the hands of the Canadian taxpayer to clean up.
2381. Point number seven -- should claims for future damages be required, I request that Enbridge provide assurance that a system be developed to rapidly identify a ship's true owners. An example of where this didn't occur was the Erika, which was a tanker sailing in the Mediterranean Sea in 1999. The Erika had an incident where it fell apart for lack of maintenance and sank at sea.
2382. When trying to identify who was responsible for the Erika, the investigation revealed that the Erika was sailing under the flag of Malta, managed by an Italian operator chartered by a Bahamian company whose headquarters were in

Switzerland. The Maltese owner was owned by two Liberian firms.

2383. I've mentioned five countries. It was a Rubick's cube to discover who was actually the owner of this ship. So I would request that insurance be given that ships owners be truly capable of being identified.
2384. Point number eight, I'd like to request that Enbridge provide evidence that OBO carriers -- these are oil-bulk-oil -- sorry, ore-bulk-oil -- in other words a combination ship that handles a variety of cargoes including oil -- they should be excluded from the list of valid oil carriers because they're inherently -- they inherently have problems for reasons of cleaning.
2385. Crude oil washing has to occur after every non-oil cargo has been put in the holds. If it's an ore that was in the holds prior to the oil, there could be damage to the corrosion protective coating that exists in these oil tanks.
2386. There are also -- apart from being susceptible to corrosion, they're also susceptible to explosions and fire. I refer to the sinking of the double-hulled OBO tanker, the Aegean Sea which happened off La Coruna, Spain in 1993. It was a double-hulled tanker.
2387. Another good reference to the exclusion of OBO carriers exists in TERMPOL 1976 Volume 1. I'd like to hammer that point home.
2388. I'd like to request that Enbridge provide evidence that chartered tankers on the spot market will be forbidden. The situation of chartering a tanker on the spot market leads to difficulty ensuring that independent vetting by an agreed third party can be carried out.
2389. What happens is these ships are sometimes called on a moment's notice to come to port. And under those circumstances, the vetting that should have occurred prior could be liable to some doubt.
2390. TERMPOL 1976 recognized that thorough prior arrangements regarding independent vetting would be very difficult on tankers in the spot market. Spot chartering is a short term trip, usually just one way. What is much preferred is time chartering which are long-term agreements covering many trips where the customer-client relationship is much more likely to develop over time. This one is much preferred.
2391. Two references -- two items that refer to the need for long-term time chartering is the sinking of the Erika, which I've just mentioned, and the recommendations in Volume 1 of TERMPOL 1976.

2392. I would like to recommend that Enbridge provide evidence that sufficient markets exist at this time for the proposed output from the pipeline to Kitimat.
2393. Number 11. I'd like to request that Enbridge show details of a sufficient deep water anchorage near the terminal in Kitimat be provided. This would provide temporary shelter so that docking during rough weather can accommodate all the ships that are looking for it. There could be some crowding at that time.
2394. I'd like to request that Enbridge provide evidence that tugboat assistance simulations that would be required during loss of power or steering situations could be mitigated during travel in the closed channel assessment area.
2395. Referring to TERMPOL 1976, a side scan sonar survey was conducted -- what they call a channel sweep was conducted using side sweep sonar. They discovered at that time that over 100 kilometres of the proposed northern tanker route is less than three kilometres wide.
2396. I'd like to refer at this point to a Los Angeles tugboat escort study in the Los Angeles harbour that recognized that failures of steering or propulsion in a given year amount to one percent of the time. So given the projected traffic in the Douglas Channel of 250 tankers per year, that would -- that could potentially lead to three tankers per year experiencing either a steering or a power failure.
2397. Another good reference on -- sorry; I'll go back to the reference. The reference of the power failures in the Los Angeles harbour is www.mxsocal.org. That references the one percent failure rate of commercial traffic in Los Angeles harbour. Our own Petersfield freighter experienced one of these steering failures in Douglas Channel just recently.
2398. Getting back to the three kilometre wide channel I mentioned just a minute ago, when following the rules of the road, a tanker would normally travel something like 300 metres off the centre line of the channel. This would place the tanker about 1.2 kilometres off the nearest channel boundary.
2399. At speeds proposed for the CCAA of 12 knots and upwards, a steering power failure could close this 1.2 kilometre gap -- which is three to four tanker lengths -- in just a few minutes. You'd be pretty much guaranteed a grounding unless the attendant tugboat escorts could pull you out of the rocks.
2400. Every large oil port on the west coast of North America -- for example, Valdez, Puget Sound, and Los Angeles -- every large oil port has insisted on simulated evidence that a tanker in distress can be controlled by its tethered and

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escort tugs in time to avoid a grounding. These scenarios include the conditions of either a complete power failure or a steering failure. These include a locked rudder at any angle up to 35 degrees.

2401. In the case of the Los Angeles simulation two large tethered tugboats tied to the stern of a VLCC tanker had difficulty controlling the tanker at six knots let alone the 12-knot speed that would be the case in the Principe Channel, for example, with one tethered tugboat. So these simulations are required evidence that safe passage of tankers can be conducted in the CCAA.
2402. I'd like to mention one point. If you read Enbridge's brochure, the Kitimat entrance is compared to several world ports. These ports are Mongstad in Norway, Brofjorden in Sweden, and Sullom Voe in the Shetland Islands.
2403. The Enbridge brochure claims that shipment on these ports has been conducted for many years without incident. It should come as no surprise because those ports are no closer -- the Kitimat example is four to five times longer than any of those ports and none of them have the 105 to 90 degree bends that exist for the Kitimat approach. So the Kitimat system is far more complex, and the other three are far easier by comparison.
2404. So pretty much this wraps up my request to see the TERMPOL study before too much time passes and also the qualitative risk assessment from Enbridge.
2405. **MEMBER MATTHEWS:** Great. Thanks a lot, Mr. Shannon. Okay, so as my colleague said, you can make that available to the Secretariat for our records.
2406. **MR. SHANNON:** I've done that.
2407. **MEMBER MATTHEWS:** Okay, great. Thanks. And there's a wealth of information there so we appreciate you bringing that in. Do my colleagues have any questions?
2408. Okay. Thank you, Mr. Shannon.
2409. **MR. SHANNON:** Thank you.
2410. **THE CHAIRPERSON:** Mr. Terry Vulcano?
2411. You'll have to let me know when you get to the microphone if I've pronounced your name correctly or incorrectly. Vulcano. I apologize, sir.

2412. **MR. VULCANO:** V-U-L-C-A-N-O.

2413. **MEMBER MATTHEWS:** Thank you for attending today, Mr. Vulcano. Please present your comments to the Panel with respect to the issues that are listed on the screen.

--- ORAL PRESENTATION BY MR. TERRY VULCANO:

2414. **MR. VULCANO:** Thank you for the opportunity to present. I wish to acknowledge the Haisla Nation whose traditional territory this is being held at.

2415. I've lived in Prince Rupert for the last two years, having moved there from Alberta. I'm going to speak on some of the issues, the locations for the hearings, and the consultation process.

2416. A little under two years ago, Enbridge held an open house in Prince Rupert which I attended to obtain information about the project. I had a concern about wildlife habitat being disturbed; specifically bear hibernation places in winter.

2417. The Enbridge representative I spoke to said he would take my name and have the bear specialist get back to me and that didn't happen. So that gave me two concerns -- one about the wildlife habitat being disturbed and that the Enbridge representative didn't follow up.

2418. I've looked through the 10 volumes of documents provided by the Northern Gateway project to find out what I could on disturbing wildlife habitat. Most of what I found concentrated on grizzly bear, mountain goat and caribou habitat.

2419. The bits I found here and there suggested the project would move fast enough not to only temporarily hinder caribou movement but be such a disturbance to discourage bears from setting up dens.

2420. However, it seems there's a contradiction that the pipeline construction cannot both move fast enough to minimize caribou movement and slow enough not to bother winter hibernation.

2421. A bear can't know where the pipeline will be going in a couple of months when it chooses its den. Bears will be hibernating almost half the year and they may well choose dens in the path of a proposed pipeline construction well before any discouraging activity occurs. This may jeopardize their wellbeing.

2422. Thus it seems it is a deficiency in the project outline. That aside, the

approach of the undertaking seems cavalier in regards to the need for a peaceful environment for wildlife.

2423. As the comments seemed to focus on grizzly bears will they not be concerned with black bears and brown bears? How will they know when habitat is at risk? Will they monitor all bears so they know when they will be affected? Similarly with caribou and mountain goats -- will they monitor their movement so as to know when not to disturb their movements within their ranges?
2424. So it seems to me that the preparation is missing information on how they're going to construct the project and not disturb habitat. Hopefully my having a concern about wildlife habitat along the proposed construction route is valid, even though I may not live adjacent to where such habitat may be affected.
2425. Now, I'd like to comment on location for the hearings. In addition to myself there are others from Prince Rupert who would like to be able to participate in the hearings and offer input. Thus, I'd like to make the case that Prince Rupert be included in the hearings and that we not have to make travel arrangements to attend elsewhere.
2426. Similarly, I'd like to recommend hearings be held in Hartley Bay, Klemtu, Pictathlan and Haida Gwaii to be able to have those residents have concerns on the mobile portion of the pipeline as it is even more of a challenge for them to attend hearings outside their communities. Thus, I'm advocating for hearings in isolated communities in Haidi Gwaii as well as Prince Rupert.
2427. In addition, I suspect there will be people in Calgary and Edmonton and other Alberta locations who may have concerns or interests in this project who may wish to speak for or against its implementation and I'd like to think there would be hearings in their communities so they may have an easy opportunity to be heard.
2428. Now, I'd like to talk about meaningful consultation. The third part of my presentation is on meaningful consultation. It is important for projects under consideration to have consultation that is meaningful. This is a requirement of the First Nation involved, as noted in the *Delgamuukw* decision. It would be preferential that it was meaningful for all participants. I'd like to try and define meaningful.
2429. Addressing the issue of meaningful consultation will help assure that the efforts are wasted and valuable input may be utilized for the benefit of participants affected by developments. Participants would like their input to be useful and meaningful. For First Nations consultation that is not meaningful is not valid.
2430. In 1998, a group of First Nation participants saw mill representatives and

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archaeology consultants met to define meaningful consultation. They agreed that consultation was meaningful when input given made a difference to a proposal or a project. A further grasp of meaningful consultation might be achieved through an overview of types of participation to determine how consultation may be more meaningful.

2431. In 1969, Sherry Armstein set out eight levels of participation based on research and studies of experiences in the USA. Her analysis yields eight types of participation. I'm just going to talk about the middle three because I think they relate to what could be meaningful consultation.
2432. My written submission touches on all eight.
2433. At the informing level emphasis is placed on one-way flow of information which includes a news media, posters and pamphlets. Meanings that provide superficial information or give irrelevant answers are also one-way communications. Participants have little influence on the projects. This is a large part the way I perceived the Northern Gateway Project is being presented.
2434. The next level is called "Consultation". Methods used for consulting include surveys, community meetings, and public hearings. Participation is measured by how many come to meetings, take brochures or answer a question. Participation is merely window dressing; there are no assurance concerns and ideas will be taken into account.
2435. Participants are pleased until they realize their concerns are not being addressed. This may lead to placation, where time is spent fashioning boards, committees or task forces without defining rights and responsibilities. Participants give input but not have control because they can be outvoted; they have a peripheral role.
2436. Time allowed and the independent technical resources available are not adequate, it's impossible to have a significant impact. Citizens realize they've participated without benefiting. So these three types informing, consultation, placation are collectively known as tokenism. There's pretence of utilizing input.
2437. This has been a brief overview of the types of participation. Success for support of a project is achieved through showing input leads to impact. This allows the potential to define what is meaningful.
2438. In genuine levels of consultation, efforts are relevant and projects are responsive to people's input. Consultation is not meaningful when it only provides information and takes comments without responding significantly to the feedback.

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2439. Just being allowed to identify issues, concerns and benefits and provide feedback and participate in a survey is not meaningful. Is there not an obligation to respond or modify projects based on input so received? Participants like to have their input useful and meaningful; the consultation that is not meaningful is not valid.

2440. Coming back to the example of the bear habitat -- if it can be pointed out that the habitat will be adversely affected by constructing the pipeline in winter and the Proponent acknowledges this and agrees not to construct during the winter then that is meaningful consultation.

2441. I would like to think that the consultation for this project would be meaningful for participants and that by making this presentation to the Joint Review Panel it will lead to a consultation being meaningful.

2442. Perhaps a Proponent could be required to show how it has responded to input rather than just receiving comments, answering questions and conducting surveys.

2443. Thank you.

2444. **MEMBER MATTHEWS:** Mr. Vulcano, thank you for taking the time and presenting some thoughtful views.

2445. **THE CHAIRPERSON:** This brings us to the end of the list of registered parties who are speaking this afternoon. I will go through the list again of other parties yesterday who had indicated an interest in presenting and see if any of these people are in the room at this point.

2446. Mr. John Perdue (ph)?

--- (No response/Aucune réponse)

2447. **THE CHAIRPERSON:** Mr. Ken Minifie?

--- (No response/Aucune réponse)

2448. **THE CHAIRPERSON:** Mr. John Bushell (ph)?

--- (No response/Aucune réponse)

2449. **THE CHAIRPERSON:** C.V. Grithaulas (ph)?

--- (No response/Aucune réponse)

2450. **THE CHAIRPERSON:** Mr. Frank Wolfe?

--- (No response/Aucune réponse)

2451. **THE CHAIRPERSON:** It doesn't appear that any of those people are in the room. So we will adjourn this afternoon and reconvene at nine o'clock tomorrow morning.

2452. Thank you, everyone.

--- Upon adjourning at 3:17 p.m./L'audience est ajournée à 15h17