



Chief's Council
Eagle Spirit Energy Corridor

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0



Submission from Eagle Spirit Energy Chiefs' Council
Regarding Bill C 48

Prepared for Senate of Canada by Kenneth Brown

PURPOSE

Our 35 First Nation coalition, which is represented by the Eagle Spirit Energy Corridor Chiefs' Council, ardently supports the Eagle Spirit Energy Pipeline Corridor Project.

The purpose of this submission is to express our collective consternation and distress regarding Bill C 48, and to provide some historical context on the matter of Bill C 48, including copies of previous submissions to the Federal Government that express our grave concerns around Consultation, Rights and Title.

It is our sincere hope that once we conclude our discussions you will have a better understanding of our First Nations' aspirations for a better future and our collective resolve to achieve that future.

BACKGROUND

First Nations who rejected the Northern Gateway Pipeline for environmental reasons are not against pipelines in general. With the environment as a first priority, the Eagle Spirit Energy Pipeline Corridor Project presents a new environmental case for a pipeline project that is similar to Northern Gateway, but with much greater protection for the land and environment.

Reaching from Bruderheim, Alberta to the Grassy Point Port near Prince Rupert BC, the Eagle Spirit Energy Corridor will traverse 35 First Nation territories in BC and Alberta. The Chief's Council supports the pipeline because it will provide significant economic and social benefits for historically deprived First Nations.

However, Bill C48 puts a moratorium on oil tankers on Canada's West Coast, and places an unnecessary obstacle in the path of the Eagle Spirit Energy Pipeline

"Indigenous people in Canada are the poorest people in the nation. With ground-breaking projects like this, we have an opportunity to holistically balance natural resource development against the dire needs of our communities."

- Chief Isaac Laboucan-Avirom, Grand Chief , Treaty 8 First Nations of Alberta

THE PROBLEM

Bill C-48:

1. Unilaterally discards the constitutionally protected Rights and Title to the land that cannot be extinguished by simple legislation
2. Doesn't allow for a Federal and Provincial Environmental Assessment process to transpire as means to predict environmental, social, economic and cultural impacts as a means to support sustainable development and environmental protection
3. Exacerbates the current helplessness in First Nation communities where our people suffer exponentially higher rates of unemployment, suicide, alcohol/drug addiction and deteriorating infrastructure. Likewise for Canadians who live in the region of the proposed corridor and all mover Western Canada who are economically displaced and would embrace the much desired economic development.
4. Perpetuates the current monopoly America has on our most valuable resource by obstructing Canada's much-needed diversification of markets - ultimately undermining Confederation itself.
5. Is based on political rather than economic or environmental concerns, as there is no empirical evidence to support an oil tanker ban in the region.

THE SOLUTION

1. Bill C-48 to be rejected in its entirety OR
2. A northern boundary to the oil tanker moratorium area be fixed at 54°30' north latitude, pending development of a lane separation scheme for oil tankers in Dixon entrance equivalent to that in the Strait of Juan De Fuca.

APPENDICES

- 1. SCOPY OF CHIEF'S COUNCIL LETTER TO SENATORS**
- 2. COPY OF NOTICE OF CIVIL CLAIM: *LAX KW'ALAAMS BAND V. CANADA***
- 3. COPY OF LETTER TO JUSTIN TRUDEAU FROM CHIEF'S COUNCIL**

COPY OF CHIEF'S COUNCIL LETTER TO SENATORS



Chief's Council
Eagle Spirit Energy Corridor

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0



Senator X
The Senate of Canada

September 12, 2018

Dear Senator X :

Re: Impact of Bill C-48, Oil Tanker Moratorium Act, on First Nation Communities

We, the Eagle Spirit Energy Chiefs Council, are seeking your support in stopping the *Oil Tanker Moratorium Act* by voting against Bill C-48—a matter which is critical to the wellbeing of our First Nation communities. Bill C-48 prohibits oil tankers that are carrying more than 12,500 metric tons of crude oil or persistent oil as cargo from stopping, or unloading at ports or marine installations located along British Columbia's north coast.

The Eagle Spirit Energy (ESE) Chiefs Council represents 35 First Nations from coastal First Nations near Prince Rupert in Grassy point B.C. to First Nations in Fort McMurray AB. For the past six years the ESE Chiefs Council has been working on the ESE corridor project (the "Corridor"). The Corridor will transport both LNG-NGL and upgraded crude oil from the Coast in B.C.

Lack of Consultation

Our major concern with Bill C-48 stems from the lack of consultations with relevant First Nations whose Traditional Territories are directly impacted.

Our communities previously opposed Northern Gateway Pipeline because of lack of consultation, and serious environmental concerns. It is not without irony that we are writing to express our concerns about the complete lack of consultation from the federal government in introducing Bill C-48 and the incredibly harmful impact that this will have on our communities.

As recently as August 30, 2018, with the Federal Court of Appeal's decision to quash the Trans Mountain Pipeline expansion, we saw the negative impact that lack of consultation with First Nations groups can have on a project. The court ruling stated they must re-do part of the consultations with First Nations as the duty to consult was not adequately discharged.

Federal government representatives state that they had over 50 meetings with First Nations regarding Bill C-48, but information meetings are not the detailed meaningful consultation as set out by the Supreme Court of Canada and as required based on the federal government's website (see: <https://bit.ly/2MXkTMK> & <https://bit.ly/2BRUmfE>). In fact, such information meetings do not even rise to the minimal level of "note-takers" as was emphatically rejected by the recent Federal Court of Appeal decision in the Trans Mountain Pipeline decision as being wholly inadequate for meaningful consultation.

As a result of the lack of consultation, the Lax Kw'alaams First Nation, whose traditional land and ocean territory covers the critical shipping lanes in northern B.C. that are impacted by Bill C-48, have filed a notice of civil claim opposing it. The notice of civil claim is supported by a group of Haida hereditary Chiefs and the neighboring Nisga'a Lisims Government is also opposed to Bill C-48 due the lack of meaningful consultation. The Nisga'a along with the 35 First

Nations members of the Chiefs Council will also be taking legal action opposing the Bill for lack of consultation should it pass through the senate.

Indigenous Protocol and Common Law

Bill C-48 covers an enormous area from the Alaskan border to the northern end of Vancouver Island which includes the individual traditional territories of many First Nations. As a matter of indigenous protocol and common law, it is understood that a First Nations' rights extend only to their traditional territory and not those of another. It would be absurd for one First Nation in Northern B.C. to seek to dictate what a First Nations in the mid-or southern coast could do in their own traditional territories and vice versa. Stating that the majority of First Nations support Bill C-48 is inaccurate, misleading, and ignores the requirement for meaningful consultation. This is so particularly when the key coastal First Nations detrimentally affected do not support Bill C-48 and the restrictions to the major northern shipping lane most harmfully impacts northern First Nations in B.C. and Alberta.

Crude Oil Shipments Permitted Everywhere in Canada

Crude oil is permitted to shipped everywhere in Canada including the Great Lakes, the Saint Lawrence Seaway, the B.C. Coast (with oil tankers travelling with heavy oil from Alaska daily within a few kilometers of Haida Gwaii and into the Juan de Fuca Strait), and the entire east coast (where actual offshore drilling is taking place).

The question being asked to you Senator, by northern indigenous people, is what makes the waters of northern B.C. any different?

In light of this situation, there is little basis to argue that imposing Bill C-48 can be justified on the basis of a compelling and substantial public interest given that this would be the only marine area in Canada that would be subject to such a ban. When this is proposed to be done without consultation with the key First Nations whose traditional territories are most harmfully impacted, it is difficult to see how Bill C-48 is consistent with the Crown's fiduciary duty to the Aboriginal group.

Inconsistent with Reconciliation and UNDRIP

Forcing Bill C-48 onto First Nations who have not been consulted is not consistent with the reconciliation commitment to "...to a renewed [nation-to-nation] relationship with Indigenous Peoples, one based on the recognition of rights, respect, co-operation, and partnership" and the United Nations Declaration on the Rights of Indigenous Peoples. In such circumstances, it makes no sense that First Nations should have to waste their scarce financial resources holding the government to account for breaching their constitutionally protected rights. There is no "compelling and substantial public interest" for Bill C-48 when the government permits oil to be shipped everywhere else in Canada, and is allowing—according to their own exhaustive study—bitumen to be shipped out of one of the riskiest ports on the west coast.

The Eagle Spirit Energy Corridor

The Eagle Spirit Energy Corridor will be a corridor from coastal North Coastal Tsimshians' traditional territory Grassy Point, BC to Fort McMurray, AB. It will be able to accommodate

future pipelines for the transportation of LNG and partially upgraded bitumen. It represents the only opportunity for our communities to generate sustainable own-source revenues which would allow us to solve our own problems. It is the greenest project on the planet through Indigenous Environmental stewardship. Given our concern for the environment, we have developed the best-in-class environmental model using state-of-the-art spill prevention and response procedures to protect the coast, significantly exceeding the standards of the Oceans Protection Plan. According to an exhaustive federal governmental study (see: <https://bit.ly/2PdI4RP>), the Corridor has the best and most environmentally-safe port location on Canada's west coast.

The Corridor has:

- Preliminary financial commitments from one of the largest national oil companies in the world
- Executed agreement with Canada's Four Craft Pipeline unions – who represent over 330,000 members from the International Union of Operating Engineers (Canadian Piping Trades), the Labourer' International Union of North America (LIUNA), the United Association Canada, and Teamsters Canada
- There is also political support from the Alberta and Saskatchewan governments through
 - Financial commitments
 - Open opposition to the *Oil Tanker Moratorium Act*
- Positive meetings have been held and are ongoing with the B.C. government
- The Chiefs Council foresees the execution of a mutual accord with the three western provinces in support of the Corridor.

The Importance of your Vote

Given strained trading relations with America, and the importance of delivering the greenest crude oil to international markets, there is no question that the Corridor is a critical to the national economy. It represents an important piece of nation-building infrastructure beyond politics. We write today to implore you to exercise your role with a sober second thought, upholding the honour of the Crown, by voting against Bill C-48.

If you wish to discuss this matter further we suggest you contact Calvin Helin, Chairman & President of ESE at (604) 644-8810 or calvinh@indigi.biz.

Sincerely Yours,

Helen Johnson
Chiefs Council Chair

Chief Isaac Laubocan-Avirom
Alberta Vice Chair

Chief Gary Alexcee
British Columbia Vice Chair

COPY OF NOTICE OF CIVIL CLAIM: LAX KW'ALAAMS BAND V. CANADA


Form 1 (Rule 3-1(1))

SUPREME COURT
OF BRITISH COLUMBIA

MAR 22 2018

PRINCE RUPERT
REGISTRY

BETWEEN:



AND:

No. 100083
Prince Rupert Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

LAX KW'ALAAMS INDIAN BAND represented by its Mayor, JOHN HELIN,
on behalf of all members of THE NINE TRIBES OF LAX KW'ALAAMS

PLAINTIFFS

THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must:

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim, described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Parties

The Plaintiffs

1. Lax Kw'alaams Indian Band is a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5 and has an office at 206 Shashaak Street, Lax Kw'alaams, BC V0V 1H0 (the "Band").
2. The Nine Tribes of Lax Kw'alaams are an aboriginal people within the meaning of section 35 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.
3. The Nine Tribes of Lax Kw'alaams (the "Nine Tribes") are comprised of the present day members of the Coast Tsimshian First Nation, being members of the Ginaxangiik, Gitandoah, Gitwilgyots, Gitnadoiks, Gits'iis, Gispaxloats, Gitlan, Gitzaxlaal, and Gitlutzau tribes, who are affiliated with the Band and whose traditional land is shown on Appendix "A" (the "Nine Tribes Territory").
4. The Nine Tribes, as an aboriginal collective, claim in this action aboriginal title and aboriginal rights over the core area shown on Appendix "B", including Nasoga Gulf, Grassy Point, Lax Kw'alaams and the Tsimshian Peninsula north of 54°24'52.811" N latitude (the "Claim Area"). The claim in this action is without prejudice to their rights and title to whole of the Nine Tribes Territory.
5. The Band is recognized as the rightful custodian and the governing body with respect to the rights and title of the Nine Tribes.

6. John Helin is the elected Mayor of the Band and as such is the authorized representative of the Nine Tribes. He brings this action as the authorized representative of the Band as custodian and the Nine Tribes as owners of the collective aboriginal title and rights of the Coast Tsimshian First Nation affiliated with Lax Kw'alaams.
7. The Lax Kw'alaams Band and the Nine Tribes have been recognized by this Court in *Lax Kw'alaams Indian Band v Canada (Attorney General)*, 2008 BCSC 447 as the proper plaintiffs and the present day descendants and holders of the collective aboriginal rights of the Coast Tsimshian Nation.
8. Before contact between the people of the Coast Tsimshian Nation and Europeans ("Contact") and before the Crown's assertion of sovereignty over the lands and waters of what is now British Columbia in 1846 ("Sovereignty"), the Coast Tsimshian Nation existed as a distinct, organized and self-governing aboriginal group and collective who shared common distinctive features including a culture, a language, customs, practices, traditions, laws, economics and spiritual beliefs.
9. Prior to and since Sovereignty, the nine Coast Tsimshian tribes have operated in common as an organized society so as to constitute one Nation known as the Coast Tsimshian.
10. The laws of the Coast Tsimshian Nation recognize their collective ownership of their lands.
11. The membership of Coast Tsimshian Nation today consists substantially of the combined members of the Lax Kw'alaams Band and Metlakatla First Nation, which bands were formed in the 1880s, well after Sovereignty, from the members of the nine Coast Tsimshian tribes. The members of these bands and tribes derive their collective aboriginal rights and title interest from their membership in the Coast Tsimshian Nation.
12. Present day members of the Nine Tribes (approximately 3,800 at present) constitute approximately 82% of the population of the Coast Tsimshian Nation.

The Defendants

13. The defendant the Attorney General of Canada ("Canada") is the representative of Her Majesty the Queen in Right of Canada pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
14. The Parliament of Canada has legislative jurisdiction over "Navigation and Shipping", "Sea Coast and Inland Fisheries" and "Indians and lands reserved for the Indians" pursuant to subsections 91(10), 91(12) and 91(24) of the *Constitution Act*, 1867, 30 & 31 Victoria, c 3.

15. Canada asserts legislative jurisdiction over the Claim Area for all matters connected with navigation and shipping, including the use of the land and sea in the Claim Area for oil transport and the construction and operation of a marine oil terminal facility.
16. The defendant Her Majesty the Queen in Right of the Province of British Columbia (the "Province") asserts ownership of lands in British Columbia pursuant to subsections 92(5) and 92(13) of the *Constitution Act, 1867* and purports to hold the legal and beneficial interest in the lands within the Claim Area.

Aboriginal Rights of the Nine Tribes

Aboriginal Title

17. The Nine Tribes, as an aboriginal collective, claim in this action aboriginal title and aboriginal rights over the core Claim Area shown on Appendix "B". The claim in this action is without prejudice to their rights and title to whole of the Nine Tribes Territory.
18. Before and at Contact and to the present day the members of the Coast Tsimshian Nation have, to the exclusion of all others, owned, used, occupied and exercised governance and control over their territories in or near the coastal area of northwest British Columbia and along the Lower Skeena River including all of the tributaries of the lower Skeena River, and coastal regions up to the Nass River, and on the inlets and islands between their estuaries and extending south to the north end of Grenville Channel as shown on Appendix "A" ("Nine Tribes Territory"). Nine Tribes Territory includes land, land covered by water, offshore and inshore water bodies, foreshore, rivers, lakes and streams situated within its bounds.
19. The nine Coast Tsimshian tribes combined and allied together for defence and as a cultural unit and single organized society well before Sovereignty. While continuing to this day to exclusively use and claim title over the whole of the Nine Tribes Territory the nine Coast Tsimshian tribes coalesced at a pre-existing village site on the Tsimshian Peninsula known as Lax Kw'alaams in 1834, which prior to Sovereignty also became known also as Fort Simpson, and later as Port Simpson. Lax Kw'alaams had since time immemorial been a Coast Tsimshian village site and lies at the core of Nine Tribes Territory.
20. Before and at Sovereignty, the nine Coast Tsimshian tribes regularly and exclusively used, occupied and controlled the Claim Area for hunting, fishing and other uses of the land and resources, which occupation and control was sufficient to establish aboriginal title to the Claim Area.

21. At and before Sovereignty, the nine Coast Tsimshian tribes had exclusive occupation, use, possession and control of the Claim Area which was recognized under their legal systems and *adaawx* and pursuant to the common law as sufficient to amount to ownership and aboriginal title over the Claim area.
22. As a present-day aboriginal collective, the Nine Tribes hold aboriginal title to the Claim Area.

Aboriginal Right to Control the Use of Land

23. Before and at Contact, the social and economic organization of the nine Coast Tsimshian tribes centred around the governance and use of land for all economic and other purposes, including the harvesting, managing, processing, storing, consuming and trading of marine and terrestrial animals and plants in Nine Tribes Territory.
24. Before and at Contact and to the present day the culture and practices relating to the use of land constitute a defining feature of the Nine Tribes' society, culture and economy and a practice, custom or tradition that was and is integral to the distinctive culture of the Nine Tribes.
25. As the present day members of this aboriginal collective, the plaintiffs hold existing aboriginal rights to the governance and use of their territory for all purposes and rely upon such rights for their cultural and spiritual identities and the economic sustenance of their families and community.
26. The aboriginal rights and title of the plaintiffs have never been lawfully extinguished.
27. The continued governance and use of land in the Claim Area is essential to the sustenance of Nine Tribes as a remote aboriginal community. The Claim Area includes and is adjacent to an open and safe deep-water shipping corridor and contains land suitable for development as an energy corridor and for protected deep-water ports for development and operation of a marine installation as defined in *Bill C-48 Oil Tanker Moratorium Act*.
28. The plaintiffs' aboriginal title encompasses the right to choose to what uses the land can be put, including use as a marine installation subject only to justifiable environmental assessment and approval legislation.

29. Without consent and over the objections of the plaintiffs the Province has extended its Great Bear Rainforest policy and legislation to the Claim Area. Although this policy and legislation does not expressly apply to navigation and shipping or oil tanker facilities on land, Canada has purported to use it to justify its oil tanker moratorium. The plaintiffs say that any and all limitations sought to be imposed on their rights and title under the rubric of "Great Bear Rainforest" are contrary to ss. 35 and 52 of the *Constitution Act, 1982* and inapplicable in the Claim Area.

Infringement of the Plaintiffs' Aboriginal Rights and Title

Interference with use of the Claim Area

30. Without any consultation or accommodation and without justification, Canada has purported to bypass the lawful federal and provincial environmental assessment and approval processes by imposing a blanket oil export moratorium that precludes the application of such processes to any proposed project involving a marine installation for use in the loading of oil to a ship in an amount greater than 12,500 metric tons regardless of the environmental safety measures contemplated by such project.
31. The said moratorium purports to prohibit the plaintiffs from developing their land in the Claim Area for use in connection with the loading of oil to a ship in an amount greater than 12,500 metric tons regardless of the plaintiffs' or any authorized agency's assessment of the environmental safety measures contemplated by any such project.
32. The moratorium has been imposed by way of cabinet decision, policy, news releases and a bill introduced in Parliament as *Bill C-48*, all of which are intended to foreclose any possibility of economic development of the Claim Area for use as a port or marine installation for bulk shipments of oil.
33. The said action by Canada discriminates against the plaintiffs by prohibiting the development of land in the Claim Area, being an area that has one of the best deep-water ports and safest waterways in Canada, while permitting such development elsewhere in British Columbia and Canada where waterways are congested and obstructed by a maze of islands, bridges, ships and other hazards to marine traffic.
34. The said action by Canada was taken in the knowledge that a plan had been developed for an energy corridor from Bruderheim, Alberta, to Grassy Point near Lax Kw'alaams and that this plan had received social licence from all the First Nations along the proposed route. The said action by Canada was therefore taken deliberately to thwart this plan and the ability of the plaintiffs to create economic support for their community based on the development of an oil export facility.

35. The said action by Canada fails to take into account the mandate received by Lax Kw'alaams Mayor and Council from members of the Nine Tribes to protect the environment that is essential to their traditional way of life while at the same time ensuring the future economic sustainability of their community through training, employment and other benefits associated with development of their lands.
36. The plaintiffs have proposed that the northern boundary of any oil tanker moratorium pertaining to shipments from Canadian ports be fixed at 54°, 30' N latitude pending the development of a lane separation scheme for oil tankers in Dixon Entrance equivalent to that in the Strait of Juan de Fuca, but Canada has not considered or responded to this request.
37. The plaintiffs have not consented to the moratorium or to *Bill C-48*, to the subsequent enactment of *Bill C-48* or to any interference with the plaintiffs' right to control the use of its land in an environmentally sustainable manner.
38. Canada's interferences with the plaintiffs' aboriginal title amounts to infringement of the plaintiffs' aboriginal title, which infringement is unjustified.

Part 2: RELIEF SOUGHT

1. A declaration that the plaintiffs hold aboriginal title to the Claim Area or portions thereof;
2. A declaration that the legislative and administrative schemes established by federal and provincial legislation for the assessment and approval of projects affecting the environment are valid and operative in the Claim Area with respect to any project for the export of oil notwithstanding the moratorium;
3. A declaration that the moratorium and any subsequent enactment of *Bill C-48* is an unjustified infringement of the plaintiffs' aboriginal rights and title and is of no force and effect in the Claim Area pursuant to ss. 35 and 52 of the *Constitution Act, 1982*;
4. Damages, Costs and such further and other relief as may be just.

Part 3: LEGAL BASIS

1. The plaintiffs have aboriginal title to the Claim Area, including the right to choose whether or not to permit a marine installation for the export of oil in the Claim Area subject only to compliance with valid federal, provincial and indigenous environment assessment and approval processes.

2. The plaintiffs are entitled to be consulted and accommodated with respect to any legislative or policy constraints or prohibitions imposed on the use of land and sea in the Claim Area.
3. The plaintiffs are entitled to the claimed declaratory relief based on their aboriginal rights and title.
4. Insofar as the claimed declaratory relief extends to any subsequent enactment of *Bill C-48*, the plaintiffs acknowledge that their right to such relief will depend on the enactment of *Bill C-48* prior to the hearing date for this action.

Plaintiffs' address for service: MacKenzie Fujisawa LLP
Barristers and Solicitors
1600 – 1095 West Pender St.
Vancouver, B.C. V6E 2M6

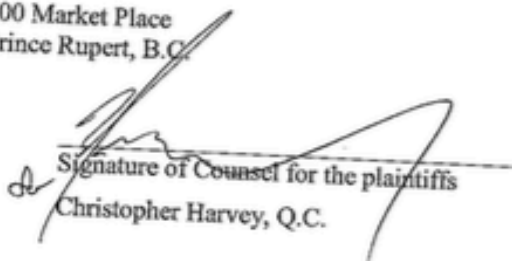
Fax number address for service (if any): 604-685-6494

E-mail address for service (if any): N/A

Place of trial: Prince Rupert, British Columbia

The address of the registry is: 100 Market Place
Prince Rupert, B.C.

Date: March 15, 2018


Signature of Counsel for the plaintiffs
Christopher Harvey, Q.C.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

- (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for declaratory relief and damages in relation to the plaintiffs' aboriginal title to lands in their Claim Area, including relief arising out of restrictions imposed on the Claim Area by the federal Oil Tanker Moratorium.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

- a matter not listed here

Part 3:

- aboriginal law
- constitutional law

Part 4:

Constitution Act, 1867, 30 & 31 Vict, c 3;

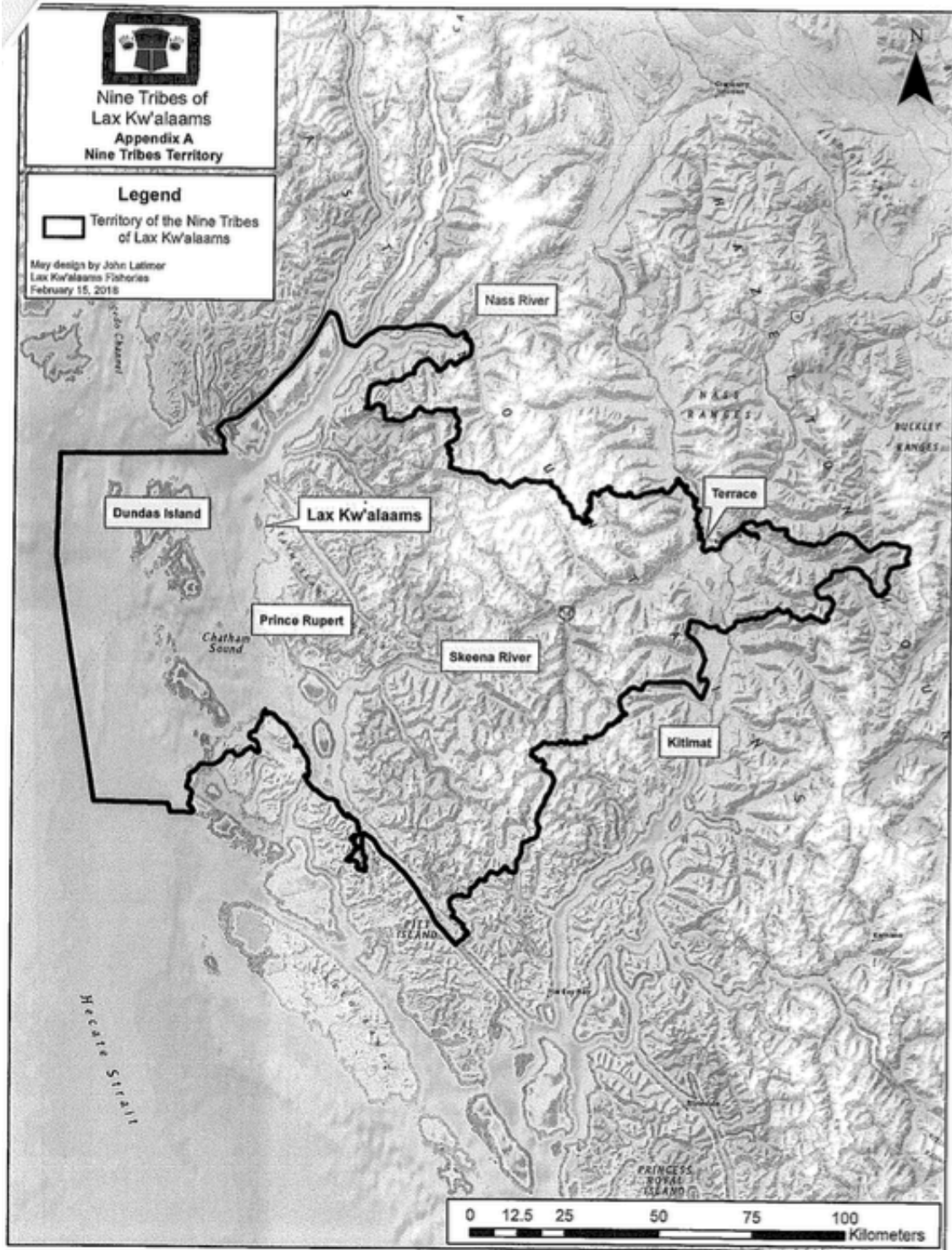
Constitution Act, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11;

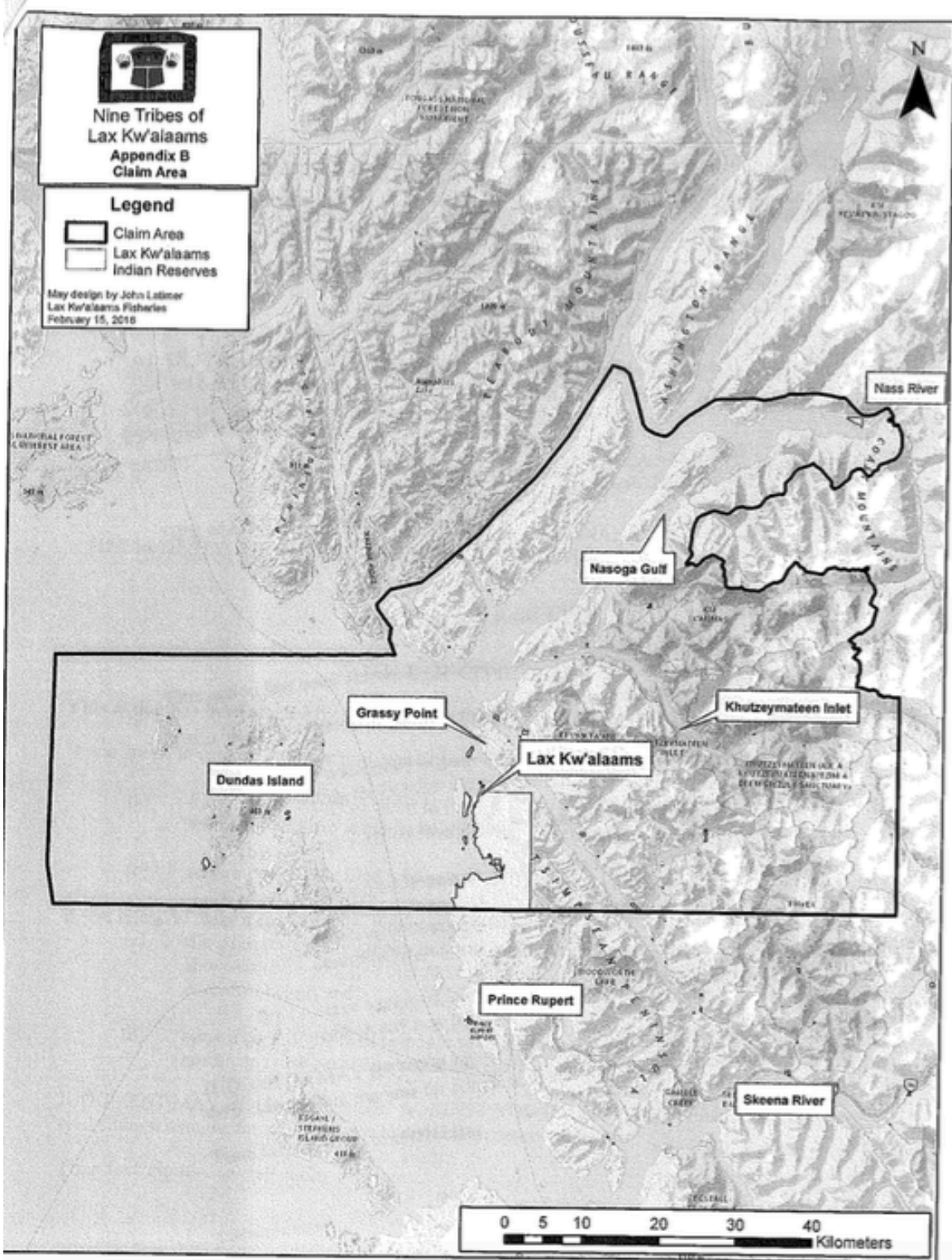
Indian Act, R.S.C. 1985, c I-5.

Canadian Environmental Protection Act, S.C. 2012, c. 19, s. 52

Environmental Assessment Act, SBC 2002, c. 43

Bill C-48: Oil Tanker Moratorium Act.





COPY OF LETTER TO JUSTIN TRUDEAU FROM CHIEF'S COUNCIL



Chief's Council

(Eagle Spirit Energy Project)

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0

Phone: (604) 275-6670 Fax: (604) 275-0307



The Right Honourable Justin Trudeau

Langevin Block

80 Wellington St.

Ottawa, ON K1P 5K9

May 9, 2017

Dear Prime Minister Trudeau,

We the Chiefs from Northern British Columbia and Alberta, want to bring your attention to our unanimous agreement and desire for economic activity that will benefit the whole of BC and Canada which will economically strengthen the government and First Nation relationship. Our Nations are located along Eagle Spirit Energy's (ESE's) proposed energy corridor and we want to realize the economic, social and community benefits of the proposed ESE Corridor.

Most importantly, we wish to formally request a change to the legislation for the pending tanker moratorium and hope to collaborate with your staff on the amendment. Further, we request a review of the current process by which decisions are being made for resource projects on our traditional territory; including, but not limited to, what is carried in pipelines and exported off our coast. We are firm in our position that a blanket tanker moratorium is not the answer; and in fact creates conflict and disadvantage to First Nations. Once again, government appears to make decisions for our people and communities (without our consent) rather than collaborating as partners in decision making for resource development which has significant and long term impacts to our rights of our Traditional Lands.

We recognize the potentially negative economic results from current trade negotiations and disputes with the US over softwood lumber, dairy, and potentially over energy resources. As a result, we do not think that Canada should be closing off any opportunities to diversify our markets. The shipping route off the northern coast of British Columbia provides access to the Asian markets, particularly China, allowing Canada to continue to diversify its markets and increase the selling price of our resources.

As background, ESE is a First Nations led energy corridor proposal that was born out of a sense of responsibility to the environment and a desire to ensure that all affected communities are involved in the development of a safe and successful project. Begun over three years ago, we have confirmed our social license for this project with the Nations along the proposed route.

An intrinsic part of this project is the Chief's Council with elected co-chairs from Alberta and BC, and representatives from all the Indigenous communities that would be impacted by the project. As members of the Chief's Council, we guide ESE and have direct input into every aspect of the proposed energy corridor.

The Chiefs Council and ESE sent a delegation to Ottawa in early April, and upon learning the outcome of those meetings, and then receiving numerous declines to follow-up meetings, the Chiefs' Council is concerned about the future of this project and, thus, increasingly concerned the economic future of our communities.

Despite all of the efforts the Chiefs council has put into consulting with the governments, we're very concerned because, reciprocally, there has been insufficient consultation (as there has been with the establishment for the Great Bear Rainforest in our territories) for the proposed

Tanker Moratorium with the affected First Nations, and it does not have our consent. Many communities feel that the federal government did not listen to our opinions, preferences, or suggestions for the best ways to protect our natural lands and waters. As Indigenous peoples, we want to preserve the right to determine the types of activities that take place in our territories and do not accept that the federal government and international environmental interest groups should tell us how to preserve, protect, and work within our traditional territories.

We are not, and have never been, willing to support projects that endanger our environment and communities; however, we believe that proper environmental protection and responsible resource development is possible as economic partners through a mutually agreeable consultation approach.

Your government has committed to support the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), which requires free, prior and informed consent of Aboriginal groups, including for the approval of any projects affecting Aboriginal lands or territories. The Declaration also provides a right of redress for lands, territories, and resources that have been confiscated, taken, occupied, used, or damaged without the free, prior, and informed consent of the affected Aboriginal groups. The commitment to upholding the Declaration combined with Section 35 of the Constitution means that the Government of Canada has a commitment to achieve free, prior and informed consent of Aboriginal groups in several instances, including for the approval of any projects affecting Aboriginal lands or territories.

The Chiefs Council is willing to work as economic partners to improve governmental relations with First Nations; however, our consent was neither requested or given for the tanker moratorium, or for the way in which it will be implemented. We also believe that the tanker moratorium uses selective research trumpeted by environmentalists and shows little regard for other scientific research, such as that done by Natural Resource Canada's own scientist (<http://www.nrcan.gc.ca/node/11696>) that showed bitumen from Cold Lake stayed buoyant for an entire week (<http://www.macleans.ca/society/does-spilled-pipeline-bitumen-sink-or-float/>).

In the case of the Eagle Spirit Energy project, we feel that the Government of Canada should work in collaboration with the affected First Nations to engage in, and confirm, our consent, rather than put in place the proposed blanket Tanker Moratorium and banned products; especially for this First Nations led project. We believe a First Nations led process should be implemented to help determine what resource projects can be developed on our lands and what products can be shipped off our coast lines.

We look forward to a meaningful dialogue with you and your ministers on how best to balance the protection of these precious lands and waters, meeting the commitments laid out in the Declaration, and our proposed amendments to any Tanker Moratorium legislation that will be introduced in the near future.



Chief's Council

(Eagle Spirit Energy Project)

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0

Phone: (604) 275-6670 Fax: (604) 275-0307



In furtherance of a government to-government relationship and a mutually respectful dialogue, we look forward to changes to the legislation that reflect our request as reconciliation through a new pathway forward. In the spirit of economic partnership and real change to the relationship with all First Nations in Canada, we can stand together in the celebration of the 150th anniversary of Canadian history.

Sincerely,

Helen Johnson
Eagle Spirit Chiefs' Council Chair

Mayor John Helin
Mayor of Lax Kw'alaams

Isaac Laboucane-Avirom
Chief of Woodland Cree First Nations and Co-Chair of the Chief's Council, Alberta

Larry Marsden
Head Chief of Fireweed,
Gitksan First Nation

Art Matthews
Head Chief Wolf Clan
Gitksan First Nation

Chief Martin Louie
Chair of Chiefs' Council
Environmental committee

Chief Dan George
Burns Lake Band

Chief Donny Van Sommer
Kwadacha Nation

Gary Alexcee
Deputy Chair of Chiefs'
Council for BC

Wesley Sam
Chair of the Chiefs' Council
Steering Committee

Chief Archie Patrick
Stellat'en First Nation

Cc: Minister Jim Carr
Minister Jody Wilson-Raybould
Minister Carolyn Bennett
Minister Catherine McKenna
Minister Marc Garneau
Minister Dominic LeBlanc
Minister François Champagne
Minister Chrystia Freeland



Chief's Council

(Eagle Spirit Energy Project)

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0

Phone: (604) 275-6670 Fax: (604) 275-0307



Name: Chief Clifford Musgrave
Title: Sm'oogyit Hymass
First Nation/Tribal Affiliation: Gitsiis

Name: Chief Randy Dudoward
Title: Sm'oogyit Niislaganoos
First Nation/Tribal Affiliation: Gitlan

Name: Chief Arnold Brooks
Title: Sm'oogyit Nisho.ot
First Nation/Tribal Affiliation: Gitzalaal

Name: Chief Alex Campbell
Title: Sm'oogyit Gitxoon
First Nation/Tribal Affiliation: Gispaxloats

Name: Chief William Sampson
Title: Sm'oogyit Ladox
First Nation/Tribal Affiliation: Gitwilgyoots

Name: Chief Donald Alexcee
Title: Sm'oogyit Ligi Watgwatk
First Nation/Tribal Affiliation: Gitwilgyoots

Name: Chief Clyde Dudoward
Title: Sm'oogyit Nies Weexs
First Nation/Tribal Affiliation: Ginandoiks

Name: Inez Helin
Title: Si gidmn'ha'ax Simgemk
First Nation/Tribal Affiliation: Ginandoiks

Name: Matron Elaine Hughes
Title: Si gidmn'ha'ax Sudalx
First Nation/Tribal Affiliation: Ginaxangiik

Name: Don Johnson
Title: Geg'yusm'waap
First Nation/Tribal Affiliation: Ginaxangiik

Name: Merle Hughes
Title: Si gidmn'ha'ax Gah'del Ban Hayetsk
First Nation/Tribal Affiliation: Gispaxloats

Name: Beatrice Bryant
Title: Si gidmn'ha'ax
First Nation/Tribal Affiliation: Gitwilgyoots

Name: Jack White
Title: Gulm'algyax Ski-las
First Nation/Tribal Affiliation: Gitando

Name: George Bryant
Title: Gwin Bax Medik
First Nation/Tribal Affiliation: Gitwilgyoots



Chief's Council

(Eagle Spirit Energy Project)

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0
Phone: (604) 275-6670 Fax: (604) 275-0307



Name: Rod Johnson Sr.
Title: Sm'oogyit Saa-Nass
First Nation/Tribal Affiliation:
Gitksan

Name: Robert Grey
Title: Chief
First Nation/Tribal Affiliation:
Whitefish Lake First Nation #476

Name: Billy Joe Laboucan
Title: Chief
First Nation/Tribal Affiliation:
Lubicon Lake Band #453

Name: James Alook
Title: Chief
First Nation/Tribal Affiliation:
Peerless Trout First Nations #478

Name: Vernon Smith
Title: Sm'oogyit (Head Chief/Eagle)
First Nation/Tribal Affiliation:
Gitksan

Name: Lloyd Ryan
Title: Sm'oogyit Haakasxu
First Nation/Tribal Affiliation:
Gitksan

Name: Frank Benson
Title: Sm'oogyit Zoak
First Nation/Tribal Affiliation:
Gitksan

Name: Rena Benson
Title: Si gidmn'ha'ax
First Nation/Tribal Affiliation:
Gitksan

Name: Lawrence Watson
Title: House Representative
First Nation/Tribal Affiliation:
Gitksan

Name: Peter Turley
Title: Head Chief Eagle Clan
First Nation/Tribal Affiliation:
Gitksan



Chief's Council

(Eagle Spirit Energy Project)

90 Robinson Road, Lax Kw'alaams, B.C. V0V 1H0
Phone: (604) 275-6670 Fax: (604) 275-0307



Name: Don Roberts
Title: Chief
First Nation/Tribal Affiliation:
Kitsumkalum First Nation

Name: Vernon Milton
Title: Xsgogimlaxhax
First Nation/Tribal Affiliation:
Gitxsan

Name: Trevor Makadahay
Title: Chief
First Nation/Tribal Affiliation:
Doig River First Nation

Name: Amanda Zettergreen
Title: Si gidmn'ha'ax Tsa'ults
First Nation/Tribal Affiliation:
Gitxsan

Name: Darrell Milton
Title: Ke'm
First Nation/Tribal Affiliation:
Gitxsan

Name: M. Williams
Title: Gao Elx'Gaaw
First Nation/Tribal Affiliation:
Gitxsan

Name:
Title: GaxGadax
First Nation/Tribal Affiliation:
Gitxsan

Name: Francis Sampson
Title: Nikat'een
First Nation/Tribal Affiliation:
Gitxsan

Name: Ivan Sampson
Title: Xhhiyem Laxha
First Nation/Tribal Affiliation:
Gitxsan