

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



**Hearing Order OH-4-2011  
Ordonnance d'audience OH-4-2011**

**Northern Gateway Pipelines Inc.  
Enbridge Northern Gateway Project  
Application of 27 May 2010**

**Demande de Northern Gateway Pipelines Inc.  
du 27 mai 2010 relative au projet  
Enbridge Northern Gateway**

**VOLUME 179**

**Hearing held at  
Audience tenue à**

**Best Western Plus Terrace Inn  
4553 Greig Avenue  
Terrace, British Columbia**

**June 20, 2013  
Le 20 juin 2013**

**International Reporting Inc.  
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as represented by the Minister of the Environment  
and the National Energy Board

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Imprimé au Canada

HEARING /AUDIENCE

OH-4-2011

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.

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held in Terrace (British Columbia), Thursday, June 20, 2013  
Audience tenue à Terrace (Colombie-Britannique), jeudi, le 20 juin 2013

**JOINT REVIEW PANEL/LA COMMISSION D'EXAMEN CONJOINT**

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

## APPEARANCES/COMPARUTIONS

(i)

### APPLICANT/DEMANDEUR

Northern Gateway Pipelines Inc.

- Mr. Richard A. Neufeld, Q.C.
- Mr. Ken MacDonald
- Mr. Bernie Roth
- Ms. Laura Estep
- Ms. Kathleen Shannon
- Mr. Dennis Langen
- Mr. Douglas Crowther

### INTERVENORS/INTERVENANTS

Alexander First Nation

- Ms. Caroline O'Driscoll
- Chief Herb Arcand

Alberta Federation of Labour

- Ms. Leanne Chahley

BC Nature and Nature Canada

- Mr. Chris Tollefson
- Mr. Anthony Ho
- Ms. Natasha Gooch
- Ms. Rosemary Fox

Doug Beckett

Province of British Columbia

- Ms. Elizabeth Graff
- Mr. Christopher R. Jones

C.J. Peter Associates Engineering

- Mr. Chris Peter
- Dr. Hugh Kerr
- Mr. Brian Gunn

Canadian Association of Petroleum Producers (CAPP)

- Mr. Keith Bergner

Cenovus Energy Inc., INPEX Canada Ltd., Nexen Inc.,  
Suncor Energy Marketing Inc. and Total E&P Canada Ltd.

- Ms. Bernette Ho

Coastal First Nations - Great Bear Initiative

- Mr. Art Sterritt

Council of the Haida Nation

- Ms. Terri-Lynn Williams-Davidson
- Peter Lantin

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

**(ii)**

**INTERVENORS/INTERVENANTS**

Nathan Cullen

Daiya-Mattess Keyoh

- Mr. Ken Sam
- Mr. Jim Munroe

Douglas Channel Watch

- Mr. Murray Minchin
- Ms. Cheryl Brown
- Mr. Dave Shannon

Driftpile Cree Nation

- Chief Rose Laboucan
- Dr. Ave Dersch
- Mr. Aryn Lalji

Edmonton Chamber of Commerce

- Mr. Ian Morrison
- Mr. James Cumming

Ermineskin Cree Nation and Samson Cree Nation

- Mr. Rangi Jeerakathil

ForestEthics Advocacy, Living Oceans Society  
and Raincoast Conservation Foundation - "The Coalition"

- Mr. Barry Robinson

District of Fort St. James

- Ms. Brenda Gouglas
- Mayor Rob MacDougall
- Mr. Dave Birdi
- Ms. Joan Burdeniuk
- Mr. Riley Willick
- Mr. Russ Gingrich

Fort St. James Sustainability Group

- Ms. Kandace Kerr
- Ms. Louise Evans-Salt
- Ms. Brenda Gouglas

Gitga'at First Nation

- Mr. Michael Reid

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

**(iii)**

**INTERVENORS/INTERVENANTS**

Gitxaala Nation

- Ms. Rosanne M. Kyle
- Mr. Robert Janes

Government of Alberta

- Mr. Ron Kruhlak, Q.C.

Government of Canada (Transport Canada,  
Natural Resources Canada and Environment Canada)

- Ms. Dayna Anderson

Haisla Nation

- Ms. Jennifer Griffith

Heiltsuk Economic Development Corporation

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Hereditary Chief

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Tribal Council

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Youth Voice

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Kitimat Valley Naturalists

- Mr. Walter Thorne
- Mr. Dennis Horwood

MEG Energy Corp.

- Mr. Loyola G. Keough

North Coast Cetacean Society

- Mr. Hermann Meuter
- Ms. Janie Wray

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

**(iv)**

**INTERVENORS/INTERVENANTS**

Northwest Institute of Bioregional Research  
and Friends of Morice-Bulkley  
- Mr. Richard Overstall

Office of the Wet'suwet'en  
- Mr. Jeff Huberman  
- Mr. Michael Ross

Sherwood Park Fish & Game Association  
- Mr. Andrew Boyd

United Fishermen and Allied Workers' Union  
- Ms. Joy Thorkelson

Dr. Josette Wier

World Trade Centre Edmonton  
- Mr. Martin Salloum  
- Mr. Robin Bobocel

**National Energy Board/Office national de l'énergie**  
- Mr. Andrew Hudson

## ERRATA

(i)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

894:

...as opposed to going through the whole wrote.

897:

...other intervenors have raised criticisms for criticisms sake.

904:

...are affected by the Project.

905:

...my clients filed on July 11<sup>th</sup>, 2011.

906:

...themselves as an “association of scientists”.

907:

...what is stated in the written argument,...

907:

...with approximately 4,500 members.”

908:

...is the national voice of naturalists in Canada.”

910:

...and in related public education”.

#### Should read:

...as opposed to going through the whole rote.

...other intervenors have raised “criticisms for criticisms sake”. [Exhibit B226-2, para. 481]

...are affected by the Project. [Exhibit B226-2, para. 478]

...my clients filed on July 11th, 2011. [Exhibit D12-1-1, cited at Exhibit B226-2, footnote 645]

...themselves as an “association of scientists”. [Exhibit B226-2, para. 478]

...what is stated in the proponent’s written argument,...

...with approximately 4,500 members.” [Exhibit D12-1-1 at 1]

...is the national voice of naturalists in Canada.” [Exhibit D12-1-1 at 1]

...and in related public education”. [Exhibit D12-1-1 at 1]



## ERRATA

(ii)

### Monday, June 17, 2013 - Volume 176

Paragraph No.:

Should read:

911:

*...and advocating on behalf of nature...*

*...and advocating on behalf of nature...*  
[Exhibit D12-1-1 at 1]

912:

...coordinates that program here in British Columbia.

...coordinates that program here in British Columbia. [Exhibit D12-1-1 at 1]

914:

...we've adduced a written evidence...

...we've adduced written evidence...

916:

*...the assessment of the project effects are flawed.*

*...the assessment of the project effects are flawed.* [Exhibit B226-2, para. 482]

917:

*...of Northern Gateway's wildlife advisers.*

*...of Northern Gateway's wildlife advisers.*  
[Exhibit B226-2, para. 482]

922:

...they changed the reference.

...they changed the reference. [B155-2 at 23 & 25]

925:

...discredited by the cross-examination and they should have...

...discredited by the cross-examination [Exhibit D12-31-2, paras. 56-67] and they should have...

927:

...calls this "criticisms for criticism sake".

...calls this "criticisms for criticism sake".  
[Exhibit B226-2, para. 481]

927:

...regarding how the Project effects could be mitigated.

...regarding how the Project effects could be mitigated. [Exhibit B226-2, para. 482]

## ERRATA

(iii)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

928:

...to be of marginal -- of marginal value.

931:

...this Proponent has the legal burden.

932:

And I think, at various points, comments from the JRP have reinforced that that is the division of labour here.

936:

...their evidence taken seriously to being weighted on equal footing...

938:

*...has returned to obviously good health."*

940:

...our two experts that weren't cross-examined.

942:

...they don't disagree either.

943:

...by funding provided by the EVOS Trustees counsel,...

#### Should read:

...to be of marginal -- of "marginal value".  
*[Exhibit B226-2, para. 490]*

...this Proponent has the legal burden.  
*[Exhibit D12-31-2, paras. 17-22]*

And I think, at various points, comments from the JRP have reinforced that that is the division of labour here. *[Vol. 75, para. 21786; Vol. 83, para. 3304; Vol. 89, para. 9570; Vol. 101, para. 25024; Vol. 104, para. 28922; Vol. 105, para. 32043; Vol. 144, para. 16697; Vol. 148, para. 20968; Vol. 153, para. 28535; Vol. 156, para. 31565]*

their evidence taken seriously, to being weighted on equal footing...

*...has returned to obviously good health."*  
*[Exhibit B226-2, para. 806]*

...our two experts that weren't cross-examined. *[Exhibit D12-8-2, paras. 66-73]*

...they don't disagree either. *[Vol. 133, paras. 1274-1282]*

...by funding provided by the EVOS Trustees Council,...

## ERRATA

(iv)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

943:

...comprehensive research effort led by Dr. Pearson.

944:

...several points, we ask him that very question,...

944:

... there was maybe conspiracy or...

948:

...the experts about sensitivity analyses.  
[Vol. 156, paras. 32314-32315]

948:

...another way of testing the reliability of evidence.

949:

...in terms of the analysis.

951:

...that many spills and instances don't get reported...

951:

...with our characterization of it as a significant issue.

954:

...that this application has been put forward is to deprived the JRP...

#### Should read:

...comprehensive research effort led by Dr. Pearson. [Vol. 134, paras. 1623-1637]

... several points, [Vol. 134, paras. 1623-1637] we ask him that very question,...

...there was maybe a conspiracy or...

... the experts about sensitivity analyses.  
[Vol. 156, paras. 32246-32484]

... another way of testing the reliability of evidence. [Exhibit D12-31-2, paras. 217-218]

... in terms of the analysis. [Exhibit B226-2, para. 970]

...that many spills and incidents don't get reported...

...with our characterization of it as a significant issue. [Exhibit B226-2, para. 964; Exhibit D12-31-2, para 186-192]

...that this application has been put forward deprives the JRP...

## ERRATA

(v)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

954:

... on the conclusion of another expert to say  
“We didn’t...

957:

If you go to our written argument at paragraphs 2010 to 2016, I think you'll see that not only do we make reference to the individual Mr. Scalzo that is -- his evidence...

959:

Here's what we say at 2016, which is...

961:

So let -- I'm just going to continue on in 216 (sic), so then we say:...

963:

*...as required by the scope of factors.”* (As read)

968:

...a procedural directive in that regard, and you quite appropriately exercised your discretion at that stage of the hearings for reasons that you set out, to not to do that and that’s fine.

972:

... and other witnesses as well.

975:

...and maintenance of oil tankers.

#### Should read:

... on the conclusion of another expert who says “We didn’t...

If you go to our written argument at paragraphs 210 to 216 [*Exhibit D12-31-2*], I think you'll see that not only do we make reference to the individual -- Mr. Scalzo that is -- his evidence...

Here's what we say at 216 [*Exhibit D12-31-2*], which is...

So let -- I'm just going to continue on in 216 [*Exhibit D12-31-2*], so then we say:

*...as required by the scope of factors.”* (As read) [*Exhibit D12-31-2, para. 216*]

... a procedural directive in that regard. [*Exhibit D12-29-2*] And you quite appropriately exercised your discretion at that stage of the hearings for reasons that you set out, to not to do that and that’s fine. [*Exhibit A352-1*]

...and other witnesses as well. [*Exhibit B226-2, paras. 380, 391, 646, 1363-1369*]

... maintenance of oil tankers. [*Exhibit B91-6 at 1*]

## ERRATA

(vi)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

976:

...for area within marine transportation.

977:

It's mentioned in his CV in passing.

981:

...there's a stage where the counsel will...

983:

... of the qualification process. Could have easily been the case...

986:

...which is that Mr. Michel is "*a world-leading expert in marine risk assessment*".

987:

That statement, by the way, is footnoted.

987:

...in my respectful submission, hangs over his qualifications.

988:

I won't go into Mr. Cowdell's qualifications.

988:

...that's abundantly clear. Notwithstanding the fact that at various points,...

#### Should read:

... for areas within marine transportation.  
[*Exhibits B90-8, B90-13, B90-23, B90-24, B91-16, B91-25, B210-5*]

It's mentioned in his CV in passing.  
[*Exhibit B91-6 at 1*]

...there's a stage where counsel will...

... of the qualification process. It could have easily been the case...

...which is that Mr. Michel is "*a world-leading expert in marine risk assessment*".  
[*Exhibit B266-2, para. 1454*]

That statement, by the way, is footnoted.  
[*Exhibit B266-2, footnote 1853*]

...in my respectful submission, hangs over his qualification.

I won't go into Mr. Cowdell's qualification.

...that's abundantly clear. [*Exhibit D12-31-2, paras. 272-274*] Notwithstanding that fact, at various points,...

## ERRATA

(vii)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

988:

You must exclude that evidence just as we say, based upon the...

992:

...and I guess not only does he call it but Northern Gateway in its written argument describes it as a “sufficiency decision” rendered by the Panel.

993:

...I believe it was Prince George.

994:

...to provide a structure to this process was the application for that matter in a reasonable enough shape for a conclusion to be reached that we could say that we were ready -- the “we” being the JRP -- to go to a hearing.

997:

...is a term that appears in the *National Energy Board Act*, in section 52(1)...

997:

...any legal authority bested in you...

998:

Section 52(1), I think, underscores what I am saying.

1000:

...but you may not have no power to make...

#### Should read:

You must exclude that evidence, just as we say, based upon the...

...and I guess not only does he call it, but Northern Gateway in its written argument describes it as a “sufficiency decision” rendered by the Panel. [*Exhibit B226-2, para. 42*]

... I believe it was Prince George. [*Exhibit A22-3*]

... to provide a structure to this process been put in place? Was the application for that matter in a reasonable enough shape for a conclusion to be reached that we could say that we were ready -- the “we” being the JRP -- to go to a hearing?

...is a term that appears in the *National Energy Board Act*, [*RSC 1985, c N-7*] in section 52(1)...

...any legal authority vested in you to...

Section 52(1), [*National Energy Board Act, RSC 1985, c N-7*] I think, underscores what I am saying.

...but you may have no power to make...

## ERRATA

(viii)

### Monday, June 17, 2013 - Volume 176

Paragraph No.:

1001:

... to test the evidence and figure out weaknesses and maybe the Proponent will be able to fix those but there is also finality built into this.

1002:

It can't be fixed one way or the other and when we say completeness, we mean everything.

1003:

...with the scope of factors with your Terms of Reference.

1004:

If you're recommending that it should proceed on what conditions.

Should read:

...to test the evidence and figure out weaknesses. And maybe the Proponent will be able to fix those. But there is also finality built into this.

It can't be fixed one way or the other. And when we say completeness, we mean everything.

...with the scope of factors with your Terms of Reference?

If you're recommending that it should proceed, then on what conditions?

### Wednesday, June 19, 2013 - Volume 178

Paragraph No.:

3253:

"...of the Scope of Factors in the NEB Filing Manual."

3332:

"**MS. GRIFFITH:** I'm honoured;..."

3336:

"...suggested removing references to preconstruction work because this would take out prior to, during..."

Should read:

"...of the Scope of Factors and the NEB Filing Manual."

"**MS. GRIFFITH:** I'm on it;..."

"...suggested removing references to preconstruction work because this would take place prior to, during..."

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--- Upon commencing at 8:29 a.m./L'audience débute à 8h29

3681.           **THE CHAIRPERSON:** Good morning, everyone.

3682.           The Panel thanks the parties who provided comments to us about potentially revising our sitting hours. As a result of those comments, we've decided that we will not be revising our hearing order -- our hearing hours. We will proceed with the hours as set out in P.D. No. 12.

3683.           So that means there will be no evening session this evening, and we will continue with the revised order of appearances as posted on the website last night, the 19<sup>th</sup> of June, 2013.

3684.           So again, thank you very much, everyone, for your comments.

3685.           I also have a ruling on the motion that was filed on the 17<sup>th</sup> of June, 2013 by BC Nature and Nature Canada. They filed a motion requesting that the Joint Review Panel allow any party, at that party's request, the ability to participate remotely in real time, including the ability to raise and speak to procedural objections during the bottom up oral argument phase or any portion thereof indicated by that party.

3686.           They also requested that the Panel allow BC Nature and Nature Canada to participate remotely in real time, including the ability to raise and speak to procedural objections during the bottom up oral argument of Northern Gateway.

3687.           In the motion, BC Nature and Nature Canada argued that parties adverse in interest must be allowed the opportunity to raise an objection if a party makes reply submissions that could be interpreted to exceed or conflict with Procedural Direction No. 12 and the common law governing oral reply submissions.

3688.           BC Nature and Nature Canada further argued that the importance of allowing other parties to participate remotely and make objections and submissions is heightened when the party making oral argument has the last word.

3689.           BC Nature and Nature Canada submitted that natural justice dictates that parties who cannot attend in person during the bottom up portion of oral

## Preliminary matters

- argument should be accorded the same opportunity as parties who attend in person to make timely objections to the JRP by remote participation.
3690. During the hearing on the 19<sup>th</sup> of June, 2013, the Panel Chair provided a comment period for parties to respond to the motion and asked that parties address the logistics of what this remote participation might entail.
3691. The Panel received comments in support of the motion from the Haisla Nation, Gitxaala Nation, the Coalition, the Northwest Institute for Bioregional Research and the Friends of Morice-Bulkley.
3692. The Province of Alberta and the Canadian Association of Petroleum Producers took no position on the motion, but indicated that they did not foresee a need for such a process.
3693. Northern Gateway indicated that it had no issue with the requested remote participation. It also indicated that it is aware of and will comply with the rules governing final reply and expects the Panel to enforce those rules.
3694. No parties provided comments addressing the logistics of the requested remote participation.
3695. The Panel rules that it is not persuaded that procedural fairness requires that it provide parties with a process to allow them to make motions and comment on motions of others remotely in real time, particularly in the absence of any suggestions as how -- sorry, as any suggestions how this can be efficiently accomplished.
3696. Are there any preliminary matters which parties wish to raise? Thank you.
3697. Mr. Kruhlak.
3698. **MR. KRUHLAK:** Thank you, Madam Chair.
3699. I've got a very brief errata to address from the transcript yesterday, Volume 178, line 2719. The last word should read "supply" -- or the last word currently reads "supply". It should read "demand". Production -- just so you have the wording in mind, production exceeds domestic "demand" should be the correct reference.

## Preliminary matters

3700. Thank you.

3701. **THE CHAIRPERSON:** Thank you, Mr. Kruhlak.

3702. Are there any other preliminary matters to be raised?

3703. I understand that there's a party on the phone remotely?

3704. Let's -- excuse me. Let's finish with the room first.

3705. Mr. Shannon.

3706. **MR. SHANNON:** Not a preliminary matter, but somebody in the parking lot has left their lights on.

--- (Laughter/Rires)

3707. **MR. SHANNON:** Nine two two (922) LTN. Rental car.

--- (Laughter/Rires)

3708. **THE CHAIRPERSON:** Thank you, Mr. Shannon.

3709. So we'll now go to the remote party who's calling in with a preliminary matter.

3710. Could you please identify yourself?

3711. **MR. POULIOT:** Yes. Hello, Madam Chair. This is -- my name is Hugh Pouliot, and I'm calling in. I'm Nathan Cullen's legislative assistant.

3712. **THE CHAIRPERSON:** Please proceed with your preliminary matter.

3713. **MR. POULIOT:** Thank you, Madam Chair.

3714. I'm calling because we've been in contact with the process advisors and Mr. Cullen is making every effort to get back to Terrace tomorrow morning. However, I mean, I guess the proceedings have gone a lot faster than anyone

might have originally anticipated, and so I would request that, if the Panel finishes hearing final argument from other intervenors by the end of day today that Mr. Cullen be allowed to make his argument tomorrow morning and that he be moved to the end of the Order of Appearances.

3715.           **THE CHAIRPERSON:** Mr. Pouliot, the procedure as set out is that we will continue down the list and call each party as they're listed on the Order of Appearances ---

3716.           **MR. POULIOT:** M'hm.

3717.           **THE CHAIRPERSON:** --- and then we set out in the Procedural Direction if a party isn't here when their name is called, we will call them again when we reach the bottom of that list.

3718.           **MR. POULIOT:** M'hm.

3719.           **THE CHAIRPERSON:** However, if they weren't there at that point either, then we would begin the bottom up process.

3720.           **MR. POULIOT:** Right.

3721.           And, no, I understand that that is how it's been laid out, Madam Chair. The request, I suppose, would be to adjourn at the end of that point today and to allow Mr. Cullen to present tomorrow morning, as he will be unable to present, I guess, by proxy because he'll be in transit back to Terrace.

--- (A short pause/Courte pause)

3722.           **THE CHAIRPERSON:** Mr. Pouliot, I recall that Mr. Cullen has been in this situation before when he's -- we recognize his travel obligations and, in the past, he has been in contact with other parties and made a switch that would allow him to be able to participate sometimes remotely, sometimes in person.

3723.           So, at this point, I can tell you that it's the Panel's intention to continue through the Order of Appearances as is set out, and we have no -- as you can tell, we don't know how long it will take to -- with each party to get -- to have them complete, other than everybody has a maximum of an hour.

3724.           So I'm not able to help you any more than that other than to suggest

- that Mr. Cullen continue to take the approaches he's taken in the past in terms of potentially making switches with other parties if they're amenable to accommodate his schedule.
3725.           **MR. POULIOT:** Thank you, Madam Chair; I will definitely look into that.
3726.           Thank you for entertaining the request.
3727.           **THE CHAIRPERSON:** Thank you, Mr. Pouliot.
3728.           **MR. POULIOT:** Thank you.
3729.           **THE CHAIRPERSON:** We'll call next the Heiltsuk Tribal Council.
3730.           Ms. Humchitt, good morning.
3731.           **MS. HUMCHITT:** Good morning, Madam Chair.
3732.           I'm happy to report that our honoured guests have made it to the Panel last night. As such, we are going to be having Chief Councillor Marilyn Slett be responding to the Northern Gateway Application, and we also have Hereditary Chief Harvey Humchitt with us.
3733.           So they will proceed first and Chief Councillor Marilyn Slett will begin with introductions and so forth.
3734.           **THE CHAIRPERSON:** And just, Ms. Humchitt, so I'm clear, so -- first of all, welcome Chief Councillor Slett and Chief Humchitt. Thank you for being here to participate.
3735.           So you'll be making your comments on behalf of Heiltsuk Tribal Council. Is that correct?
3736.           Okay. Terrific. Thank you.
3737.           So I understand, Chief Councillor, that you're going to begin, so we'll start with you. Thank you very much for being here.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR HEILTSUK TRIBAL COUNCIL:**

3738.           **CHIEF COUNCILLOR SLETT:** So before we get started, I would like to introduce the other people that we have with us from Heiltsuk.

3739.           At the end of the table here is Earl Newman. He is one of our Traditional Leaders. He's a Hemas and he's also an elected Tribal Council. We have Harvey Humchitt, who is our Hereditary Chief, Hemas. Jessie Humchitt -- or Jessie Housty -- sorry -- is an elected councillor and she's also here to observe and witness today's proceedings. And elected Councillor Reg Moody. And we also have with us a youth from Heiltsuk and he is a -- his name is Sunny -- Sunny Star. Thank you.

3740.           So my name is Marilyn Slett and I'm the elected Chief Councillor for the Heiltsuk Tribal Council. I've been the elected leader for Heiltsuk for the last five years. I'm representing the Heiltsuk Tribal Council and the Heiltsuk Nation here today.

3741.           I am of Heiltsuk ancestry through both my parents, who are from the Carpenter and Humchitt families. From my father's side, four generations back, my great, great grandfather was Captain Carpenter. He lived in Gale Pass and old Bella Bella. His English name represents his occupation as a boat maker, carver and navigator.

3742.           Captain Carpenter was a renowned boat builder. I shared with you before that he has some canoes that he built displayed in the American Museum of Natural History and the Canadian Museum of Civilization in Ottawa. He was also -- he also successfully adapted his expert skills into the construction of European boats. At the age of 60, in 1900, he became the keeper of the Dryad Point Lighthouse, north of Bella Bella. He also had a son, Fred Carpenter, who was my great grandfather, and his son Basil Carpenter, who is my grandfather. Basil also served as the Chief Councillor for the Heiltsuk Tribal Council in the 1950s.

3743.           My parents are Bessie and Randy Carpenter. On my mother's side my great grandfather was Albert Humchitt. He was also a Hereditary Chief of our village. My ancestral name is Gag'wi'a and it was passed to me from my maternal grandmother Florence Humchitt, who was also Heiltsuk. My ancestral name is Gag'wi'a and it's translated into "Beloved".

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3744.           **THE CHAIRPERSON:** Chief Councillor Slett, I'd just like to make sure that we're all on the same page; that we're here to hear reply to the arguments that have previously been filed.
3745.           I hope that that's where your remarks are going.
3746.           **CHIEF COUNCILLOR SLETT:** That's right. So I am going to be doing that.
3747.           **THE CHAIRPERSON:** Okay. Great. Thank you very much.
3748.           **CHIEF COUNCILLOR SLETT:** But it's appropriate that I introduce myself ---
3749.           **THE CHAIRPERSON:** Yes. Thank you.
3750.           **CHIEF COUNCILLOR SLETT:** --- to the Panel.
3751.           **THE CHAIRPERSON:** Thank you very much.
3752.           **CHIEF COUNCILLOR SLETT:** Thank you.
3753.           **THE CHAIRPERSON:** And we've had the pleasure of hearing you during oral evidence in the community hearings as well so thank you.
3754.           **CHIEF COUNCILLOR SLETT:** So at paragraph 1251, Northern Gateway asserts the evidence is clear that, even if a spill were to occur, impacts on the environment and to humans would not be permanent. They assert that history shows that both recover.
3755.           This is not a fair statement and contradicts everything we've expressed throughout the Joint Review Panel hearing process. Northern Gateway does not know, and could not know, if Heiltsuk would recover from a major oil spill.
3756.           A major oil spill would cause Heiltsuk to lose our way of life. Heiltsuk are marine people, our highway is the ocean, the water. A spill would destroy our sustenance from the marine life. A spill would destroy our current major employment opportunity, the marine resources. A spill would also destroy our future opportunities. We've been building our marine resources and marine businesses for decades.

3757. For example, we fought for years in the *Gladstone* case, up to 10 years in the court process, and obtained a decision from the Supreme Court of Canada that we have the right to commercially harvest spawn on kelp. And for over the last 15 years, we've engaged with the federal government in negotiations regarding Gladstone to rebuild our herring spawn on kelp fishery.
3758. More recently, in the last five years, Heiltsuk had various government agencies contribute millions of dollars into developing and operating our Heiltsuk fish plant. That's the processing plant that we have in Bella Bella.
3759. A major oil spill would have a grave impact on the marine resources, which would in turn impact the entire well-being of the Heiltsuk Nation. Heiltsuk's way of life is intertwined with the land and the water. We have traditions in harvesting the marine resources, utilizing the marine resources for sustenance, medicinal, cultural and spiritual purposes.
3760. Our traditional laws and governance authority comes from our Gwi'i'las and they come from a place within our Heiltsuk territory, and we have responsibilities over those places in the territory to steward the resources for the well-being of our people.
3761. One of our traditional marine resources is abalone. Abalone is an indicator of the ecosystem health. We know that when abalone are in the area the marine ecosystem is healthy. Due to overharvesting and overfishing, an abalone moratorium was put into place 24 years ago. I have a 24-year old son, Jessie, who has never had the opportunity to harvest abalone and has never had the opportunity to consume this traditional food. He will never know how to harvest abalone, how to prepare it, or to understand it's various uses in our culture.
3762. An oil spill that results in salmon not returning to the community, even for a season, would undermine our stories. Our Creation story states that salmon was created for the intention that they would return year after year so our people can be nourished. If the salmon do not return, it would shame the ancestors who are looking out for the future generations, destroying one of our most ancient and well-respected relationships between our people and the salmon.
3763. Our language is very descriptive and our culture, in naming processes, and based on physical features of the land and the sea, the way that we interact with those places. If something like an oil spill that changed the physical features



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- of the land and sea or changed the way that we interacted with it, then the language would no longer be true, because our language is based on these places within our territory. If the language does not have the truth then it undermines our genealogy, our hereditary governance, our Gwi'i'las and our social structure of our people.
3764. We want to share with you a bit about our spirituality. Ocean baths and saltwater purification practices are the foundation of our mental, spiritual, and physical health for the Heiltsuk Nation.
3765. **THE CHAIRPERSON:** Chief Councillor Slett, we have listened and taken into account and are still processing the wealth of oral evidence that you provided us. At this point, it's the chance to reply to the arguments that have been previously made without introducing new evidence. So the evidence that's already on the record is there and this is not the appropriate time to introduce any new evidence.
3766. **CHIEF COUNCILLOR SLETT:** This is not new evidence.
3767. **THE CHAIRPERSON:** So if you could confine your comments to responding directly to the reply -- the arguments that have been presented, it would be most helpful to the Panel.
3768. **MS. HUMCHITT:** If I could interject, Madam Chair, this is in response to the Northern Gateway argument in response to the effect of the Project on Aboriginal rights and interests, and that's referred to on Adobe page 342 of the Northern Gateway application.
3769. **THE CHAIRPERSON:** Is that of the Northern Gateway argument?
3770. **MS. HUMCHITT:** Yes it is, Madam Chair.
3771. **THE CHAIRPERSON:** Thank you, Ms. Humchitt.
3772. **CHIEF COUNCILLOR SLETT:** I can proceed?
3773. **THE CHAIRPERSON:** Chief Councillor Slett, I would just remind you to keep in context what we're here for and to make sure that your comments focus directly in reply to the arguments previously presented.

3774.           **CHIEF COUNCILLOR SLETT:** Okay.
3775.           **THE CHAIRPERSON:** Thank you.
3776.           **CHIEF COUNCILLOR SLETT:** So our customs have an important role in our traditional practices and we are still practicing those customs today.
3777.           When the oil hits the water, why would we ingest that water and why would we take a spiritual bath in it? It would deny us the right to practice fundamental cultural practices, which are still actively practiced within our community today.
3778.           We agree that cultural changes can be natural and can be positive. Natural cultural changes are gradual, inevitable and represent a part of communities' internal processes. Natural cultural change is part of culture's evolution, but the change caused by a catastrophic oil spill is not natural. It's sudden and imposes an external cultural shift. This is the knowledge we pass down to our children every day, and this will be lost in the event of an oil spill.
3779.           In essence, the social and mental health of our people is inherently tied to the health of our traditional territory. Its abundance of resources and our ability to access them if the integrity of our landscape is damaged by a catastrophic oil spill, our nation's investment in social development, mental health, restorative justice would be damaged irreparably.
3780.           Our biggest fear is at the end of the result of an oil spill will be that our future generations will not experience what it means to be Heiltsuk in every sense of the word.
3781.           Northern Gateway asserts that history shows there is a certainty of recovery. We don't believe that is true and we're not willing to take that risk. Heiltsuk people hold stewardship responsibilities over our traditional territory, and we cannot ask our members to bear that burden of an oil spill.
3782.           Thank you.
3783.           **THE CHAIRPERSON:** Thank you, Chief Councillor Slett.
3784.           **MS. HUMCHITT:** Now, I would like to call up our Hereditary Chief, Harvey Humchitt.

3785.           **THE CHAIRPERSON:** Good morning, Chief Humchitt.
3786.           **CHIEF HUMCHITT:** Good morning, Madam Chair. I would like to thank the Panel for allowing me to speak this morning.
3787.           Northern Gateway states that there's simply no evidence around -- that the Project will affect -- I'm sorry, I'm just a little nervous. So I'm going to start again.
3788.           **THE CHAIRPERSON:** Chief Humchitt?
3789.           **CHIEF HUMCHITT:** Yes?
3790.           **THE CHAIRPERSON:** Take a deep breath. We want to hear what you have to tell us.
3791.           **CHIEF HUMCHITT:** Okay.
3792.           **THE CHAIRPERSON:** Thank you very much.
3793.           **CHIEF HUMCHITT:** Thank you very much. My name is Chief Wiguilthba Wakas. My chieftainship comes from the outer islands of the Heiltsuk territory and my English name is Harvey Humchitt.
3794.           I would just like to state that the evidence that Northern Gateway says it -- the Project won't have an effect on our herring resources, 1271, this statement is not true. If there's an oil spill around Price Island, Aristable Island, Milbanke Sound, Queen Sound. The tides in these areas are really quite rapid and are very strong. These tides flow in different directions and at different times, have different strengths depending on the weather. When the tides are at the largest, at the end of the month, these flows of the currents are very, very strong.
3795.           In the event of an oil spill in conditions -- in Queen Sound could be quite horrendous and hazardous. If there's an oil spill, there is no way anyone would be able to contain it, no matter what kind of equipment they may have. When you have swells that raise up to the height of this room at the very least, to 10 metres in height, and on top of that you have blowing southeasters or northwesterners, water that is capping and there's just no way that anyone would be able to contain that, and the oil spill would flow into our traditional territories,

where we have spawning herring and other species that live in the ocean.

3796.           If you had a plan for responding to an oil spill, we believe that we don't -- I mean, I know myself, I've been on the water a lot of times; I grew up on water, I've been a commercial fisherman. I've been out there and there are times where even a small spill would never be contained.
3797.           When you look at the dangers of the oil spill in Queen Charlotte Sound, you're looking at oil spills that could happen between the southern point of Haida Gwaii right to the northern point of Vancouver Island and up along the coast in around Aristazabal up to Prince Rupert, that's the extent of the oil -- the threat of an oil spill. And to me, there's just no way that we would be able to address or respond to an emergency like that.
3798.           I think what I'll do is I'll just finish now.
3799.           As I was saying, I was a commercial fisherman when I was 19 years old. I grew up fishing on a fish boat with my father. We travelled the coast of British Columbia, we know the waters very well and, to us, the threat of an oil spill is large. And what we can base our beliefs in is what happened at Prince William Sound. There's still -- 20 years after the oil spill up at Prince William Sound is -- they're still trying to recover from it. Even the herring haven't returned to the historic levels that they experienced there.
3800.           So in closing, I just -- the experience that I have on the waters, I understand the conditions of the ocean and I also understand that, you know, there's no way that Northern Gateway or any emergency response team would ever contain an oil spill in Queen Sound, Laredo Sound, Milbanke Sound, if the weather is blowing.
3801.           Just not too long ago, there was a boat that was disabled and dead in the water. The winds were 45/50 southeast off McInnes Island. The Canadian Coast Guard was called to respond to that incident and they weren't able to. They had to hold off. Eventually, what happened is the disabled freighter managed to get the power back up. So that's just an example of what we have experienced and noticed.
3802.           Thank you very much for your time. Thank you very much for listening. And in -- I'm speaking on behalf of the Heiltsuk people, it's our duty and responsibility to ensure that our lands are protected, our laws are protected

and that we have a future. And, to us, Northern Gateway poses a threat to us.

3803. Thank you.

3804. **THE CHAIRPERSON:** Thank you, Chief Humchitt.

3805. Ms. Humchitt, does that conclude the submissions of the Heiltsuk Tribal Council?

3806. **MS. HUMCHITT:** No, not yet, Madam Chair.

3807. **THE CHAIRPERSON:** Okay. Thank you.

3808. **MS. HUMCHITT:** I just wanted to refer to, as per your direction yesterday, we do wish to adopt a portion of the Haida argument, specifically in regards to her reference that a spill will affect us despite the proximity of our location to the Confined Channel Area and the Open Water Area for the same reasons given.

3809. And as stated by Chief Humchitt, that the tides will affect spawning populations which are throwing through there and the potential effects of the dilbit on those areas. So we adopt the portion of Haida evidence specifically related to that.

3810. And I would also like to advise that there are specific sections of the Northern Gateway argument which we were responding to with the presentations of Chief Slett and Chief Harvey Humchitt. And I've already referred to one of them and that's in response to the effect of the Project on Aboriginal rights and interests, Adobe page 42.

3811. And what Marilyn Slett was responding to, and it is really important to respond to, was the cultural impacts which was referenced vaguely or briefly in supernatural British Columbia, which is referenced in the Northern Gateway argument. So it was important to respond with cultural information.

3812. The other sections are effect of routine operation in coastal areas, page 344, and effects of accidents and malfunction on Aboriginal rights and interest, which is also on page 342.

3813. And I would like to now call up Reg Moody of the Gladstone

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- Reconciliation Program. He is a Council member, in addition to being a member of the Gladstone Reconciliation Program and he is going to be speaking to the impact on the herring fishery, which is referenced in the Northern Gateway argument on page 347.
3814.           So I'll call him up now.
3815.           **THE CHAIRPERSON:** Ms. Humchitt, I recall that you spoke to other Heiltsuk parties thoughts on the impact of the herring fishery.
3816.           **MS. HUMCHITT:** M'hm.
3817.           **THE CHAIRPERSON:** And so again, I would thank you for referencing the arguments that were being adopted and I would again assume that the arguments that have already been put forward would be adopted and it would be any further information that was going ---
3818.           **MS. HUMCHITT:** Yes.
3819.           **THE CHAIRPERSON:** --- to be provided this morning.
3820.           **MS. HUMCHITT:** Yes.
3821.           As Reg works directly with Gladstone, there is further information that wasn't gone through previously, specifically in regards to what hasn't been put forth already.
3822.           **THE CHAIRPERSON:** Thank you, Ms. Humchitt.
3823.           Good morning, Mr. Moody.
3824.           **MR. MOODY:** Good morning. Good morning, ladies and gentlemen.
3825.           I just want to say that, you know, it is -- I feel honoured and -- to come again before the Joint Panel on -- to talk about some important issues around the *Gladstone* case. I know I spoke to this in the earlier presentation and I know I need to keep my presentation brief and to the evidence that's already presented.
3826.           So my name's Reg Moody Humchitt and I am a citizen of the Heiltsuk

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- Nation. And I'm married and I have two children, Lorne and Vincent. This is my fourth round as an elected official with the Tribal Council and I've been very involved with the *Gladstone* decision that came down in 1996.
3827. In 2001, I was hired as the Spawn coordinator. Up until now, we're doing negotiations with the reconciliation process, but -- on my mother's side, I come from a very industrial and successful business-minded commercial fishing family.
3828. In my presentation in Bella Bella, I talked about how experienced and successful the fishermen in our family was, that they were -- they actually ended up going to fish in the East Coast for herring and they went down through the Panama Canal.
3829. So the history in my family for commercial fishing is very in-depth and I think, you know, I know they made a name for themselves over on the East Coast.
3830. And on my father's side, my father's mother, my grandmother Nora, comes from a family of 21 children. And, you know, my great -- my great, great-grandparents Albert and Louisa, through them we have also had a very successful line of fishermen and community-minded people.
3831. And we were taught very well in both the commercial fishing sector and in our traditional food gathering practices. To this day we continue to instill in our children the importance of conservation and responsible stewardship.
3832. At paragraph 1232, Northern Gateway in its written submission, acknowledges Heiltsuk Nation's Aboriginal right to a commercial herring spawn on kelp fishery.
3833. At paragraph 1272, the Northern Gateway characterizes the risk of an oil spill incident affecting the herring stocks in Heiltsuk territory as extremely low.
3834. The Heiltsuk Nation disagrees with Northern Gateway's characterization of the risk to the Heiltsuk's herring stocks as extremely low because the total community impact would be so significant. These are some reasons why.

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3835. The Gladstone reconciliation process, we are already in negotiations over the resource in characterizing the risk of -- to the Heiltsuk Nation as being only a risk that could impact herring resources the Northern Gateway fails to acknowledge or consider the reconciliation program's economic benefits, food, social, ceremonial, fishery, spiritual and cultural components, and the trade and barter relationships with other First Nations that the fishery brings.
3836. We are engaging in the Gladstone reconciliation process, a process which expands considerable resources by -- expends considerable resources by the Heiltsuk Nation as well as the Crown.
3837. The reconciliation process represents more than an economic benefit to our nation. It represents our stewardship of the resource. It represents our connection to the other communities along this coast, through our participation at ceremonies and by commercial trade. This commercial trade has been well established for thousands of years and continues to this day.
3838. And I just want to make a reference to part of my presentation earlier in Bella Bella. And I just wanted to read an excerpt from Barbara -- Dr. Barbara Lane's report. The report says the Heiltsuk were connected with all of the Nations along this great coast, not only by linguistic ties but also through intertribal marriage by attendance and participation at ceremonies and by commercial trade.
3839. Heiltsuk spawned, harvested, processed and packaged by the Heiltsuk was traded to the Tsimshian, the Haisla -- to the Haisla Nation, to the Nuxalk neighbours on the mainland and to the Kwakiutl and the Coast Salish on Vancouver Island.
3840. Some of these trade relations were noted in an account written by first white settlers and traders to visit the central coast, including Alexander Mackenzie of 1763, William Tolmie 1835 and James Douglas 1840. They documented Heiltsuk trade of herring spawn on kelp to the Nuxalk and the Kwakiutl and to the Tsimshian respectively.
3841. These early accounts describe a trade which was already well established prior to them coming to our coast. And during the -- my presentation in Bella Bella, as I concluded my portion of my presentation, we called on the Nuxalk -- there were representatives of the Nuxalk Tribe. They came forward and we continued that practice and we continued to this day.



3842. To this day we continue to trade with the Nisga'a people for eulachon grease and eulachons. And we -- the trade and barter still continues with the Haisla. And we still do the same thing with our neighbours from the Nuxalk for what we call sluk or smoked fish.

3843. Through the Gladstone process we've developed alliances with the Marshall people and the Mi'kmaq on the east coast, to the west with the Nuuchahnulth. And we have a working group that is committed to continue to push the advancement in recognition of our court proven rights. These ties were created by the resources.

3844. Poverty, one of the biggest obstacles my community faces today is poverty. Increased access to the herring resource provides a solution to the cycle of poverty.

3845. This is the economic benefit that we seek. You know, in our community the price of gas is high and the majority of our people are unemployed, 80 to 90 percent. So a lot of our members, the only chance they can get out on the grounds is once a month, where they could pool their money to go out and gather their traditional foods.

3846. And the resources today are becoming so scarce that there are times where when they go out their effort -- what they gather, it's not meeting our needs. And, you know, today many in our community this is our concern. Our health and our welfare are serious issues and to think about not having access to our sea resources is very frightening.

3847. I'm a descendant of Chief Bob Anderson who stated that: "After we are gone, our children will carry on this fight."

3848. Bob Anderson made a statement to the Mackenna-McBride Commission in 1913. And I feel very strongly about these words, I admired Bob Anderson's concern for our people. He took his responsibilities as a steward of his resources seriously. That is a responsibility that I share and I will pass on to my children.

3849. More recently, in 1996, William and Don Gladstone who are also my family, took Bob Anderson's vision to the Supreme Court of Canada by challenging the government's continuous charges against the exercise of our

rights which ultimately led to the 1996 *Gladstone* decision.

3850.            “We are not going anywhere” as Chief Justice Lamer said in Delgamuukw: “Let us face it, we are all here to stay.”
3851.            And I just want to allude to Bill Gladstone who is my boss. He’s the chief negotiator at the Gladstone reconciliation table. I know I’ve heard this story many times by Bill but in our deliberations, in our talks, as we talk about reconciliation, he talks about Bob Anderson’s statement. In the early 1980s the court system used to come to our village and it used to be held annually in the church, in our United Church.
3852.            And in the early eighties, many of our members were being carted into the courts and they were being charged for doing what we have traditionally done for thousands of years. And it was Bob Anderson’s statement that Bill relied on and thought, you know, this is -- we need to challenge this.
3853.            So in 1987 he was charged, him and his brother Don. In 1996 that decision -- the Supreme Court of Canada handed down its decision in *Gladstone*. And since then we’ve been working with both industry and the Department of Fisheries and Oceans to try and reconcile our rights, as defined by the Supreme Court of Canada.
3854.            And that’s where we are today. Like I said I want to say that I’m very honoured to be able to have an opportunity to be here to share this with you because it’s important for us. It’s very important for us.
3855.            In our recent deliberations with the Integrated Fisheries Herring Management Plan, you know, what they’re doing there, it continued to move on and develop their plans without even showing any respect to our right and we’ve made it very clear -- we’ve made it very clear to the industry and to the Department of Fisheries and Oceans that if there is no certainty for my people there’s certainly going to be no certainty for them.
3856.            And that message that comes from my community has been sent to, not just fishing people on the central coast but the whole central coast economy.
3857.            And, again, I just want to thank you for the opportunity to speak, and thank you very much.

3858.           **THE CHAIRPERSON:** Thank you, Mr. Moody.
3859.           **MS. HUMCHITT:** How much time do I have?
3860.           **THE CHAIRPERSON:** Twenty-one (21) minutes and 55 seconds.
3861.           **MS. HUMCHITT:** Yes, I'd like to speak further and in response to Northern Gateway's argument, specifically Aboriginal benefits, which is referred to on page 80 of the argument and I would also like to advise that we would also wish to adopt the position of the Driftpile Cree Nation Chief Rose Laboucan, specifically in her reference to the equity agreement.
3862.           We also cannot agree to the equity agreement for ethical reasons. This would be, to us, agreeing that the destruction of our culture and way of life and marine resources can be compensated by money and we cannot agree to that. Our resources will not and cannot be sold for the destruction of our territory and our sustainability of our nation for generations to come. We have to consider our future generations in what we are doing today.
3863.           In regards to the economic benefits which are supposedly going to be coming out of this project for First Nations, we are in disagreement that there are significance benefits for Aboriginal communities, specifically our community. There are construction jobs available along the pipeline route. Those have been spoken to previously by other intervenors, that these are transitory and not long-term positions.
3864.           There are also other positions in the coastal First Nations area which would also be limited, so this doesn't support that there are going to be benefits to the Heiltsuk Nation or other Aboriginal communities. There are positions as well, spotters, those are limited to begin with. There are positions related to marine oil emergency response, another limited type of position.
3865.           And speaking from an ethical point of view, it would break my heart to think that our people would be employed cleaning up the mess made by an oil spill. That is not of a benefit to us to have that kind of position for our people.
3866.           And speaking about -- another reason why we don't consider this Project to have any economic benefits, the benefits -- economic benefits to our community far outweigh the minimal benefits offered by the Northern Gateway Project. As referred to by Harvey Humchitt, Chief Harvey Humchitt and Reg

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- Moody and was also referred to by Chief Slett, we do have a commercial right and I believe everyone is well aware of that now.
3867.           The economic benefits of that right and -- this was in past evidence brought up as well, is that we have had a significant herring spawn this year. Our herring spawn is recovering and this Project does and would have an impact upon that right. There was evidence given before that the effect of the tanker noise, the effect of the pollution and -- will have an effect on our herring population. Herring can't spawn if there is a large amount of noise which can impact their spawning. It would disperse them.
3868.           One of the other benefits that came with our commercial right to the herring fishery via Gladstone is that 640 people were employed through that and, as we are in the state of recovery, any impact upon that fishery will affect a significant amount of employment for our people in the future.
3869.           We have also recently got our fish plant going again and we employ people in our fish plant. We are likely to have over a hundred people employed in our fish plant this summer and we will be in full operation. This far outweighs the minimal benefits that will be as a result of this Project.
3870.           This does not even count the members of our nation who are still commercial fishermen. This is another economic benefit to our community from this Project not happening.
3871.           According to my calculations, the potential employment, just through the marine resources, is probably close to 800 people being employed off and on, on a seasonal basis. This is one reason why we cannot agree that there will be no impacts to our fisheries. And this was referred to by the Northern Gateway when they referred to the Heiltsuk specifically and that there would be no impact on this Project as a result of the tankers coming into our territory.
3872.           We also want to emphasize that as a number of issues have come up throughout this that we do adopt the positions taken by the Coastal First Nations who presented first and also as expressed by the Alexander First Nation, there is a difference between the Treaty and non-Treaty nations, but some of the core concerns expressed by the other nations are same for all of us.
3873.           We also adopt the concern of C.J. Peter and Associates in regards to their concerns regarding the route and that this is not a feasible route to be

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- considered for this Project and that there are less dangerous routes that can be considered which -- we do not adopt that part, but we do adopt that there should be alternatives considered in regards to this.
3874.           They referred to different port locations. I would put forth that there are also alternatives but that should be explored by Northern Gateway. The onus shouldn't be on us to advise. There are alternatives though.
3875.           We adopt the position of the Council of the Haida Nation. They have also expressed many of the same concerns that we have. Also, in regards to the concerns over the QRA and the lack of information, we'd like to adopt the position of the Coalition on this.
3876.           There was also a concern expressed by the Ermineskin Cree Nation and Samson Cree Nation as well in regards to the duty to consult and the failure to consult First Nations on this Project. We would also like to adopt that position.
3877.           In addition to the concerns expressed by the other First Nations in this application, as a lot of their issues are similar to our issues as First Nations, particularly the coastal First Nations, referring specifically to the Gitxaala Nation, the Gitga'at Nation and the Haisla Nation.
3878.           And one of the reasons why we do share so many of the same issues as is with these particular communities, the coastal communities, is that they are not just non-related to communities to us; we have a lot of family members and family ties with these nations, so they are a part of us and we communicate with them on a cultural and tribal level and on a nation to nation basis.
3879.           There was also the Alberta Federation of Labour presentation earlier, made by Ms. Leanne Chahley, and this is another reason why this Project should not be approved, on the basis of the economic benefits to Canada. It was brought out in her argument that the benefits to Canada are minimal.
3880.           There is nothing that is being processed in regards to dilbit oil in Canada. If there were economic benefits to Canada, they would be processing it within the country of Canada so that there would be Canadian benefits which they can speak of. There is not, it is being shipped to Asian markets for processing.
3881.           This also goes against the economic benefits argument as put forward by the Northern Gateway.

3882. And in regards to -- there has been various presentations. For example, there was the presentations by the oil sands companies. MEG presented yesterday and there's also Cenovus and the Canadian Association of Petroleum Producers presentation where they referred to: Well, we have spent so much money on this Project already and this would be wasted should this Project be approved.

3883. It is hard for me to find sympathy, as a First Nation, for this opposition, given the fact that if the various interested parties really wanted to -- this Project to grow through and the Federal Crown wanted this Project to go through, then they would have consulted with First Nations at a meaningful and at the earliest opportunity. They have had a long time to do this before we have come to this stage.

3884. We are on the last part of the hearing process and if they really wanted this Project to go through, we would have had meaningful consultation and accommodation prior to this point. So we do not bear any responsibility for any financial losses that may happen.

3885. If the Northern Gateway wanted this Project go to through, they could also have done the same thing and had meaningful consultation and accommodation with the Heiltsuk Nation. Our interaction with them has been limited and it is a double-edged sword for us. We have to participate in this process as there is a reciprocal duty to consult and we have attempted to do so.

3886. One of the things that's highlighted -- and this is not new evidence, this is -- I'll make a brief reference to evidence that we have never considered this process to be adequate consultation. I've gone through that in my previous presentation and they -- Northern Gateway and the Federal Crown have had notice of an alternative mode of consultation which involved meeting with us directly outside of this process.

3887. This was also referred to by the Driftpile Cree Nation as well, which we want to adopt, that they had proposed an alternative agreement which was not considered by the Northern Gateway. This shows that there is no flexibility in this process and one of the things -- and this was also referred to in the initial intervenor submission by the Heilstuk Nation which was filed on January 4<sup>th</sup>, 2011 where we referred to the *Haida* decision and that any type of process has to be flexible and be willing to adapt. And there has been no flexibility in this

- process.
3888. Any suggestions that were made -- and I refer specifically to the Coastal First Nations and Art Sterritt's submission where there had been a proposal made to the Northern Gateway to have meaningful consultation outside of this process and that was refused.
3889. So it is not like that we have not given them direction or provided them with alternative ways to meaningfully consult with us. We have and these have not been accepted.
3890. How much time do I have?
3891. **THE CHAIRPERSON:** Seven (7) minutes and fifty (50) seconds.
3892. **MS. HUMCHITT:** Okay.
3893. In terms of the Chief Harvey Humchitt's reference, this is also another reason why this Project should be refused is the assessment of the Northern Gateway has basically concentrated on routine operations and that's been the primary focus: that it will -- routine operations will not impact, you know, First Nations or waterways.
3894. They haven't adequately considered how much it will impact and this is -- the shortfall of their Application is the lack of consideration for "Black Swan" events, catastrophic oil spills. If they had done that, their case would have been better towards their seeking to have it approved. They have not done that. They have not adequately considered "Black Swan" events or catastrophic oil spills.
3895. And as Chief Harvey Humchitt brought forward, you could have the best oil spill response vessels possible, if the water and the water around the Hecate Strait is treacherous and -- there is no way that that oil can be contained or dealt with. The closest comparison -- because there hasn't been a big oil -- dilbit oil spill in the Open Water Area and there's no way of knowing how that's going to react.
3896. What was found in the Kalamazoo, Michigan experience was that it sunk. That is also likely to happen in the Open Water Area but it may not sink right away. It could be carried by tides to distant locations and, as was the

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- experience in EVOS -- the Exxon Valdez -- and there has been significant comment on that by previous intervenors. This does get into the marine resources and affect them.
3897.           What will happen when that dilbit oil -- and there hasn't been any studies and how is there going to be any studies? And what if that oil is ingested by marine resources? This is another reason why this should be not -- this Application should not be accepted at this time.
3898.           We share the concerns expressed by the other intervenors who have made presentations so far that there is incomplete information as such. And there has also been inadequate consideration to impacts on rights and title and existing rights which have been established by the Supreme Court, specifically, the *Gladstone* right.
3899.           And for all the other aforementioned reasons, the Heiltsuk Tribal Council feels that this Application should not be approved at this time.
3900.           Thank you.
3901.           **THE CHAIRPERSON:** Thank you for the submissions of the Heiltsuk Tribal Council. The Panel has no questions.
3902.           We'll call next the Heiltsuk Youth Voice, please?
3903.           **MS. HUMCHITT:** Okay. If you just give us a few moments to set up here.
- (A short pause/Courte pause)
3904.           **THE CHAIRPERSON:** Let's take a 10-minute stretch break here while people get re-established and let everybody get settled in. Thank you.
- Upon recessing at 9:35 a.m./L'audience est suspendue à 9h35
3905.           --- Upon resuming at 9:43 a.m./L'audience est reprise à 09h43
3906.           **THE CHAIRPERSON:** If we can get everyone to take their seats again, please, we'll resume.



3907. Thank you.

3908. So we're next at the Heiltsuk Youth Voice.

3909. **MS. HUMCHITT:** Yes, we're back again. I just wanted to -- it's my honour and privilege to call up one of our youth today who has made it to Terrace to respond. And one of -- the section I'm referring to is in response to the effects of the Project on Aboriginal rights and interests of the Northern Gateway argument, which is referred to on Adobe page 342.

3910. And I would now like to call up Heiltsuk Youth, Sunny Star, to please present.

3911. **THE CHAIRPERSON:** Good morning, Mr. Star.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR HEILTSUK YOUTH VOICE:**

3912. **MR. STAR:** Good morning. My name is Sunny Star; I'm a Heiltsuk and I'm proud to be on the central coast.

3913. **THE CHAIRPERSON:** Mr. Star, if we could just get you to raise your microphone closer to your mouth. And if you could as speak as directly into the microphone as you could.

3914. **MR. STAR:** Okay.

3915. **THE CHAIRPERSON:** But not too close, too.

--- (Laughter/Rires)

3916. **THE CHAIRPERSON:** One of those fine balances of life.

3917. **MR. STAR:** Okay. Tell me to stop then.

3918. **THE CHAIRPERSON:** There you go. That sounds great. Thank you.

3919. **MR. STAR:** Okay. My name is Sunny Star; I am Heiltsuk, and I'm proud to be in the central coast. My family is the Humchitt grounds and hills. My grandfather, Stan, comes from Kitkatla. My nan, Cora, comes from Kitimat.

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- I want to tell you about my family -- what my family taught me about marine life.
3920.           They taught me the names of the fish, how to fish, how to pick seaweed, how to collect clams, Manila clams, how to collect cockles, how to harvest herring eggs and how to harvest crabs. They taught me how to cook the food.
3921.           I harvest herring eggs. My family taught me how to harvest herring eggs, too. You lay down a big tree, tie branches to that big tree. You let the branches sink and the female herring eggs will stick onto them, onto the branches. Then you harvest the herring eggs a few days later.
3922.           My family taught me how to harvest -- how to eat the herring eggs. There are many ways, pickled herring eggs, put grease on it, put seaweed on it, eat it raw or fried in garlic and butter.
3923.           Things I am worried about what will happen if -- if there is an oil spill. It will kill the marine life. There will be no more food. The water would be devastated. There will be a breakdown of my nation. There will be no more harvesting, and there will be no more future.
3924.           **MS. HUMCHITT:** Thank you, Sunny, for your statement.
3925.           I would now like to call up to present on behalf of the Youth Voice, Jessie Housty.
3926.           **THE CHAIRPERSON:** Ms. Humchitt, just as Ms. Housty is getting to the podium, we continue to remind you that this isn't oral evidence ---
3927.           **MS. HUMCHITT:** Yes.
3928.           **THE CHAIRPERSON:** --- that this is now reply to arguments that have been made, and we hope that the comments that will be presented by the Heiltsuk Youth Voice will respect that requirement.
3929.           **MS. HUMCHITT:** Yes. And I just wanted to also refer that this also speaks in reply to the socio-economic effects referred to in the Northern Gateway application. They have failed to cover the full scope of effects upon the Heiltsuk Nation, and this actually is referred to on page 130 of the Northern Gateway Project and speaks to trapping, hunting, recreational fisheries.

3930. It also speaks to heritage resources based on heritage resource legislation and Aboriginal interests, effect on -- potential effects on herring sites. And this is in addition to the Aboriginal effects. And there was also the potential effects on non-traditional land uses and heritage resources. So this is in response to the shortfalls in the Northern Gateway's submission on this aspect.
3931. **THE CHAIRPERSON:** And Ms. Humchitt, as I mentioned, we've had the benefit of the oral evidence during the community hearing portions of -- from the Heiltsuk Nation, and so what we're looking for now is the direct reply to the arguments that have been brought forward rather than a repetition of the evidence ---
3932. **MS. HUMCHITT:** Okay.
3933. **THE CHAIRPERSON:** --- that we've had the opportunity to receive.
3934. **MS. HUMCHITT:** Understood.
3935. **THE CHAIRPERSON:** Ms. Housty, with those comments in mind, and I'm sure with the able guidance of your counsel, please proceed.
3936. **MS. HOUSTY:** Thank you.
3937. As stated by my Chief, my name is Jessie Housty. My traditional name is Ciuagilauyv. I come from the House of Naci and the House of Tsumclaqs. It's important to root my introduction to you in this family history. My name and the houses that I come from link me to the stories that are the basis of my identity as a young Heiltsuk woman.
3938. I'm 26 years old. I grew up on the lands and waters with my family, living the intergenerational teachings that have supported the transmission of Heiltsuk values and laws since time before memory. I'm also an elected member of the Heiltsuk Tribal Council.
3939. I sit on this Council with my colleagues that you see here today, and our council represents three generations of leadership in the community. There's 60 years between me and the oldest Councillor. That's six decades of leadership in the community. That's how governance and leadership happen in our way, with intergenerational succession, and that's one of the things that I'd like to speak

- to briefly today.
3940. Even in my short life and my short work, I've seen really huge transformations in my community. What we've fostered in our young people is boldness and hope. We have fostered a strong sense of place-based identity that is rooted in our cultural values, and it links our youngest generation into a powerful chain that stretches back to time before memory.
3941. Our young people are empowered socially and spiritually by access to the lands and waters where they can learn and grow surrounded by their peers, their family and their community.
3942. From the deep sea to the intertidal zone and into the meadows and forests, our young people walk where their ancestors walked. I've walked where my ancestors walked. And the duty that they inherit is the same one I inherited. Our duty is to ensure that our children and their children can walk where our ancestors walked too.
3943. You cannot assign a dollar value to the potential for transformation. When you take away hope, there is no adequate compensation. Our culture is based on stories. Those stories are written on the lands and waters. If the lands and waters are destroyed, our stories will be destroyed, our way of life will be lost and our culture will be gone.
3944. Enbridge cannot put a price on my identity as a young Heiltsuk woman. I come from the land and the waters and I cannot be separated from the landscape where my stories come from. From the very first generation of Heiltsuk people, someone has always held the Heiltsuk name that I hold now. It was passed down along with our stories, our values and our laws from generation to generation. I hope that someday I can pass that name to a daughter and that she'll pass it to my granddaughter.
3945. When my children are born, I want them to be born into a world where hope and transformation are possible. I want them to be born into a world where stories still have power. I want them to grow up able to be Heiltsuk in every sense of the word, to practice the customs and understand the identity that has made our people strong for hundreds of generations. That cannot happen if we do not sustain the integrity of our territory, if we don't sustain the integrity of our lands and waters and the stewardship practices that link our people to our landscape.

3946.           On behalf of the young people in my community, I respectfully disagree with the notion that there is any compensation to be made for the loss of our identity and for the loss of our right to be Heiltsuk.
3947.           Giaxsixa.
3948.           **THE CHAIRPERSON:** Thank you, Ms. Housty.
3949.           **MS. HUMCHITT:** Thank you, Jessie.
3950.           There are specific things that I wanted to reply to in regards to the opening presentation by the Northern Gateway, by my friend Mr. Neufeld, which occurred on Monday.
3951.           On Monday he referred to the withdrawal of the Gitxaala notice of constitutional question and he expressed that he had wished that this question had gone through so that this question had been answered.
3952.           I would also like to refer to the evidence submitted by the Heiltsuk Nation as -- and this is in the evidence already -- that we had given notice that we would also be providing notice of a constitutional question because I think it's relevant in response to what was put forth by my friend, Mr. Neufeld, on Monday.
3953.           And it is already on the record that the reason for the withdrawal and why the Heiltsuk Nation did not put forth a notice of constitutional question is effectively the jurisdiction and mandate for answering that question has been taken out of the hands of the Panel.
3954.           We would have liked to have answered that question as well. Unfortunately, that has been taken out of the Panel's jurisdiction so now that constitutional question will have to be answered in another venue.
3955.           In regards to some of the other issues brought up, we had also -- in regards to the potential impacts -- and I would also like specifically to refer to the Northern Gateway submission on the economic impacts to Aboriginal peoples and it's referred to equity and investment agreements.
3956.           This is from the work that I do and this is also related to the evidence of Chief Laboucan in regards to the request for an agreement outside of that what

- was proposed by Northern Gateway.
3957.           **THE CHAIRPERSON:** Ms. Humchitt, I understand that the Heiltsuk Tribal Council has previously adopted ---
3958.           **MS. HUMCHITT:** Okay.
3959.           **THE CHAIRPERSON:** --- the evidence of Driftpile First Nation.
3960.           **MS. HUMCHITT:** M'hm.
3961.           **THE CHAIRPERSON:** Did you have anything further to add to what was adopted by the Heiltsuk Tribal Council?
3962.           **MS. HUMCHITT:** Yes, and this is specific to the Heiltsuk Tribal Council.
3963.           **THE CHAIRPERSON:** I'm sorry, I need to clarify ---
3964.           **MS. HUMCHITT:** And actually, it's ---
3965.           **THE CHAIRPERSON:** I believe that the party who's speaking now is the Heiltsuk Youth Voice?
3966.           **MS. HUMCHITT:** Yes. Sorry, I'm getting crossover here.
3967.           **THE CHAIRPERSON:** And so I was just saying that the Heiltsuk Tribal Council in its argument ---
3968.           **MS. HUMCHITT:** Okay.
3969.           **THE CHAIRPERSON:** --- in its reply adopted Driftpile First Nation's position and ---
3970.           **MS. HUMCHITT:** Okay.
3971.           **THE CHAIRPERSON:** --- so there's no need to repeat.
3972.           **MS. HUMCHITT:** All right.

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3973.           So one of the other things that -- and further, in regards to the notice of constitutional question, and this also goes to the -- what is put in the Northern Gateway argument, and this is something beyond what has already been previously stated in regards to that.

3974.           There was also reference to the draft JRP agreement, the amended JRP agreement, but what was brought up for myself in regards to the notice of constitutional question and something which hasn't been really addressed here but which should be in response is the impact of the changes to legislation on this whole process.

3975.           **THE CHAIRPERSON:** Ms. Humchitt, I'm having a little bit of difficulty following you.

3976.           Can you take us to the argument that you're replying directly to at this point?

3977.           **MS. HUMCHITT:** Yes, this is related to the Crown consultation protocol, which is referred to on page 28 of the Northern Gateway argument.

3978.           **THE CHAIRPERSON:** And again, I would just remind you that previous parties, including the Heiltsuk Economic Development Corporation ---

3979.           **MS. HUMCHITT:** M'hm.

3980.           **THE CHAIRPERSON:** --- and the Heiltsuk Hereditary Chiefs have spoken to the issue of Crown consultation previously.

3981.           **MS. HUMCHITT:** M'hm.

3982.           **THE CHAIRPERSON:** And so it -- as you've done with the Heiltsuk Tribal Council where you adopted arguments that had previously been brought forward ---

3983.           **MS. HUMCHITT:** M'hm.

3984.           **THE CHAIRPERSON:** --- please avoid repetition of arguments that have previously been brought forward.

3985.           **MS. HUMCHITT:** Yes, I will do so.

3986.           And I'm still relating this in response to Mr. Neufeld's reference to the notice of constitutional question in which he stated that wishes was -- he wishes was responded to, and that is directly related to the Crown consultation protocol and this is going beyond what has been said previously in response from the Heiltsuk Tribal Council, the HEDC and the Heiltsuk Hemas Hereditary Chiefs.
3987.           And one of the reasons that I feel that it's important to respond to the notice of constitutional question reference put by Mr. Neufeld on Monday and related to the Crown consultation protocol is because, in response to that, this has had a direct impact on this process.
3988.           One of the things that has not been brought forward before was the impact that the change of legislation had on the Heiltsuk Nation putting forward the notice of constitutional question. This was brought up by Mr. Neufeld as per the procedural direction. I think it's important to respond to that, and that this has been impacted by legislative changes enacted by the federal government. If those legislative changes were not enacted by the federal government, the Heiltsuk Nation would have put through the notice of constitutional question in this process.
3989.           There was also -- and I'm referring to the Gitxaala Nation, as they had already referred to that they were going to be putting a notice of constitutional question as well, and this was also withdrawn. I believe it does have a big bearing on this process how these legislative changes have affected our ability to put forward the notice of constitutional question in this current process.
3990.           In response to the reference to Crown consultation and what was even beyond what I had previously put forward in regards to the duty to consult, something that I haven't put forward yet is that the Heiltsuk Nation was not consulted on the consultation framework.
3991.           And in response to the notice of constitutional question and the legislative changes, which resulted in our not putting forward a notice of the constitutional question, I believe it is important that the Heiltsuk Nation does have to respond to this. Because we had gone into this process in good faith and we expected a reciprocal measure of good faith on the part of the federal Crown, so that we would be able to put forth such a question.
3992.           And the fact that we were not consulted on the JRP framework



- process, that we were not consulted on the approach to Crown consultation for the Northern Gateway Project, this is contrary to the case law, which says that the Crown cannot cavalierly run roughshod over Aboriginal rights in seeking reconciliation, and that is exactly what has happened here.
3993.           This may be disagreed with by the Northern Gateway. This may be disagreed with by the federal Crown, but this is what we, as the Heiltsuk Nation, feel that our rights have been run roughshod over by this process, by the changes to the legislation, which we were not consulted on.
3994.           This is also in response and this has been brought up before which -- not in regards to this argument but there has been reference from previous intervenors and from the Northern Gateway as well, that there were opportunities for First Nations, you know, to participate in this process and that there was funding designated for that. This is another reason why this application should be rejected, as the funding provided to First Nations to participate in this process has been insufficient.
3995.           **THE CHAIRPERSON:** Ms. Humchitt, if you could help me a little bit to understand, as you're moving on, which particular pieces of which arguments you're responding to. I have to admit, I'm finding it a little bit difficult to follow and it would be helpful to me if you could help me anchor where you are at in terms of others' arguments.
3996.           **MS. HUMCHITT:** Okay. This was also referred to -- and I happen to have a reference right here, and this was referred to by the Haida Nation, which we already adopted.
3997.           **THE CHAIRPERSON:** And so if you've adopted it, there's no need to repeat it.
3998.           **MS. HUMCHITT:** Yes. I do wish to emphasize that all of the coastal First Nations, including -- you know -- the Haida and the Heiltsuk Nations, we are unique. This is not one-size-fits-all approach, which is why I feel I need to address this on behalf of the Heiltsuk Nation.
3999.           Other nations' experiences with consultation with the Northern Gateway and the federal Crown may or may have not been different, but the bottom line is that it is in the Heiltsuk Nation's experience that this has severely impacted our ability to participate in this process, although we have -- we have

lost -- and this is something beyond what has been responded to already, we had lost a good part of our representation with the withdrawal of the Coastal First Nations. And this is in direct response to the approach to Crown consultation for the Northern Gateway Project, which was referred on Adobe page 29.

4000.           And one of the things that is referred to is that the consultation framework was prepared by the federal government in response to comments received from Aboriginal groups on the draft JRP agreement in response to that statement. We have not been consulted on that. We have not been consulted on changes to legislation, which we, the Heiltsuk Nation, view as impacting this process. This has impacted this process.
4001.           I could refer to numerous changes, and the omnibus bills I have referred to previously, so I'm not going to repeat what I said.
4002.           I would also like to refer to the Government of B.C.'s position, as I believe that their position was a good one, that there must be recognition of Aboriginal rights and title and Treaty rights in this process. And that is directly referred to in the Government of B.C.'s submission, and this has not happened. This is another reason why the application should be rejected; is because this has not happened.
4003.           In terms of responding to the government, that presentation happened earlier that this is needed for Canada, that this is for the economic benefit of Canada, not once did I hear a reference to how this benefits Aboriginal Canadians. And this is something that's missing in response to what was put forward by the Government of Canada and in response to the oil producers, for example, CAPP.
4004.           And I would also like to reference, I think it was the Edmonton Chamber of Commerce also made a reference to the economic benefits which could result about it. And if I can typify all of these arguments, which I say are the pro-economic benefits for Canada which was put forward not only by the Government of Alberta, the Government of Canada, CAPP, the oil producers, and MEG, another tar sands producers, all of these were focused upon economic benefits which if there was -- if this Project could be mitigated in any way, you know, that would not be an issue.
4005.           In response to their argument that this is needed for Canada, I would respond to that that this is not what is right for Canada.

4006.           **THE CHAIRPERSON:** Ms. Humchitt, I believe that the Heiltsuk Tribal Council made arguments to that effect. And so again, I would ask you not to repeat arguments that have previously been made by other parties but just to adopt them. Thank you.
4007.           **MS. HUMCHITT:** Yes, if I have your patience, this is -- I'm leading to something beyond what was said previously.
4008.           **THE CHAIRPERSON:** I would really request that you go directly to the points that you want to go to that are beyond what's already been filed. It's very helpful to the Panel.
4009.           **MS. HUMCHITT:** Okay. Beyond what has already been filed, this fails to account that a spill will not affect the residents of the Edmonton Chamber of Commerce. The effects of a spill will not affect -- and I'm referring to an open water spill, I'm referring to a spill in the closed confined channel area.
4010.           All of the arguments toward economic benefits are rendered moot because they are not going to be the beneficiaries or the ones who have to deal up with a spill in their territory or in their residences. And their arguments towards the pro-economic benefits fails to account for the social, economic, cultural, and spiritual costs that will be borne by not only the Heiltsuk Nation but all of the Coastal First Nations.
4011.           In regards to Northern Gateway's offer to top off a compensation fund, I also feel that this is insufficient as well, and I refer directly to Kalamazoo, Michigan. The costs of the clean-up there have far exceeded what has gone before and, on behalf of the Youth Voice -- and I am speaking on behalf of the Youth Voice at this juncture, the risks to the Heiltsuk Nation are too great for this Project.
4012.           **THE CHAIRPERSON:** And Ms. Humchitt, I believe other Heiltsuk parties have expressed that same perspective.
4013.           And so, again, if we could ask you to just focus on new reply that has not already been covered, that would be most helpful.
4014.           **MS. HUMCHITT:** Okay.

4015.           **THE CHAIRPERSON:** You may want to just take a minute and go through your notes ---

4016.           **MS. HUMCHITT:** Yup, I'm just doing that.

4017.           **THE CHAIRPERSON:** --- and help organize your thoughts.

--- (A short pause/Courte pause)

4018.           **MS. HUMCHITT:** In regards to -- in response to the reference to the Marshall incident -- and this is beyond what have I -- what I have already said -- there has been a lot of reference to -- that there is a -- that there have been lessons learned from the Marshall incident.

4019.           One of my concerns in response to the Northern Gateway's supposition that they have learned lessons from this, and this is also in response to their reference to the amount of spills which have occurred through their operation, I would like to also cross-reference the B.C. submission in reference to the Marshall incident.

4020.           And this is also another reason why the current Application before the Panel should be rejected is that there is a dependence upon technology insofar as detecting spills and leaks. And the "Trust us" argument doesn't work as, apparently, technology fails to adequately monitor these. And technology does and will fail and this is something that is not taken into account by the Northern Gateway in their Application: the possibility of the failure of technology and how this will impact spills.

4021.           This is not only in regards to technology on the VLCC tankers, which could potentially happen, but this is also in regards to technology which is supposed to detect pipeline ruptures on terrestrial territories.

4022.           And that is another reason why we have concern over this is because of the vast amount of pipeline which is going to be required for this Project.

4023.           This covers -- comes from all the way to Alberta to the B.C. coast should this be approved and, when this would happen, there is no way, in my view, based upon the Enbridge record, that they can possibly respond.

4024.           **THE CHAIRPERSON:** Again, Ms. Humchitt, I'm -- I believe you're

repeating arguments that have previously been made.

4025. I would encourage you to please look through your notes and see if there's any additional information in reply that you'd like to provide that's not repetitious of arguments that have previously been brought forward.
4026. **MS. HUMCHITT:** Getting right to the point, technology fails and there should be manual checking of these pipelines all along the pipeline and this is in response to -- this is a mitigation measure.
4027. I believe there have been references to fly-overs as a possible mitigation measure. We still don't think that this is sufficient, that there should be manual checking of these lines as well all along the pipeline route and that these should be regularly scheduled, to get directly to the point.
4028. One thing that has not been addressed as of yet -- and this is referred to on the Northern Gateway argument and the category which was referred to was impact on Enbridge personnel.
4029. I think this is a shortfall of their argument because ---
4030. **THE CHAIRPERSON:** Ms. Humchitt, could you refer me to the section of the argument that you're referencing?
4031. I'm not quite following.
4032. **MS. HUMCHITT:** Yeah. It's paragraph 565, and it's the Northern Gateway argument. I can refer you to the exact page.
4033. **THE CHAIRPERSON:** I know you've been interested in time checks as we're going along, so you have about 24 minutes left.
4034. **MS. HUMCHITT:** Okay.
4035. **THE CHAIRPERSON:** And so I'd encourage you to make sure that you give us the benefit of your perspectives on all aspects, including proposed conditions.
4036. **MS. HUMCHITT:** In terms of -- and you've brought this up on proposed conditions -- and one of the things that I would like to refer to is that it

is within the authority of the Panel -- at least I think it is and you can clarify if it is not -- that if there is insufficient time for consultation that the Panel consider extending the period of consultation on this matter.

4037. I know in *Jackpine* that this was extended as there was a lot of evidence which had to be considered and this is what I am asking the Panel to consider is an extension of time to allow for meaningful consultation and accommodation and that the assessments required for this Application are completed before a decision is made.
4038. I know this is not likely to happen but I have been asked to respond to that and I will.
4039. And one of the things that you have asked me to possibly make a comment on is the conditions proposed, and that is another reason why that I would request that there be an extension of this process to allow for meaningful consultation accommodation is that there has not been adequate time, you know, to consider this not only on the part of the Heiltsuk Nation, but I imagine a lot of the other Nations.
4040. But I cannot speak on their behalf. I can only speak to the experience of the Heiltsuk Nation is that an evaluation of an application of this time -- of this type, you know, requires added resources and the ability to respond to the application. It involves technological information, which many nations do not have and we need to -- more than this compressed period of time to go through this information in order to be able to adequately respond to it.
4041. I've been here since December 15<sup>th</sup> last year, and this -- it's only about six months that we have been expected to respond on thousands of pages of technological information and expected to participate in this as a consultative process. The amount of information, which has to be gone through by a First Nation or anyone, even people involved in this process, involves a lot more review than the time has allowed.
4042. If I would ask anything, is that there needs to be more time for this process and that includes the proposed conditions. There has been some comment by other intervenors on the proposed conditions. We really do need more time as a First Nation and resources in order to be able to fully comment on this, to understand the impacts of conditions and to be able to respond.

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4043. It's easy to say that this is your opportunity to respond, the fact of the matter is, thousands of pages of technological information cannot easily be gone through by a layperson.
4044. **THE CHAIRPERSON:** Ms. Humchitt, can I ask you to let us know what you're replying to in argument at this point because I'm again having trouble following you.
4045. **MS. HUMCHITT:** Okay. Well you had asked me to respond on the potential conditions?
4046. **THE CHAIRPERSON:** Just from the aspect of what's laid out in the Procedural Direction. I just wanted to make you aware of the time and so that's -- that was the only point in that is that you're now just under 20 minutes of the time allotted for Heiltsuk Youth Voice.
4047. **MS. HUMCHITT:** And that actually brings me to another issue of -- which I do feel is necessary to respond. I do feel limited in my ability to respond within procedural directions and I believe we do have a chance to respond as to why this process -- and I have referred to it and you may stop me, as you probably will.
4048. **THE CHAIRPERSON:** I'd invite you to use your judgement as legal counsel as to what would be appropriate at this point, bearing in mind that the Panel isn't interested in hearing a repetition of arguments that have previously been brought forward.
4049. **MS. HUMCHITT:** Okay. And one of the things that I wanted to bring forward is the Court's decision in *Delgamuukw*. And that this process -- and you have an ability as the Chair of this process to adapt. And although this isn't likely to happen here, we do feel we have been limited in giving our oral evidence, as a result of the constraints of this process.
4050. As we have made numerous submissions, I want to highlight, in closing, that this Project is not in the public interest or in the First Nations' interests. I have already outlined the reasons why I do not feel that this is in the public interest or in the interest of the First Nations and those have already been previously referred to.
4051. Another reason why this application should be rejected by this Panel is

- that the B.C. government has not supported this application either, and unless certain conditions were met, which haven't been, and they don't have time to be met by the time this decision is made, that is another reason why this application should be rejected at this time.
4052.           The financial benefits are overestimated to Aboriginal peoples. So in a sense, there are very little benefits, as posed by the Northern Gateway in regards to this Project. In summation, Enbridge's track record does not support this Project's approval. We cannot rely on trusting that certain things that are promised will be done.
4053.           Another reason why this Project should not be approved is the reliance on post-approval consultation. We have no trust that this will happen either, as we have not been consulted so far -- not meaningfully consulted.
4054.           Another reason why this Project can -- should not be approved is that this Project will have significant adverse environmental effects, which cannot be compensated with money and these include cultural impacts, marine resources, and the lack of ability to earn money in a traditional lifestyle.
4055.           There is also the inadequacies of the Enbridge Northern Gateway's plans for a world-class response regime. This has been referred to in the B.C. submission.
4056.           **THE CHAIRPERSON:** Ms. Humchitt, again, you're repeating arguments that have already been brought forward. So I'd invite ---
4057.           **MS. HUMCHITT:** Yes. This is my closing.
4058.           **THE CHAIRPERSON:** And so there's no need to repeat anything that's already been brought forward. Do you have anything further in closing?
4059.           **MS. HUMCHITT:** I'd like to be able to finish my closing, if I ---
4060.           **THE CHAIRPERSON:** Without repeating arguments that have already been presented, of course.
4061.           **MS. HUMCHITT:** Okay. Well I feel this is really limited me in terms of closing, as I thought I would be able to summarize and wrap up what has been put forward.



4062.           So I do have to reference *Delgamuukw* and the value of our oral history and I do feel it is being violated in this process and that I'm not fully able to express myself on behalf of my nation, as a result.

4063.           This will impact our future generation and this whole process is a violation of our rights and title. It is a violation of our Gwi'i'las, it is a violation of our sovereignty, and the whole process being imposed upon us is going to facilitate the destruction of our territory and our way of life and this is not acceptable to the Heiltsuk Nation.

4064.           This is a violation of Canada's commitments on the United Declaration on the Rights of Indigenous People. This is a violation of our section 35 rights on the *Constitution Act of B.C.*, and we will not accept tankers in our territory, as per our Declaration. And any tankers coming to our territory is an act of trespass and we cannot allow it.

4065.           **THE CHAIRPERSON:** Thank you for the submissions of the Heiltsuk Youth Voice.

4066.           The Panel has no questions.

4067.           **MS. HUMCHITT:** Thank you.

4068.           **THE CHAIRPERSON:** We'll call next the Kitimat Valley Naturalists please.

--- (A short pause/Courte pause)

4069.           **THE CHAIRPERSON:** Good morning, Mr. Thorne and Mr. Horwood.

4070.           Who's going to be starting?

4071.           Please go ahead.

**---ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. HORWOOD AND MR. THORNE:**

**Oral argument**  
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4072.           **MR. HORWOOD:** Thank you. Good morning.
4073.           My name is Dennis Horwood and I am speaking to you as a member of the Kitimat Valley Naturalists.
4074.           We would first like to thank the Panel for this final opportunity to make a presentation. Also, we would like it to be understood that our oral statements here today are intended to address issues. They are not nor should they be interpreted in any way to suggest a lack of integrity or honesty of any individuals.
4075.           We would like it on record that the Kitimat Valley Naturalists were intervenors in the LNG project at Bish Bay. We had concerns about that project and they were addressed to our satisfaction.
4076.           Our point in stating this is simply that the Kitimat Valley Naturalists are in favour of industrial development but not all industrial development.
4077.           At this time, I would like to outline four reasons why I've taken yet even more time to speak before the JRP regarding the Northern Gateway.
4078.           First, I want to talk about this infamous pipeline carrying dilbit mentioned countless times in these proceedings. In July 2010, this pipeline ruptured and unceremoniously dumped a million plus gallons into a Michigan river system. Early estimates indicated this spill would take 6 to 8 months and \$5 million to clean up. A year later, the river was still closed. But by July 2010, the cleanup costs approached \$1 billion. Why were the initial estimates so low?
4079.           Three months ago on March 14<sup>th</sup>, 2013, the Province newspaper reported that the EPA directed Enbridge to dredge portions of the river. Why was the EPA directed to do this -- I'm sorry, why was Enbridge directed to do this by the EPA?
4080.           **THE CHAIRPERSON:** Sorry, Mr. Horwood can ---
4081.           **MR. HORWOOD:** I'll get there.
4082.           **THE CHAIRPERSON:** Can you help us understand what you're replying to in the arguments that have gone before you?

4083. **MR. HORWOOD:** I'm replying to ---

4084. **THE CHAIRPERSON:** Just so that we can anchor ourselves.

4085. **MR. HORWOOD:** --- Mr. Neufeld's comments that he made on Monday.

4086. **THE CHAIRPERSON:** Thank you very much.

4087. **MR. HORWOOD:** Okay.

4088. In short, the excessive time, cost and dredging related directly to the fact that dilbit sank and no one had the means or expertise to clean up this kind of mess with speed or efficiency. Yet, Enbridge continues to deny this reality.

4089. At the Prince Rupert hearings, Enbridge expert Alan Maki stated bitumen was buoyant. He said:

*"It is an immutable fact of physics that they will float. They simply cannot sink in water."*

4090. This was repeated yet again in Mr. Neufeld's oral presentation this past Monday. Yet, on Enbridge's website in a document entitled "Diluted Bitumen in Sea Water - Some Basic Science" dated February 6<sup>th</sup>, 2013, states:

*"When crude oil particles and sediment particles combine, together, they [...] become denser than water and sink ..."*

4091. Northern Gateway's publications contradict their specialists.

4092. Northern Gateway must know the Kitimat River system is silt laden for most of the year. Based on Enbridge's own published information, there's no doubt whatsoever if dilbit were to enter this river system, it will combine with the sediment and sink. Since the silt laden river empties directly into the Kitimat Arm then, by default, dilbit will sink there as well.

4093. I have not read, I've not seen, I've not heard any plans by Northern Gateway to recover submerged dilbit.

4094. What is it called when a company's experts insist the dilbit simply

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cannot sink but the company's published documents state the opposite?

4095.           What is it called when dilbit irrefutably sank on one river system but this evidence is ignored, marginalized or denied by the pipeline proponent when talking about the Kitimat River or the Kitimat Arm?
4096.           My second point. Enbridge has plans to contain floating dilbit if it is spilled into the Kitimat River. In Prince Rupert, on February 25<sup>th</sup>, I asked what their plans were for the town's water supply should a spill occur above the city's water intake. Their response was to provide bottled water.
4097.           Bottled water was their plan for 8,000 residents and the local industries in the event of a spill. They made no mention to us about using toxic water for basics such as lawns and vegetable gardens, showers, washing dishes, laundry, family pets and so on.
4098.           Following the oil spill in the Pine River system, the mayor of Chetwynd interviewed on CBC radio said the city lost its water supply for two years. There was no mention of this being a possibility in the Kitimat River system. Are we supposed to rely on unpalatable water or drink bottled water for two years?
4099.           Long-term plans for this possibility were non-existent.
4100.           There was also a lack of how to deal with the negative publicity associated with a spill in a city's river or water system. I can imagine a headline, "Who wants to come to live in Kitimat with their polluted or poisonous drinking water?" or "What will the health risk be to residents who have benzene in their tap water?"
4101.           My third point. In past testimony by Northern Gateway, they've made many claims about how safe Douglas Channel will be for marine shipping. This was addressed superficially by Mr. Neufeld on Monday during his oral testimony beginning on line 121. I would like to comment about how the -- I'm sorry, about how the Proponent portrayed the safety of Douglas Channel.
4102.           While watching the evening news, hockey games or afternoon talk shows, almost inevitably a Northern Gateway ad would appear. One of these ads clearly showed Douglas Channel as a straight, ever-widening, unobstructed ocean shipping lane to the wide open Pacific. Those of us who have taken a boat ride

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- along the proposed route know the reality. The Douglas Channel is, in many places, a narrow, twisted marine corridor full of islands, hidden rocks, strong tides, and subject to heavy weather.
4103. When challenged by the Ottawa Citizen about the accuracy of these ads, an Enbridge spokesperson euphemistically called them “broadly representational”. Douglas Channel boaters know only too well what a truthful representation would look like.
4104. What is it called when a company takes the reality of Douglas Channel and simplifies it down to what appears to be nothing more than a quiet, trouble-free waterway?
4105. My fourth and final comment. If the Northern Gateway Project ever proceeds, paperwork, permits and documents of unimaginable numbers will have to be signed off. One document, a social license, should not be granted when a company continues to deny, contradict, show indifference and post misleading advertising to the public.
4106. A social license must be earned and only be granted when a high level of trust is present. In our opinion, the Northern Gateway Project has not achieved this high level of trust. Given the vast opposition to the Project, there are few indications, to me, that Northern Gateway thinks this necessary or needed.
4107. In these few brief minutes, we have outlined several critical reasons why this is so. We could, and have, mentioned dozens more in our submitted report and questions posed in Prince George and Prince Rupert.
4108. If it is for these reasons that we urge the JRP to reject the Applicant’s plan to pipe dilbit across the province or ship it along our marine waterways.
4109. **MR. THORNE:** Thank you.
4110. Walter Thorne ---
4111. **THE CHAIRPERSON:** Mr. Thorne, please go ahead. Yes.
4112. **MR. THORNE:** Yes. Honourable Panel Members and members of the public, at this point we would like to expand on comments made by Barry Robinson, representing ForestEthics. We will be elaborating on comments made

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- in reference to the marine mammals and Douglas Channel and connected waterways.
4113. We are all newcomers to this land of the northwest coast that we call home. Because this is our home and we live here, we're protective. It's only naturally so.
4114. Our Kitimat home and valley has been a prolific provider over the centuries. Ancient First Nations legends tell of the monster that lived in the north end of Kitimat Arm. The monster would rise and lift with flapping jaws when seen from afar.
4115. The Haisla people discovered the flapping jaws were actually thousands of birds assembled in the lush productive delta lands. This was in the day long ago when the eulachon and herring came in their millions. Those days are gone, but there is still hope of a recovery. Can you believe it? There were again visible eulachons in our river this spring.
4116. At the time of contact two centuries ago in about 1792, early explorers like George Vancouver were overwhelmed by nature's abundance. At the entrance to Douglas Channel at Hartley Bay lies another channel they named Whale for its abundant humpbacks. In years since, the whales were scarce, hunted by we humans to dangerously low populations, but in recent decades our whales have returned.
4117. The return of the humpback to our pristine waters could be short-lived. There is a widespread fear that whales will perish from collisions with ships. The cumulative effect to whales within our area from all our development would be quite concerning. An oil spill in Whale Channel would be devastating.
4118. Another magnificent creature which relies on our home is the orca, known as the blackfish to First Nations people. Some people, myself included, have been privileged to witness its appearance.
4119. Just in recent weeks, a whole pod of seven orcas was at Bish Creek, right on our doorstep. Fortunately, I was able to photograph them. They were from a chinook-seeking family pod.
4120. Whale researchers in Vancouver positively identified it -- identified two brothers from their tall and singularly unique dorsal spikes. They ---

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4121.           **THE CHAIRPERSON:** Mr. Thorne, your -- I believe that in your reply you're introducing new evidence, which isn't part of what the process is at this point. You said you wanted to respond to the comments made by ForestEthics, I think it was ---
4122.           **MR. THORNE:** Yes.
4123.           **THE CHAIRPERSON:** --- the Coalition.
4124.           And so could you respond to that, but it's not appropriate to be introducing new evidence at this point. As you know, we closed the evidentiary record.
4125.           **MR. THORNE:** I'm just relating an experience of what -- it connects. It's very short.
4126.           **THE CHAIRPERSON:** Could you take us to the connection?
4127.           **MR. THORNE:** Yes.
4128.           **THE CHAIRPERSON:** Thank you.
4129.           **MR. THORNE:** Also positively identified from her back and saddle patch was A79, a female.
4130.           Now, what got Chad Nordstrom, a Vancouver-based Cetacean Sightings Network whale researcher, excited was a photograph of a new calf. This has never been catalogued or recorded.
4131.           The orca is a blue-listed threatened species, and it gave me a bit of a thrill to realize that there was some hope; a new orca. But talk of future, what kind awaits this orca calf?
4132.           Will it be returning with its extended family to the mouth of the Kitimat River? Will there be any chinooks to chase in Kitimat's future or will cumulative industrial development be the kiss of death?
4133.           Will this calf make it? Will it live to have a family of its own or is it doomed to an existence threatened by us with scarcer fish to prey on?

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4134. Will lurking toxins such as carcinogenic benzene poison the organisms that orcas feed on? These toxins, which remain in the water column, are lasting components of both condensate and diluted bitumen product. These products are integral parts of the Enbridge Project.

4135. These components of oil and condensate could be lethal to marine organisms, including whales. It is ---

4136. **THE CHAIRPERSON:** Mr. Thorne, could you help us understand which argument you're replying to and where in that argument you're replying? I'm just having trouble following which argument you're replying to.

4137. **MR. THORNE:** We are just about the sense of having a project and its overwhelming influence and threat.

4138. **THE CHAIRPERSON:** And you've had the opportunity to present your argument in writing.

4139. **MR. THORNE:** Yes.

4140. **THE CHAIRPERSON:** And so now this portion is just to reply to other arguments that have been raised, so that's what ---

4141. **MR. THORNE:** Yes.

4142. **THE CHAIRPERSON:** --- we're looking for now. It's not to repeat your argument. It's not to repeat other arguments.

4143. **MR. THORNE:** Fair enough.

4144. **THE CHAIRPERSON:** It's just to reply to arguments that have been made.

4145. **MR. THORNE:** I understand.

4146. **THE CHAIRPERSON:** So can you help me understand which argument you're replying to?

4147. **MR. THORNE:** I'm not sure. I think just the greater argument. It's



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very brief. I'm in conclusion, basically, at this point.

4148.           **THE CHAIRPERSON:** If you don't have a reply itself, if you could just give us two final sentences because the purpose of this is to reply to other arguments, not to restate or remake your argument again.

4149.           **MR. THORNE:** I have a new paragraph which is a new topic, so I think it's still relevant.

4150.           **THE CHAIRPERSON:** If you can help us understand what you're replying to, it would be very useful.

4151.           **MR. THORNE:** Okay. Again, it's up to us to protect, not threaten and destroy nature.

4152.           Witnessing nature in all her glory is becoming more and more difficult on our planet, but Kitimat still has it. It is still relatively pristine. It is certainly worthy of an even greater recreation sector. Boating our fjords and inlets are -- have incredible appeal and potential.

4153.           Destinations like Douglas, Devastation, Gardner, Fernie, Fosh, Giltwohees, Princess Royal and Campagnia all have their merits. Kayakers and, of course, fishermen with dollars to spend, have their sights on our water and, yes, we will welcome them, as they help to grow our economy in a sustainable way. But surely the approach of a vessel nearly a million times the size of a kayak will scare off would-be boating tourists in our area. That's the loss of a valuable industry, an industry that could have been.

4154.           Clearly, development in Kitimat and, in particular, the Northern Gateway Project is a threat. The Project is overwhelmingly flawed and dangerous, with unprecedented risks. We won't stand idly by. Our voices must be heard.

4155.           We also need to speak for those that can't, including the orca and humpback whales. Oil and water don't mix, and Enbridge hasn't the right to destroy the home we have in Kitimat.

4156.           Thank you again to each of you, our esteemed Panel of three. Your patience has been infinite. We are in appreciation.

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4157. We certainly don't envy the task ahead. Your decisions and/or recommendations will have daunting consequences.
4158. Thank you.
4159. **THE CHAIRPERSON:** Thank you to Kitimat Valley Naturalists.
4160. Do you have more, Mr. Horwood, to add?
4161. **MR. HORWOOD:** I just would like to say my personal thank you to the JRP Panel for your patience while listening to our concerns. And we would also like to thank Louise and her staff for her endless amount of patience and helpfulness through these proceedings.
4162. **THE CHAIRPERSON:** Thank you very much. And thank you for your submission. The Panel has no questions.
4163. We call next the Northwest Institute for Bioregional Research and Friends of Morice-Bulkley.
4164. I'm sorry. I'm sorry; I got out of order. It's the North Coast Cetacean Society, and I understand that we're going to be dialling them in remotely, so we'll take a five-minute stretch break. Thank you.
- Upon recessing at 10:51 a.m./L'audience est suspendue à 10h51  
--- Upon resuming at 10:59 a.m./L'audience est reprise à 10h59
4165. **THE CHAIRPERSON:** We can hear you. Hi, Mr. Meuter, it's Sheila. Could you just speak a little more? I guess we can't hear him.
4166. **MR. MEUTER:** I'm ready to present. I hope you can hear me now.
4167. **THE CHAIRPERSON:** That's better. How's the weather, without swearing?
- (Laughter/Rires)
4168. **MR. MEUTER:** The weather is awful. It's been raining, no wind and a few whales out front.

4169.           **THE CHAIRPERSON:** Thank you, Mr. Meuter. We are, at this point, able to hear you. Let's hope it continues. And so let's have you -- thank you, Mr. Overstall, for being ready to step forward.
4170.           Mr. Meuter, let's have you go forward providing your reply to the arguments that have preceded you.
4171.           **MR. MEUTER:** Thank you, Madam Chair, and thank you for being patient.
4172.           Good morning, Madam Chair, Mr. Bateman and Mr. Matthews ---
4173.           **THE CHAIRPERSON:** Mr. Meuter, I'm sorry, you're continuing to cut out again unfortunately. Is there anything you can do on your side to have a clearer connection?
4174.           **MR. MEUTER:** Unfortunately, no. What I could do is I (inaudible). That would take me one hour.
4175.           **THE CHAIRPERSON:** Yes. Let's try everybody disconnecting on our side and on your side and let's try calling back in again and we'll see if that can work.
4176.           **MR. MEUTER:** Okay.
4177.           **THE CHAIRPERSON:** Thank you.
4178.           So let's everybody take another five-minute stretch break while we get this done.
4179.           Thank you.
- Upon recessing at 11:00/L'audience est suspendue à 11h00  
--- Upon resuming at 11:02/L'audience est reprise à 11h02
4180.           **THE CHAIRPERSON:** Mr. Meuter, it's Sheila Leggett again. Let's see how we do at this point if everybody can just take their seats again please.
4181.           Mr. Meuter?

4182.           **MR. MEUTER:** Yes, Ms. Leggett, if I could just make one comment. If for some reason we get disconnected again, what I could do is I could travel to Hartley Bay and call from a regular phone. Now, that would require me -- it would take me an hour, a little more than an hour to get to Hartley Bay.

4183.           **THE CHAIRPERSON:** Okay, well, let's go forward and see if we can hear you clearly and if not, thank you very much for your kind offer to get to another form of communication that might work more clearly. So let's have you going.

4184.           **MR. MEUTER:** Okay, why don't I start then.

4185.           **THE CHAIRPERSON:** Yes, please. Thank you.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. MEUTER:**

4186.           **MR. MEUTER:** Good morning, Madam Chair, Mr. Bateman and Mr. Matthews.

4187.           I want to thank you for giving me the opportunity to speak to you today. Before I begin my oral argument, I wish to explain who I represent and why it is that we participate in these hearings, as a lot of people in the room and online are most likely not familiar with the North Coast Cetacean Society.

4188.           Our society operates Cetacealab, a land-based year-round whale research station located on Gil Island. We conduct our research within Gitga'at territory, from Caamano Sound in the south to lower Douglas Channel in the north.

4189.           My research partner, Janie Wray, and I have dedicated our lives to a long-term research project that seeks to understand the abundance and behaviour of different whale species, in particular, fin whales, humpback whales and killer whales.

4190.           More than 3,000 days of monitoring of this area, which encompasses much of the proposed CCAA, has given us a unique understanding of the importance of this area as habitat for whales and you, the Panel, have all that information on the record through all our written submissions.

4191. Many of the arguments that I wanted to address today have already been discussed by other parties, in particular, by the Gitga'at and the Coalition. So I won't take much of your time today repeating them to present my argument, but I would like to mention a few additional points that are of importance.
4192. Throughout its evidence and its written argument, Northern Gateway states that mitigation measures are in place to reduce potential significant adverse effects. Many intervenors have argued that in a lot of cases not enough data exists to assess the effectiveness of those proposed mitigation measures.
4193. We agree that for the most part that is very true.
4194. A first example is the quantitative approach by Northern Gateway to conduct marine mammal surveys as part of the environmental assessment. In its written argument, in paragraph 661, Northern Gateway disputes the claim of intervenors that Northern Gateway did not collect adequate amounts of baseline data. I quote:
- "While Northern Gateway agrees that more information can be collected (and would be through future studies), the amount of information available did not affect the ability to do a rigorous environmental assessment. As stated by Mr. Anderson [in line] 12565, 'I would never disagree that more information would be helpful... [line] 12566. But I do not believe that not having this information... limits our assessment in any way. I believe we've done a thorough assessment, as I've said, and I believe that having this information would certainly not change our understanding, our predictions.'"*
4195. End of quote.
4196. For a research station that has the experience of thousands of whale monitoring days within the CCAA, we strongly disagree that the 10 marine mammal surveys (two aerial and 8 boat based) in five years can be seriously called thorough nor can they, in any way, be rigorous.
4197. In fact, these surveys don't even come close to start to understand marine mammal abundance in the CCAA, but perhaps that was never intended to be the case. If Northern Gateway would have done a thorough baseline study, they would have quickly realized how important the habitat for whales is, that

they are planning to plough supertankers through. It might have even resulted in a change of tanker routes and/or abandoning Kitimat as a tanker port altogether.

4198. Another example can be found in Northern Gateway's written argument, paragraph 698. I quote:

*"While some small amount of behavioural change in marine mammals is expected in the Open Water Area as a result of underwater acoustic emissions, these effects are expected to be reversible, possibly within minutes to hours of the passing of the vessel. As a result, effects of underwater noise are not expected to affect the long term viability of any population of marine mammal in the Open Water Area."*

4199. **THE CHAIRPERSON:** Mr. Meuter, it's Sheila Leggett again. Mr. Meuter, could you just slow down just a little bit. We're doing our very best to get the transcript, but if you could slow down just a little bit, it would be helpful.

4200. **MR. MEUTER:** Okay, thank you.

4201. Our response to this argument is how is it possible for Northern Gateway to make such an assumption if, by their own submission, Northern Gateway did not survey any species within the proposed Open Water Area and with that no baseline data even exists?

4202. And one more is just this: In its written argument, Northern Gateway promotes the development of a Marine Mammal Protection Plan -- MMPP -- to further reduce potential harm to marine mammals. While we think that a plan that promotes the protection of marine mammals is a very good idea, it should never be implemented and funded by a proponent of a potential harmful project to the species it claims to protect.

4203. Northern Gateway is not in the business of protecting whales. Northern Gateway is in the business of transporting oil through pipelines and maximizing profit for its shareholders. A delayed VLCC because of sleeping whales in the "core humpback whale area" is not in the best interest of Northern Gateway. If Northern Gateway would be serious about the protection of marine mammals, it would not propose the world's largest tankers through confined channels that are identified as critical whale habitat.

4204.           And there is one more point I want to make. I want to make it perfectly clear that The North Coast Cetacean Society will never participate in any marine mammal survey methods that would be initiated and funded by Northern Gateway. The results of these studies would never be independent and, therefore, never reflect the truth.
4205.           Those are the points that I would like to make and then, in closing, I would like to say that we believe that the introduction of very large crude carriers to the coast of B.C. would have significant adverse environmental impacts on marine mammals. There are no mitigation measures available that would prevent the destruction of one of the last relatively quiet underwater habitats of the Pacific Northwest. Baleen whales would be killed in collisions with large tankers and Canada could lose its iconic northern resident killer whale population in the event of an ill-timed catastrophic oil spill.
4206.           There is so much more I could add to try to convince you, the Panel, that rejecting the Northern Gateway proposal is the only way to move forward, but I would like to end with urging you all to very carefully re-listen to the emotional closing statement from Cameron Hill of the Gitga'at Nation yesterday. That is really all you need to know to make the right decision for this Coast.
4207.           Thank you for listening to me. I'm very sorry about the connection, but it really is the only way for us to communicate. I hope -- I hope you were able to hear me okay.
4208.           **THE CHAIRPERSON:** Thank you for your submission, Mr. Meuter.
4209.           I believe that we were able to capture the transcript and able to hear you, so thank you very much. So we'll say goodbye. I'm sorry -- I forgot to mention ---
4210.           **MR. MEUTER:** Thank you very much.
4211.           **THE CHAIRPERSON:** The Panel has no questions. Thank you. Goodbye.
4212.           So after having called the Northwest Institute once and partially calling them again, we will now call the Northwest Institute for Bioregional Research and Friends of Morice-Bulkley, please.

4213. **MR. OVERSTALL:** Which microphone?

4214. **THE CHAIRPERSON:** Wherever you're comfortable, Mr. Overstall.

4215. **MR. OVERSTALL:** Okay, I think I'll sit here.

4216. **THE CHAIRPERSON:** Good morning, Mr. Overstall.

4217. **MR. OVERSTALL:** Good morning, Madam Chair.

4218. **THE CHAIRPERSON:** Please begin when you're ready.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. OVERSTALL:**

4219. **MR. OVERSTALL:** Yes.

4220. First, Northwest Institute and Friends of Morice-Bulkley would like to acknowledge that they and all of us are speaking on Tsimshian territory.

4221. I'd like to thank the Panel for this opportunity and also, as this is the final part of the hearing, to repeat what others have said and to thank the Panel staff who have been extraordinary in many regards as some of us fumble our way through all the technology.

4222. I'd like to start very briefly just by explaining what the Northwest Institute and the Friends of Morice-Bulkley are. I realized in going through the transcripts and other submissions that we had never actually said what kinds of organizations and I notice that in Northern Gateway's written submission, they raise questions about the character of some of the groups.

4223. Neither Northwest Institute or the Friends of Morice-Bulkley are mass membership types of organizations. They're essentially research and educational organizations. So there's no claim to having any large membership such as other intervenors clearly have nor do they represent any coalition of groups or anything like that. They are merely attempting to assist this process and, in fact, I might say, when they started off and they submitted their four reports as evidence, they actually thought that would be it. You just hand in your reports and the Panel will consider it and carry on. How wrong they were.



4224. Nevertheless, here we are at -- at the final part of the hearing.

4225. My comments today are structured around the concept of risk and I assure you, Madam Chair, that we will be referring to some of the previous arguments. In particular, the comments will consider risk as defined by the Law Commission of Canada and I quote:

*“Risk is the predicted or expected chance that that a set of circumstances over some time frame will produce some harm that matters.” [Law Commission of Canada, Law and Risk (Vancouver: UBC Press, 2005) at 4.]*

4226. I put that quote in, not to introduce new evidence, merely to have a framework for the remarks. From that, as other intervenors and the Proponent have suggested, risk is, therefore, probability times consequence severity or as the Law Commission says:

*“...consequences that will produce some harm that matters”.*

4227. So with that framework, we’d first like to address the matter of the Northern Gateway comments on the oral statement and letters of comment.

4228. We agree with Northern Gateway that:

*“It is critical for the Panel to consider the substance of all ... [of]... the oral statements and letters of Comment.” [Northern Gateway Pipelines, Written Argument (May 31, 2013), Exhibit B226-2 at para. 1325.]*

4229. And maybe I’ll pause there. Just in terms of the process here, I’ve got quotes of paragraph numbers, but that’s in the written submission that’s already been handed over, so I won’t repeat those.

4230. Northern Gateway then goes on to rebut many of the themes it identifies within those statements. *[Northern Gateway Pipelines, Written Argument (May 31, 2013), Exhibit B226-2 at paras. 1333 to 1369.]*

4231. It says, for example, that the statements were “not tested by questioning” and that:

*“The JRP must recognise the “misconceptions, misunderstandings, myths and misinformation ...”*

4232. that it says were included in the statements.

4233. It quotes case law to the effect that the JRP should give little weight to such statements. [*Northern Gateway Pipelines, Written Argument (May 31, 2013), Exhibit B226-2 at para. 1363 to 1368.*]

4234. If the JRP adopted Northern Gateway’s submissions, it would essentially dismiss the 1100 oral statements and 5600 letters of comments. It is hard to believe that when the Minister of Environment and the Chair of the National Energy Board instructed the JRP to:

*“... conduct its review in a manner that will facilitate the participation of the public and Aboriginal peoples ...”*

4235. that they intended, the JRP, to merely summarise those comments, but then disregard them. That, we submit, is a cynical view of the process. [*JRP Agreement (December 4, 2009) at paras. 6, 4, 9.1 and Appendix Part IV*]

4236. And that quote is from the JRP agreement.

4237. As the JRP formulates its recommendations under the *National Energy Board Act* and the *Canadian Environmental Assessment Act*, there is a more positive roles -- role for those many hours of careful, thoughtful preparation and often stressful times at the microphone that the oral presenters contributed.

4238. They provided the Panel with a unique identification of those values surrounding this Project that matter; consequences that matter. That is, consequences that matter in the more formal sense of the definition of “risk” I quoted at the start of this presentation.

4239. The consequences that matter that we heard at the oral statement hearings were about, for example, salmon as food, as recreation, as the key indicator of ecosystem health and, perhaps most of all, as an icon of the coasts and the watersheds they share.

4240. Consequences that matter include clean water, food supply and

wilderness values.

4241. These tangible consequences were also bound up with the participants' sense of identity, with those aspects of their communities and landscape that they considered part of themselves. They expressed to you their sense of place. From their place in a particular watershed, or coastal island or fjord, many of them questioned how the JRP would balance the "national interest" with their local and regional interests.

4242. Contrary to Northern Gateway, we submit that these are the true "substance of all the oral statements and letters of comment".

4243. The JRP, the Panel, can accommodate this sense of place by rejecting the evidentiary restraints listed by Northern Gateway and, instead, include the summary of such comments that is required under paragraph 9.1 of the JRP Agreement as a basis for the Panel's assessment of which of the consequences that might arise from this Project are the ones that matter.

4244. The Northwest Institute and Friends of Morice-Bulkley submit that these consequences that matter are the interests included in Section 52(1)(a) of the *National Energy Board Act* as "present and future public convenience and necessity". They are thus distinct from the public interest that determines any certificate conditions under Section 52(1)(b) and the public interest that may be regarded under Section 52(2)(e) when the Panel makes its recommendations to the federal Cabinet.

4245. We acknowledge that this argument is certainly different from Northern Gateway's and appears to be contrary to the position taken by the Board in *Emera* at page 10. And here I'm just going off my submitted notes for the purpose of the court reporter. And the *Emera* quote is the Board's -- the National Energy Board's Reason for Decision - *Emera Brunswick Pipeline Company Ltd*, GH-1-2006 and was dated May 2007.

4246. And that quote, which is from page 10, says:

*"Various decisions of the courts have established that a specific individual's or locale's interest is to be weighed against the greater public interest, and if something is in the greater public interest, the specific interest must give way."*

4247.           However, *Emera* goes on, on the next page, on page 11, to state:

*“In addition, it is worthwhile to note that while the Board may be guided by past decisions, it need not be bound by them; indeed, it may be imprudent to be so bound given the dynamic nature of the public interest, and the inherent exercise of administered discretion in the Board’s decision-making process.”*

4248.           There is clearly some notice in the oral statements and letters of comment that distinguish this hearing from *Emera*. *Emera*, the comments were made -- the Board made the comment that there was a great deal of public interest in that particular pipeline. They, in fact, on page 4 of that decision, recorded a total of 19 oral statements and 180 letters of comment. In this hearing, there have been 1100 oral statements and 5600 letters of comments. Clearly, a quantitative change in the two cases.

4249.           So in our submission then, these oral statements and letters of comments cannot be dismissed as mere venting of public opinion. They somehow have to be used and incorporated in the Panel’s decision.

4250.           I’d like to go onto the second point which is Northern Gateway’s risk assessments.

4251.           In its written argument, Northern Gateway states that it’s put in evidence at least four risk assessments. There’s the what is called the “SQRA”, which relates to engineering, design and construction which is a failure frequency times consequence score. There’s the ESA, which is the environmental assessment, the effects of pipeline construction on “valued environmental components”.

4252.           There is the risk assessment around project operations -- this is the third one -- including a spill trajectory model, otherwise known as “SIMAP”, S-I-M-A-P. And there are spill consequent models, four of them, which model the spill effects on four critical watersheds, and they are in the environmental and human health risk assessment, EHHRA.

4253.           Each of these four assessments described in Enbridge’s written arguments appear to be in a silo with minimal connections among them. As the Northern Gateway written -- final written argument states:

*“Although these various categories of risk assessment may be related, because they serve different purposes, comparing them qualitatively and quantitatively would be erroneous. The methodology employed, scope of data used and considered and the intent and purpose in communicating results all factor into why a comparison should not be made.”*

4254. That’s at paragraph 260.

4255. Each risk analysis, therefore, appears to consider a different set of consequences, the criteria for which differ from silo to silo. For example, for the SQRA:

*“...consequence areas were identified within the PEAA, [which is] the 1-kw-wide zone established for much of the Project’s environmental and socio-economic assessment.”*

4256. That’s at Adobe page 33 in Exhibit B196-2.

4257. For the spill trajectory modelling:

*“...other consequence areas were defined outside the PEAA (such as parks, urban areas, watercourses and water intakes)...”*

4258. That’s the same exhibit at Adobe page 33.

4259. Thirdly, for the environmental and socio-economic effects assessment, ten -- quote “valued environmental components” -- unquote -- were identified that appear to differ from the above consequence categories, although with some overlap. [NGP written argument at paras. 410 and 417] And that’s in the Northern Gateway written argument at paras -- paragraphs 410 and 417.

4260. The EHHRA evaluates the potential for, quote, “ecological resources” -- unquote -- including fish invertebrates, amphibians, reptiles, birds, mammals and plants, pretty much every living thing. Quote:

*“...to experience adverse environmental effects as the result of exposure to chemicals released from hypothetical oil spills*

*from the pipeline.” [NGP written argument at para. 591]*

4261. That’s at Northern Gateway’s written argument at paragraph 591.
4262. The -- and then finally, the SQRA also includes a fish and fish habitat risk management framework, RMA. This risk analysis appears to be confined to pipeline stream crossing design and does not include the effects of a spill on salmon and other fish populations. It too, appears to be a silo by itself as it does not address the main concern expressed by many intervenors and in many oral statements. *[NGP Written Argument at paras. 316 to 318]*
4263. In our questioning of Northern Gateway, we attempted to make connections among their risk assessments. For example, the probability of a rupture from a geohazard combined with a probability of a spill -- sorry, I’ll start again.
4264. For example, the probability of a rupture from a geohazard combined with a probability of the spill extent from that rupture combined with the probability of subsequent harm to living things.
4265. But we were told by Dr. Stephenson, quote:
- “They’re actually separate entities in that regard. In order to do [the] consequence analysis in the ecological human health assessment we have to make that fundamental assumption that this hypothetical spill has occurred.” [Transcript Vol. 97 at 20910]*
4266. We submit -- and I’m going off the submitted notes here. We submit that assigning different sets of consequences to different risk assessments in its application, and by not making quantitative connections among them, means that in this respect, the application is incomplete.
4267. Further, most of the outcomes of these siloed models are given without a range of uncertainty around them. For example, in relation to the SIMAP model, I won’t quote but we asked Dr. Horn what’s the range of uncertainty and he wasn’t able to give it.
4268. In the next part we look at Northern Gateway’s submission in respect to what the standard is they intend to meet in order to obtain the Certificate of

Public Convenience and Necessity and to demonstrate that there will be no significant adverse environmental effects.

4269.           There appears to be confusion in the Northern Gateway written argument as to whether the risk analyses are aimed at producing a project that is as safe as Northern Gateway can make within some practical and financial constraints, that is a relative criterion, or whether producing a project that meets regulatory and statutory standards, an absolute criteria.
4270.           For example, within the SQRA, Northern Gateway’s written argument state the proposed route was -- in other words, the proposed route that they chose “was the U revision option relative to this alternative” -- relative to another alternative -- “the Bulkley Skeena route”. [para. 278] That’s at paragraph 278.
4271.           Again, Northern Gateway “...has chosen the safest [...] route.” [para. 279] Paragraph 279.
4272.           Northern Gateway has: “...incorporated mitigation measures to reduce the risk to as low as reasonably [practical].” [para. 311] Paragraph 311.
4273.           Northern Gateway: “...intends to take all reasonably practicable measures to design and construct a safe and reliable pipeline system.” [para. 329] Paragraph 329.
4274.           Northern Gateway: “...has chosen a route that reduces adverse environmental effects [...] and avoids geohazards where possible.” [para. 331] Paragraph 331.
4275.           So this is Northern Gateway characterizing its evidence. It’s relatively safe as reasonably practical.
4276.           Yet, in the face of these relative assessments of its own evidence, Northern Gateway submits that at the end of its account of the SQRA risk analysis, quote:

*“The evidence before the JRP demonstrates that the project can, and will, be designed and constructed in a safe, reliable and responsible manner.” [NGP Written Argument at para. 404]*

4277. And here we had the absolute standard. It's not the safest. It's not as low as reasonably practical, it is safe, which implies some standard has been met.

4278. Is it -- it is in respect to Northern Gateway's evidence and argument on spill response that many of the deficiencies noted above come together. It starts with the much discussed "trust us" statement.

4279. At paragraph 496, quote:

*"The witnesses from whom the Panel heard are the same knowledgeable, expert and committed individuals who would operate the Project. They can be trusted to do this in a safe, reliable and responsible manner." [NGP Written Argument at para. 496]*

4280. That's the same safe, reliable and responsible manner that was quoted above. That's at paragraph 496.

4281. We submit that Northern Gateway's trustworthiness is argued here because its spill response evidence is so thin. In effect, it relies on measures which it calls, quote, "iterative refinements" -- unquote -- that Northern Gateway says it will put into effect after it obtains its certificate.

4282. Northern Gateway argues that it has, quote:

*"...provided more Emergency Preparedness Planning information than is typical at this stage in a project's life."*

4283. Unquote.

4284. This argument does not account for the fact that the company does not typically build diluted bitumen pipelines through the West Coast Mountains and alongside salmon producing waterways. *[NGP Written Argument, paras. 498 and 508]*

4285. We submit that there is a proper test for the Panel to assess whether a pipeline design or planning component can be safely carried out after the certificate is granted. It is whether the pre-certificate information, such as we've heard in these hearings, is sufficient to give the Panel and the public confidence that whatever the results of the post-certificate investigations, the confidence



- levels of the risk probability and the risk consequences will not exceed those found during the hearing process.
4286. In other words, the Panel must assure itself that whatever measures are proposed after the certificate is granted, whatever investigations, research, collaborative projects, independent committees that are set up, that none of those will make findings that are beyond what the Panel decides are the constraints or the conditions that come out of this hearing process.
4287. We further submit that in the case of Northern Gateway's spill response capacity, that test has not been met.
4288. For example, in our questioning of Northern Gateway, it became apparent that the necessary river control points to respond to a spill had not been identified. Further, that there would be considerable difficulty in establishing them due to the remote locations of the two rivers in question -- that was the Morice River and the Sutherland River -- and those river's dynamic flood plains full of log jams, and the fact that aggressive intervention could do additional damage.
4289. Further, the critical section of the Sutherland River was entirely within a provincial park and Northern Gateway had no evidence that it had discussed access for river control points with the provincial government. *[Transcript Vol. 93 at 21571 and 21591 to 21592] [Transcript Vol. 98, at 21824 to 21853]*
4290. We submit that because of Northern Gateway's silo approach to risk assessment with mutually exclusive modelling methodologies, different and seemingly arbitrary consequence factors for each assessment, incomplete data inputs and no confidence levels or uncertainty limited -- uncertainty limits that could be taken from one assessment model to the next, its application in respect to the potential effects of the pipeline on significant interior salmon-bearing rivers is incomplete.
4291. Those are my oral arguments, Madam Chair.
4292. **THE CHAIRPERSON:** Thank you, Mr. Overstall.
4293. The Panel has no questions. Thank you for your submission.

4294. **MR. OVERSTALL:** Thank you.

4295. **THE CHAIRPERSON:** The next party is joining us remotely and so I think what we'll do is break for lunch now and then -- which will be atypical to our manner, previously we've ended up breaking later. So we'll get all the tummies caught up today. We'll break a little earlier today and then come back to continue on with the next party who will be the Office of the Wet'suwet'en.

4296. Let's give everybody a chance to actually eat their meals today and come back for 1 o'clock, please.

4297. Thank you.

--- Upon recessing at 11:42 a.m./L'audience est suspendue à 11h42

--- Upon resuming at 1:01 p.m./L'audience est reprise à 13h01

4298. **THE CHAIRPERSON:** Good afternoon. I believe we're ready to get underway.

4299. **MR. GRANT:** Yes.

4300. **THE CHAIRPERSON:** Thank you very much. It's Sheila Leggett and the next party is the Office of the Wet'suwet'en.

4301. Mr. Grant and Mr. Ross, are you there?

4302. **MR. GRANT:** Yes, we are.

4303. **THE CHAIRPERSON:** That's terrific. Thank you.

4304. Please go ahead with your reply submissions.

4305. **MR. GRANT:** Thank you very much, Madam Chair.

--- **ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. GRANT:**

4306. **MR. GRANT:** My name is Peter Grant and I'm with Michael Ross. We're legal counsel for the Wet'suwet'en on this matter and we're here to speak on behalf of the Wet'suwet'en.

4307.           Firstly, on behalf of the Wet'suwet'en, I want to thank their Tsimshian neighbours for hosting this particular set of the hearings on Tsimshian territory. And I -- before I begin, I have been asked on behalf of the Wet'suwet'en to thank the Panel, the Proponent and all of the intervenors for your time and undergoing and participating in this review. I want to underline the excellent work of the Panel staff for their hard work on this in these hearings.

4308.           My intention in our brief time in reply is to respond to the written arguments and some of the oral submissions made on behalf of Enbridge. And we're going to endeavour to address specific points -- some specific points raised by Enbridge in their final arguments. So I'd like to move into that right away.

4309.           In its written argument at paragraph 207, Enbridge cites Dr. Ruitenbeek for the claim that, quote:

*"Its Cost Benefit Analysis likely over-predicted potential impact on ecological goods and services values."*

4310.           It goes on to speak of -- rely on Mr. Anielski's evidence as confirming a claim saying that he:

*"...noted that, in light of the fact of that the [...] Right of Way would be generally located in disturbed and affected areas, the assumption of disturbance had overestimated impacts on ecological goods and services." [Exhibit B226-2, Northern Gateway Pipelines Inc. Written Argument ("ENGP Written Argument"), p. 67, Paragraph 207]*

4311.           The Wet'suwet'en want to reply to this. Firstly, that it does not follow from the purported fact that the right-of-way would, taken as a whole, generally be located in disturbed and affected areas. Rather, it needs to be considered -- and this comes up again in our submission -- relative to the Wet'suwet'en territory and the generally -- located in disturbed and affected areas.

4312.           Firstly, creating a strip crossing the east-west length of Wet'suwet'en territory that cannot be reforested on Enbridge's own evidence, will lead to impacts on game resources and access to game by non-Wet'suwet'en hunters. Enbridge has conceded it cannot reforest all of the impacted areas and indeed, the right-of-way itself will not be able to be reforested.

4313. Secondly, Wet'suwet'en replied that portions of their territory up to this time remain pristine, and that includes the Burnie Lake and Clore River area, access at this time which is only by walking or helicopter. For these portions of the Wet'suwet'en territory at least, the claim of Mr. Anielski in his evidence is not applicable. Now, this lends -- and thus lends no support to Enbridge's dismissal of serious concerns of impacts raised by the Wet'suwet'en.
4314. Significantly, the area I'm referring to is also the area in which the Clore Tunnel and the associated staging area campsite and waste-rock disposal area is proposed to be constructed.
4315. Finally, the Wet'suwet'en note that the assumption is that where Enbridge's right-of-way intrudes on already disturbed and affected areas, impacts on ecological goods and services are lessened compared to undisturbed and unaffected areas.
4316. This assumption, in effect, treats Aboriginal people's territories as black boxes, if I may say as much, with no need to consider the internal tenure systems, which in the Wet'suwet'en argument -- main argument, we referred to how that had been recognized by the Courts specific to the Wet'suwet'en.
4317. Hence, Mr. Anielski and so Enbridge assume that the effects of its right-of-way on those portions of Wet'suwet'en house territories already disturbed and affected is the same for each house.
4318. They -- in doing this, they overlook even the possibility, much less the likelihood, that Wet'suwet'en houses living with significant disturbances to their particular house territories may well experience the addition of the impacts of Enbridge's right-of-way even more keenly in regard to their ecological goods and services.
4319. At -- and where I refer to paragraphs, I'm referring to Enbridge's written submissions. At paragraph 243, Enbridge relies on the Project's economic benefits to Aboriginal peoples. It refers to Mr. Carruthers' argument and evidence that First Nations communities either have to accept the Project and some risk of spills or have to say they don't want the Project's benefits, especially economic benefits not only for themselves but for all Canadians.
4320. So he makes these statements that are cited. If you want to make the chance of spill zero, you have to have no project and then you have to say, we

don't want the benefits. [ENGP Written Argument, p.80-81, Paragraph 243]

4321. Now, in reply, the Wet'suwet'en say that Enbridge is creating a false dichotomy. The Wet'suwet'en have never taken the position that an infinitesimal risk of spill would make the Project unacceptable. The problem with the Project is its real and actual risk of major impacts on one or more of the water systems that flow through Wet'suwet'en territory or the land resources on Wet'suwet'en territory, not some hypothetical risk approaching zero.

4322. It is easy to say that there is a remote chance of a spill but once a spill happens that chance is 100 percent and there is no turning back at that point. The devastation to water or land resources has occurred. This is what makes the proposed Project unacceptable to the Wet'suwet'en.

4323. The Wet'suwet'en have already, for over the last 120 years, experienced the consequences of different impacts such as this. Now, in fact, Enbridge even presented evidence that there is no -- quote:

*"...there is no acceptable way of quantifying cultural effects in economic terms." [Transcript Volume 92, Paragraphs 14642-14644]*

4324. End quote.

4325. Their expert, Dr. Ruitenbeek, conceded that stating -- by stating put in the:

*"But in terms of valuing an entire culture, and an entire entity, such as a First Nation or a particular ethnic group, for example, there are definitely no acceptable ways of quantifying those." [Transcript Volume 92, Paragraphs 14644-14647]*

4326. Now, when any value is not quantified or is deemed not to be quantifiable, such values are not given as much weight. Therefore, Enbridge is, in effect, arguing that the JRP should accept a de facto minimization of cultural values and Aboriginal values, notwithstanding the constitutional entrenchment and protection of Aboriginal rights since 1982.

4327. Now understood that the Wet'suwet'en question how anyone, including Mr. Carruthers, can consider a rational approach for the Wet'suwet'en

to put their people and culture at risk of significant harm, in effect, to a roll of the dice, for the sake of short term jobs and some money for themselves and the long-term enrichment of others.

4328. The implication is that Wet'suwet'en society and culture have little value in western terms and certainly cannot come close to match the value of such an impressive economic project, as the proposed Northern Gateway.

4329. Unfortunately and regrettably, this builds in an ethnocentric bias against the Wet'suwet'en which is what they have fought against since the earliest contact and takeover of Wet'suwet'en territory in the late 1800s, as told by the late Johnny David in the *Delgamuukw* case. [*Delgamuukw v. The Queen, 1991 CanLII 2372 (BCSC), p.72. Also: Hang Onto These Words: Johnny David's Delgamuukw Evidence U of Toronto Press 2005, pp.97-98 Also Introduction, p.8*]

4330. And I refer you there to the finding of the Trial Judge in that case, which is cited there in *Delgamuukw and The Queen* at page 72 of the CanLII reference where he says this:

*"That the first farmers moved into the area around 1900 and there was much resentment."*

4331. This was in his summary overview of the historical overview findings. None of this was disputed at higher levels -- this particular paragraph -- which continues, to this day, about pre-emption of land occupied by Indians and over the issue of land script for veterans of the Boer War.

4332. This script was used to dispossess some individual Indians from land which they have been occupying, especially in the Bulkley Valley. Well that, of course, is where the Wet'suwet'en are and were.

4333. In reply to paragraph 393 to 399 of Enbridge's argument, it responds to the Wet'suwet'en concerns of the impacts of metal leaching and Acid Rock Drainage (ARD) or it purports to do so. [*ENGP Written Argument, pp.122-124, Paragraphs 393-399*]

4334. The Wet'suwet'en reply that Enbridge, in its argument, concedes that the, quote, "exact amount of PAG rocks at the tunnels is unknown". End quote. That's precisely the point raised by the Wet'suwet'en. There cannot be a determination of the scope of the impact without knowing what amount of acid

rock will be released.

4335. It is significant that one of the biggest areas of impact will in the Clore River area, to which I referred earlier, which is one of the few pristine areas of the Wet'suwet'en territory. It is noteworthy and significant that Enbridge did not respond in argument to the fact that their proposed route will go through areas in Wet'suwet'en territory already affected by Acid Rock Drainage, including at Owen Lake and Equity Mine.

4336. These areas have been significantly impacted already and this would increase the risk of further impacts on the Wet'suwet'en's ability to exercise their Aboriginal rights. In other words, it's not a question just of the science, the Wet'suwet'en have seen the impacts of ARD within their territory.

4337. These areas are significant Wet'suwet'en territories upon which the Wet'suwet'en have traditionally relied and continued to rely for their resources. The adverse impacts of the Equity Mine site on Wet'suwet'en resources has demonstrated to the Wet'suwet'en that when developments such as this occur, they are literally and figuratively left to deal with the fallout on their land.

4338. Enbridge states, quote:

*"The effectiveness of the installed mitigation measures would be monitored. Management of potential acid rock drainage will not be a problem. [ENGP Written Argument, page 124, Paragraph 399]"*

4339. End quote.

4340. Unfortunately, the Wet'suwet'en have heard such promises in the past from other project proponents, such as Equity Silver. Where is the mining company now that the acid rock drainage is a long-term problem? The Wet'suwet'en are still there having to deal with the impact on their lands and resources.

4341. In other words -- stepping out from my speaking notes. In other words, the Wet'suwet'en have already been down this road and have seen these adverse impacts, and have now had to deal with them in their succeeding generations.

4342. At page 6 -- paragraph 639 of Enbridge's argument, they respond to the Wet'suwet'en's oil spill pathway analysis and summarily dismiss this analysis.
4343. It is noteworthy that they do not address the reduced attenuation of evaporation and biological breakdown in winter months when there's ice on the rivers. Now, in reply to that point, the Wet'suwet'en point out that they do not have the resources to do the detailed and exhaustive analysis which Enbridge has at its disposal.
4344. The point of the analysis presented by the Wet'suwet'en was to raise the question as to what proven methods have been demonstrated by Enbridge for cleaning spilled oil product along the spill pathway under ice in the winter and during freshet flows.
4345. It is not sufficient to say the chance of such a spill is remote as the potential adverse effects on the fishery resource, which is a critical element of the entire Wet'suwet'en social system and social structure could be devastating. Unfortunately, instead of answering this issue, Enbridge decided to minimize and discount the means by which the Wet'suwet'en raised this issue through the oil spill pathway analysis.
4346. We ask that the JRP -- the Wet'suwet'en ask that the JRP not be distracted by Enbridge summary dismissal and consider Enbridge's failure to answer the questions about the oil product under ice in the winter and during freshet flows, as part of their own case.
4347. At paragraph 1279, Enbridge states:
- “One other aspect of the Office of the Wet'suwet'en participation warrants comment. Office of the Wet'suwet'en witnesses made a point referring to Wet'suwet'en customs for executing trespassers and the issuance of trespass warnings in the form of eagle feathers. This was unfortunate and detracted from otherwise helpful testimony.” [ENGP Written Argument, p.348, Paragraph 1279]*
4348. In reply, the Wet'suwet'en say here that Enbridge exhibits its failure -- and I would say fairly complete failure -- to even try to comprehend the context in which those statements were made. Even the Supreme Court of Canada has



elicited the importance of such evidence.

4349. The approach of Enbridge is one that suggests a narrow, ethnocentric, and I say indeed a 19<sup>th</sup> century approach to Aboriginal nations. Enbridge fails to demonstrate that this evidence of their traditions and laws on trespass demonstrate the central interrelationship between the Wet'suwet'en and their lands and resources. We of course expanded on that in the Wet'suwet'en argument -- in our main argument and just refer you to cross-reference to that.

4350. This is not a perspective that Enbridge appears able to understand. The lands and resources are vital to the survival of Wet'suwet'en society. This evidence demonstrates the serious import of that relationship and how it was addressed in pre-contact times.

4351. Indeed, the Wet'suwet'en relationship to their land has and continues to be a matter of, quote, "life and death", end quote, and that it is not only integral but is also critical to the survival of Wet'suwet'en society.

4352. And I referred a few moments ago to the comments of the Supreme Court of Canada in considering the significance of this evidence over 15 years ago, in 1997, where it states in support of the Wet'suwet'en claim to Aboriginal title: "*A consideration of the Aboriginal perspective...*" --- this is Chief Justice Lamer for the Court.

*"A consideration of the Aboriginal perspective may also lead to the conclusion that trespass by other Aboriginal groups does not undermine, and that presence of those groups by permission may reinforce, the exclusive occupation of the Aboriginal group asserting title.*

*For example, the Aboriginal group asserting the claim to Aboriginal Title may have trespass laws which are proof of exclusive occupation, such that the presence of trespassers does not count as evidence against exclusivity.*

*As well, Aboriginal laws under which permission may be granted to other Aboriginal groups to use or reside even temporarily on land would reinforce the finding of exclusive occupation. Indeed, if that permission were the subject of treaties between the Aboriginal Nations in question, those*

*treaties would also form part of the Aboriginal perspective.”*  
[*Delgamuukw c The Queen [1997] SCC, para. 157 (emphasis added)*]

4353. Now, at paragraph 1280 of their argument, Enbridge argues that 100 percent of its right-of-way is now covered by ATK studies (Aboriginal Traditional Knowledge studies). [*ENGP Written Argument, p. 349, Paragraph 1280*]
4354. In reply, the Wet'suwet'en say that, rather than doing an ATK study it commissioned a rights and title analysis which is consistent with the Wet'suwet'en position that has been before the Courts in *Delgamuukw* and the *Queen* since 1987, the Inter-American Commission on Human Rights in 2007, and in its effort at Treaty negotiation since 1997.
4355. The Wet'suwet'en are far beyond traditional knowledge studies stage, which they worked on prior to the *Delgamuukw* trials commencement in 1987.
4356. At paragraph 1243, Enbridge acknowledges the Wet'suwet'en did not support the Pacific Trails pipeline. However, it suggests that it is facile to suggest that Enbridge can rely on Aboriginal support of one project, the Pacific Trails pipeline, as other Aboriginal groups did support it which they assessed does not have as high risks with the Enbridge's Project. [*ENGP Written Argument, p. 343, Paragraph 1243*]
4357. Indeed, even the province has taken different approaches with each project, including for the reasons of relative environmental risks. That is of course what this Panel, that I'm speaking to, has to assess.
4358. The Wet'suwet'en opposition to the Pacific Trails pipeline is based on, amongst other things, the environmental impacts which have the potential of destroying a significant portion of several Wet'suwet'en house territories. I'm sorry -- that's with respect to this Project, the one before the Joint Review Panel.
4359. Although irrelevant to this Project, notwithstanding Enbridge's effort to bootstrap onto the Pacific Trails pipeline, the Wet'suwet'en replies that one-third of that pipeline passes through Wet'suwet'en territory and is very significant and that's the -- why the Wet'suwet'en did not sign on to this Project.
4360. In short, with respect to the reliance on some groups supporting the

Pacific Trails pipeline, it seems that this very much a red herring because -- and many parties that may have supported that have taken a different position, and it's a whole different type of situation.

4361. At paragraph 1278, Enbridge has written, in its argument:

*“In any event, even if Aboriginal title were to be proven in respect of all or a portion of the proposed right-of-way, [that would mean that the project --] that would not mean that the project should not, or could not, proceed.*

*Rather [the opposite], the [...] Wet'suwet'en would be entitled to deep consultation, something that has been afforded in this process. It should be noted that, in assessing the Wet'suwet'en strength of claim in the course of the Pacific Trails Pipeline [...] assessment, the B.C. EAO arrived at exactly the same conclusion -- without making any findings or conclusions regarding the existence of Aboriginal title.” [ENPG Written Argument, p. 348, Paragraph 1278]*

4362. Now, in reply the Wet'suwet'en say that Enbridge is confusing the duty owed prior to proof of title with the duty owed in the face of proven title. The Supreme Court of Canada has made it clear that with respect to the infringement of Aboriginal title, quote:

*“...in most cases, it will be significantly deeper than mere consultation [and some cases] may even require the full consent of an Aboriginal Nation.” [Delgamuukw v The Queen [SCC] par. 168]*

4363. The assumption that this process, quote, “afforded”, end quote, deep consultation is misleading in that the Courts have made it clear that the issues of each Aboriginal nation needs to be addressed and, in fact, the arguments made by Enbridge are generalized arguments of impacts over the whole pipeline and not specific impacts to the Wet'suwet'en as was set out in our argument.

4364. In fact, Enbridge has conceded in their -- in the evidence which was at -- in September 20<sup>th</sup>, 2012 examination of Dr. Ruitenbeek by Ms. Williams-Davidson, that he conceded that -- and he agreed that:

*“...you indicated that you [...] not put weight on one group over another and that in the absence of any particular further information, it's weighted equally; is that correct?”*

4365. We'll provide the citation in the final reference but it's -- I think it -- we'll put it as a footnote.

4366. Now, in the oral submissions on June 17<sup>th</sup>, Enbridge relied on legal authority just not -- to justify not having addressed certain impacts. [*International Reporting Inc. – OH-4-2011 Hearing Nov. 8, 2012 – Vol. 104 (A49083) (Adobe page 114)*] And they relied on the Oldman River case as referred to and they stated at paragraph 95:

*“As you carry out the environmental assessment that will form part of your report, you should consider arguments of insufficiency in that context. There is nothing wrong with incorporating additional environmental information into project planning as it becomes available. A sound planning exercise should embrace and take advantage of all opportunities to do so.”*

4367. However, contrary to this argument, Enbridge acknowledged during testimony that the Morice River, which is one of the critical rivers going through the heart of the Wet'suwet'en Territory, was not even sampled. [*12-11-08 International Reporting Inc. – OH-4-2011 Hearing Nov. 8, 2012 – Vol. 104 (A49083)*]

4368. Specifically when asked if habitat mapping and assessment -- down in Reach 2 of the Morice River had been done, Mr. Anderson for Enbridge, stated they had not sampled in the Morice. [*12-11-08 International Reporting Inc. OH-4-2011, Hearing Nov 8, 2012 - Vol. 104 (A49083) (Adobe page 114)*]

4369. Contrary to the final oral submissions of Enbridge, the fundamental issue of impact of the proposed Project on one of the most significant rivers, certainly, within the Wet'suwet'en Territory, has not been assessed.

4370. Now, this is another key part of the impact of the Project which has more questions unanswered than answered at the end of this process.

4371. Now, going to paragraph 1235, citing *Delgamuukw*, Enbridge has this

to say about Aboriginal title:

*“Assertions of an Aboriginal right to make land or marine use decisions must be viewed with the same degree of caution. Even if a parcel of land were proven to be subject of Aboriginal title (which has not yet been done in Canada), that title would not confer upon the Aboriginal group in question the unfettered right to decide land use. The Supreme Court of Canada discussed this at some length in Delgamuukw, in holding that even Aboriginal title lands could be used for development, such as mining, forestry and infrastructure.”*  
[ENGP Written Argument, p. 342, Paragraph 1235]

4372. In reply, the Wet'suwet'en, who of course were one of the two Nations in *Delgamuukw* state that the Wet'suwet'en Chiefs were the Plaintiffs in *Delgamuukw*, they along with the Gitsa'an.
4373. The Supreme Court of Canada never used the term “unfettered” in describing the scope of Aboriginal title. What the Court said was that Aboriginal title confers upon its holder the exclusive right to decide land use, exclusive of provincial and federal governments and thus of third parties such as Enbridge; who rely on permits from the federal or provincial governments.
4374. It also says that uses to which Canada may put Aboriginal title lands are thus infringement to the rights and as such cannot proceed absent constitutional justification.
4375. The Wet'suwet'en case for Aboriginal title is strong and was not rejected by the Supreme Court of Canada in *Delgamuukw*, who decided to set the case back for trial for other reasons on a procedural basis.
4376. Now, the Wet'suwet'en submit that Enbridge's efforts, first, to characterize the Wet'suwet'en and other First Nations opposition to their project as unreasonable and even unfair and that it would, if it stopped their project, “imperil the future of Canada's economic and social structure”.
4377. And second, to imply that if Wet'suwet'en cannot justify their opposition to the satisfaction of Enbridge and its picture of what counts as reasonable, an apparently impossible task, reveal a blindness to what Aboriginal title really means.

4378. As the Wet'suwet'en observe and have set out in our written argument that was -- has been filed with you, the Aboriginal title gives the Wet'suwet'en the right, indeed the exclusive right, to decide to what if any uses their lands may be put. *[ENGP Written Argument]*
4379. And that's from the -- not Enbridge written argument but the Wet'suwet'en written argument at paragraphs 114 to 116.
4380. The choice is theirs by right. Exercise of the right, similar to the right of a fee simple owner, does not require justification to anyone. Justification is Enbridge, and ultimately the Crown, or Canada's problem. They are the ones contemplating infringement.
4381. In other words, Enbridge here has turned the legal principle on its head. It has said "no, the Wet'suwet'en and other Aboriginal Nations have to justify why they -- this Project should not proceed".
4382. That's not the law; that is not the understanding. The infringement should be on the hands of Canada and its -- the proposed permittee Enbridge. Thus Enbridge, not the Wet'suwet'en has to demonstrate reasonableness.
4383. Enbridge blindness regarding Aboriginal title extends to their discussion of, quote "tradeoffs", and quote, unquote "balancing", in their oral reply argument of June 17<sup>th</sup> and its implications for the Wet'suwet'en.
4384. In the oral arguments, they made the following statements:
- "But we don't live in an ideal world. Tradeoffs are a fact of life. That does not mean [...]any person, any community or region should be marginalized, which is why this project has conducted such an extensive public and Aboriginal consultation program, why your Panel has conducted such a wide-ranging and long proceeding, and why the project has developed such extensive programs for local and Aboriginal economic opportunities. It is also why the project has committed to such a comprehensive suite of mitigation measures for environmental protections."*
4385. All it means is that, in determining public interest, we need to seek a

balance; a balance that respects local interests, plans and that will deliver benefits to local communities and environmental sustainability, while still ensuring that projects that are needed so the country can proceed.

4386. Underlying these remarks is a belief -- and we say a fallacy -- that it doesn't matter what the Wet'suwet'en decide and it most certainly doesn't matter if the Wet'suwet'en decide against the Project because, at the end of the day, it's really about big picture trade-offs, outsiders coming in, and balancing of interests. Wet'suwet'en Aboriginal title and Wet'suwet'en's efforts, against the odds, to carry on as their forefathers on their lands are irrelevant and their title-grounded decisions are of no effect.

4387. In other words, to go back to what Justice McEachern found in 1991 in the Historical Overview, just as the federal Crown of that day decided to get Boer War script and to remove Wet'suwet'en from their land in the late 1800s and the early 1900s, without their permission, so Enbridge is really saying: Look, just move them aside. It's nice to talk to them but, at the end of the day, their rights are not relevant.

4388. Now, Enbridge has a lot to say about consultation. Treating Aboriginal title as it does shows a failure to appreciate the special purpose of consultation in the face of Aboriginal title.

4389. As the Supreme Court of Canada made clear in *Delgamuukw* because Aboriginal title:

*"...encompasses within it a right to choose to what ends a piece of land can be put, ..."*

4390. the Crown has a duty, when contemplating a title infringing activity, to seek:

*"...the involvement of Aboriginal peoples in decisions taken with respect to their lands."*

4391. Consultation in the face of Aboriginal title is directed at involving the people who have the prior and constitutional right to decide how the land is used in those Crown decisions with infringing effects.

4392. As the Courts made clear, it's not open to the Crown to treat an

Aboriginal community's decisions about its land as irrelevant and never, including when they are opposed to a project of any force and effect [*Delgamuukw, para. 168*] contrary to the arguments being made by Enbridge.

4393.           There is no doubt that approval of Enbridge's Project would constitute a serious infringement of Wet'suwet'en title.
4394.           In conclusion, we say that Enbridge has minimized and, indeed, does not even value the rights of the Wet'suwet'en -- I'm talking about the legal rights -- has globally viewed widely diverse Aboriginal values of the Wet'suwet'en and their acknowledged social system of governance over lands and resources which are critical to their structure with the Haida, the Gitga'at and the other Nations, who have completely different resource systems and resources and different Aboriginal governance systems.
4395.           Enbridge has suggested that they may address potentially massive Acid Rock in a pristine area of the Wet'suwet'en territory but they're not sure how. Enbridge has failed to sample or assess the risks of a spill path in those areas and, ultimately, is asking the Wet'suwet'en and other Aboriginal Nations to trust them in their technology to somehow protect Wet'suwet'en Aboriginal rights and title.
4396.           With respect, that is what the Wet'suwet'en have been told since the first White settler fenced the lands where the late Johnny David's father lived in the late 1800s. That's what was promised by Equity Silver when they opened the mine overlooking Goosly Lake, which is a critical area for the Wet'suwet'en Chiefs, who have hunted and trapped there since before contact. This is what has happened since the Supreme Court of Canada, in 1997, urged the Wet'suwet'en to negotiate a resolution of their title with the Crown and they have still got no resolution with the Crown.
4397.           The promises have continued and are continuing to this day before this Panel, but the devastation of Wet'suwet'en lands and resources continue without any lasting protection or agreement with the Crown.
4398.           As the Wet'suwet'en Chief Namox stated at the hearings in Burns Lake:

*"This proposed project endangers our promises to our grandchildren that we would look after our land, our culture,*



*our people for them. We cannot break this promise to our grandchildren."*

4399. The Wet'suwet'en want to thank the Panel for hearing the importance of the Wet'suwet'en rights and title in their land and the importance of the resources and the land for the Wet'suwet'en and why -- and listening to the Wet'suwet'en Chiefs as they have explained why they have had to object to this particular project proposal.

4400. Those are -- subject to questions, Madam Chair and Panel, those are the submissions for the Wet'suwet'en.

4401. **THE CHAIRPERSON:** Thank you, Mr. Grant.

4402. The Panel has no questions and thanks the Office of the Wet'suwet'en for their submission.

4403. **MR. GRANT:** Thank you.

4404. **THE CHAIRPERSON:** Goodbye.

4405. We will now connect up with Sherwood Park Fish & Game Association. So it will just take a couple of minutes to dial up and get the next party on the line.

--- (A short pause/Courte pause)

4406. **THE CHAIRPERSON:** Good afternoon, Mr. Boyd. It's Sheila Leggett speaking.

4407. **MR. BOYD:** Oh, good afternoon.

4408. **THE CHAIRPERSON:** Thank you for joining us.

4409. Please go ahead with your reply submission.

4410. **MR. BOYD:** Very good.

--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. BOYD:

4411.           **MR. BOYD:** Good day, Madam Chair and Panel. Andy Boyd here representing the Sherwood Park Fish & Game Association.
4412.           As we are without legal or other support staff, I won't claim to have read every word of written argument presented. It is mid-June, as I'm sure I don't have to remind you, there's grass that needs cutting and fish that need catching. Volunteer hours to review hundreds of pages of legal argument are at a premium at the moment.
4413.           We did at least skim through them though concentrating on argument relating to areas of particular interest to our members, primarily wildlife and freshwater fish habitat conservation.
4414.           Some interesting commonalities stood out from this review. Many of the intervenors who oppose the Project commented the Application was not thorough enough in its review of environmental impacts; not that it was not done, but that it was not adequate.
4415.           Just what constitutes an adequately thorough environmental impact assessment seems to be very much a matter of personal perception. It is our perception the level of detail required at the Application stage should be adequate to demonstrate what level of importance the Proponent places on the environmental impact of their Project.
4416.           When, and if, approval is granted, and the detailed engineering stage is reached, a more detailed level of environmental planning becomes possible. Requiring every fine environmental detail to be predetermined, as suggested by some, at the application stage is unrealistic.
4417.           Comparing Northern Gateway's level of planning at this stage of the Project with other pipeline projects we have been involved in would indicate they have provided a much higher level of detail on environmental impacts.
4418.           The Kinder Morgan Anchor Loop twinning project through Jasper National Park, a few years back, is the only other project, that we are familiar with, that came close. In our experience, Northern Gateway has provided, through such undertakings as their watercourse crossing sensitivity ranking system, and their extensive spill modelling programs, a level of planning well

- above the average for other pipeline projects.
4419. We welcome the conditions on approval that will monitor Northern Gateway's delivery on their commitments they have made, and ensure they follow through on the detailed environmental planning as the Project proceeds, if you were to recommend it should.
4420. As we speak, our association continues to work with Enbridge to find mutually beneficial freshwater fish habitat compensation projects in Northwestern Alberta along the proposed right-of-way, which demonstrates to us their long-term commitment.
4421. A second major commonality we noticed when reviewing the written argument is that the core, or basic Northern Gateway proposal has been overshadowed and encumbered by much larger and more complex issues.
4422. Environmental issues such as our society's reliance on non-renewable oil based energy sources and related greenhouse gas/climate change impacts, go well beyond considering the advisability of any single pipeline proposal. That's not to say that such larger issues should not be discussed, but there must be a more appropriate forum for that discussion.
4423. Similarly, many of the First Nations issues, which have taken up much of the Joint Review Panel process, are much bigger questions than can or should be addressed when considering any single pipeline proposal. Certainly it is critical that our country comes to term on these outstanding Aboriginal challenges, but holding a particular project hostage until such complicated and perplexing long-term issues are resolved is fundamentally unfair.
4424. It may be appropriate for the Joint Review Panel to comment on the obvious need for governmental leadership to provide a mechanism for public debate on such issues. Certainly we understand the frustration felt by those who see ongoing approvals of major oil infrastructure projects perpetuating our societal dependence on unsustainable and environmentally harmful energy sources.
4425. Nevertheless, we feel your Panel must remain focused on the actual pipeline proposal itself. You can't be expected to remedy all of Canada's ills through this one recommendation.

4426.           And that, Madam Chair, concludes our comments. We thank you for listening to our ramblings over the past few months and thank all the good folks at the Energy Board for their assistance.

4427.           **THE CHAIRPERSON:** Mr. Boyd, thank you very much for your submission. The Panel has no questions.

4428.           **MR. BOYD:** Very good. Thank you.

4429.           **THE CHAIRPERSON:** Bye bye.

4430.           We'll call next the United Fishermen and Allied Workers' Union.

4431.           We'll move down the list to Mr. Cullen, which I believe will be another phone in. So again we'll just take a short break while we reach Mr. Cullen.

--- (A short pause/Courte pause)

4432.           **THE CHAIRPERSON:** Thank you for being able to join us remotely.

4433.           We can hear you very clearly in the room here.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. CULLEN:**

4434.           **MR. CULLEN:** Thank you, Madam Chair.

4435.           And I -- first of all, on somewhat of a personal note, I've just recently read the news article about some of the losses that Members of the Panel and staff have suffered, so on a personal note I wanted to express my condolences. I can only imagine how difficult it is to do the job that you folks are engaged in while other more important and personal things are going on.

4436.           I'm here in Parliament this afternoon. The plan was, of course to join you in Northern B.C. but the speed with which we are passing through the final arguments and the intervenors that have been unable to provide their final thoughts, has required that I cancel my flight tonight and join you on the phone.

4437. I would offer that if there is some, I'm not sure if "irony" is the exact word, but as I'm sitting here in the Centre Block of Canada's Parliament, I'm one floor and about 300 metres away from the Prime Minister's Office. And as the rules have been constructed around the new rules that were changed halfway through this process, the final decision will not be made in the northwest of British Columbia but for, I would suggest political reasons, they'll be made in this building by the Prime Minister and his Cabinet.

4438. I -- I raise this as it's an important part of the introduction to my -- my final argument that one of the things we need in assessing such a -- a project of such magnitude and scope is a fair and balanced process.

4439. I believe that the Panel has endeavoured in its many hearings and meetings to achieve this, yet the Panel can only exist within the rules that are set out by the politicians and, in this case, by the -- the Conservative government here in Ottawa.

4440. And -- and many I suspect, I, in fact, know have -- have had their trust and faith diminished somewhat as they've seen the -- the rules that guide us change so fundamentally.

4441. The -- the drastic and environmental -- drastic environmental and economic risks posed by the Project have been outlined by many of the groups and individuals that have preceded me. I believe they have convincingly shown that we along the route carry much or all of the risk while Enbridge and its investors enjoy short term benefits and profits.

4442. This frames much of the conversation from the very beginning of Enbridge's proposal to build its 1,100 kilometre pipeline and the associated supertankers along our coast, a question of risk and benefit.

4443. I will -- I will focus my final arguments today on the -- the section of the Proponent's final argument related to public consultation and Aboriginal engagement, as well as the conduct of the -- the Government of Canada regarding this Project and this process.

4444. To be clear, I'm not here with you representing just myself or as a politician or on behalf of the party I represent in the House of Commons, I think as the only elected representative who has chosen to commit to the intervenor status, I -- by the nature of my work and my life, make an effort to speak on

behalf of others, to speak on behalf of others both in Canada's Parliament and across the country. I am here conveying the views of the people and the -- and the communities I represent in the great northwest.

4445.           Actively participating in this -- in this process, for any ordinary citizen, would be an almost impossible venture.
4446.           The time, the money it takes to fully participate would seem almost inconceivable for a private citizen or a non-profit group and indeed for many of the communities and -- and completely out of reach.
4447.           As a Member of Parliament, with the resources and time that I have, I'm here to give some of those communities, some of those groups, some of those individuals a voice in what is so critical for us. We are engaged in making a decision not just for now, but for the next 50 years.
4448.           And when making a generational decision, one must be careful to weigh all of the pros and cons and it is -- the onus is firmly placed on the Proponent to prove that the -- the risks are non-existent or to such a minimal effect that future generations will not be cursed by the decisions that we impose upon them.
4449.           I want to speak about the process itself for a moment. I would argue that over the last 18 months or more, the Government of Canada has made concerted and specific efforts to undermine and undercut this process.
4450.           **THE CHAIRPERSON:** Mr. Cullen, it's Sheila Leggett speaking. As you know, this is the time to reply to the arguments that have been put forward by others. Can you help us understand which argument you're replying to in your comments?
4451.           **MR. CULLEN:** I'll just take one moment, Madam Chair.
- (A short pause/Courte pause)
4452.           **MR. CULLEN:** Just -- I'm back, Madam Chair. Just to clarify, if the -- if the process and the guideline under which we are making this decision, are you suggesting that would be off limits for today's final argument?
4453.           **THE CHAIRPERSON:** I'm -- I'm telling you that in Procedural

Direction Number 12, we outline that the purpose of the oral argument was to reply to the arguments that have been made before, either in writing or orally.

4454. And, as you're at the -- near the bottom of the list, most of the other parties have -- have already presented oral -- their oral reply. So those are the areas that we're looking to hear from you today on. We're not listening -- we're not here to listen to a reiteration of the written argument that you've previously filed. We're here to hear your reply comments on the arguments of others.

4455. **MR. CULLEN:** Thank you, Madam Chair.

4456. Then in reply to the federal government's arguments which, I believe, four various federal agencies, if not five, were able to somehow summarize their arguments before the Panel in under half an hour, I would submit that the -- the argumentation made by the federal government in -- both in the cross-examination stage and as their final argument, with respect to consultation and impacts with regards to this Project have been of serious, serious concern to me and to many others.

4457. When we have looked at the -- the lack of scrutiny by the Department of Fisheries and Oceans and Environment Canada with regards to the impact on fisheries, the impacts of bitumen spill, and the lack of attention or evidence brought forward that would assuage some of the many fears that residents in the northwest have, we are left in a difficult position, Madam Chair, in that one can't argue against testimony, particularly at this stage that hasn't been given, that when we, through the cross-examination process asked for dates and specific times of consultations that are constitutionally required for Aboriginal consultation, we were told that there had been none.

4458. When we asked the Department of -- Environment Canada with examination for what impacts had been studied in the many river crossings that the 1,100 kilometre pipeline would -- would impact, there too we were told that once certificates were issued, we would then have more evidence to bring to the process.

4459. We have found that consistently representatives from the federal government have provided us with a very lacking or complete lack of evidence and effort with respect to bringing the voices of the people of the northwest to bear.

4460. The fate of diluted bitumen in a -- in a water system has been of great concern and of great interest to the Panel, I know. We have found that the federal government's role in discerning the actual impact of this product on our fisheries and on our rivers, is an abject failure on the part and responsibilities of the federal government. Simply not doing the work, not doing the science is not an argument in favour of a project.
4461. As I said at the beginning of my final argument, the onus remains on the Proponent and I would argue, in this case, on the federal government to prove a project is safe and to prove that consultations, particularly on the First Nations front, are important and of significance.
4462. I have -- I have some comments about the -- the way in which the federal government has engaged along the process, but Madam Chair, under your -- under the directive of this, I feel that perhaps it would be stepping out of the bounds with respect to comments made of citizens who have happened to raise their voices in -- in concern or opposition to this Project.
4463. I will -- I will take a moment to go through the Proponent's record. The Panel has -- has heard from -- from previous speakers about the seriously questionable record that Enbridge has with regards to pipeline safety, compliance, and spill response.
4464. Enbridge's three-year odyssey -- if that's a word we can use -- in Michigan following the Kalamazoo River spill is just a small but important example of the impacts we might face here with a similar or larger spill in the northwest of British Columbia.
4465. It should also serve the Panel of an example of how this company behaves in the real world, beyond the rhetoric and promises we've seen in the application and in their final arguments.
4466. The fact remains: if Enbridge has the safety standards to prevent spills, and the technology and know-how to respond to them when they happen, why were they not able to do so just three short years ago?
4467. We -- we must note as well that the -- the disaster in Michigan occurred at a time when much of the Proponent's application to the Panel relating to spill prevention and response had been filed.



4468.           So if they knew then, why weren't they able to prevent or respond effectively to the spill?
4469.           And how can we reasonably expect better, if Enbridge's response and recovery efforts were a complete disaster in the placid Kalamazoo River, when comparing that to the significant and much stronger river systems of the northwest like the Skeena and other river systems?
4470.           **THE CHAIRPERSON:** Mr. Cullen, as I mentioned, this isn't the time to reiterate or reinforce your written argument, we've had the opportunity to read that, but it's your opportunity to reply to the arguments of others. So can you help the Panel understand which argument you're replying to and which portion of that that you're replying to?
4471.           **MR. CULLEN:** That argumentation we're responding to is Enbridge's claims in their final argumentation and throughout this process as to their safety records, their spill response and compliance, and their ability to demonstrate their -- attempts to demonstrate some level of competence with respect to a potential spill in the northwest system. This has been a central factor in their argumentation; that they are able in the event of a spill to be able to respond effectively.
4472.           I would like to perhaps move on to the economic arguments made by the Proponent.
4473.           **THE CHAIRPERSON:** Thank you, Mr. Cullen. If you can help us again, you know, understand where in the argument you're directly replying to it's helpful to us.
4474.           **MR. CULLEN:** Thank you, Madam Chair. Maybe I'll just take a moment before I move on to the economics, if I can have the committee's permission.
4475.           **THE CHAIRPERSON:** Absolutely, Mr. Cullen.
- (A short pause/Courte pause)
4476.           **MR. CULLEN:** Madam Chair, with your permission, I'd be pleased to continue.

4477.           **THE CHAIRPERSON:** Thank you, Mr. Cullen. Please proceed.
4478.           **MR. CULLEN:** Thank you, Madam Chair.
4479.           As I mentioned at the very beginning, part of the challenges for average folks being able to understand what is always submissible and what is not, the Panel has heard about the risks that would be put upon the economy and the environment in Northwestern British Columbia as a result of approving this Project. I'd like to respond to the Proponent's contention that this Project is in the, quote, "national interest of Canada" -- "national economic interest" -- excuse me -- "of Canada".
4480.           On June 17<sup>th</sup> Enbridge's lawyer suggested that if the Panel does not approve the Project Canada could be looking at, quote, "an economic catastrophe of unprecedented proportions." End of quote.
4481.           Now, submitting this to the Panel as a stated fact, without considering the broader implications of this type of energy and economic policy is, I believe, a poor attempt at making an argument in favour of the Project. Allow me to explain.
4482.           The alarmist nature of such a quote, of an economic catastrophe if this Project were not to be approved, speaks directly to the ignoring of central facts around this Project as it is right now designed.
4483.           The reality is very much different and I would argue completely in the opposite direction as to respect to the national economic and public interest. The lawyer for Enbridge referred to the spectre of a double-discount on Canadian bitumen as well as the prospect of American energy independence. Northern Gateway pipeline will not solve either of these issues, rather, in addition to compromising our communities, our economy and environment, it will only serve to ship Canadian jobs overseas.
4484.           The Panel has heard much about the nature of upgrading the economies of adding value to our raw resources. Transporting this product, as it is, is expensive and refining it is a resource and job intensive exercise. There's a reason it's sold at a discount, and it's not about a pipeline shortage.
4485.           A second issue is that eastern Canada is importing oil from the Middle East, which begs the question of whose energy independence should we be

- occupying ourselves with. The preoccupation of American energy independence should be doubly so that for Canada. We find that the lack of energy coherence, while not Enbridge's consideration, is certainly the environment in which they live.
4486. The third issue about refining jobs in Canada is one of the most poignant. Recapping Enbridge's argument regarding this Project as being in the national interest belies the shortened view of what energy independence and economic strength really means, creating untold environmental risks so that we can ship a crude unrefined resource overseas along with the many thousands of Canadian refining jobs while still leaving half our country dependent on foreign unreliable oil.
4487. I'm told billions of dollars would be lost, not just in the salaries of those workers adding value to this product, but billions more in the taxes that support our schools and hospitals, all get shipped at the same time. We, in the northwest, have experienced this economic model already over the last 15 to 20 years as government policy has directed more and more raw log shipments away from the northwest rather than into the mills of the territory. You are holding hearings right now in a community that has suffered greatly by such policies.
4488. The value-added process with energy is even more intensive than it is with forestry. We have lived the reality of raw export policy. And for a Proponent like Enbridge to come into the northwest and argue that raw export is good for the Canadian and regional economies of this country, absolutely flies in the face of reality, a reality that we unfortunately have had to live.
4489. I will now take a moment to move on to the public consultation Aboriginal engagement and social licence piece, if I may, Madam Chair.
4490. **THE CHAIRPERSON:** Please go ahead.
4491. **MR. CULLEN:** Enbridge has made extensive consultations. They made the submission, not only in their final arguments, but in previous iterations of the Panel and made much noise of this in the public sphere.
4492. I, as a Member of Parliament, obviously engage myself in very broad and regular public consultations across the northwest to some of the most remote communities. Recently I -- we have engaged in a project entitled "Renewal Northwest" which was to seek an answer to a very profound question which

occupies the minds of the Proponent and I imagine this Panel as well.

4493. The social licence to operate is a concept well-known in industry and becoming better known in the Canadian public, and that is in its most basic form the community support, knowledge and participation in projects that affect our daily lives.
4494. While I've conducted this tour it's given me even further insights into the types of developments and economies that residents in our regions would like to see built. We are at our fundamental heart a resource reliant people. We have relied on forestry, fishing and mining and so on for millennia, and we are seeing a massive and unprecedented wave of investment right now in the northwest.
4495. I wish that the company were able to participate with me in some of these because their final argumentation seemed to suggest that phone calls and meetings, both informal and informal with communities, just the process itself, was enough to garner them the social licence to operate. But the heart of proper and good consultation means that one enters the process, one enters the conversation willing to change one's mind about fundamental things.
4496. Now, it seems that large numbers of contacts are meant to replace and override the fact that through all of this consultation process Enbridge has rarely, if ever, changed its mind and certainly never changed its mind about the fundamental nature and risks of its Project to the people they are consulting with. This is a very cynical form of consultation.
4497. As well as we have seen raw resource export policy and the damage that it causes in the northwest. We have seen what false consultation looks like when proponents, federal governments have sought to engage with us, have said that they are here to consult and listen, take many notes, leave and come back with the exact same project as they did before they bother talking to us. Unfortunately, this has led to a very high level of cynicism.
4498. While the Proponent might be focussed on getting to "yes" at all times, we in the northwest, when we enter these consultations, expect them to be sincere, expect them to perhaps lead to a change of heart and mind, and certainly we expect them to lead to greater understanding by those that are consulting with us; this has not been the case. Enbridge has had many unfortunate circumstances in which consultations have gone badly.

4499. I won't speak to the particular offences that I've been given but it has become part of the narrative, certainly, of this story that it is not enough and it is not sufficient to say we will consult with First Nations, we will consult with communities if you are not also willing to commit to actually modifying, significantly altering or perhaps even abandoning your plans if those consultations lead you to a conclusion that the overwhelming feeling, thoughts of people in the Northwest are against the very nature of the Project, that the risk that has been exposed is so great that there isn't a slight modification or slight advancement that will make that reality different.

4500. It has been unfortunate that as Enbridge has sought to achieve certainty, which we acknowledge is important for the business community, particularly for heavy resource and industry, they are unwilling to believe that the possibility of "No" exists and that that "No" could be a reactive -- reactionary "No" coming from the residents of the Northwest but a well-considered, well-contemplated, based on science rejection of the idea of an 1100 kilometre pipeline from a company that has had experiences with spills and damage to the environment.

4501. It is imperative upon us as stewards of this place that, when we are consulted, we engage, we offer our best thoughts and views but we have a certain expectation that long-term legacies that are experienced will be brought to bear by the Proponent, whatever their nature, be they industry or government.

4502. The Proponent has also argued time and again and in their final argumentation that one of the chief merits of this Project is the potential to bring long-term, local economic benefits to the region. Our region is far too resourceful and innovative and respectful of the environment to believe that Northern Gateway is the only way to put food safely on the table.

4503. As I have said, we have always been a resource region and, as such, we are pragmatic people, constructive and a solution-seeking people. We frankly do not need a pipeline company to tell us how to develop our economy. We're open to forestry that is well managed. It creates local jobs and respects the environment.

4504. We're open to mining projects that are managed sustainably and create legacy funds. We're open to fishing that drives our local economy and strengthens our food security. We're open to many energy projects that do not compromise our environment or, better yet, move us away from the fossil fuels

altogether to help us develop the green energy sector.

4505. Many of these conclusions came through our consultations from Renewal Northwest. The Enbridge Gateway Project as designed and as been argued earlier this week speaks directly against many of the values that we hold dearly. I'll just take a moment to pause, if I may, Madam Chair.

4506. **THE CHAIRPERSON:** Go ahead, Mr. Cullen.

4507. And we do understand that you registered as an intervenor as an individual. So we understand that you're expressing your views.

4508. **MR. CULLEN:** Thank you.

--- (A short pause/Courte pause)

4509. **MR. CULLEN:** Thank you, Madam Chair. I'm ready to begin again.

4510. **THE CHAIRPERSON:** Please continue.

4511. **MR. CULLEN:** In their current -- in their written argument, Enbridge has frequently claimed how extensively they conducted their community consultations. [pg 295]

4512. In Section 15 of the argument, Enbridge lists the number of meetings, presentations, phone calls and other ways in which they have solicited community input.

4513. As always, the Proponent is chocked full of metrics and, at first glance, some of these numbers look supportive and satisfying. In their final argument, Enbridge described the primary goal of the community consultation as "*...an exchange of information...*" on page 310.

4514. However, this definition, just like the application of Enbridge's consultation is neglecting the most important step in this process: taking the information and putting it into action to accommodate the wishes of communities.

4515. Unsurprisingly, the overwhelming majority of community feedback has been in opposition to the Project, as you, yourself, the Panellists have heard. This is where the numbers start to fall apart.

4516. Looking through the Proponent's final argument, it's difficult to see significant changes made to the Project based on consultations in non-First Nations communities.
4517. We have found a few references to changes made to accommodate consultations in Aboriginal communities, both of which have been condemned as grossly inadequate by the same Aboriginal groups that they were seeking to accommodate both in pipeline design and the ATK study on page 298. [*ATK Study, pg 298; pipeline design, pg 359*]
4518. This means that, in terms of the specific details and designs of the Northern Gateway Pipeline Project, all that community consultation that happened might as well have not occurred. B.C. communities have clearly gone to great effort to make sure Enbridge knows their perspective.
4519. People have driven great distances, taken time away from their kids, work and family and to have these input utterly ignored both in the final argumentation and in the design of the Project is worrisome and, in fact, insulting to many of the people that I speak with and to myself, as a person in the Northwest.
4520. We often say a bad resource project is like a bad piece of art and we know it when we see it. I would -- on page 360 of their final argument, the Proponent claims to have responded meaningfully -- I'm quoting now Madam Chair:
- "...meaningfully and constructively to the concerns expressed..."* (As Read)
4521. If they had meaningfully and constructively responded to our concerns, why do the representatives of the City of Prince Rupert, Terrace, Smithers and Fort. St James council all remain committed against this Project?
4522. If that were the case, why did we hear the Coastal First Nations, on June 16<sup>th</sup>, say that they remain 100 percent opposed to this Project?
4523. I have a series of quotations from people around the Northwest, Madam Chair, that have written me but I suspect that as you confirmed in your latest response before my last break, that you'd prefer me only to use my voice in

this argument. Let me just say that, if it were true that the concerns were being incorporated and addressed, certainly then, the opposition to this Project would have diminished.

4524.           And as I have dealt with this Proponent and with the communities along this route that are at the greatest risk if something goes wrong, I can unequivocally say that that is not the case.
4525.           It's become somewhat insulting to some of the community members and to myself, as a person on the Northwest but yet it's perhaps even more insulting that when Enbridge has claimed, as it has recently in their testimony, that the concerns of community members have been, on page 369, seen as "unqualified" or "baseless", [pg 366] "cursory" [pg 299].
4526.           To suggest that when people have raised legitimate concerns, people that are most directly impacted by this Project to the very core of who we are and to call our concerns unqualified, baseless and cursory, is to dismiss out of hand the need to have public support. It is to dismiss out of hand the imperative of any company seeking to invest and operate that the social license to operate should remain at the heart and core of their operations.
4527.           I looked carefully over the 199 considerations that the Panel has suggested to this point in the process, Madam Chair. I would submit that there may be a first and most important consideration and that is that community support.
4528.           That if the social licence to operate has not been achieved by the company and that the onus to achieve that support is firmly placed upon the company, then it simply cannot be permitted to operate and to build a project that we will live with for a generation or more.
4529.           In conclusion, Madam Chair, it has been an interesting and an engaging effort to stand as an intervenor in this process. I have been incredibly impressed and moved by the effort and determination of fellow citizens across the northwest who have, with very few resources, mostly at kitchen tables, almost entirely volunteer, have presented cogent, powerful, science-based arguments to show that this Project's risks far outweigh the benefits, and that the Proponent, with its significant resources and significant political assistance, has been unable to sway the people that I represent or myself.



4530. It is a reminder to me of the importance of community, the importance of true consultation, and the importance that, even in the face of risks and at times threats, we have drawn together more closely than we ever have before, First Nations and non-First Nations, community to community, and across the political spectrum. It has left us, while rattled somewhat, more unified than I've ever seen us before.

4531. I thank you for your and the Panel's time today, Madam Chair.

4532. **THE CHAIRPERSON:** Thank you, Mr. Cullen.

4533. The -- thank you for your submission and the Panel has no questions.

4534. **MR. CULLEN:** Thank you very much, Madam Chair.

4535. **THE CHAIRPERSON:** I wish you safe travels when you have the opportunity to get back home again.

4536. **MR. CULLEN:** That'll be late this evening or early tomorrow morning. Thank you, Madam Chair.

4537. **THE CHAIRPERSON:** Goodbye.

4538. We'll call next the World Trade Centre Edmonton, which I understand is another teleconference so we'll just take a couple of minutes to connect.

4539. Let's take our afternoon break now.

--- (Laughter/Rires)

4540. **THE CHAIRPERSON:** So we'll come back for 25 to three, please.

--- Upon recessing at 2:18 p.m./L'audience est suspendue à 14h18

--- Upon resuming at 2:35 p.m./L'audience est reprise à 14h35

4541. **THE CHAIRPERSON:** Good afternoon, Mr. Bobocel. It's Sheila Leggett speaking.

4542. **MR. BOBOCEL:** Good afternoon.

4543.           **THE CHAIRPERSON:** So I understand you're representing the World Trade Centre Edmonton; is that correct?

4544.           **MR. BOBOCEL:** That is correct, yes.

4545.           **THE CHAIRPERSON:** Please provide us with your reply submissions.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. BOBOCEL:**

4546.           **MR. BOBOCEL:** Okay. Thank you so much, Madam Chair, Members of the Panel. I appreciate this opportunity. We have been watching the proceedings and listening to the proceedings and would like to also thank all the participants to date. I think the conversation has been valuable and we've certainly learned a lot from it and I hope you all have as well.

4547.           As a matter of background, the World Trade Centre Edmonton is part of a global organization of over 300 world trade centres around the world. The mission of the organization is to promote peace to prosperity and trade. World Trade Centre Edmonton has a membership of over 10,000 businesses across -- throughout Northern Alberta and Northern Canada, each sharing a vision that vibrant trade promotes prosperity.

4548.           We've heard through these hearings this week, significant consideration of trust, whether we can or cannot trust Enbridge, or in this case, the Project Proponent. I refer to the testimony provided by the Edmonton Chamber of Commerce, which represents over 2,600 businesses, 100,000 plus employees and the well-being of their families with the highest concentration of pipelines and hydrocarbon terminals in the country.

4549.           The Edmonton Chamber states that they trust Enbridge as a corporate citizen and that they trust their own lived experiences with Enbridge, not -- and Trans Mountain pipelines and quality of life that these projects and these corporations provide daily. The fact that they're highly dependent on a vibrant hydrocarbon industry is essential to our position.

4550.           We've heard criticisms from numerous presenters that Enbridge is not to be trusted, that the language within the Project proposal is inconsistent or that Northern Gateway's stakeholder consultation has been disingenuous. We

- wholeheartedly disagree with this assertion. We find that that consultation has been more than sufficient and that Enbridge has met the burden of trust.
4551. It is the position of the World Trade Centre Edmonton that healthy and vibrant trade, again, promotes peace and prosperity. The World Trade Centre has a principal trust in free markets. It trusts that the increased revenues from getting our resources to diversified markets around the world will realize social benefits, not just through British Columbia and Alberta but across Canada.
4552. It is the position of World Trade Centre Edmonton that businesses and nations engaged in trade and commerce either meet their obligations and stated commitments or they fail as businesses. We trust that Enbridge will, indeed, meet these expectations.
4553. Enbridge is a successful and responsible corporate partner with experience -- sorry, experience-building pipelines and transporting hydrocarbons throughout North America. As pointed out by the Edmonton Chamber of Commerce, this is a mature industry and, contrary to what many critics would say, the circumstances of this pipeline are not particularly unique.
4554. It is imperative that our valuable natural resources, the Canadians valuable natural resources, reach global markets, so that we can extract the maximum value to ensure prosperity for generations to come. World Trade Center Edmonton believes that this Project, the Northern Gateway Pipelines Project, enables this goal for the prosperity of all Canadians.
4555. As previously stated, our prosperity, our nation's prosperity and social well-being depend on trade, largely the trade of hydrocarbons, and we're very good at it. This pipeline project is a vital piece of infrastructure, of nation-building infrastructure that promotes peace and prosperity in our society by enabling Canada to trade effectively and prudently through tidewater access and diversified markets.
4556. As such, World Trade Centre Edmonton strongly supports the Joint Review Panel's approval of the Northern Gateway Pipeline Project.
4557. I made up my comments today short and succinct, as I know that this process has been a long one and it's been a long week for everyone. So that's the conclusion of my statement today.

4558. Thank you very much.

4559. **THE CHAIRPERSON:** Thank you very much for your submission, Mr. Bobocel.

4560. The Panel has no questions.

4561. **MR. BOBOCEL:** Thank you very much. Have a good day.

4562. **THE CHAIRPERSON:** Thank you. Goodbye.

4563. United Fishermen and Allied Workers' Union and so I understand that's going to be a remote connection. So we'll take another little break to get that done and then we'll move forward.

--- (Short pause/Courte pause)

4564. **THE CHAIRPERSON:** Good afternoon, Ms. Thorkelson, it's Sheila Leggett speaking.

4565. **MS. THORKELSON:** Good afternoon.

4566. I want to thank you very much for being so flexible with me today. It's unfortunate or fortunately for us, we've had very good fishing and we have lots of fishermen in town and people working. And tomorrow, fishermen are preparing to go fishing again and so we have lots in the office, and we had some urgent meetings that we had to attend to today, and I'm sorry that I've been unavailable either to go to Terrace and I've been difficult to get a hold of.

4567. I've tried to make my meetings so that they would not be in the way of this hearing, but it's been exceedingly difficult today, and I want to thank you very much for your patience and for your time.

4568. **THE CHAIRPERSON:** Ms. Thorkelson, you're here and we look forward to your comments.

4569. You're actually at the pivot point, you're the last party on the top down and so we'll be turning around after you and doing the bottom up.

4570. So please proceed with your reply submissions.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. THORKELSON:**

4571. **MS. THORKELSON:** Thank you.

4572. Our reply submission is very short because we believe that we've covered all of our points that we did want to make in our written submission, and we have -- just for the record, the Union has agreed with every recommendation that has been made by the -- orally and in the written submissions that will tighten up -- any conditions that will tighten up this Project if they do go ahead. We believe that this Project needs to be run, if it goes ahead, under the tightest conditions possible.

4573. So that, instead of going through all of them, I think people have done a pretty good job, we're just going to say that if a condition is -- it's been suggested that it be tightened, that we would agree with that.

4574. The need for -- we'd like to first discuss the need for the Project. On page 33 of Enbridge's Written Submission, B226-2, one of the undeniable facts that they say regarding the need for the Project is that the world needs oil and, therefore, the need for the Project is compelling.

4575. The Union argues in response that the need for -- sorry, of the world for oil is not what this hearing is to determine. It is if it is in the public interest of the people of Canada, not of the world. We also propose that the need for food trumps the need for oil and the fishing resources of Canada are more important to Canadians and to the world's peoples than oil.

4576. Enbridge also argues on page 33 of the written argument that billions of dollars are being transferred to U.S. refineries and:

*"The only way to stop this massive transfer of wealth is to diversify Canadian crude oil markets [...] through a high capacity crude oil pipeline to the Pacific Basin on the west coast."*

4577. This will presumably mean that Canada will be better off. We question that. The producers are pretty much foreign-owned and the jobs that we will receive from oil production will be there whether we sell our oil to China or

to the U.S.

4578.           What will increase jobs in Canada and wealth to Canadian workers is to build secondary oil processing facilities in Canada. This will increase employment and tax revenue and slow down the production of oil.
4579.           We can keep this oil for future generations and still retain processing -- still retain a producing capacity.
4580.           This leads to the question of who is to benefit from the proposed pipeline. Enbridge's written argument on page 78 says that:
- "In determining the public interest, we need to seek a balance; a balance that respects local interests, plans and that will deliver benefits to local communities and environmental sustainability." (As read)*
4581.           We agree with this part of their statement. Where we disagree is that the Enbridge Pipeline and Tanker Project -- where we agree -- sorry, where we disagree with the statement is that Enbridge says that the pipeline and tanker project does all of those things.
4582.           We disagree and we believe it places the interests of oil producers in front of other interests, particularly interests of those in the commercial fisheries.
4583.           Enbridge says that B.C. is supposed to benefit from the Project because there will be more navigational aids and a better spill response program that exists today. That's on page 78 of their written submission.
4584.           That is hardly a benefit when the greatest threat of the spill is by the Proponent's Project.
4585.           We would also like to make a comment on Dr. York's testimony. We believe that it's very clear from the transcripts, particularly Volume 82, that under questioning Dr. York added to the analysis that he provided in his written report. And this is what we understand that the questioning phase of the hearings was for: to test the information given in the reports.
4586.           The lawyer for the AFL drew out the additional information on the length of Enbridge's impact -- one year -- and drew, through questioning,

information from Dr. York on the alternatives to the Project.

4587. I believe that the Panel should rely on Dr. York's testimony and not on his report and just on his report. And certainly not on the Government of Alberta's or Enbridge's interpretation of the transcripts, which we say again are very clear.

4588. And we are disturbed to hear that, in their oral argument, Enbridge does not believe that bitumen or dilbit or condensate is highly toxic. They say, at Volume 176, which is their oral argument, page 21 at paragraph 89:

*“Crude oil hardly qualifies as being ‘highly toxic’, at least in the ordinary sense of the word. Nor does condensate, which is otherwise known as natural gasoline.”*

4589. And they also deny that there are chronic impacts from dilbit on fish. We would challenge them as to where they found this information because they have agreed through their testimony many times, both written and oral, that oil is toxic to fish.

4590. We are not going to go into chapter and verse here about the impacts of oil on fish as we have provided a discussion of this in our written argument at Adobe page 40 to 42 of the Union submission which is B203-16-3. However, for Enbridge to take this position shows an incredible disregard for fish and for the commercial fishing industry, as well as for the truth.

4591. We would also like to address the position regarding recovery time that Enbridge presented in their oral argument at page 35 in Transcript Volume 176.

4592. Enbridge suggests there that because Dr. Pierson is characterized by them as “honest and sincere”, you should believe his evidence that everything impacted by oil recovers. This is not true, as found in the sworn testimony given by other experts, Gitxaala -- by Canada and by the Gitxaala Panel and they're too many -- and I have a list of where those excerpts are, there's too many just to read out.

4593. We also disagree with Enbridge's vision of the Fisheries Liaison Committee. The Union has participated in many such committees as Enbridge proposes it to be, which is to reduce conflict between other marine vessels and us

in the fishing industry.

4594. Enbridge's own expert referred to the Union's participation in a lower mainland committee at least twice in the Shipping and Navigation Panel, and we are in the process of setting up a similar committee with the Port of Prince Rupert. And although this was not given in evidence, there is a committee right now that deals between BC Ferries and the crab fleet regarding same kind of disputes between -- about regarding care and vessel traffic, fishing traffic.

4595. The Alaskan Regional Advisory Committee should be used as the basis for the FLC if the Project does go ahead, in spite of our best efforts to prevent it. We examined the regional -- the Alaskan Regional Advisory Committees with Enbridge's expert witnesses and this information is on record. If the primary purpose of the Fisheries Liaison Committee is, as Enbridge describes in their written submission at line 1434, to identify measures -- this is what they've said, to identify measures:

*"The primary purpose of the FLC is to identify measures to reduce the conflicts between tanker movements and fishing. The FLC could also develop procedures for compensating damaged fishing gear."*

4596. Then this committee should not even be set up as an Enbridge driven committee if this is -- if Enbridge's primary purpose is as what I just read, then this committee should not even be set up as an Enbridge driven committee. But Enbridge should participate in the committee that we're setting up with the Port of Prince Rupert.

4597. The Fisheries Liaison Committee should, instead, cover spill response and biological studies, as well as shipping and navigation issues. It should be funded to the same levels as the Alaskan pipeline funds the Alaskan Regional Advisory Committees.

4598. Enbridge uses the Alaskan time standards for marine oil spill response of "36,000 metres within 72 hours". However, it objects in their oral submission that "it does not make sense to prescribe a specific time period", but:

*"What is important, [they say,] is that you have the right equipment in place to do the job, at the right locations, at the right time."*



4599. And that quote is in their oral statement at Volume 176, page 48.
4600. In Alaska, it is the Regional Advisory Committees that determine which equipment and where the equipment should be cached. The Union believes that both the Alaska response time and the Alaska style, Regional Advisory Committee, as determined in Alaska legislation, which was discussed in the testimony -- in the Shipping and Navigation Panel -- should be required if the Project goes ahead.
4601. Those, I think, are our -- any -- that's the additional responses that we would like to make to the Panel. We don't plan to reiterate everything else. Like I said, it is fishing season and we're busy and we think that those are the contributions that we can make in addition to other's contributions.
4602. So we would like to thank the Panel and the JRP staff for being fair and helpful in our struggle to meet the requirements of this hearing process. We've had technical difficulties at time, we've had travel difficulties and everybody's been very patient with us.
4603. I'd like to say that the Union believes that we have to have hearings like this in order to have a truly democratic country, and we certainly are thankful that the Panel has put this amount of time and effort into these hearings. And I do want to thank you on behalf of our membership and wish you good luck in your deliberations.
4604. **THE CHAIRPERSON:** Thank you very much, Ms. Thorkelson.
4605. The Panel has no questions on your submissions so we'll let you return to an obviously very busy life outside of the hearing.
4606. **MS. THORKELSON:** Thank you.
4607. And I'm not going -- because I'm at the end, I guess if I had wanted to take my hour and then a further 15 minutes, but I have nothing more to say so I won't see anybody and I would like to say goodbye to everybody. And it is fishing time for me so it's just impossible for me to get back to the hearings next week. So goodbye to everybody and I want to again, thank you very much.

4608.           **THE CHAIRPERSON:** Thank you very much, Ms. Thorkelson, for your participation.
4609.           Safe fishing this summer.
4610.           **MS. THORKELSON:** Thank you very much.
4611.           **THE CHAIRPERSON:** Bye bye.
4612.           So that does finish us off as I mentioned, on the top down. And so now we'll proceed on to the bottom up.
4613.           I just want to make a few comments before we get going but it looks like Mr. Neufeld would like to make a comment so, Mr. Neufeld?
4614.           **MR. NEUFELD:** I thought that I might rise now, Madam Chair, before you go through that and start the bottom up procedure, just by way of a process check.
4615.           As you know, it's been a pretty, obviously, a lengthy proceeding and we've heard this week a lot of arguments from opposing intervenors -- I think 29 in all that we've listened to carefully. We're in the process of, obviously, reviewing the transcripts of those arguments and considering our reply.
4616.           Were you to arrive at our spot in the order today, we wouldn't be able to -- or wouldn't be in a position to provide reply today and nor really tomorrow morning either, so our suggestion would be that if you do get to us today, that we would want to come back Monday morning and provide you with a considered response.
4617.           Primarily, I might add, it's not so much the content or the substantive replies to our oral comments earlier this week that we need some extra time to consider, but the comments regarding conditions.
4618.           We want to be very careful and very precise in responding to the comments around that because, as you know, conditions are something that you live with for a long time, should the Project proceed, and we want to make sure that we're very clear and precise in the types of responses that we give you to the positions that are taken on things such as the coatings requirement, emergency response drills, and that kind of thing.

4619. So that's where we stand and I say that now because it may well be that people will be able get through the bottom up portion today with sitting a little bit longer and we wouldn't have to come back tomorrow morning.

4620. **THE CHAIRPERSON:** Thank you for your submission, Mr. Neufeld.

4621. Just give the Panel a moment please.

--- (A short pause/Courte pause)

4622. **THE CHAIRPERSON:** Thank you very much.

4623. Mr. Neufeld, I just have a question of clarification from you. I heard in your comments that you weren't going to be ready to go tomorrow morning. And, of course, we've all been sort of trying to figure out where we're going to be in the process, and here we find ourselves Thursday afternoon ready to start the bottom up. If the Panel was to be able to make itself available tomorrow afternoon -- we're just seeking to understand -- does it remain your preference to go on Monday as opposed to any time tomorrow?

4624. **MR. NEUFELD:** I would think that it would, Madam Chair, but obviously the extra time would be helpful as well.

4625. **THE CHAIRPERSON:** So if the choice was available to go tomorrow -- tomorrow afternoon, your preference is still to go on Monday?

4626. **MR. NEUFELD:** Just give me a moment.

4627. **THE CHAIRPERSON:** We took our moment. You can have yours.

--- (Laughter/Rires)

--- (A short pause/Courte pause)

4628. **MR. NEUFELD:** Again, Madam Chair, I think that the central issue is really quality control and just making sure in terms of the conditions, in particular that were all square with our response and our recommendation.

4629. The one condition -- I just might add that the one condition that's of particular importance, as far as just simply the cost ramifications is concerned, is the one that relates to the three layer coating issue, and we're still running that to ground in terms of what the potential cost parameters of that would be in terms of compliance with the proposal as currently made versus what we understand to be the standard approach that would be used on that.

4630. That's a very, very high ticket item. So that's why I'm hesitating as far as the time. We may need a little bit more time to run that to ground.

4631. **THE CHAIRPERSON:** That's fine, Mr. Neufeld. What I'm understanding is that Monday is the time that you would be ready?

4632. **MR. NEUFELD:** Yes.

4633. **THE CHAIRPERSON:** Thank you.

--- (A short pause/Courte pause)

4634. **THE CHAIRPERSON:** Thank you.

4635. As people have heard, Northern Gateway has requested additional time to prepare its oral reply to the oral arguments that have been presented in the top down and soon to be bottom up portions of this hearing.

4636. For everybody's information, who may not be familiar with regulatory proceedings, the Board frequently allows Applicants additional time to prepare final oral reply argument because of the large number of arguments that they are replying to. Northern Gateway's request is not unusual.

4637. Most of the parties presenting oral argument are adverse in interest to Northern Gateway. They've referred to a large amount of evidence on the record and have addressed numerous conditions. Northern Gateway will not be able to complete its argument until the end of the bottom up argument.

4638. As we have time in our schedule, the Panel will allow Northern Gateway to present its final reply argument on Monday, 24<sup>th</sup> of June, and we'll set that time down as 9 o'clock in the morning.

4639. **MR. NEUFELD:** Thank you, Madam Chair.

4640.           **THE CHAIRPERSON:** In addition, the Panel recognizes that more preparation may result in shorter more concise oral argument. Thank you.
4641.           Mr. Robinson?
4642.           **MR. ROBINSON:** Yes, Madam Chair. The Coalition would like to respond to that ruling, and actually it's too bad we didn't have an opportunity before you made the ruling.
4643.           The Panel's procedure throughout these hearings has been that all parties must be ready to proceed when called and, as you're well aware, the schedule has contracted and expanded several times and making it difficult for people to make that judgment call but we've always been required and prepared to respond.
4644.           Certainly, there are several points in these hearings in which the Coalition would have been happy to request three days extra to prepare our response to -- to what's been going on and, you know, you mentioned the size of the record and the materials that Northern Gateway needs to respond to, but the Coalition and other groups with much less resources are dealing with exactly the same volume of material to respond to.
4645.           Several parties I know, including the Coalition, have very much indicated their wish to be present and -- and able to be in the room during Northern Gateway's final closing. Given that the remote option has now been taken off the table as a result of your decision this morning, we're now looking at physically having to be in the room which, for the Coalition in particular and I expect others, is a great cost consideration either having to stay over or -- or to return.
4646.           So I think, just to be consistent with the approach that has been taken to these hearings, I find it, with respect, somewhat unusual that Northern Gateway would be allowed this extra three-day period and the Coalition would just ask you to reconsider your decision on this matter.
4647.           **THE CHAIRPERSON:** I was just going to ask if there's anyone else who wishes to speak and it looks like Ms. Griffith would like to as well, thank you.

4648. **MS. GRIFFITH:** Thank you, Madam Chair.

4649. I'd like to echo the comments of Mr. Robinson on behalf of the Coalition and I'd also like to add that the Haisla Nation certainly would have had -- like to have had more than just the time during which Canada presented its oral reply to prepare for a response to that oral reply and hasn't had that opportunity due to the sequencing for the top down argument.

4650. The submissions on conditions occurred largely on Tuesday and Wednesday, not today, and I believe the submission on the conditions on the coating were on Tuesday. So it seems there's been a fair amount of time with regard to that particular condition.

4651. We've -- I've arranged to be here through the end of the hearings by noon tomorrow in hopes that I could be here during Northern Gateway's top -- bottom up oral reply and I note that Northern Gateway has specifically identified only one condition to which they really need more time to reply to which is the three-layer coating component.

4652. So perhaps the ability to delay reply could be limited to that one particular condition.

4653. Thank you.

4654. **THE CHAIRPERSON:** Thank you, Ms. Griffith.

4655. I understand that Dr. Wier is calling in to talk to the Panel.

--- (A short pause/Courte pause)

4656. **MS. MILLS:** Ms. Wier?

4657. **DR. WIER:** Yes.

4658. **MS MILLS:** It's Ruth Mills.

4659. **DR. WIER:** Fine, hi. This is Josette Wier here in Smithers.

4660. Oh, my apology. Hello?

**Administrative matters**

4661.           **THE CHAIRPERSON:** Hello, Dr. Wier. It's Sheila Leggett here.
4662.           **DR. WIER:** Hi, it's so complicated. I've been on for several minutes, but nobody answered.
4663.           Okay, I want the -- the input I wanted to say is I need some time too. It's -- it's been compressed way way way too fast. No -- no time to answer, so if Enbridge wants to -- or Northern Gateway wants time for Monday, it's okay with me by remote participation for myself -- for other -- the other intervenors.
4664.           **THE CHAIRPERSON:** Thank you -- thank you, Dr. Wier.
4665.           **DR. WIER:** Thank you.
4666.           **THE CHAIRPERSON:** I believe there's others who are wanting to speak?
4667.           You'll need to turn on the microphone, sir.
4668.           **MR. EVANS:** It's my first time at the mic.
- (Laughter/Rires)
4669.           **THE CHAIRPERSON:** I didn't think I recognized you.
4670.           **MR. EVANS:** Yeah, that would do.
4671.           **THE CHAIRPERSON:** Can you introduce yourself to us, please?
4672.           **MR. EVANS:** My name is Chris Evans.
4673.           **THE CHAIRPERSON:** Okay.
4674.           **MR. EVANS:** I'm appearing on behalf of Rosanne Kyle who had to get back to Vancouver and she's asked me to stand up and say that we support the statements made by the Coalition and Haisla Nation and Gitxaala's case is really an illustration of the problem that they've identified where, because we couldn't participate remotely, we made special arrangements for me to stay today and tomorrow and we won't be able to continue to have me here on Monday.

4675. So thank you.

4676. **THE CHAIRPERSON:** Thank you.

4677. Was there anyone else who wanted to speak to this?

4678. Give us a moment please.

--- (A short pause/Courte pause)

4679. **THE CHAIRPERSON:** Dr. Wier has -- in her comments has raised the request that she too would like additional time.

4680. I'd like to hear from parties who want to express an opinion on -- on the acceptability from the parties perspective of delaying all the bottom up until Monday. One of the points I would make is that we did set aside two weeks. We believed we were going to be here for two weeks.

4681. I don't know that anybody in this room had -- and if you did, you should go buy a lottery ticket I think ---

--- (Laughter/Rires)

4682. **THE CHAIRPERSON:** --- had an understanding that we were going to be where we are this afternoon.

4683. And so, are there any parties who wish to comment on the -- on the possibility of the Panel deciding that -- that we will delay all the bottom up until Monday?

4684. **MR. ROBINSON:** Madam Chair, I booked my flight out tomorrow afternoon, so I win the lottery, I think, as to when this was going -- should -- should have ended -- or not tomorrow afternoon, pardon me, Saturday afternoon I booked my ticket out.

4685. I would oppose Ms. Wier's suggestion in the suggestion that we all wait until Monday. It really doesn't resolve anything for us. It still means the Coalition having to put out the expense of being here until Monday and -- and it really doesn't change the picture all that much because I expect we'll get through whether it's Northern Gateway's or Northern Gateway's and everybody else's, I



- expect we'll get through it on Monday but it would be certainly preferable to get through it -- through the rest of today if we don't spend too much time on this issue and the time that's available tomorrow.
4686.           **THE CHAIRPERSON:** Mr. Minchin?
4687.           **MR. MINCHIN:** Good afternoon. I'm speaking for Cheryl Brown who isn't able to make it today because she's working and was expecting to maybe speak tomorrow but she will be available on Monday as well. So we'd like to see some flexibility for other intervenors that couldn't foresee how this schedule was going to giddy up along.
4688.           **THE CHAIRPERSON:** As we mentioned in the opening remarks, it's from a procedural fairness perspective. Once we start the bottom up, we need to continue on in the order that we came down in the top down. So we don't have the same flexibility to jiggle parties. We've now got the order set and that's the order that we will follow going bottom up.
4689.           Ms. Griffith?
4690.           **MS. GRIFFITH:** Thank you, Madam Chair.
4691.           I just wanted to add that your proposal wouldn't affect my ability to do my bottom up because, at this point, I don't actually think I have any bottom up but it does affect my ability to be here to hear potentially Northern Gateway provide its reply.
4692.           Thank you.
4693.           **THE CHAIRPERSON:** Thank you, Ms. Griffith.
4694.           **MR. NEUFELD:** Madam Chair, may I just suggest, I think, that it does make sense to do it the way that you've suggested but we're in your hands on that.
4695.           **THE CHAIRPERSON:** I don't see anyone else coming to the microphone so I believe we've heard all the comments that parties wanted to provide us on this.
4696.           Again, give us a minute please.

--- (A short pause/Courte pause)

4697.           **THE CHAIRPERSON:** Thank you very much for everybody's submissions.

4698.           The Panel has come to a decision as to how we will proceed. We will begin with bottom up on Monday morning at 9 o'clock. In light of the comments, the Panel is prepared to reconsider our Ruling 165 of this morning, and we would invite counsel to work together with our staff to find a technological solution as to how this can be accomplished. So we will move forward on that basis.

4699.           We will close the hearing this afternoon, at this point and we will reconvene in this same room at 9 o'clock on Monday morning to commence the bottom up.

4700.           Thank you very much everyone.

--- Upon adjourning at 3:30 p.m./L'audience est ajournée à 15h30