



FIRST NATIONS SUMMIT

May 2nd, 2013

**Presentation by Grand Chief Edward John,
First Nations Summit Political Executive**

**To the House of Commons Standing
Committee on Natural Resources**

1. Good afternoon ladies and gentlemen.
2. Thank you for inviting me to submit a presentation to your Committee today.
3. The issues this Committee is considering, outlined in the 6 "questions" (appendix 1) presented to me, as well as the "recommendations" you make, are critically important to First Nations in BC. Developing a just resolution of the "land question" in BC is essential but it requires the full and collaborative involvement of, as well as the free, prior and informed consent of First Nations.
4. They are important because they involve direct impacts on: our First Nations communities and peoples' social, cultural and economic well-being and dignity; the environment, lands and resources we rely on which continues to support our way of life and livelihoods; and the aboriginal and treaty rights, including aboriginal title, we have inherited from our ancestors and which are recognized and affirmed in the Constitutions of Canada.
5. There is one thing I want to have clear at the outset: our people, communities and constitutional rights, are considered by governments, industries and even the public, as "risks", "barriers" and "obstacles" which create "uncertainty" for "development". To assume, or suggest this, puts our people and our rights in an adversarial position. We do not see ourselves or our rights as "risks", "obstacles" or "barriers". We have a right and a responsibility to advance and protect ourselves, our well-being and dignity; our lands, resources and environment and; our rights.
6. During the course of this past winter the protection and promotion of these rights and responsibilities were key in "IdleNoMore", the grassroots First Nations/Aboriginal protest movement. The steps by the federal government in Bills C38 and C45 to limit or eliminate environmental



- standards and safeguards have in no way provided any assurances to First Nations who continue to practice their way of life and who provide for their livelihood by relying on the lands and resources in their respective territories. Because of this there is strong and widespread opposition to the significant risks associated with proposals such as those being advanced by Enbridge, Kinder-Morgan and Taseko.
7. Mechanisms such as political advocacy, action on the ground and litigation have all been used, with various degrees of effectiveness, by First Nations in advancing and protecting their rights, supporting their communities and peoples and defending their lands, territories and resources. Much of this has been seen as necessary because of the intransigence of, and in some cases, because of actions of Crown governments. However because of these initiatives, First Nations peoples are perceived in negative and discriminatory ways.
 8. I believe you have an important responsibility to recommend to the federal government, change as to the nature and tone of the unfortunate negative perceptions about First Nations peoples. As the saying goes "the tone starts at the top". I think it applies here.
 9. Our peoples are proud of who we are, proud of where we come from and proud of our linguistic and cultural heritage. Historic and even contemporary policies of the federal government have done much to deny, undermine and extinguish this. We can't change the past, but historical wrongs can, and should be remedied. As well we can strive to create more inclusive and dynamic relationships based on respect, recognition and reconciliation.
 10. The diversity and richness of the cultural and linguistic background of First Nations in BC is truly immense, and in my view absolutely wonderful and worth celebrating. We have some 30 tribal groups with seven linguistic families representing about 5% of the population in the province. However the federal government's Indian residential and associated policies have had, and continue to have, devastating impacts on our peoples and communities including families and languages. In fact, if nothing is done, some languages will become extinct in a generation or two.
 11. Our leaders, families and communities are working against difficult odds in rectifying this. They have, over several years and in countless meetings, developed proactive measures and actions and have created community, tribal and provincial institutions and initiatives. As members of Parliament it is important for you to ensure the federal government recognizes and supports these significant steps to improve our peoples "quality of life". It is our view that, in time, the changes we need will happen.

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12. One of the most significant issues in BC relates to the inherent, legal and human rights First Nations have to and in their respective lands, territories and resources. These lands, territories and resources have, throughout our histories, provided for the well-being of our peoples. In the mid-1800s colonial authorities, without our peoples' agreement or consent, appropriated these to Crown sovereignty, ownership and jurisdiction. The underlying assumptions about our First Nations then were: that we were not civilized enough to have ownership to or authorities over our traditional lands, territories and resources and; that the civilizations of the new colonies were superior to those of our peoples. These underlying assumptions have been categorically condemned internationally including in the United Nations Declaration on the Rights of Indigenous Peoples.
13. However, and unfortunately, these underlying assumptions were recently re-iterated by the BC Court of Appeal in the Tsilhqot'in case, where the so called "principle of discovery" (also referred to as the "doctrine of discovery", established in US jurisprudence, and first applied in the St. Catherine's Milling case in 1888) was considered as a part of the rationale to deny the existence of Tsilhqot'in peoples title to their lands, resources and territories. These assumptions, even now forming a foundation for Canada's "aboriginal" relations strategy, including the comprehensive claims and self-government policies, must be re-considered.
14. The appeal in this case will be heard in the Supreme Court of Canada this fall and it is imperative that the federal government discontinue advancing arguments premised on these underlying, much maligned and discredited assumptions. A more respectful foundation, such as those contained in the minimum standards in the UN Declaration on the Rights of Indigenous Peoples will foster better First Nations-Crown relations."
15. In most of the province there are no agreements or treaties. Resolution and reconciliation however cannot be the extinguishment of, in any form or result, the aboriginal rights and aboriginal title of First Nations. The "certainty" necessary for First Nations must be one based on true and full recognition and implementation of aboriginal rights and title. This will provide a solid basis for First Nations to share and co-exist with all others and to provide for our economic, social and cultural well-being.
16. In negotiations in BC the existing unilateral and self-serving federal government comprehensive claims and self-government policies and mandates continue to be significant impediments to "good faith negotiations". Government cannot dictate what is, and what is not, negotiable; nor can it take the position that if a First Nations does not agree with its negotiation policies and mandates that they should pursue other options. This does not under any circumstances amount to "good faith" on the part of government. The Supreme Court of Canada has been



critical of this pattern of conduct on behalf of the Crown. It has repeatedly stated that "reconciliation" is an important constitutional purpose of s. 35 and that it is best achieved through principled negotiations conducted in "good faith".

17. For this Standing Committee the respectful resolution of the land question and the critical issues of certainty for First Nations "without extinguishment" and negotiations in "good faith" are definitely "key" to the six questions you raise.
18. The Prime Minister on January 11, 2013 (and on January 24, 2012) committed to set up a process to deal with treaty implementation and enforcement and, to reforming Canada's "comprehensive claims" policies and mandates. It is important that this Committee consider this as a priority and that the work necessary to revise Crown negotiating policies, including mandates, proceed with urgency and priority.
19. We know that the foundation of wealth generation to support the economic and social well-being of peoples comes from the access to and development of lands and resources. There is, in the coming years, an estimated \$650B worth of resource development and associated infrastructure pending in First Nations territories. One of the greatest sources of the enduring poverty in First Nations communities comes from the Crown dispossession of their lands, territories and resources and the continued denial and prohibition of First Nations from using and developing these to support their social and economic well-being. For example, notwithstanding recognition and affirmation in s.35 of the Constitution Act (1982) governments refuse to recognize the existence, including the nature and scope, of aboriginal title to the territories of First Nations. Recognition and the resolution of this would provide a solid foundation to support sustainable economic and social development. These lands, territories and resources have since time immemorial provided for the well-being of our peoples. There is no reason why this cannot be the case.
20. Regarding some public perceptions on this I want to refer to an opinion poll by the Asia Pacific Foundation, titled Assessing Canada-Asia Energy Relations. This poll was commissioned in March 2013 and directed to Asia practitioners, those who engage in business in Asia. A majority of Asia practitioners (63%) believe that the federal government should NOT allow the development of energy resources for export to Asia without first obtaining the approval of affected First Nations communities.
21. I also bring to your attention two key reports: the Canadian Council of Chief Executives July 2012 report entitled "Framing an Energy Strategy for Canada" and the Asia Pacific Foundation June 2012 report entitled,



"Securing Canada's Energy Future: Report of the Canada-Asia Energy Futures Task Force". Both of these reports highlight the importance of meaningful partnerships with Indigenous Peoples.

22. In conclusion, as articulated in Articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples, I strongly recommend that new and constructive standards provided in the Declaration as well as those set out by the various Supreme Court of Canada decisions form an important base for renewed First Nations-Crown relationships. The old standards are regressive, colonial and outdated. New standards will allow for an improved process for achieving reconciliation. There is now a good opportunity for strong and true partnerships with our First Nations while ensuring our communities realize benefits as well as the necessary protections and safeguards from development that is sustainable.

23. **APPENDIX - Questions from the House of Commons Committee on Natural Resources:**

Given the potential importance of market diversification to Canada's energy future and economic growth, the House of Commons Standing Committee on Natural Resources has decided to study this topic in greater detail and consider the following questions:

- *What is the current state of Canada's domestic and export energy markets?*
- *What are the key drivers of energy market diversification? Why are Canadian energy producers (including crude oil, natural gas, electricity and nuclear) looking to diversify their markets, both domestic and export?*
- *What are the key advantages and risks involved in diversifying Canada's energy markets? How would market diversification benefit the country?*
- *What are the key barriers to the diversification of Canada's energy markets? What are the key requirements for market diversification?*
- *What actions are needed from energy industries and government to realize market diversification in Canada's energy sector?*
- *What role can the federal government play in maximizing advantages and minimizing risks of Canada's energy market diversification?*

