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July 15, 2016

The Honourable Catherine McKenna
Minister of Environment and Climate Change
Environment and Climate Change Canada
200 Sacré-Coeur Boulevard, Gatineau QC K1A 0H3

RE: Terms of Reference for Expert Panel Reviewing Environmental Assessment Processes

Dear Minister McKenna,

Chiefs of Ontario (COO) is an advocacy forum, and a secretariat with a mandate for collective decision making, action and advocacy for the 133 First Nations communities located within the boundaries of the province of Ontario. These 133 communities hold treaty rights and COO works to assist in upholding the treaty rights and self-determination of these communities. A commonality between the First Nations is the importance of land. It is a founding source of identity and culture. First Nations have a great responsibility to protect and preserve the land that has been bestowed upon us by the Creator and captured in naturalized laws of respective nations. Some of these communities are in the far north and are only accessible by plane and winter roads.

This letter is in response to the call for comments on the terms of reference for the expert panel reviewing environmental assessment processes in Canada. A number of First Nation communities will also be submitting their own independent comments. Many of these communities will also be participating in the consultation sessions of this review. Please read below for comments as to the terms of reference.

Indigenous Engagement Plan and Timeline

Although the federal government has a general obligation to consult the public on such legislative changes as these, it has a legal obligation of duty to consult and accommodate with Aboriginal peoples under section 35 of the *Constitution Act* (1982). First Nations are also sovereign Nations, with a right to self determination, meaning that we have jurisdiction (the right, power and authority) to administer and operate our own political, legal, economic, social and cultural systems. This is why Canada must work with First Nations through a government-to-government

relationship. More so, with Canada's recent official acceptance of the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP), this consultation process, and subsequent consultation processes in the legislation that is under review, needs to be guided by principles of UNDRIP including free, prior and informed consent (FPIC).

Procedural application of FPIC requires adequate time and adequate resources. Participant funding for First Nations is one aspect and for that we are grateful. But, the usefulness of this funding is limited due to the tight timeline of the review. According to how the timeline is laid out, it would appear First Nation communities would apply for funding in August and consultation would begin September and end in December. **This is not enough time for communities to use the provided funding to adequately educate themselves on the impacts the legislation has for their communities.** The fast pace the federal government is taking in positions, policies and climate targets are leaving Indigenous people struggling to catch up. This is not in line with Trudeau's promise of a renewed relationship or the commitment to UNDRIP.

First Nations are the most vulnerable to the impacts of climate change in Canada. They are also the most impacted by resource projects, such as pipelines, which the legislation under review is responsible for.

Therefore, we please ask you to extend the timeline of consultation by four months in order to adequately engage Indigenous communities in the consultation process.

Review Panel Composition

In order for the review to be adequately conducted, and for the Question five* of the scope of the review answered, appropriate First Nations representation is required. (*Question five- *How to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects?*).

Scope of Review

Environment assessments aim to identify project development that has the least environmental impact. The scope of the review Question three aims to ascertain the same- "*How to require project advocates to choose the best technologies available to reduce environmental*

impacts?". In reality, however, we know that environmental assessments serve as a decision instrument for respective authorities and are not deployed to outright reject projects. We have seen mainstream dominant governments approve contentious projects despite concerns from environmental groups and Indigenous communities. Furthermore, environmental review tribunals and judicial review panels have not served our First Nations well. Expanding the scope of the environmental review to go beyond science-based impacts (especially in light of the uncertainty around validation) to include traditional knowledge would allow for integration of naturalized laws and worldviews that have sustained First Nations and respectful relationships to the natural world from time immemorial.

Confidentiality

Please note that in the absence of provisions to protect intellectual property and avoid exploitation of traditional knowledge, there will be reluctance amongst First Nations to share information that would fall in the purview of the *Access to Information Act*.

Sincerely,
CHIEFS OF ONTARIO

A handwritten signature in black ink, appearing to read 'Isadore Day', is placed over a white rectangular background.

Isadore Day, *Wiindawtegowinini*
Ontario Regional Chief

ENCLOSED: Map of Ontario First Nations

FIRST NATIONS

LES PREMIÈRES NATIONS



LES COMMUNAUTÉS DES PREMIÈRES NATIONS

Les collectivités des Premières Nations (ci-dessous) sont des entités distinctes et autonomes qui ont des gouvernements et des lois propres. Elles sont reconnues par le gouvernement fédéral et les gouvernements provinciaux. Elles ont le droit de négocier des traités avec le gouvernement fédéral et les gouvernements provinciaux. Elles ont également le droit de négocier des traités avec le gouvernement fédéral et les gouvernements provinciaux.

LES COLLECTIVITÉS DES PREMIÈRES NATIONS

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