

## **Statement from Canadian Law Professors re: Tsleil-Waututh Trans Mountain Project Assessment**

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We write as professors of law at several Canadian law schools to recognize and commemorate the May 26, 2015 release of Tsleil-Waututh Nation's *Assessment of the Kinder Morgan Trans Mountain Pipeline and Tanker Expansion ("TMEX") Proposal* (the "Assessment").

Tsleil-Waututh carried out its Assessment pursuant to its Stewardship Policy, which is an expression of the nation's inherent jurisdiction and law. The Assessment involved a review of the potential impacts of the TMEX proposal – not only impacts on the biophysical environment, but also on Tsleil-Waututh's interconnected cultural, spiritual, legal and governance rights and responsibilities. Legal principles that guided the assessment were drawn from Tsleil-Waututh traditional narratives and other Coast Salish traditional and contemporary sources.

The inherent jurisdiction and laws which Tsleil-Waututh relied on in completing its Assessment exist independently of, and pre-date the assertion of sovereignty by Canada. Section 35(1) of the Canadian Constitution recognizes and affirms such existing Aboriginal rights, including Aboriginal title and governance rights.

In the landmark Supreme Court of Canada decision *Tsilhqot'in Nation v. British Columbia*, Canada's highest court affirmed that Aboriginal title encompasses a right to "proactively use and manage the land" including making land use decisions. The Tsleil-Waututh Assessment is a pioneering example of a First Nation acting on this authority to review and decide whether a project should proceed in its territory.

Tsleil-Waututh's decision to reject the Kinder Morgan pipeline and tanker project on the basis of an in-depth review conducted pursuant to its own laws and policies is legally significant for a number of reasons:

- Although Tsleil-Waututh's inherent title to its territory has not yet been recognized by the Canadian courts, in *Tsilhqot'in* the Supreme Court of Canada notes that: "*if the Crown begins a project without consent prior to Aboriginal title being established, it may be required to cancel the project upon establishment of the title if continuation of the project would be unjustifiably infringing.*"
- The Assessment lays out the profound impacts of the TMEX project on Tsleil-Waututh title and rights, thus setting the stage for litigation that could delay or derail the TMEX.
- Tsleil-Waututh Nation has stated that it will "*take all lawful means necessary to ensure that Tsleil-Waututh's decision in relation to the TMEX is recognized, respected and enforced.*"
- Thus, Tsleil-Waututh's Assessment and decision create uncertainty and legal risk for the Kinder Morgan TMEX proposal both as a matter of Coast Salish and of Canadian constitutional law.

We close by echoing the words of the Supreme Court of Canada: "Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group."

**Signed:**

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