

MY LANGUAGE, MY CULTURE AND MY SPIRITUALITY IS WHO I AM

A report prepared for Wa Ni Ska Tan

by

David Scott

with assistance from Nicholas Smith

May 4, 2018

Declaration

I understand that my duty in providing written and oral evidence is to help the National Energy Board (“the NEB”) and that this duty overrides any obligation to the party by who I am retained or the persons who have paid or are liable to pay me. I confirm that I have complied with and will comply with my duty.

I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the hearing.

I acknowledge that it is my duty to provide:

- evidence that is fair, objective and non-partisan
- evidence that relates only to matters within my expertise; and,
- such additional assistance to the National Energy Board as it may reasonably require to determine relevant issues.

Recommendations

Seventeen recommendations are provided to the NEB to aid in its decision whether to recommend that the Governor in Council issue a certificate to Manitoba Hydro to build and operate the Manitoba-Minnesota Transmission Project (“MMTP”). It is important to note that these recommendations are presented by the author; Wa Ni Ska Tan does not endorse any particular recommendation, nor the suite of recommendations as a whole; and, while each recommendation listed here is designed to assist the NEB, the list should not be considered exhaustive.

1. The federal government must protect Treaty and Aboriginal Rights, especially those related to lands and resources, from potential injustices and abuse by local governments and authorities. This responsibility is national in scope and should operate to prevent Canada from delegating crown responsibility to Manitoba, thereby avoiding treaty obligations.
2. The profitability of Manitoba Hydro cannot take precedence over other considerations including First Nation interests.

3. The Federal government and the National Energy Board must consider the entirety of Manitoba Hydro activities, which includes dam construction and electricity generation in northern Manitoba. Project by project reviews of Manitoba Hydro activities do not fully consider the full impact of Manitoba Hydro activities on First Nations. The entire environmental footprint of Manitoba Hydro activities needs to be reviewed by the Federal government and the National Energy Board in terms of First Nation rights and the infringement thereof.
4. As Indigenous people we continue to express the need for us to protect our cultural and heritage resources on our lands and territories. Our heritage includes our land, our resources, our people and our ancestors. This is ultimately what makes us who we are. Our heritage must be treated with respect.
5. Our Indigenous ways of life must be understood and respected.
6. The integrity and well being of our heritage in all its forms must be promoted.
7. Aboriginal artifacts that are found, are the responsibility of Aboriginal people. We have the responsibility to identify where they came from, and to determine who is responsible for their care. This includes artifacts from pre-contact times. These responsibilities are carried out in conjunction with individuals, families, communities and tribes. It is these parties who must determine the heritage value of these objects.
8. Rights and responsibilities for artifacts found across Aboriginal territorial lands, particularly those of sacred significance, must not be forfeited to non-aboriginal investigators using provincial guidelines and standards. The responsibility for determining cultural value rests with which ever person or community is determined to be the current caretaker. The responsibility for making these decisions must rest with Aboriginal people themselves.
9. Heritage Resource studies should be undertaken as “Full and complete Impact Assessments.” That is an essential element of responsible development planning practice. All such heritage related studies must be conducted by researchers with an appropriate level of Indigenous life understanding as well as academic experience and/or training and must be done independent of the proponent, not proponent-led.

10. Determining management measures for Indigenous-led Impact assessments should be consistent with Indigenous values that are attached to specific heritage resources.
11. Any management recommendations/conditions should include additional phases of Indigenous-led inventory and data collection in the process of developing a sound management plan.
12. The process of consultation and accommodation should be guided by the principles established by the United Nations Declaration on the Rights of Indigenous Peoples. At a minimum, this should include:
 - A lack of all coercion including but not limited to, financial and time constraints.
 - Commencing comprehensive consultation at the onset of a project, prior to decisions being made.
 - Providing full disclosure, including but not limited to, detailed reports on the project.
13. Indigenous people must have a formal role in all decisions influencing and impacting the territory at all levels reasonably necessary to protect the rights and interests of Aboriginal people.
14. The process of consultation and accommodation should be carried out with respect for the sacred bonds between Aboriginal people and the land, through long term agreements that provide measures to protect the land and resources that Aboriginal people rely on to sustain their culture, community, and economy.
15. Adequate financial resources must be made available to Aboriginal people for full and effective participation in all aspects of the consultation and accommodation process.
16. An accommodation agreement should be reached with Aboriginal people, on behalf of those affected, prior to the commencement of the project. The accommodation agreement should be based on the principles of perpetual care and maintenance.
17. The parties must be willing to engage in a joint accepted dispute resolution process in the event an agreement cannot be reached.

About the Author and the Retainer

David Scott

David Scott is an Ojibwa Traditional Knowledge Keeper and a researcher of Treaty and Aboriginal Rights. In his 40 years of experience in these areas David has facilitated community-led research and Traditional Knowledge camps; taught widely about land claims, the Indian Act, and governmental policies of assimilation; and undertaken field studies on the impacts of Manitoba Hydro's infrastructural developments in Manitoba. As committee member with many Manitoban First Nations, David has worked in community engagement and consultation, particularly in relation to section 35 of the Constitution Act. In addition to the Traditional Knowledge he holds, David is fluent in Ojibwa and has a working understanding of Cree. He brings this knowledge to bear in his critique of the Canadian education system and his expertise on the relationship between Aboriginal Peoples and governmental politics.

David Scott was retained by Wa Ni Ska Tan to provide independent expert evidence on environmental processes and Indigenous communities, with a specific focus on the MMTP and its relationship to his own community.

Nicholas Smith

Nicholas Smith contributed to this work as an administrative assistant to David Scott. Mr. Smith holds an MA in Anthropology from the University of Victoria and is a community organizer with the Manitoba Energy Justice Coalition.

Who I Am

1. My name is David Scott. I was born in 1960 and raised on the Swan Lake Indian Reserve. I was raised as a traditional person. My grandparents and my parents were traditional people and my mother was a survivor of the Indian Residential School system. I was born a citizen of Canada, not a ward of the state.
2. My paternal grandfather lived in the days of Chief Yellow Quill the Chief who signed Treaty 1 on our behalf. My Grandfather died in the house I was raised in at the age of 103. These were my teachers. They lived their entire lives in my community and their teachings were learned from these life experiences. I am a beneficiary of these skills and teachings which have been handed down from one generation to the next.
3. My language, my culture, and my spirituality is who I am and who I have chosen to be.
4. I have worked with hydro, with pipeline development and with water diversion and it is always the same from the proponent: “we are complying with the existing laws”. There are unjust men with unjust intentions just as there are unjust laws with unjust intentions and consequences.
5. In the work I have done with Aboriginal and non-Aboriginal people, the question is always: “How do we coexist?” As a Traditional Knowledge Keeper, I have tried to answer this question. The institutional mechanism called the National Energy Board has rules that prevent Aboriginal people from being heard. The system is set up to approve this project because it is determined to be in the national interest. The health of the environment that you and I need for our children is of far greater national significance than the corporate interests that the NEB continually sides with. In my experience this process is pre-determined. There is a stamp of approval at the end of the process for Manitoba Hydro, and Aboriginal people are simply put through the motions set out by the proponent and the Crown agency responsible. To answer the question of how we can coexist, it is important to recognize and address the inadequacies of the ways we are communicating with each other.

6. I do not accept, nor do I seek validation from Canadian institutions for the things I know about who I am. I do not have letters attached to my name because there is no institutional degree in the knowledge I hold. Nor should there be.
7. I live who I am. I speak my language fluently. I live my culture and traditions. I have now become a teacher of our traditions. I teach our people about their rights prior to treaty and the rights that are identified in treaty. I also teach people about the events, the policies and the laws that have and continue to impact the lives of “Indian People” from racism to assimilation to more recently “cultural genocide.”
8. I am an “Ojibwa.” the history I know of our people comes from our oral traditions and from the traditional people that I was raised with.
9. As an Indigenous person in Canada, I have rights and privileges that are in addition to and not in lieu of those of non-Indigenous Canadian citizens.
10. I ask you, Board members, to accept me as I am, as an “expert.” I have read the list of all the Manitoba Hydro personnel, with letters attached to their names, and I wonder whether such letters are a prerequisite to being heard by this board. If I do not participate in this process, my words will not be heard. If I participate, I validate a process that works in favour of the proponent and has nothing to do with upholding the “Honour of the Crown.”

The Crown’s Broken Commitments

11. The federal crown has indicated that it is committed to the renewal of its legal duty to consult and accommodate and that it wants to renew its relationship with Indigenous people. It claims to take this responsibility seriously, and given this apparent sincerity I would add that the government also needs to consider the morality of Canada in its treatment of Aboriginal people.
12. In light of the supposed renewal of Canada’s relationship with Indigenous people, I offer the following comments for your consideration.
13. As an Aboriginal person I am frustrated by what I see as the inability and unwillingness of the Federal Crown in fulfilling its constitutional obligations to protect Treaty and Aboriginal Rights, especially those related to lands and resources.

14. My understanding is that the constitutional framework of Canada requires the federal government to protect my rights from potential injustices and abuse by local governments and authorities. This responsibility is national in scope and should operate to prevent Canada from delegating crown responsibility to Manitoba, thereby avoiding treaty obligations.
15. The profitability of Manitoba Hydro, a crown corporation, takes precedence over other considerations including First Nation interests, since the province reaps the rewards of profitability. The Federal government cannot rely upon Manitoba to fulfill Federal obligations to First peoples regarding lands and resources.
16. The scope of this hearing, and particularly the Board's Ruling No. 4 of February 14, 2018, which states that "The Board does not intend to assess the environmental and socio-economic effects associated with upstream or downstream facilities associated with electricity production" is seriously flawed. When considering Manitoba Hydro's application for the Manitoba-Minnesota Transmission Project, the Federal government and the National Energy Board must consider the entirety of Manitoba Hydro activities, which includes dam construction and electricity generation in northern Manitoba. Project by project reviews of Manitoba Hydro activities do not fully consider the full impact of Manitoba Hydro activities on First Nations. The entire environmental footprint of Manitoba Hydro activities needs to be reviewed by the Federal government and the National Energy Board in terms of First Nation rights and the infringement thereof.
17. The process under the Provincial Clean Environment Commission was not empowered to take into consideration the full range of First Nation interests, and if the federal government does not review the entire Manitoba Hydro system, the full range of First Nation interests will continue to be inadequately considered and the environment will continue to be under stress.
18. The Federal government continues to be negligent in its duty to protect the interests of First Nations by licensing of these projects in isolation of one another.

Heritage Protection

19. The Indigenous people in Canada continue to carry on and express our traditions and spirituality in the ever-changing world which we are a part of. There are Federal, Provincial and Municipal laws and institutions that prevent our people from freely exercising our rights. We have managed to

endure, and we continue to express the need for us as Indigenous people to protect our cultural and heritage resources on our lands and territories.

20. I hold these resources in high regard and with respect. Our responsibility for the protection of heritage resources was not relinquished under treaty to any non-aboriginal authority.
21. Our heritage includes our land, our resources, our people and our ancestors. This is ultimately what makes us who we are. All I ask is that our heritage be treated with respect.
22. We continue to lose the use of our lands and territories, the lack of protection of our heritage sites, the displacement of Indigenous people and the clear and continuing impacts on our culture are due largely to a widespread failure to understand and respect Indigenous ways of life.
23. If you, the NEB, are truly upholding “The Honour of The Crown” then you will come to understand and respect us – our concerns, our heritage, our land and its treatment. We are determined to promote the integrity and well being of our heritage in all its forms.
24. To help you try and understand what I mean; we have traditional law that guides us in protecting the ownership and care-taking of heritage sites and objects, we are guided by the teachings provided by the old people and the ancestors of our communities. With this view in mind the old people stress the importance of finding out where these artifacts came from and who owned them. I have used the word “own” because the Ojibwa word cannot be translated into English.
25. Aboriginal artifacts that are found, are the responsibility of Aboriginal people. We have the responsibility to identify where they came from, and to determine who is responsible for their care. This includes artifacts from pre-contact times. These responsibilities are carried out in conjunction with individuals, families, communities and tribes. It is these parties who must determine the heritage value of these objects.
26. This work is complex and requires a very high understanding of Aboriginal culture. The Heritage Resources Branch, as a regulator, needs to consider processes specific to Indigenous Heritage sites in its review of these processes.
27. Under the current system, it is impossible to complete the comprehensive archeological processes necessary to understand Aboriginal artifacts. Rights and responsibilities for artifacts found across

Aboriginal territorial lands, particularly those of sacred significance, must not be the forfeited to non-aboriginal investigators using provincial guidelines and standards. The responsibility for determining cultural value rests with which ever person or community is determined to be the current caretaker. The responsibility for making these decisions must rest with Aboriginal people themselves.

28. My understanding is that the Spirit and Intent of Section 35 protections includes our right to protection of heritage resources, mitigated from all development-related disturbances and impacts.
29. Heritage Resource studies should be undertaken as “Full and complete Impact Assessments.” That is an essential element of responsible development planning practice. All such heritage related studies must be conducted by researchers with an appropriate level of Indigenous life understanding as well as academic experience and/or training and must be done independent of the proponent, not proponent-led.
30. Detailed Indigenous-led assessments serve the purpose of providing an inventory and identifying all potential conflicts between heritage resources and proposed development plans. Determining management measures should be consistent with Indigenous values that are attached to those specific heritage resources.
31. Any management recommendations/conditions should include additional phases of Indigenous-led inventory and data collection in the process of developing a sound management plan.

Duty to Consult

32. My understanding is that the Duty to Consult is based upon “The Honour of the Crown”, which requires that the Crown consult with and accommodate the interests of Aboriginal peoples when the Crown has knowledge of the potential existence of an Aboriginal or Treaty Right and contemplates decisions or actions that might adversely affect it.
33. My understanding is that the Supreme Court of Canada has confirmed, through a series of decisions since 1990, that both the Federal and the Provincial Crown have a “Duty to Consult” Aboriginal people where a Crown decision or action may adversely affect Aboriginal rights and title. In practice,

it is also an opportunity for Aboriginal peoples to have a greater influence over what happens in their Traditional Territories.

34. The process of consultation and accommodation should be guided by the principles established by the United Nations Declaration on the Rights of Indigenous Peoples. At a minimum, this should include:
 - A lack of all coercion including but not limited to, financial and time constraints.
 - Commencing comprehensive consultation at the onset of a project, prior to decisions being made.
 - Providing full disclosure, including but not limited to, detailed reports on the project.
35. Indigenous people must have a formal role in all decisions influencing and impacting the territory at all levels reasonably necessary to protect the rights and interests of Aboriginal people.
36. The process should be carried out with respect for the sacred bonds between Aboriginal people and the land, through long term agreements that provide measures to protect the land and resources that Aboriginal people rely on to sustain their culture, community, and economy.
37. Adequate financial resources must be made available to Aboriginal people for full and effective participation in all aspects of the consultation and accommodation process.
38. An accommodation agreement should be reached with Aboriginal people, on behalf of those affected, prior to the commencement of the project. The accommodation agreement should be based on the principles of perpetual care and maintenance.
39. The parties must be willing to engage in a joint accepted dispute resolution process in the event an agreement cannot be reached.
40. The Clean Environment Commission, and the National Energy Board process is intimidating to people. For those who are unfamiliar with the process, it is like going to court; another adversarial institution that Indigenous people have negative experiences with.

41. I share my experience with you in the hope that I can contribute to the changes that are required for Indigenous people to fully participate in a process that truly upholds the “Honour of the Crown” and in a process that respects our heritage and our culture.

42. Thank you for listening.