

Media release
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Government tactics in Site C injunction hearing already at odds with BC's commitments to respect Indigenous rights

First Nations and human rights groups are questioning why lawyers for the government of BC and BC Hydro wanted to exclude important evidence about the Site C dam from an injunction hearing set to begin this July.

First Nations are seeking an injunction to halt destruction of their homelands by the Site C dam until the courts can finally address whether the dam should be cancelled for violating the Treaty rights of the West Moberly and Prophet River First Nations.

In an oral judgment made on April 24 and [publicly posted yesterday](#), the Supreme Court of British Columbia allowed applications by BC Hydro and the province to exclude some of the evidence First Nations had submitted for the injunction hearing, including sworn [statements from Marc Eliesen](#), the former president and CEO of BC Hydro, and [Harry Swain](#), who was the chair of the joint review panel for the project's environmental assessment.

Grand Chief Stewart Phillip, President of the Union of BC Indian Chiefs stated, "The West Moberly and Prophet River challenge to the destructive Site C dam is vitally important both for the future of the Peace River Valley and for holding governments in Canada accountable for respecting the rights of Indigenous peoples. During the upcoming injunction hearing, BC Hydro will no doubt argue that there's an economic imperative to continue construction of Site C despite the irreversible harm that will be ravaged on crucial ecosystems and cultural sites that are at the heart of this court case. First Nations deserve to be able to challenge BC Hydro's claims with the best available expertise. The fact that government lawyers are using legal technicalities in an effort to deny them this opportunity – especially with so much at stake – is nothing less than totally unconscionable and utterly shameful."

The Union of BC Indian Chiefs is part of group of organizations, including Amnesty International Canada, Council of Canadians, Sierra Club BC, the Peace Valley Solidarity Initiative, Fight C and the Yellowstone to Yukon Conservation Initiative that have launched a new website – witnessforthepeace.ca – to monitor government responses to the Site C court case and strengthen efforts to hold the federal and provincial governments accountable to their commitments to uphold Indigenous rights.

Alex Neve, Secretary General of Amnesty International Canada said today, "If the provincial and federal governments are serious about their commitments to recognize and respect the rights of Indigenous peoples, they need to demonstrate it in court. Focusing on technicalities rather the substance of the case puts an even greater unfair burden on First Nations that have been forced to go to court to defend their rights. That is not reconciliation. It is not in keeping with the BC and federal governments' unconditional promise to uphold the *UN Declaration on the Rights of Indigenous Peoples*. And it is certainly not consistent with the obligation of governments to protect and promote the human rights of all without bias or discrimination."

BACKGROUND

[Marc Eliesen's affidavit](#) details BC Hydro's 1993 decision not to proceed with planned construction of Site C at that time after the BC Utilities Commission (BCUC) concluded that the project was not "the only or best project" to meet the province's energy needs. The affidavit also includes an expert report that Eliesen submitted to the 2017 BCUC review of Site C in which he concluded that BC Hydro's budget estimate for the project is unreliable and that further delays and cost overruns are likely. Eliesen estimated that the dam cannot be completed by 2024 as currently projected and that "its capital cost will reach a range of \$12 billion or more – an increase greater than 45 per cent from BC Hydro's August 2017 estimate of \$8.3 billion and an increase greater than 12 per cent from its current budget of \$10.7 billion."

In arguing for the exclusion of this affidavit, lawyers for BC Hydro claimed that Eliesen, who was president and CEO of BC Hydro when the Site C dam was reviewed in 1993, and has also been Board Chair of Manitoba Hydro and the Chair and CEO of Ontario Hydro, is not properly qualified to be considered an expert witness on these matters.

The [affidavit by Harry Swain](#) states that because the environmental impact assessment of Site C was framed within a provincial public policy geared to the construction of further dams on the Peace River, "a number of electricity supply alternatives less damaging to the Peace River First Nations could not be considered." Swain states in the affidavit that the result of this framing, and other constraints on the impact assessment review, was to "bias choices toward a Project whose effects were disproportionately concentrated on the West Moberly First Nations."

Although the environmental assessment review panel called for Site C to be reviewed by the BCUC, Swain's affidavit is also highly critical of the terms of reference imposed by the province when it established a review in 2017. Swain calls the terms of reference "highly restrictive," noting that the BCUC was required to accept BC Hydro's estimation of future energy demands. Swain argues that the BCUC's "equivocal" report, which in most scenarios found little difference between the cost of completing Site C versus pursuing other alternatives, would likely have been different if the review had been allowed to consider the possibility that BC Hydro had over-estimated future energy demands.

The province and BC Hydro sought to exclude Swain's evidence by arguing that his affidavit was biased and unnecessary since it presents arguments that could be made by the First Nations themselves.

In the judgement posted Monday, the affidavits by Eliesen and Swain were excluded by the court, along with affidavits by toxicologist Annette Muttray and ecologist [Petr Komers](#), as not meeting the technical criteria for admissibility of expert evidence established in previous court rulings. The court dismissed BC Hydro's application to exclude three other affidavits related to a report comparing the environmental impacts of Site C to other viable alternatives.

Contact: Jacob Kuehn
Media Relations, Amnesty International Canada
(613) 744-7667 ext 236
jkuehn@amnesty.ca