

FAQ

What are the Wet'suwet'en legal challenges about?

Wet'suwet'en Houses, through their Hereditary Chiefs, have launched two legal challenges over Canada's approval of multiple fossil fuel projects in their territory. These challenges are strategically designed to address both the immediate issue of the Coastal GasLink LNG pipeline being built without Wet'suwet'en consent, as well as Canada's ongoing failure to address the climate emergency.

Legal challenge No. 1, supported by all the Hereditary Chiefs acting in unity, seeks a Judicial Review of a project extension for Coastal GasLink's pipeline, granted by the B.C. Environmental Assessment Office (BCEAO) in October 2019 for another 5 years. The action argues that the B.C. Environmental Assessment Office had a duty to assess new evidence of the project's harms, which in this case means the recent findings of the Inquiry on Missing and Murdered Indigenous Women and Girls, which found direct links between extractive industries, "man camps" and increased violence against Indigenous women. The BCEAO was also required to take into account Coastal GasLink's record of non-compliance (over 50 instances!).

Legal challenge No. 2, a constitutional and Charter of Rights challenge brought by two Houses of the Likhts'amisyu (Fireweed Clan) through their House Chiefs, is an ambitious, long-term legal challenge seeking a comprehensive overhaul of Canada's environmental legislation to enable urgent action on climate change.

This visionary, sweeping action puts forward the argument that Canada has a constitutional duty to protect its citizens from climate catastrophe, and draws a line against reckless fossil fuel developments that will push us past the tipping point. The action invokes Constitutional provisions about "peace, order and good government" as well as the equality rights of Wet'suwet'en young people and future generations under the Canadian Charter of Rights and Freedoms.

The case specifically names Coastal GasLink and Pacific Trails fracked gas pipelines along with LNG export facilities in Kitimat as particularly high-emitting fossil fuel projects that are likely to breach Canada's (already inadequate) emissions targets. In the name of future generations, the legal challenge argues that Canada's failure to do its fair share to avert a climate catastrophe would breach the equal protection of the law guaranteed by the Canadian Charter of Rights and Freedoms.

What is the Coastal GasLink pipeline?

Coastal GasLink is proposing a 670-km pipeline carrying fracked gas from Dawson Creek to a proposed LNG facility in Kitimat. The pipeline is owned by TransCanada, the same corporation funding the Keystone XL and Energy East Pipeline projects.

Coastal GasLink (CGL) is part of a recently-approved \$40 billion LNG Canada project which is the single largest private sector investment in Canadian history. The Malaysian company Petronas, which abandoned its own Pacific NorthWest LNG project when faced with First Nations opposition, has a 25% stake in LNG Canada.

If CGL were to be built and become operational, it would irreversibly transform the ecology and character of northern B.C. It would also lock in decades of fossil fuel extraction at a time when scientists are warning of untold suffering unless all nations rapidly scale down production of fossil fuels.

According to the Pembina Institute, LNG Canada's carbon footprint would be 8.6 million tonnes (Mt) by 2030, making it impossible to achieve even the targets mandated B.C.'s recently-weakened climate legislation. Another concern is the process of hydraulic fracturing (fracking) used to obtain the gas, which pollutes groundwater and causes large amounts of methane to escape into the atmosphere, which has a serious impact on our climate and public health. The pipeline will cross hundreds of salmon-bearing streams, terminating in an LNG liquefaction and export facility in the Skeena River estuary.

What is RAVEN's relationship with Wet'suwet'en?

In the spring of 2019, RAVEN was approached by Wet'suwet'en Hereditary Chiefs associated with the Unist'ot'en camp. The Chiefs were in court opposing an injunction granted to Coastal GasLink that excluded Wet'suwet'en members from portions of their own territory. RAVEN ran a fundraising campaign for Unist'ot'en in May-June 2019, raising \$90,000. Unfortunately, Unist'ot'en lost in court.

In the fall of 2019, RAVEN was approached by the Office of the Wet'suwet'en, a body that coordinates the work of all Hereditary Chiefs, requesting support for their Judicial Review Application. As well, two Chiefs of the Likhts'amisyu clan requested support for their Constitutional/Charter challenge. RAVEN accepted both applications and has entered into a formal agreement with Wet'suwet'en Hereditary Chiefs, which is the foundation for our Wet'suwet'en campaign.

If the Wet'suwet'en win, what would change?

If the Wet'suwet'en win the Judicial Review, the Coastal GasLink approval would be quashed (cancelled).

If the Wet'suwet'en win the Constitutional and Charter challenge, it may lead to far-reaching changes to Canada's environmental legislation. These would enable the federal government to cancel previously given approvals to fossil fuel projects such as the LNG export facilities and pipelines proposed for Wet'suwet'en territories. The cancellations would kick in when it can be proven that, should projects proceed, Canada will fail to meet its Paris obligations to keep the country's greenhouse gas emissions to less than 2 °C above pre-industrial levels.

What is the role of hereditary chiefs in Wet'suwet'en governance?

The Wet'suwet'en governance system, dating back thousands of years, is based on Houses and Clans. The Feast is central to Wet'suwet'en government, law, social structure and world view. Dinī ze' and Ts'akē ze (Hereditary Head Chiefs and Wing Chiefs of each House) draw their legitimacy neither through elections, nor through

birthright alone (as in European monarchies) but through the Feast House process. The feast validates the chiefs' authority and legitimacy according to Wet'suwet'en law. Before any feast, there are many informal and semi-formal meetings at which ideas are introduced, discussed and a consensus built within the host House and among the other Wet'suwet'en Houses. The English term "hereditary leadership" doesn't really convey the complexity of this highly participatory governance system.

Do Canadian courts recognize hereditary chiefs?

Canadian law recognizes Indigenous governance in general and the Wet'suwet'en House and Clan system in particular. This was very clearly stated by the Supreme Court of Canada in its 1997 *Delgamuukw* decision. The Supreme Court of Canada described the system of Clans and Houses with Hereditary Chiefs as "the fundamental premise of both the Gitksan and the Wet'suwet'en peoples."

Subsequently, the B.C. Supreme Court held in *Canadian Forest Products Inc v Sam* that "the Wet'suwet'en occupation and use of land is organized by the clan and house system upon which the law and essential social structure is ultimately based." The B.C. Supreme Court went on to say that "each Wet'suwet'en chief has rights and responsibilities specific to the particular territory over which that chief is given a duty to protect. The rights and responsibilities are confirmed, coordinated, and directed to the common good, in other words, governed, through the feast," which is "central to Wet'suwet'en society and government".

As well, the 2019 Memorandum of Understanding signed by the Wet'suwet'en Chiefs and the government of Canada recognizes Wet'suwet'en title.

The two legal challenges RAVEN is currently supporting were brought by Wet'suwet'en Hereditary Chiefs representing all Wet'suwet'en Clans.

What about the elected chiefs and councils? Don't they get a say?

The Hereditary Chiefs, not the band councils, were the plaintiffs in the landmark *Delgamuukw* case before the Supreme Court. The Supreme Court confirmed that the Wet'suwet'en never surrendered title to their ancestral lands, and accepted extensive evidence outlining their hereditary governance system. The Supreme Court further clarified in the *Tsilhqot'in* decision that the organization of a Nation into bands as a result of the reserve allocation process and the *Indian Act* "does not affect the identity of the Nation as the holder of rights."

According to legal scholar Bruce McIvor, unless otherwise authorized by the Indigenous Nation members, the authority of elected Chiefs and Councils is limited to the powers set out under the *Indian Act*. The *Indian Act* does not provide authority for a Chief and Council to make decisions about lands beyond the boundaries of the First Nation's reserves.

By contrast, the Hereditary Chiefs are responsible under Wet'suwet'en law and governance for making decisions relating to their ancestral lands. It is these lands that

the Hereditary Chiefs are seeking to protect from the impacts of the pipeline project, not *Indian Act* reserve lands.”