



Winneway, October 9, 2024

**BY EMAIL**  
**WHITOUT PREJUDICE**

Mr. Joseph Zayed  
President of the Commission of Enquiry  
Bureau d'audiences publiques sur l'environnement  
140, Grande Allée Est  
6e étage, bureau 650  
Québec (Québec) G1R 5N6

**Subject: LPFN's participation in the public hearing on the Horne 5 project – Distinction between BAPE Process and the Crown's Duty to Consult**

Dear Mr. Zayed,

On behalf of Long Point First Nation (hereinafter "**LPFN**"), I wish to express our gratitude to the members of the Commission of Enquiry (hereinafter the "**Commission**"), Mrs. Meloche, Mr. Lessard and yourself as well as the rest of your team for holding two public hearings of the *Bureau d'audiences publiques sur l'environnement* (hereinafter the "**BAPE**") regarding the Horne 5 project (hereinafter the "**Project**") in our community on October 3, 2024. We deeply appreciate that the Commission has accepted our invitation and took the time to come to our community, allowing our People to voice their concerns directly. Your commitment to engaging with us is a gesture we value, and I extend our sincere thanks to you and your team for your openness and respect throughout this process. We appreciate the BAPE's efforts to facilitate meaningful dialogue regarding the proposed Project.

As we have stated during our presentations and written submissions to the Commission, it is important to distinguish between the BAPE process and the duty to consult and accommodate Indigenous Peoples, which is the legal responsibility of the Quebec Crown. The role of the BAPE is to investigate, inform, and advise the Minister of the Environment, the Fight Against Climate Change, Wildlife and Parks (hereinafter the "**MELCCFP**") on the environmental and social impacts of proposed development projects, such as the one currently under review. Your work focuses on assessing a project's implications for the environment and quality of life for the general public, which is distinct from the constitutional obligations owed to Indigenous Peoples.

The duty to consult and accommodate Indigenous Peoples, grounded in the honour of the Crown, is a distinct and separate legal process. It arises when the Crown has knowledge, real or constructive, of potential Aboriginal rights or title and contemplates conduct that could adversely affect those rights. This duty is part of a broader reconciliation process between the Crown and Indigenous Peoples that stems from section 35 of the *Constitution Act, 1982*, which recognizes and affirms Aboriginal and treaty rights. We LPFN Anicinabek have pre-existing Aboriginal rights and title to our traditional unceded territory of Anicinabek Aki, predating European contact, and are vested with a sacred, inherent responsibility for the stewardship of the land, waters, animate and inanimate beings within Anicinabek Aki. We are thus entitled to be consulted and accommodated for the Project, especially since its impacts will affect our people and our ability to exercise our Aboriginal rights. Furthermore, in accordance with international legal standards, as provided in the *United Nations Declaration on the Rights of Indigenous*

*Peoples*, States must obtain the free, prior, and informed consent of Indigenous Peoples before approving any development projects that affect their lands or resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. The Quebec government's failure to consult with and obtain LPFN's consent on this Project, despite being fully aware of our rights in the area, is a serious breach of its constitutional duty and international standard.

As I have outlined in my letter to the Minister of Natural Resources and Forestry, Quebec is well aware of our asserted rights in this region. In fact, we have, no later than in 2022, formally notified Quebec of our right to be consulted in relation to the Horne Smelter operations situated in very close proximity to the proposed mining Project, as appears from a copy of the Anicinabek Chiefs' letter to Minister Charette dated August 2022 attached as an appendix to our written submissions to the Commission. The Horne Smelter facility is situated on our unceded traditional territory, where we continue to exercise our Aboriginal rights. Despite being fully aware of this, Quebec has chosen to ignore its duty to consult with LPFN regarding the current mining Project. This constitutes a clear violation of the Crown's legal obligations and a failure to uphold the honour of the Crown.

I must reiterate that our participation in the BAPE process, as well as our submissions to the Commission, focus solely on the environmental and social impacts of the proposed Project on Anicinabek Aki and Peoples. This participation should not, under any circumstances, be construed as fulfilling the Crown's constitutional duty to consult and accommodate with LPFN regarding the potential impacts of the proposed Project on our constitutionally protected rights. The BAPE's mandate does not extend to matters of Aboriginal rights under section 35 of the *Constitution Act, 1982*, and our engagement with the Commission should not be interpreted as addressing or resolving those issues. The engagement sessions are a valuable opportunity for dialogue, but they do not replace nor diminish the Crown's obligation to conduct a comprehensive consultation and accommodation process with our community, as required by law.

We remain steadfast in our assertion that the Quebec government has a clear legal obligation to consult with and accommodate LPFN regarding this Project, and we'll see to it that our constitutional rights be respected. We trust that you, as President of the BAPE, understand the importance of maintaining this distinction and that you will reflect this in your recommendations to the Minister.

Once again, we thank you and the Commission for your work, and we appreciate your ongoing commitment to ensuring that the concerns of LPFN are heard as part of the BAPE's process.

In spirit of truth and reconciliation.

Kitci meegwetch,



Chief Henry Rodgers

Encl: LPFN letter to Minister Blanchette Vézina dated October 9, 2024

cc. LPFN Council  
Chief Vicky Chief, Timiskaming First Nation  
Chief Lance Haymond, Kebaowek First Nation  
Sharon Hunter, LPFN Executive Director  
Steeve Mathias, LPFN Lead Negotiator  
Leonard Polson, LPFN Director of Sustainable Development  
Joseph Larivière, LPFN Mining Manager  
Mathieu Giroux, Coordonnateur du secrétariat de commission, BAPE