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PRESS RELEASE

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MCK extremely disappointed in today's Supreme Court decision

For Immediate Release

(Kahnawake – 26, Ohiarihkó:wa/July 2017) The Mohawk Council of Kahnawà:ke (MCK) is extremely disappointed by today's Supreme Court of Canada decision in the Chippewas of the Thames appeal, which upholds the National Energy Board's (NEB) approval of the Enbridge Line 9B pipeline project. The MCK had intervened in the case in support of the Chippewas, arguing that direct Crown consultation respecting the Nation to Nation relationship was required and that the NEB's process was not an adequate substitute for this consultation.

The MCK is disheartened that the Supreme Court failed to recognize the importance of direct consultation between Canada and Indigenous Nations as being essential to achieve reconciliation through the duty to consult in this case.

The Court also released a decision in the Clyde River case this morning and the MCK is concerned with the inconsistencies between the two decisions, in particular, upholding the NEB's approval in the Chippewas case despite the Crown's failure to provide timely and explicit notice that it was solely relying on the board's process to discharge its constitutional duty.

In addition, the lack of clear guidance and criteria as to when a board must conduct an explicit assessment and provide explicit reasons on whether Canada's duty to consult has been met prior to approving a project is also disappointing. The Court's view that these requirements "depend on the circumstances" is wholly inadequate and will promote further uncertainty and confusion.

The MCK is also extremely concerned that, without an explicit assessment of whether Canada's consultations have been met, consideration of impacts to Indigenous rights will not be appropriately assessed and will be overlooked as part of a broader public interest determination. The MCK believes that explicit assessments of Canada's consultation obligations are necessary to ensure fair and transparent decision making and that this not being a requirement in the Chippewas case is problematic.

"Despite an embarrassing performance by the NEB, the Supreme Court, in essence, still supported the NEB's position and processes," said Grand Chief Joseph Tokwirot Norton. "So now we're going to have to find creative ways to ensure that Canada consults with us, regardless of today's decision. We will stay vigilant and cannot let our guard down – even for a moment."