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Jerry Natanine raises his arms in triumph in front of the Peace Tower on Parliament Hill on July 26. The photo of the former Clyde River mayor was taken moments after the Supreme Court of Canada sided with the hamlet in its fight against seismic testing in Arctic waters. Full coverage begins on page 3.

NIRB approves Back River gold project



Should guns share common storage space? the traditional way



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QUOTE: "It will be hard to keep me out of the classroom."

Did we get it wrong? Nunavut News/North is committed to get-

Nunavut News/North is committed to getting facts and names right. With that goes a commitment to acknowledge mistakes and run corrections. If you spot an error in Nunavut News/North, call (867) 979-5990 and ask to speak to an editor, or e-mail editorial@nnsl. com. We'll get a correction or clarification in as soon as we can.

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photo courtesy of Shari Fox Gearheard/Greenpeace Canada

Clyde River residents hold a banner that reads "Clyde River Wins" in both English and Inuktitut in celebration of their victory at the Supreme Court of Canada on July 26.

Clyde River wins Supreme Court case

Court rules Inuit not properly consulted on oil exploration project

by John McFadden
Northern News Services
Ottawa

Triumphant at the Supreme Court of Canada, former Clyde River mayor Jerry Natanine says the potential is now there for a new era in the relationships between Indigenous people and the federal government.

His comment to *Nunavut News/ North* came shortly after the country's highest court sided with the Hamlet of Clyde River in its case against Petroleum Geo Services et al.

In a decision released July 26, the court ruled that it was wrong for the National Energy Board (NEB) to grant the exploration consortium the right to conduct offshore seismic testing, which had been opposed by the hamlet and other organizations.

The court unanimously ruled that the proposed testing could negatively affect the treaty rights of Inuit in Clyde River, and that the duty to consult Inuit had not been fulfilled. In its ruling, the court wrote that a project authorization that breaches the constitutionally-protected rights of Indigenous peoples cannot serve the public interest.

"When affected Indigenous groups have squarely raised concerns about Crown consultation with the NEB, the NEB must usually address those concerns in reasons," the court wrote.

"Above all, any decision affecting Aboriginal or treaty rights made on the basis of inadequate consultation will not be in compliance with the duty to consult. Where the Crown's duty to consult remains unfulfilled, the NEB must withhold project approval. Where the NEB fails to do so, the approval decision should be quashed on judicial review."

Clyde River's fight against seismic testing dates back to 2014, when the hamlet aligned with environmental watchdog Greenpeace in an effort to stop seismic testing in the waters of Baffin Bay and Davis Straight.

It has been a long fight for the hamlet and Natanine.

"It's unbelievable. I feel real-

ly excited and happy, but also relieved," he told *Nunavut News/North*. "We were expecting to win. My father told us how much damage seismic testing caused the first time it was done in the 1970s. My thinking was how can we lose if we take this on? It damages so much and that has been our attitude from the beginning."

Natanine said that there is little scientific evidence showing the effects of seismic testing, which involves firing underwater cannons that make as much noise as a jet engine. But he added anecdotal evidence and traditional knowledge showed that it is harmful to marine mammals and that was one of the main reasons they fought the NEB's decision to allow seismic testing. Natanine said that the court's decision was not based on whether seismic testing was harmful, but on the lack on consultation.

Testing killed plankton

He did note that a recent report from Australia showed that seismic testing did kill plankton in a wide area.

Natanine said that he does not know if the companies looking to explore for oil in the Arctic using seismic testing will continue to fight for the right to do so. He added that there has been no seismic testing since 2014 when the company agreed not to test until the matter was resolved.

Natanine said that the decision validates their stance that they were not properly consulted during the approval process.

"If they want to do seismic testing, they have to go through a fair procedure of proper consultation," Natanine said. "The minister of Indigenous Affairs and Northern Development would have to be involved. The National Energy Board will have to be more careful."

Natanine said the support from across the country and around the world, including many celebrities, has been overwhelming. He added however that he is disappointed by the lack of support from the two Nunavut MPs who were in power during their legal battle – current

fact **FILE**

SUPREME COURT'S DECISIONS

 ${f 1}$ – We agree with (Clyde River) that the consultation and accommodation efforts in this case were inadequate. We would therefore allow the appeal and quash the NEB's authorizations.

2 - True reconciliation is rarely if ever achieved in courtrooms... No one benefits - not project proponents, not Indigenous peoples and not non-Indigenous members of affected communities - when projects are prematurely approved only to be subjected to litigation.

3 – We do not however see the public interest and the duty to consult as operating in conflict. The duty to consult, being a constitutional imperative, gives rise to special public interest that supersedes other concerns... A project authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve the public interest.

4 - The Crown acknowledges that deep consultation was required in this case and we agree... Here (Clyde River) had established treaty rights to hunt and harvest marine mammals

Source: Greenpeace Canada/Supreme Court of Canada

Liberal member Hunter Tootoo and Conservative Leona Aglukkaq, who was an Environment Minister in the Harper government.

Disappointed by MPs

"They showed no support for us. They were not part of the process, they didn't express concern for us," Natanine said. "It was very embarrassing and disappointing."

Natanine pointed to British actress Emma Thompson as a celebrity who put her money where her mouth was, and did not just pay lip service to the cause.

"She went up to Clyde River and we had a great time with her. She learned about our community and our way of life – the food we eat and hunt," Natanine said. "There was very beneficial to us – all the media attention we got."

Natanine said the contribution to the cause from Greenpeace Canada was also invaluable.

"We owe them a debt of gratitude. We've made friends with them," Natanine said.

He added that Clyde River, with a population of 1,100, is celebrating

the court decision and said that all Indigenous people in Canada have reason to be proud.

"More power to the people." he said.

Nader Hasan, Clyde River's lawyer in the case, said the ruling was truly groundbreaking for the hamlet and Indigenous people across Canada.

"It took the highest court in the land to remind the Government of Canada once again that consultation with Indigenous peoples must be meaningful," Hasan said.

"It has been an honour representing the people of Clyde River who refused to back down despite seemingly impossible odds."

Greenpeace estimated the legal costs for fighting the case were roughly \$300,000. That includes the NEB process, the Federal Court of Appeal case and the Supreme Court of Canada case.

The court also awarded Clyde River court costs but it was unclear as of press time whether that ruling would cover the entire \$300,000, according to a Greenpeace spokesperson.

fact **FILE**

KEY DATES IN CLYDE RIVER'S SEISMIC TESTING OPPOSITION

1970s-1980s

Clyde River experiences impacts of seismic blasting for oil exploration with deaths of fish and seals that had been deafened

May 2011

Group of Norwegian companies files initial project description with National Energy Board (NEB)

May 2013

Hamlet of Clyde River and Hunters and Trappers Organization pass joint motion opposing project; send letter reiterating concerns to NEB

July 2014

Clyde River invites Greenpeace to support fight against seismic blasting in Baffin Bay and Davis Strait

July 2014

Clyde River community members hold public protest against seismic testing and call on federal Environment Minister and Nunavut MP Leona Aglukkaq to engage with them

July 2014

Clyde River applies for judicial review of NEB approval of project

September 2014

Banner reading "We Stand With Clyde River" with Inuktitut translation displayed at largest ever climate change march in New York City

November 2014

Online petitions launched and attract support of more than 300,000 people from around the world

November 2014

All 25 of Nunavut's mayors (Nunavut Association of Municipalities) pass resolution supporting Clyde River's legal struggle

March 2015

Coalition of Indigenous Human Rights and environmental organizations form Clyde River Solidarity Network; author Naomi Klein and actress Lucy Lawless join the cause

April 2015

Clyde River's case heard in Federal Court of Appeal

May 2015

Seismic companies cancel plans to explore for oil in Baffin Bay and Davis Strait for 2015

June 2015

British actress Emma Thompson releases statement supporting Clyde River

August 2015

Federal Court of Appeal judges dismiss Clyde River's case

October 2015

Clyde River seeks leave to appeal decision to Supreme Court of Canada

March 2016

Supreme Court of Canada grants Clyde River leave to appeal their case

November 2016

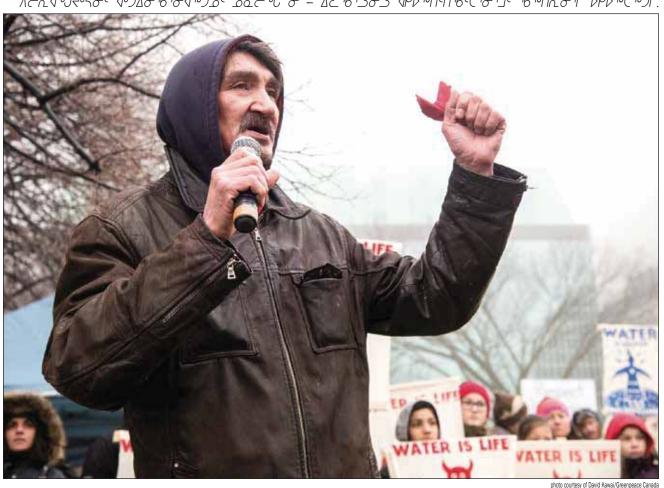
Clyde River presents case at Supreme Court of Canada; hundreds attend solidarity rally in Ottawa

July 26, 2017

Supreme Court of Canada rules in favour of Clyde River, quashes NEB decision to allow seismic testing in Arctic waters

Source: Greenpeace Canada

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Jerry Natanine, former mayor of Clyde River speaks at a rally on Nov. 30, 2016 on unceded Algonquin territory in Ottawa. Clyde River, Inuit headed to the Supreme Court of Canada to uphold the legal right of Indigenous peoples to be consulted and give (or withhold) consent to energy projects that will impact their communities - including seismic blasting in the Arctic.

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