



**Report on the Selection of Members of the Indigenous Caucus for the
Indigenous Advisory and Monitoring Committee for the Trans
Mountain Expansion and Existing Pipeline**

Prepared by the Communications Manager for the Indigenous Caucus

August 26, 2019

1. Introduction and Background

In late 2018 and early 2019, 12 of the 13 available seats on the Indigenous Caucus were filled through the selection of members by Indigenous Communities, in a process facilitated by the Indigenous Caucus. This report summarizes the process undertaken to select members of the Indigenous Caucus for the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion and Existing Pipeline (the “IAMC”).

The IAMC was established in 2017 through the co-development of its Terms of Reference and the selection of the Initial Members of the Indigenous Caucus, which is comprised 13 seats to be selected from the regions delineated in the Terms of Reference (the “Indigenous Caucus”). The Terms of Reference provided that Initial Members of the Indigenous Caucus would serve a term of 18 months¹, commencing from the inaugural meeting of the IAMC on August 2-3, 2017. That term was set to conclude by January 31, 2019 and the Terms of Reference required the Indigenous Caucus to initiate a process by which the Indigenous Communities (as defined in the Terms of Reference) would (i) select members of the Indigenous Caucus and (ii) select the term for such members:

39. Terms of Initial Indigenous Caucus Members. The first members of the Indigenous Caucus (the “Initial Indigenous Caucus”) serve 18-month terms.

40. Membership. The membership of the Initial Indigenous Caucus is the following, with reference to the groupings of Indigenous Communities set out in Appendix A:

- a) One member from each of:
 - i. Vancouver Island – Western Approach;
 - ii. Vancouver Island – South;
 - iii. Vancouver Island – Southeast;
 - iv. Burrard Inlet / Lower Fraser;
 - v. Fraser Valley;

¹ Terms of Reference, s.39

- vi. Mid-Fraser / Thompson;
- vii. BC Interior;
- viii. Okanagan;

- b) Three members from Alberta First Nations;
- c) One member from BC Métis; and
- d) One member from Alberta Métis.

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42. Future method for selecting members. During its term, the Initial Indigenous Caucus develops and sets out methods for the selection of members of the Indigenous Caucus, and it initiates and oversees a process by which a method for future selections, and the terms for Indigenous Caucus members going forward, is determined by the Indigenous Communities. The number of Indigenous Caucus members may be changed only by decision of the Committee.

It is important to note that Indigenous Caucus members are not federal appointees. They are selected by Indigenous Communities from each region (as set out in Appendix A of the Terms of Reference). Furthermore, neither Kinder Morgan, nor Trans Mountain Corporation, funds the IAMC, nor did they participate in the creation of IAMC or participate in the selection of the Indigenous Caucus members.

The following sections of this report discusses:

- How the Indigenous Caucus facilitated the selection of members by the Indigenous Communities; and
- How each region member was selected through that process.

2. Facilitating the selection process

In developing the Terms of Reference, Indigenous Communities expressed that there was no “one-size fits all” process for selecting members, and that each region should have the option to select members as they see fit. This flexibility was embedded in the Terms of Reference, and required the Indigenous Caucus to propose a process for regions to follow. Our goal was to create a governance process that was open,

transparent and encouraged participation by Indigenous communities in the selection of members.

This process was lead by Chief Crey of the Cheam First Nation (then Chair of the Indigenous Caucus) and supported by Walter Quinlan (Communications Manager – Indigenous Caucus) and the Indigenous Caucus' legal counsel, Jeff Langlois (JFK Law Corporation). During the selection process, Indigenous Communities were contacted by email, either by the Communications Manager directly, or using the IAMC distribution list managed by the Secretariat.

a) Initial Discussion

The selection process was first discussed by the Indigenous Caucus at their meeting on September 12, 2018 at Lac Ste-Anne, Alberta. At this meeting, Indigenous Caucus members considered a draft recommendation as to the process to be followed to select members and agreed: (1) that in accordance with the Terms of Reference, communities in each region must have the opportunity to choose their own selection process, but that communities should be given the option and (2) to recommend to Indigenous Communities that they appoint members to the Caucus for either a term of two or three years.

b) Communication of proposed selection process

On October 3, 2018, the Caucus emailed a letter from Chief Crey to all Indigenous Communities which enclosed a nomination form and additional background information. In his letter Chief Crey:

- Asked communities to participate in selecting members of the Indigenous Caucus and determining the term for those members.
- Proposed that: (1) the Indigenous Caucus host a series of regional meetings to facilitate the selection of members; (2), Indigenous communities work together to select members by consensus at these meetings; and (3)

Indigenous communities be given a choice to appoint its regional members for either a two-year or a three-year term.

Chief Crey requested that Indigenous Communities provide comments on the proposed selection method, the proposed term of Caucus members and the conduct of meetings in each region (by October 17, 2018) and requested that Indigenous Communities or individuals submit completed nomination forms (with a suggested timeline of October 26, 2018).

The Caucus did not receive comments from Indigenous Communities regarding the proposed selection process, but did receive a total of four (4) completed nomination forms, nominating: Tracy Freidel (Alberta Métis); Michelle Wilsdon (Alberta First Nations); as well as Gary Biggar and Earl Belcourt (BC Métis).

c) Next steps to engage Indigenous Communities in the selection process

Following Chief Crey's initial letter, and having received no responses to the proposal to hold regional meetings, the Caucus began to schedule regional meetings to facilitate selection of members. Below, we have set out the specific activities that took place in each region, but in general, a notice was sent to each region which scheduled a regional meeting and requested that nominations be provided by a specific date prior to each meeting. The Communications Manager ensured that adequate notice was provided for each proposed meeting, worked with the regions to ensure that nominations were received and managed logistics relating to each meeting.

These notices sent to the regions in advance of meetings indicated that if the Caucus did not receive nominations in excess of the Indigenous Caucus seats available, then a regional selection meeting would not be conducted, and the nominee or nominees would be acclaimed with a term of three years.

The notices provided that if there were multiple nominees for a regional seat, that a selection meeting would take place. In anticipation of the possibility that a region may not be able to reach consensus on the selection of members, these notices also

proposed rules for conducting an election at these regional meetings. The proposed election process provided that each Indigenous Community listed in Appendix A to the Terms of Reference would be provided one ballot to be cast by the Chief of the Indigenous Community (or a person designated by the Chief, in writing). Alternatively, the notices indicated that Chiefs (or designate) could cast a vote in writing if they were unable to attend. The notices also set out other procedural rules to be followed, including the time to be allotted to each nominee to address the meeting, and other provisions relating to the conduct of the election.

The Indigenous Caucus was kept apprised of these selection activities, through personal communications by the Communications Manager, and through the provision of updates at Indigenous Caucus meetings at the October and November 2018, and January, 2019 meetings.

3. Report on selection process

(Note: An Interim Report was delivered to the IAMC meeting (including both federal and Indigenous Caucus members) on February 26, 2019.)

The selection process for all regions, with the exception of the BC Métis Indigenous Caucus member (discussed below) concluded on January 31, 2019, with the following results:

Region	Indigenous Caucus Member	Selection method
Burrard / Lower Fraser	Carleen Thomas	Acclaimed
Fraser Valley	Chief Ernie Crey ²	Acclaimed
Mid-Fraser / Thompson	Chief Marcel Shackelly	Acclaimed
Okanagan	Chief Harvey McLeod	Selected by Tribal Council Resolution
BC Interior	George Lampreau	Acclaimed
Vancouver Island	Chief Russell Chipps	Selected by written

² As discussed below, Chief Crey has taken a medical leave of absence and has been temporarily replaced until his return

Region	Indigenous Caucus Member	Selection method
South		correspondence from Indigenous Communities in Region
Southeastern Vancouver Island	Trina Sxwithul'txw	Acclaimed
Western Approach	Kristine Pearson	Acclaimed
Alberta First Nations	Councillor Michelle Wilsdon Norine Saddleback Ray Cardinal	Elected
Alberta Métis	Tracy Freidel	Acclaimed
BC Métis	Vacant	N/A

The process that lead to each selection is summarized in the following sections. In general, over the course of October 2018 to January 2019, there were four ways in by which Indigenous Caucus members were selected to their region:

- Tribal Council Resolution (1)
- Acclamation (7)
- Regional meeting and election by vote (3)
- Letter of Support signed by a majority of Chiefs in the nominee's region (1)

a) Tribal Council Resolution

Chief Harvey McLeod, Okanagan submitted Tribal Council Resolution 2018/19 No. 391 from the Okanagan Nation Alliance (which comprises the majority of Indigenous Communities in this Okanogan region) signed and dated November 22, 2018.

Following receipt of this resolution, a letter was sent by the Caucus confirming this selection on January 21, 2019. No comments were received in response to this confirmation, and no Indigenous Community responded to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process.

b) Acclamation

Kristine Pearson, Western Approach

Kristine submitted a nomination form on January 25, 2019. Her two nominators were: Chief Robert Joseph (Ditidaht) and Chief Jeff Jones (Pacheedaht).

There was no other response from this region to: Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process; a second letter asking for nominations that was sent from the Communications Manager on January 24, 2019.

On January 31, 2019, a letter was sent to this region confirming Kristine as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

Trina Sxwithul'txw, Southeastern Vancouver Island

Trina submitted a nomination form on January 28, 2019. Her nomination was supported by letters from the Chiefs of Halalt, Stz'uminus and Penelakut nations.

There was no other response from this region to: Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process and a letter dated January 24, 2019 from the Communications Manager seeking additional nominations.

On January 31, 2019, a letter was sent to this region confirming Trina as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022 (with the condition of that an annual review may be requested by an Indigenous Community within the Southeastern Vancouver Island region).

Carleen Thomas, Burrard Inlet / Lower Fraser

Carleen submitted a nomination form on January 11, 2019. Her nominator was: Deanna B. George, Councillor, Tsleil-Waututh.

There was no other response from this region to: Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process and a second letter, dated January 7, 2019, from the Communications Manager seeking additional nominations.

On January 11, 2019, a letter was sent to this region confirming Carleen as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

Chief Ernie Crey, Fraser Valley

The Communications Manager received nomination forms in support of Chief Crey from: Chief Andy Phillips, Sqewlets (Sto:lo Tribal Council) on November 19th, 2018; and Chief Robert Gladstone, Shwha:y Village (Ts'elxweyeqw Tribe) on November 20th, 2018.

There was no other response from this region to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process or a letter from the Communications Manager (dated November 19, 2019) seeking additional nominations, and proposing a nomination meeting for November 30th.

On November 26, 2019, a letter was sent to this region confirming Chief Crey as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

Chief Marcel Shackelly, Mid-Fraser / Thompson

Chief Shackelly submitted a nomination form on January 3, 2019. His nominator was: Chief Jordan Joe (Shackan).

There was no other response from this region to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process. In addition, the

Communications manager contacted all Nations in this region on December 3, 2018 (proposing dates for a Nomination Meeting in January 2019) and again on January 7, 2019. In both communications the Communications Manager invited additional nominations, but indicated that if such nominations were not received by January 11th. No responses were received from these communications, accordingly, on January 18, 2019, a letter was sent to this region confirming Chief Shackelly as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

In response to this letter, on January 22, 2019, Nicomen Indian Band emailed the IAMC-TMX to indicate that they had not been informed of Chief Shackelly's nomination. The Communications Manager confirmed that the Secretariat for the IAMC-TMX had provided the above noted correspondence to the contacts listed for each Nation. In any event, Chief Shackelly was informed of this letter and a follow up meeting took place involving Nicomen Indian Band in the spring of 2019. No additional correspondence from this region was received regarding this selection.

George Lampreau, BC Interior

On November 22, 2019 the Communications Manager received a nomination form for George Lampreau. His nominator was: Chief Shelly Loring, Simpcw First Nation.

There was no other response from this region to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process or a letter from the Communications Manager, emailed on November 14th, proposing a Nomination Meeting to be held on December 4th.

On January 16, 2019, a letter was sent to this region confirming George as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

Tracy Freidel, Alberta Métis

Tracy submitted a nomination form before the original deadline of October 26, 2018. Her two nominators were: Al Findley (Métis Local 1994, Grand Cache) and Murleen Crossen (Gunn Métis Local #55).

There was no other response from this region to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process.

On January 21, 2019, a letter was sent to this region confirming Tracy as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

c) Letter of Support signed by a majority of Chiefs in the nominee's region

Chief Russell Chipps, Vancouver Island, South

Chief Chipps was nominated on November 22, 2019 by Chief Gordon Planes (T'sou-ke). There was no other response from this region to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process.

On January 31, 2019, Chief Chipps also provided a signed letter of support from the duly elected Chiefs of a majority of Indigenous Communities in the Vancouver Island South region: Tsawout; Tseycum; Pauquachin; Malahat; T'sou-ke, and the Chief Councillor from Esquimalt Nation. This constitutes consent from 7 of the 9 Indigenous Nations (including Scia'new) that comprise the Vancouver Island South Region.

On February 1, 2019, a letter was sent to this region confirming Chief Chipps as Indigenous Caucus member for a term of February 1, 2019 to March 31, 2022.

Note: There was a concern raised that the Letter of Support listed Robert Thomas as "Hereditary Chief" for Esquimalt Nation. In fact, Robert Thomas became the Chief

Councillor for the Esquimalt Nation, following the death in 2018 of former Hereditary Chief Andy Thomas.

c. Meeting to select members by vote: Alberta First Nations

Unlike the other regions, the Alberta Region has multiple Indigenous Caucus positions (3) and during the selection process, four nominations were made, requiring that a selection meeting proceed.

The following correspondence was sent to Alberta First Nations on the IAMC-TMX email list:

- October 3, 2018: Chief Crey's letter of asking for nominations and comments on the selection process.
- November 28, 2018: Letter from the Communications Manager asking for additional nominations and proposing a meeting to select by vote on December 12th.
- November 31, 2018: Calendar invitation for the December 12th meeting.

Nominations were received from:

- Ryan Arcand (Nominator: Chief Burnstick, Alexander First Nation)
- Ray Cardinal (Nominator: Enoch Cree Nation Council Resolution)
- Norine Saddleback (Nominator: Chief Irvine Bull, Louis Bull Tribe)
- Michelle Wilsdon (Nominator: Enoch Cree Nation Council Resolution)

A meeting was held on December 12, 2018 in Edmonton, and the Enoch River Cree Resort. The hosting of the meeting resulted in a few issues arising from the Terms of Reference and from the process chosen for conducting elections for Caucus members.

The first issue that arose was that the meeting was attended by a number of representatives from First Nations that were not listed in the appendices to the Terms of Reference, were therefore not included in the definition of “Indigenous Communities” and were therefore not entitled to vote for the selection of members. This was an unfortunate and uncomfortable situation to deal with, especially for those representatives that attended. This was all especially so because, due to the NEB’s reconsideration process and renewed Crown consultation, these First Nations were, at that time, engaging in the regulatory and consultation processes relevant to the Project. Ultimately these representatives were not entitled to cast a vote in the selection process, but were permitted to speak at the meeting.

The second issue involved the proposed method for allowing proxy voting for the membership selection at the meeting. In the notices that were sent in advance of this meeting (and all other meetings), it was proposed that votes would be cast only by Chiefs of Indigenous Communities, either in person or in writing. The notice allowed for Chiefs to send individuals to vote by proxy, provided that such proxy voters provided a Chief’s written authorization to cast a vote on behalf of that Indigenous Community.

This process had been canvassed with the Indigenous Caucus and set out in the notice provided prior to the meeting, and a number of Indigenous Communities sent voters along with written authorization allowing for a proxy vote to be cast. However, at the meeting, an issue was raised by two individuals that had been sent by their communities to cast a proxy vote, but who could not provide written authorization from their respective Chiefs. The Caucus’ legal counsel became aware of this issue immediately prior to the meeting and asked that those individuals make attempts to obtain written authorization before votes were cast. However, after nominees were given the opportunity to speak to the meeting, these individuals (who were well known by attendees at the meeting, as well as Caucus staff and legal counsel, as acting on their communities’ behalf in other

IAMC activities, or as employees of their respective communities) advised that they had not been able to obtain written authorization to cast a proxy vote.

A discussion of this issue ensued, and proposals were canvassed by the Caucus' legal counsel and attendees, including proposals to (i) not allow those individuals to cast a ballot (ii) allow those individuals to cast a ballot, but segregate those ballots until such time as written authorization could be provided or (iii) allow those individuals to cast a ballot on behalf of their community. This discussion was made difficult as there were not written rules on which to rely, other than the rules that had been proposed by the Caucus. During this discussion, a number of attendees argued that, as these people were well known to represent their community in many forums, that they should be able to cast a ballot. However, a representative of one community disagreed with that proposal, noting that all attendees were aware of this proposed process and most had followed this process. As a result, attendees could not reach a consensus on the procedure to be followed in this respect.

At that point in the discussion, an attendee made a motion, which was seconded, calling for a vote on whether those two individuals would be entitled to cast a proxy vote in the selection election. That motion was passed by a majority of those attending. On that basis, ballots were distributed to every attendee that was a Chief or had written notice authorizing that person to cast a proxy vote, or who had been approved to vote as a result of the motion made during the meeting (i.e. the two aforementioned individuals). In total, 10 votes were cast (entitling each voter to vote for up to three nominees), representing 10 out of 15 Indigenous Communities from this region. Votes were counted and recorded by Caucus staff and legal counsel, and the following results of the election were announced:

Nominee	Votes
Michelle Wilsdon	8

Norine Saddleback	7
Ray Cardinal	7
Ryan Arcand	4

While the attendees at the meeting (constituting a majority of not only those in attendance, but a majority of all Indigenous Communities from this region) had selected to allow for proxy votes from two individuals that did not have written authorization, it is notable that the casting of two ballots could not have changed the result of the election. If it is assumed that those two ballots each cast votes for the top three nominees, then the result of the election would have been the same if those votes had been disallowed.

On the basis of the selection method chosen by those in attendance at the meeting (i.e. to allow proxy voting without written authorization) and on the basis that such irregularity could not have swayed the election result, the results of this election were communicated to attendees and to Indigenous Communities in the region.

Following this communication, on December 13, 2018, Chief Burnstick of the Alexander First Nation wrote to Chief Crey and others to voice his concern that the election had occurred with this irregularity and had resulted in a member from his community (Ryan Arcand) not being elected. On January 8, 2019, Chief Crey responded to this concern in writing, accurately conveyed the record of what had occurred at the meeting (as set out above) and indicated his view that this irregularity, though frustrating, did not, in his view, undermine the results of the selection process. Chief Crey offered to meet with Chief Burnstick to discuss this issue. In addition, members of the Indigenous Caucus reached out to Ryan

Arcand to offer other opportunities to work with the IAMC, including through sub-committee work.

d. BC Métis – member not selected

The Caucus has continued to experience difficulty in selecting a member to represent the region consisting of three BC Métis groups, being:

- BC Métis Federation
- Kelly Lake Métis Settlement Society
- Métis Nation of BC

During the selection of Initial Indigenous Caucus, BC Métis representatives were unable to come to a consensus on either the selection of a member from this region, or on a process to select a member from this region. During that initial selection process, a number of efforts were attempted by the working group (which preceded the Committee) to assist the BC Métis to resolve this issue, including the use of mediation. The Caucus is cognizant of the need to fill this seat and provided direction to Caucus staff and legal advisors to explore new ways to assist in resolving this impasse. However, to date, the Caucus has not been able to facilitate the selection of a member for this region.

During the selection process, nomination forms were received nominating the following individuals for this region:

- Earl Belcourt, BC Métis Federation (Nominator: Keith Henry, President, BCMF)
- Gary Biggar, Métis Nation BC (Nominator: Clara Morin Dal Col, President, MNBC)

There were no other responses from this region to Chief Crey's letter of October 3, 2018 asking for nominations and comments on the selection process. However, as a result of the Caucus' knowledge that the members of this region had not reached a consensus

on an appropriate method for selecting a member as between the BC Métis Federation/Kelly Lake Métis Settlement Society (on the one hand) and the Métis Nation of BC (on the other), Caucus staff did not recommend hosting a selection meeting and vote as was done in other regions.

Instead, a meeting was hosted at the offices of the Caucus' legal counsel (JFK Law Corporation) in Vancouver on February 22, 2019. This meeting was attended by representatives from each Métis organization as well as Caucus staff (by phone) and legal counsel (Jeff Langlois). During this meeting Caucus staff and legal counsel explored whether there had been any progress between the groups in the intervening 18 months since the initial selection, in terms of agreeing to a selection methodology. Through discussions it became clear that parties still did not agree on a selection method, and in particular, the Métis Nation of BC disagreed with the legitimacy of hosting an election between the three organizations.

Having established that, Caucus staff and legal counsel explored whether there could be other ways to address the lack of representation from this region. A number of ideas were discussed, including appointing members with short terms or on a rotating basis. In addition, the attendees discussed whether it would be acceptable to appoint a member and an observer (one from each side of the divide between the groups). The discussions during this meeting were forthright but ultimately a resolution was not achieved. Instead, the parties indicated they would consider the issues raised in the discussion, and Caucus staff and legal counsel indicated that this issue would be discussed with the Indigenous Caucus. The Indigenous Caucus is committed to finding ways to encourage the BC Métis to select a member for this region, and Caucus staff and legal counsel intend to bring recommendations forward for consideration of the Caucus and for further discussion with representatives from this region.

3. Updates to Indigenous Caucus membership

Following the completion of the selection process, as set out above, Chief Ernie Crey went on extended medical leave from his duties as a Caucus member and from his role as Chair of the Caucus. As a result, efforts were made to (i) appoint an interim

replacement member for the Fraser Valley Region and (ii) appoint an interim Chair of the Indigenous Caucus.

(i) Appointment of interim replacement

On March 26th, 2019 a Sto:lo leadership meeting was held in Richmond, during which Tribal Chief Colin Pennier was appointed as interim replacement and Chief Robert Gladstone was appointed as an alternate member of the Caucus. This meeting was attended by 13 of the 24 Sto:lo communities listed on Appendix A of the IAMC ToR in the “Fraser Valley” present at that meeting and their decision was confirmed in a letter sent to all 24 communities on March 29, 2019.

(ii) Appointment of interim Chair of Indigenous Caucus

Councillor Michelle Wilsdon was selected by the Indigenous Caucus to be their Interim Chair.

This process started with a discussion by Indigenous Caucus legal counsel and staff shortly after Chief Crey went on medical leave. We decided to start by asking Ms. Wilsdon because: (1) Chief Crey had previously asked her to Chair the Indigenous Caucus meetings and Co-Chair the IAMC meetings on those occasions when his responsibilities as Chief kept him from attending; and (2) our observation was that IAMC members were happy with her work, and viewed her as an effective meeting Chair.

Michelle agreed to be considered for the role providing that there was a “consensus” reached amongst Indigenous Caucus members. Each member of the Indigenous Caucus was then contacted by the Communications Manager and they were asked this question: “Do you support Michelle Wilsdon as Interim Chair?” Each person responded with an unconditional “yes.” This was confirmed in an email to Indigenous Caucus members on March 25, 2019, and forwarded to the federal Co-Chair shortly thereafter

4. Documentation

Documentation and correspondence referred to above is on file at the offices of the legal counsel to the Indigenous Caucus.

