

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES**

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON,
DOUGLAS CLAYTON, DANIEL CLAYTON, and BILCON OF DELAWARE**

Investors

v.

GOVERNMENT OF CANADA

Respondent

WITNESS STATEMENT OF

HUGH FRASER

JULY 6, 2011

I. Personal Background

1. I am a communications and public relations professional. I have an Honours Bachelor of Arts in English degree from Dalhousie University in Halifax. I also hold a Master of Journalism degree from Carleton University in Ottawa.
2. In my professional experience, I spent a decade as a journalist with CBC Newsworld, CBC Television, and CBC Radio as a writer, editor, and producer. I have served as the Press Secretary to former Nova Scotia Premier, John Hamm. I also served as a Communications Advisor to Health Canada, in Halifax, and to the Nova Scotia Department of Transportation and Public Works.
3. At the time of the public hearings conducted by the Whites Point Quarry Joint Review Panel, I was Senior Public Relations Counsel with the Bristol Group in Halifax. The Bristol Group provided public relations services to Bilcon. In that capacity, I attended the hearings.

II. General Observations

4. From June 16 to June 30, 2007, I attended the majority of the sessions of the public hearings. I have also refreshed my memory by reviewing the transcripts of the Hearings.¹ I did not attend the hearings on June 22, 23, and 25 but I have reviewed the transcripts for those days.
5. In my view, the Panel appeared disdainful of Bilcon and its representatives, while appearing deferential to those who opposed the quarry. The atmosphere in the room was tense.
6. On Day One of the hearings, Dr. Robert Fournier, Chair of the Panel, outlined the Panel's mandate by reading the entire Terms of Reference aloud to the audience. From the start, it seemed clear that Dr. Fournier was unhappy with Bilcon, even before testimony had begun.
7. Dr. Fournier opened the questions by asking Bilcon's representative, Paul Buxton, what he thought the purpose of the EIS Guidelines were, and how they relate to the process they were in right now.² It appeared to me that Dr. Fournier wanted to let the audience know from the very start, in the Panel's opinion, Bilcon had not met the terms of the Joint Review Panel's guidelines:

THE CHAIRPERSON: Perhaps I will offer my view now in that the guidelines are generally perceived as a minimum requirement for the Panel. The Panel defines the task in front of it and then puts in the guidelines the minimum amount of information that is necessary to make a decision. ... So I just think it's important for you to realize that the guidelines were seen by us as a minimum of information, not a framework. In addition to a framework, they were requests for specifics. Do you have anything you want to add?³

8. It seemed to me that Dr. Fournier was scolding Bilcon, rather than establishing an objective tone to consider the environmental effects of the Project.
9. The following exchange, from the first morning, illustrates the kind of adversarial approach the Chair employed with Bilcon:

THE CHAIRPERSON: One of the things that has struggled us for some time is that there is a view offered by you that you have consulted with the community, you have had open houses, and as you have said your door is opened, and that you attempted to interface with community members in order to extract knowledge.

Mr. PAUL BUXTON: Yes.

¹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16 to June 30, 2007 at . (*Set out as Fraser Exhibits 1 to 13*)

² Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 66-69. (*Fraser Exhibit 1*)

³ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 71-72. (*Fraser Exhibit 1*)

THE CHAIRPERSON: But when you look at the responses that have emerged from the community in response to the EIS, they are almost universally negative. And in your side, they are almost universally positive.

The community members say: We haven't been consulted. The CLC has not worked very well. We know a great deal about ocean conditions off the coast because we have been fishing here for hundreds of years. We haven't really been consulted. Questions may have been asked, but it was not a true consultative process.

The reason why this concerns us is that it is the cornerstone of the TIA Process. The TIA Process says that traditional knowledge and public involvement are the cornerstone of any project, working with the community, engaging the community in a meaningful discussion long term.

So there clearly is a disparity, a disparity which is difficult for us to comprehend because on one side we are hearing very positive, on the other side we're hearing very negative, and there seems to be no middle ground.

So I would ask that you reflect on that for a moment and tell us why that would be the case, why would there be such a disparity between what you think is the perfect process or that you seem to think is a process that has been perfectly executed and on the other side, the negative side, which seems to be just the opposite. It just strikes us as unusual.

Mr. PAUL BUXTON: I believe there is an explanation to this. I believe that anybody that genuinely wanted to know what the Project was about and how they could be involved in it and influence it, that is in its various parts, whether you were concerned about noise, dust or any of the other issues, that the opportunities were there, and I think those people came in to see us, and I believe that they got the information that they were looking for.

I believe that those people that from a philosophical perspective did not want to see this Project did not consult with us and in fact chose not to consult with us.

We can't force people to consult with us. The opportunities were there. I think we provided them continuously over a five-year period. And those people that really did want to know what we were doing about the elements of concern came in to talk to us. Those that in fact did not want to know about the elements of the project itself or the specific elements of concern, but who opposed the project from a philosophical perspective, and it is certainly their prerogative, did not consult us and did not want to consult us or be part of any type of consultative process. And you know, I think that that has continued for five years.⁴

⁴ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 82-85. (*Fraser Exhibit 1*)

Dr. Fournier continued, making clear that he felt Bilcon had fallen short of community engagement, regardless of what Mr. Buxton was saying:

THE CHAIRPERSON: Are you suggesting that the burden of responsibility for engagement rests with the public?

Mr. PAUL BUXTON: I did not. What I do say is that if we provide the opportunity and people chose not to take that opportunity, we cannot drag people into meetings. We cannot force them to come and talk to us or if we set up specific meetings to discuss and people do not come, we cannot make them come. Both sides must be willing to discuss.

THE CHAIRPERSON: The burden of responsibility I think rests with the Proponent and it seems to me given the prominent nature that traditional knowledge and public involvement has in the TIA Process, it would seem to me as well that this is something which should have been pursued more vigorously, or do you feel that you have pursued it as vigorously as you possibly can?

Mr. PAUL BUXTON: I fail to see how we could have pursued it more vigorously. We have made ourselves available on numerous occasions...

THE CHAIRPERSON: But you seem to be saying that you had an open door policy.

Mr. PAUL BUXTON: Yes.

THE CHAIRPERSON: But I'm thinking about workshops, I'm thinking about public engagement, I'm thinking about documents presented, walking people around the site. In other words...

Mr. PAUL BUXTON: We have done all these things. We did site tours.

THE CHAIRPERSON: Then why do we get these negative responses?

Mr. PAUL BUXTON: We did site tours. It has been a difficult process for us to engage in. I have talked to literally thousands of people in the past five years on a personal basis. I think that we have taken every step in those years. I don't think anyone can genuinely say that they did not have their opportunity to make their views known to us throughout that process.⁵

10. Dr. Fournier's language in the following exchange also reinforces the sense that he was unwilling to accept Bilcon's explanations:

⁵ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 85-86. (*Fraser Exhibit 1*)

THE CHAIRPERSON: As I said, I think we will terminate this line of questioning but there is just one further thing I wanted to raise, and that is that I wonder why it is that the 400 individuals that you have on record as wanting jobs in this project were not available for consultation or public involvement?

Mr. PAUL BUXTON: At this meeting?

THE CHAIRPERSON: No, I mean in the public consultation processes in the community. You have made the suggestion that you have 400 people on record as wanting jobs emanating from this project. Well those 400 people are potential candidates for consultation, are they not?

Mr. PAUL BUXTON: Oh, absolutely. And in the recent past, we have held two meetings on-site. I think there were 23, 24 at the first meeting, 40 out of the second meeting, and they come in on a regular basis to consult with us.⁷

11. From my review of the transcript, I see that on Day Six, for example, Dr. Fournier said:

... And I think, and I have to agree with some of the comments that I've heard, is that it seems totally inappropriate to present it to us as a moving target, ask us to evaluate it, and in the same words to tell us that it's going to change again, and again, and again. You've had two and a half years to look at this process. It would seem to me, as a Panel member I would've thought that we would be looking at something that would be settled and defined. Instead, what you're offering up is a compensation plan. So I'm sorry to verbalize it this way, but I think, speaking for the Panel, I believe that this is an inappropriate response.⁸

12. It seemed to me that the Panel was applying a different standard to Bilcon and the project's opponents, by taking a hard line towards Bilcon while accepting anything from opponents, regardless of how frivolous some comments might have been, and still requiring Bilcon to respond. For example, Dr. Fournier entertained the challenge of Mr. Bob Morsches, to Bilcon's consideration of alternative sites:

Mr. BOB MORSCHES: Mr. Chairman, this concerns the briefing by Mr. Buxton last Saturday, if I may address that. It doesn't have much to do with the environment. This concerns alternative sites for basalt quarries. Last year, the year before, Reykjavik, Iceland, was wanting people to come to take away the basalt which is, they have very active volcanoes up there, and a lot of basalt, and you want to ship it by sea, and therefore it would be a perfect area to use it, 'cause those people wanted to get rid of it. An alternative site which is under consideration by NASA is to go ahead and explore Mars because it's full of basalt and there's - it doesn't hurt the environment or anything. They're thinking about having large carriers do such a thing, and then bring it back to the United States,

⁷ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007 at 89. (*Fraser Exhibit 1*)

⁸ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 22, 2007 at 1212. (*Fraser Exhibit 6*)

and they could drop it in lake water. Now that's a couple alternatives, you know, that I've taken a look at. I realize that maybe that's far-fetched, but that's what I found out.

THE CHAIRPERSON: Was that in a form of a question, or was that - that's a comment, is it?

Mr. BOB MORSCHEs: Well, I was wondering if those two alternatives were researched, because I know you haven't listed any alternatives sites.

THE CHAIRPERSON: I think the first one might have some merit. The other one is a trifle fanciful, think you not?

Mr. BOB MORSCHEs: My discussion with NASA is that it's in a, not a detailed planning area, but it's a concept plan, Mr. Chairman.

THE CHAIRPERSON: Well, Mr. Buxton, I guess you're being asked about Iceland.⁹

13. As a professional observer, it appeared to me throughout that the Panel was taking sides, and showed little respect to Bilcon and its experts. The demeanour and conduct of Dr. Fournier, in particular, surprised me. Dr. Fournier is a well-regarded, popular weekly science columnist on CBC Radio on mainland Nova Scotia. His performance on radio is invariably scholarly, friendly, good humoured, educative, and professional. Dr. Fournier's performance at the Joint Review Panel hearings was far different. I recall observing at the hearings that he appeared more like a professor committed to embarrassing an unpopular student, while showing the entire class who was in charge and who had the right answers to all of the questions he was asking. For example, at one point, Dr. Fournier inquired if any member of Bilcon's presentation team knew what "the scientific method" was.¹⁰ The team, of course, consisted of experienced and qualified engineers and scientists.
14. Over the 90 hours of hearings, Bilcon's experts testified for only 90 minutes or so.
15. At the request of the Panel, Bilcon had arranged for several experts, in various fields, to attend the hearing every day. Carlos Johansen, for example, an expert in shipping, came from Vancouver. Yet, the Panel directed only one question to him.
16. Throughout the hearings, while the Panel tolerated emotional outbursts and unrelated presentations from opponents to the project,¹¹ Dr. Fournier chastised Bilcon frequently.

⁹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 18, 2007, at 374, 375. (*Fraser Exhibit 2*)

¹⁰ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 18, 2007 at 263. (*Fraser Exhibit 2*)

¹¹ For example, on Day Five the audience broke out into applause. Dr. Fournier did not caution the audience to not applaud until well into the following day. Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 21, 2007, at 1151. (*Fraser Exhibit 5*); Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 22, 2007, at 1271 (*Fraser Exhibit 6*); In reading the transcripts, I noticed that on Day Seven and Day Nine, the Panel only cautioned attendees to "refrain" from cheering or applauding when someone said something against the Project or its representative, Paul Buxton. Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007,

III. The Tone of Anti-Americanism

17. Throughout the hearings, there was a pervasive tone of anti-Americanism, against Bilcon's American parent company, and its intention to export the aggregate from the proposed quarry to the United States
18. On Day One of the hearings, for example, Dr. Fournier began by asking Bilcon's representative if anybody from the U.S. parent companies would attend the hearings. Dr. Grant pursued the questioning, and asked Buxton:

Perhaps you might explain to us a little bit about what the nature of being a subsidiary of Bilcon of Delaware implies? You talked a little bit about the corporate structure, but it's not entire clear to us so perhaps you might just clarify that a bit?¹²

Mr. Buxton was surprised and commented, "I'm not quite sure what you're driving at", but tried to respectfully answer Dr. Grant's questions. Dr. Grant then continued to challenge the experience of Bilcon and its parent U.S. companies with aggregate mining and environmental interests.

19. Dr. Fournier then asked:

Does Clayton have any other additional international interest? I realize they're involved in something in New Brunswick, but aside from that are they involved in anything else internationally?¹³

20. Dr. Muecke then added:

And to my knowledge, there are rock types which are for aggregate mining. So perhaps just to answer my question as to why Nova Scotia as opposed to the U.S. coast?

...

Okay. Thank you for that. And so what you are saying is that the transportation costs and the quality of the rock were the main determinants in locating where you are at the present time.¹⁴

21. Many statements of opponents to the project were also clearly motivated by anti-American sentiment. For example,

at 1501, 1526 (*Fraser Exhibit 7*); Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 26, 2007, at 1927(*Fraser Exhibit 9*).

¹² Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 129. (*Fraser Exhibit 1*)

¹³ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 132. (*Fraser Exhibit 1*)

¹⁴ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 16, 2007, at 136, 138. (*Fraser Exhibit 1*)

- a) Mr. Michael Hayden, related some “personal research” he conducted about Bilcon’s U.S. parent in the American concrete market:

The fact that we, as Canadians, are becoming once again a part of a core-peripheral economy scares me even more. ... Of course, there's nothing new about core-peripheral economics. We, as Canadians, experienced it for 200 years as a Colony of the British Empire. Does that give me the full 15 minutes? I tried not to talk too fast. Of course, there's nothing new about core-peripheral economics. We, as Canadians, experienced it for 200 years as a Colony of the British Empire. We sat idly by and watched our natural resources being plundered for the good of the Motherland; in this case, England. 50 or so years ago, we said, excuse us, we'd like our sovereignty back.¹⁵

- b) Ms. Mary McCarthy challenged the “profits accruing” to Bilcon.¹⁶ She also made a comment on how Bilcon of Nova Scotia is an unlimited company registered with Joint Stocks:

Nova Scotia is one of the few provinces in Canada that has this facility of registering unlimited companies and recognizing them, so I was wondering if ... Now there is a special formula for taxing such companies which have their office in another jurisdiction out of Canada. And I’m wondering if this calculation has been factored into the profits as accruing to the Province as listed by the gentleman just now on the board.¹⁷

- c) Mr. Don Mullin also challenged Bilcon’s corporate status as a Nova Scotian unlimited liability company: He said that there were:

“... no requirements of the Directors of these companies to be residents in Canada ... U.S. resident investors that hold their Canadian investments through one of these may generally consolidate the profits and losses of their indirect Canadian operations within those of the other members of their corporate group, when computing their U.S. tax liabilities.”¹⁸

22. The transcript of the hearing provides many examples of the hostility to the American aspects of the Project. For example:

- a) It is another pattern of US interests being served by the compromising of Canadian resources.¹⁹
- b) I also told him we are instructed by God in the Bible to preserve the earth and be good stewards not to blow up Digby Neck for the basalt rock and ship it to New Jersey to make roads.²⁰

¹⁵ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 25, 2007 at 1818. (*Fraser Exhibit 8*)

¹⁶ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 19, 2007 at 574. (*Fraser Exhibit 3*)

¹⁷ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 19, 2007 at 574. (*Fraser Exhibit 3*)

¹⁸ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 28, 2007 at 2701. (*Fraser Exhibit 11*)

¹⁹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 25, 2007 at 1832. (*Fraser Exhibit 8*)

- c) For foreign business interests and far away governments to force such an industry upon a population against their will has the air-about-it of rule by a self-interested oligarchy.²¹
- d) Also, for a foreign company to enter this magnificent area, this province, this country to freely, and I mean freely, rape it and remove the very material of which it is made and give nothing in return but a few paltry low-paying jobs is an abomination.²²
- e) It seems to me the real CFA (come from away) here is Bilcon, a subsidiary of an American company, whose commitment to this place is to spend the next 50 years blowing up as much of it as possible and shipping it off to another country.²³
- f) How could foreign interests be allowed to come into our country and blast our precious, irreplaceable Fundy rock into gravel for roads in New Jersey? Preposterous.²⁴
- g) So I'd like to approach this by talking about several categories, and the first is how it feels to be member of a community that has been targetted (sic) by corporate America.²⁵
- h) I feel that that at least raises some questions about trusting whether the community's best interests will be taken exclusively to heart by a foreign-owned company, so we know that such risks are inherent in hard rock mining.²⁶
- i) Two million tonnes of basalt rock, reportedly, will be removed from Digby Neck annually over 50 years, perhaps longer, and shipped to the US, which already has its own basalt deposits. So what's the attraction for Nova Scotian basalt? Could it be that the price is right with minimum royalties, under-funded monitoring and complicit Governments in Ottawa and Halifax?²⁷
- j) Regarding the proposed destruction of our Fundy Shore communities by foreign-based pirates stealing our resources, contaminating our environment and threatening our livelihoods and well-being for future

²⁰ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 19, 2007 at 602. (*Fraser Exhibit 3*)

²¹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1521. (*Fraser Exhibit 7*)

²² Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1526. (*Fraser Exhibit 7*)

²³ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1580. (*Fraser Exhibit 7*)

²⁴ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 25, 2007, at 1867. (*Fraser Exhibit 8*)

²⁵ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 27, 2007, at 2370. (*Fraser Exhibit 10*)

²⁶ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 28, 2007, at 2539. (*Fraser Exhibit 11*)

²⁷ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1570. (*Fraser Exhibit 7*)

generations... We are outraged with the deceptive tactics used by this invader, its local hirelings and the complicit elected officials.²⁸

k) Will outside interests be enabled to enter our Province at will to rape and pillage our land, and we will not be able to stop them?²⁹

23. Throughout the hearing, it also appeared to me that the Panel, by its demeanor and behavior, accepted these same sentiments and anti-American statements and that they shared those opinions. For example, I see in the transcript that Dr. Fournier noted the nationality of the shipping company that Bilcon had an agreement with. He said:

But is it not true that two-thirds of that operational money would be spent on shipping and that the shipping company you've identified, Canada Steamship Lines, is not necessarily a Canadian company. It's an international company. It has offices in Boston and so forth, so that 20 million would not necessarily be spent locally, would it?³⁰

24. I do not recall seeing in the transcript an example during the hearing where a Panel member said that these kinds of politically biased statements were not relevant to the proceeding or that they were counter-productive to fostering an objective environment for the hearings.

25. Throughout the hearings, it also struck me that the anti-American tone was more than a little ironic. Many of those who seemed most concerned that an American subsidiary would harm the idyllic local community were themselves American cottagers or retirees, while Dr. Fournier himself came to Nova Scotia from the U.S. as a young professor.

IV. The anti-NAFTA Tone of the Hearing

26. On Day Three, the Panel received a presentation from Gilles Gauthier, a senior official in the Department of Foreign Affairs and International Trade (DFAIT) who testifies about the application of the North American Free Trade Agreement to the Project. During that presentation, Mr. Gauthier said that the implications of the NAFTA did not require that additional future aggregate quarry projects be approved in the Digby Neck region if the Project was approved.³¹

27. Following Mr. Gauthier's presentation, the Panel expressed concern that approval of the Project would "open the floodgates" for more approvals of American-based aggregate corporations. For example, Dr. Fournier's commented on the precedent for future coastal quarries: "is there implicit in that decision [to approve a project such as this one] ... to automatically facilitate the development of further coastal quarries?"³²

²⁸ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 30, 2007, at 3146. (*Fraser Exhibit 13*)

²⁹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 30, 2007, at 3177. (*Fraser Exhibit 13*)

³⁰ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 25, 2007, at 1695. (*Fraser Exhibit 8*)

³¹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 19, 2007, at 434. (*Fraser Exhibit 3*)

³² Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 19, 2007, at 434. (*Fraser Exhibit 3*)

28. In the same way, Dr. Fournier said:

“The fifth question, and I think I know the answer to this one, but we’ll ask it anyway, and that is would provisions in a Whites Point Quarry approval compromise the Government’s ability to manage environmental effects of any future coastal quarries?”

29. This fear was clearly broadcast by the Panel to the audience. After Mr. Gauthier spoke, a clergy person, Sister Bonnie, said:

“Bilcon cannot build quarries and destroy their American shoreline, and that is one of the reasons that Bilcon has come to exploit our shoreline.” She then noted that NAFTA was the reasons why if the Canadian government decided to allow it, then “Bilcon or any large company” could “rape our land” and then “sue our Canadian Government billions of dollars.”

30. On Day Four, Ms. Leslie Wade said,

“In this area, our beautiful shoreline is being targeted for a rock quarry to build roads in the U.S. and like a bad disease, if this gets approval, it has the potential to spread further along the Bay of Fundy and threaten the already struggling fishery along with the impact on quality of life and tourism.”³³

31. On Day Seven, Ms. Helen Whidden expressed alarm that Bilcon did not intend to limit its operations to one quarry on Digby Neck.

32. Despite Mr. Gauthier’s confirmation that all NAFTA requirements had to be met on a case-by-case basis, the Panel did nothing to abate the repeated challenge by opponents that the NAFTA free trade agreement was to be blamed for Canadian problems.

33. For example, Mr. Calum MacKenzie said:

Could it be that NAFTA and the WTO Trade Agreements, along with our complicit Governments in Ottawa and Halifax allow for coastal and rural communities to be decimated in the name of so-called free trade?

...

Could it be that US state regulations for environmental protection are so onerous and demanding that the Proponent cannot meet them, so Nova Scotia becomes their chopped liver?³⁴

³³ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 20, 2007, at 891, 892. (*Fraser Exhibit 4*)

³⁴ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1571. (*Fraser Exhibit 7*)

34. The transcript indicates that Dr. Grant actually asked Mr. Calum Mackenzie to amplify his concerns that the quarry “might expand beyond the bounds of what is being applied for here”, and Mr. Mackenzie gladly did so. “So under NAFTA, if we open the door for one, we open the door for all, and we’re assuming, hopefully wrongfully, we’re assuming that mining could pop up everywhere along North Mountain.”³⁵
35. On Day Twelve, Ms. Elizabeth May, the leader of the Green Party of Canada, appeared and said: “In other words, triggering NAFTA in this instance is entirely at the discretion of the investor and there is no question but that changes to the regulatory environment in Nova Scotia at either the provincial or federal level that Bilcon didn't like could give rise to a Chapter 11 suit.”³⁶
36. Dr. Fournier encouraged these kinds of comments by opponents about the NAFTA and asked Ms. May to elaborate:
- I would like to bring you back to the NAFTA comments you made. Actually, I was looking for a clarification. The Tribunal decisions that you cited with regard to Canada and the United States, were they post-approval? That is, were some kind of deals struck between organizations in the two countries, and it was only after a deal had been struck or approval had been reached that it then went to a Tribunal, or did any of those have anything to do with a process similar to the one we're in now, which is leading up to an approval or a rejection of a proposal?³⁷
37. The written submissions to the Panel by “citizen advocates” also included the same kind of anti-NAFTA comments. For example, David Reside wrote a letter to the Joint Review Panel and stated: “and the worst is yet to come, because the NAFTA rules (the infamous chapter 11) would allow possibly the whole North Mountain to be eventually crushed up and shipped south, where there is apparently an insatiable market for basalt.”³⁸

V. The Political Element

38. The transcript shows that William Lang, the Deputy Leader of the Green Party of Nova Scotia, commented that it would be unethical to approve the Project based on the potential effect of greenhouse gas emissions on the future generations of Nova Scotia.³⁹

³⁵ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1576. (*Fraser Exhibit 7*)

³⁶ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 29, 2007, at 2775. (*Fraser Exhibit 12*)

³⁷ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 29, 2007, at 2798. (*Fraser Exhibit 12*)

³⁸ Letter from David Reside to Joint Review Panel, dated May 19, 2007, at 1. (*Fraser Exhibit 14*)

³⁹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 23, 2007, at 1544. (*Fraser Exhibit 7*)

39. On Day Nine, Harold Junior Thériault, the Liberal Member of the Legislative Assembly (MLA) for the Digby-Annapolis region of Nova Scotia, and Leo Glavine, the Liberal MLA for the Kings West region, made a joint presentation to the Panel. During their presentation, MLA Thériault and MLA Glavine said they were against the development of the Project, and said the Liberal Party of Nova Scotia held the same position.⁴⁰
40. The wife of Harold Junior Thériault, in her presentation to the Panel, spoke about completely unsubstantiated effects of the Project on marine life, tourism, fisheries and real estate.
41. MLA Thériault himself told the Panel that he won the election, and displaced former Conservative MLA Gordon Balsler, based on his stance against the Project.⁴¹
42. When Mr. Buxton asked Mrs. Thériault why she had never brought any of her concerns to the attention of Bilcon, Mrs. Thériault answered:

And there is a sense in our household that we stay clear of... Or that I'm to stay clear of issues that are so strongly put forward in the community, and that's why, to show that we don't have... That we are not on one side or the other. I do have a "Stop the Quarry" sign on my lawn, and... But that's the main reason why I haven't been to any of the public meetings. I don't feel that meetings that were put on by Bilcon is the place that I want to be seen. It says that... It has the connotation that you are in support of the quarry, and that's the reason why I didn't attend your meetings.⁴²

On Day Eleven, the local Member of Parliament for the Digby region and former Minister of the Department of Fisheries and Oceans (DFO), Robert Thibault, also made a presentation to the Panel. He was critical of the Project, particularly because the basalt was to be exported to the United States. It was also clear that he had held the same opinion as the federal Minister of the Department of Fisheries and Oceans; as minister, he referred the Project to a panel review assessment, something which is not ordinarily done for quarry projects.

43. Ms. May, the leader of the Green Party of Canada, began her presentation by stating she was there to condemn both Bilcon and the Project.⁴³

⁴⁰ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 26, 2007, at 2160. (*Fraser Exhibit 9*)

⁴¹ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 26, 2007, at 2162. (*Fraser Exhibit 9*)

⁴² Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 19, 2007, at 587. (*Fraser Exhibit 3*)

⁴³ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 29, 2007, at 2771. (*Fraser Exhibit 12*)

At this point, having spent a good deal of what I laughingly refer to as my free time reading their Environmental Impact Statement, I wouldn't trust Bilcon to put up an ice cream stand next to the highway in this area.⁴⁴

44. Having attended the Whites Point Quarry Joint Review Panel hearings, the Panel's treatment of Bilcon did not, in my view, align with the behaviour of an objective independent Panel. The Panel did nothing to discourage emotional, unsubstantiated, and patently biased comments by opponents to the Bilcon project and actively expressed its own suspicion of Bilcon's representative, Mr. Buxton, took little interest in other Bilcon experts, and consistently, negatively focused on the American nationality of Bilcon. The Panel appeared from the first day to have some pre-established resentment for Bilcon, which manifested itself in the behaviour described above.
45. I make this witness statement in support of the Investors' Memorial and for no other or improper purpose.



HUGH FRASER

Dated: July 6, 2011

⁴⁴ Whites Point Quarry Joint Review Panel Hearing Transcript, dated June 29, 2007, at 2801. (*Fraser Exhibit 12*)