S.C.C. File No. 35379

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ANDREW KEEWATIN JR; and JOSEPH WILLIAM FOBISTER on their own behalf and on behalf of all other members of GRASSY NARROWS FIRST NATION

APPELLANTS

-and-

MINISTER OF NATURAL RESOURCES and RESOLUTE FP CANADA INC. (formerly ABITIBI-CONSOLIDATED INC.)

RESPONDENTS
(Defendants)

-and-

THE ATTORNEY GENERAL OF CANADA

RESPONDENT
(Third Party)

-and-

GOLDCORP INC. and LESLIE CAMERON on his own behalf and on behalf of all other members of WABAUSKANG FIRST NATION

RESPONDENTS
(Interveners)

FACTUM OF THE INTERVENER
BLOOD TRIBE, BEAVER LAKE CREE NATION, ERMINESKIN CREE NATION, SIKSIKA NATION and WHITEFISH LAKE FIRST NATION #128

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada)*

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(Interveners)

AND BETWEEN:

LESLIE CAMERON on his own behalf and on behalf of all other members of WABAUSKANG FIRST NATION

APPELLANTS
(Interveners)

-and-

ANDREW KEEWATIN JR; and JOSEPH WILLIAM FOBISTER on their own behalf and on behalf of all other members of GRASSY NARROWS FIRST NATION

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3. The situation in Alberta foreshadows what may occur in Treaty 3 if sufficient safeguards are not put in place, in advance of intensive resource development, to ensure the Treaty harvesting promise. In regions faced with ongoing and intensive resource development, particularly where the province stands to benefit financially from a proposed taking up (through royalties for example), the duty to consult and accommodate, in the experience of the Intervener Nations, is not sufficient to protect their Treaty harvesting rights.

4. The plain language of the harvesting clauses in Treaties 3 -7, s. 91(24), the promise of s.35 and the honour of Crown, demand the federal government, as a Treaty signatory, step-in to ensure the Treaty promise is not eviscerated by provincial Crown actions in relation to public lands.

PART II – STATEMENT OF ISSUES

5. The Blood Tribe, Siksika Nation, Beaver Lake Cree Nation, Ermineskin Cree Nation and Whitefish Lake First Nation #128 (collectively, "Intervener Nations"), wish to make the following points:

a. In certain circumstances, where the province takes up lands pursuant to their jurisdiction over public lands and resources, the duty to consult and accommodate may be insufficient to protect Treaty harvesting rights;

b. The Government of Canada has a positive obligation to protect Treaty rights, and the harvesting right in the numbered Treaties is no exception; and

c. The Government of Canada's involvement in protecting Treaty rights would not present a completely new paradigm. Fears expressed by the Respondents and the

Ontario Court of Appeal about the "evisceration" of the province's jurisdiction over public lands are vastly overstated.

PART III – STATEMENT OF ARGUMENT

A. In some circumstances, the duty to consult may not sufficiently protect Treaty rights

6. The situation in Alberta foreshadows what may occur in Treaty 3 if sufficient protections are not in place to ensure the Treaty harvesting promise.

7. The Blood Tribe[1] and Sikisika Nation[2] are parties to Treaty 7. Beaver Lake Cree Nation[3], Ermineskin Cree Nation[4], and Whitefish Lake First Nation #128[5] are Treaty 6 beneficiaries. Most of the lands in Treaties 6 and 7, and in the traditional territories of these Nations, have already been taken up by agriculture, oil and gas, forestry and other developments. Remaining lands suitable for the exercise of Treaty rights are rapidly being taken up for oil sands development, coal mines, forestry and grazing leases.

8. The Intervener First Nations submit that when a provincial Crown discharges the dual roles of: a) taking-up land for resource extraction projects to generate provincial revenue, through royalties for example; and b) consulting about impacts of those projects on Treaty rights,

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[1] The Blood Tribe, also known as the Kainai, are comprised mainly of Niitsitapi (Blackfoot) speaking people. There are approximately 11,820 Blood Tribe members. Their reserve lands are located approximately 200 km south of Calgary, Alberta near the city of Lethbridge, Alberta and include a timber reserve (IR 148 and IR 148A).

[2] The Siksika Nation is comprised of mainly Niitsitapi (Blackfoot) speaking people. The reserve lands of the Siksika Nation are located approximately 100 km east of Calgary, Alberta (IR 146). The current membership of the Siksika Nation is approximately 6988 people.

[3] Beaver Lake Cree Nation is comprised of mainly Nehiyaw (Cree) speaking people, with approximately 1092 members. The nation's reserve lands are located approximately 17 km southeast of Lac La Biche, Alberta (IR 131).

[4]. Ermineskin Cree Nation's reserve lands are located in two separate locations, approximately 70 km south of Edmonton, Alberta (IR 138 and IR 138A) near their traditional territory of Bear Hills and Pigeon Lake. There are currently about 4,377 members of the Nation.

[5] The reserve lands of Whitefish Lake First Nation #128 are located approximately 200 km northeast of Edmonton, Alberta (IR 128). The current membership of the Nation of approximately 2,378 people, are the descendants of the Whitefish Lake Cree

there can be instances when the protection of Treaty rights is not at forefront of the reconciliation exercise.

9. The duty to consult and, if indicated, accommodate, as interpreted and implemented by the Alberta Crown, threatens the continued existence of Treaty harvesting rights, particularly in parts of the province facing intensive resource development. The shortcomings of the consultation process for provincially regulated resource developments are thoroughly reviewed in a paper recently published by the Canadian Institute of Resources Law by David Laidlaw and Monique Passelac-Ross.[6]

10. The Alberta Crown disregards "the critical importance of consultation on strategic decision-making and on cumulative impacts management, preferring to focus on project-specific consultation".[7] While taking-up land for an individual project may not result in significant impacts, hundreds of individually insignificant projects, taken together, can render large swaths of traditional territory unsuitable for the exercise of Treaty rights.[8]

11. First Nations should not have to wait until no meaningful ability to hunt, fish and trap, exists to commence an infringement action.

12. Consultation processes depend on good-faith efforts to share information and, if done meaningfully, lead to the negotiation of measures to mitigate impacts on Treaty rights. Despite the protection of s.35 and what the common law mandates, in the context of rapid and intensive natural resource development on provincial Crown land, First Nations are seriously disadvantaged in these negotiations. First, the Crown and industry generally come to the table with significantly more financial and technical resources than First Nations. While First Nations have superior knowledge regarding their members' use of the provincial Crown lands to be impacted, they generally do not have the scientific and technical expertise that the Crown and

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[6] David Laidlaw and Monique Passelac-Ross, *Alberta First Nations Consultation and Accommodation Handbook*, Canadian Institute of Resources Law, University of Calgary, Occasional Paper #44 (March, 2014), Tab 11.

[7] Ibid., at 60, Tab 11.

[8] *Gift Lake Métis Settlement v. Métis Settlements Appeal Tribunal (Land Access Panel)*, 2009 ABCA 143, at paras 31-32, Tab 2.

industry have on hand.[9] Second, this resourcing deficit is exacerbated by the sheer volume of project applications proposed within First Nations' traditional territories and the short timelines to respond.[10] Third, an analysis of the cumulative impact of numerous projects on a Nation's harvesting rights is largely absent from the project-specific approach to consultation favoured by Alberta.[11]

13. In Alberta, the administrative tribunals that oversee the regulation of resource projects under provincial jurisdiction have, to date, been reluctant to consider whether a project approval (which would lead to lands being taken-up) would adversely affect Treaty rights.[12] Recent changes to the legislative regime governing energy projects in fact removed the tribunal's jurisdiction to assess the adequacy of Crown consultation.[13]

14. While recourse to the courts remains an option, forcing First Nations to commence litigation to challenge the decisions of provincial regulators is less than ideal for all involved. First, court challenges of this type are "expensive, extensive and complicated" for both First Nations and project proponents whose projects can be tied up for years. Second, the usual remedy is for the court "to direct the affected First Nation to engage in additional consultation *with the same parties that misunderstood their concerns the first time*."[14]

15. The Intervener Nations make these points not to add to the record of this appeal or to ask this Court to make factual findings about activities occurring in Alberta. We make these points to provide the Court with a First Nation perspective of what can happen, *on the ground*, when intensive provincially regulated development conflicts with the ongoing exercise of Treaty

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[9] *Alberta First Nations Consultation and Accommodation Handbook*, supra at 3.4.1 – 3.4.3, Tab 11.

[10] Ibid., at 3.3.7, Tab 11.

[11] Ibid., at 31-32 and 60, Tab 11.

[12] Ibid., at 3.5.2 and 3.5.3, Tab 11, and the authorities cited therein, for example, see: *Dover Operating Corp*, 2013 ABAER 14, 2013CarswellAlta 1393, where the Alberta Energy Regulator held that it would not consider constitutional questions raised by the intervener First Nation (at paras 22-32), that its focus was on the "project-level effects", and it would not consider cumulative effects (at paras 112 and 163-174), Tab 1; *Teck Resources Ltd*., 2013 ABAER 17, 2013 CarswellAlta 2024, at paras.105 and 112-113, Tab 7.

[13] *Alberta First Nations Consultation and Accommodation Handbook*, supra at 15, Tab 11, which summarizes section 21 of the *Responsible Energy Development Act*, SA 2012, c R-17.3.

[14] *Alberta First Nations Consultation and Accommodation Handbook*, supra at 13, Tab 11 [emphasis in original].

harvesting rights, and to demonstrate the practical shortcomings of the duty to consult in this context, when led by the provincial Crown.

16. The protection of Treaty harvesting rights promised by the duty to consult and accommodate has been largely illusory. We are not aware of any decision in the last quarter-century made by an Alberta tribunal in the context of a resource project application that required the taking up of lands that has concluded the protection of Treaty rights trumped the economic benefits of the project. As this Court noted in *Haida*, when balancing Aboriginal interests with the public interest, the scales tend to tip "in favour of protecting jobs and government revenue, with the result that Aboriginal interests tend to 'lose'"[15].

B. The Federal Crown has a positive duty to protect Treaty rights

17. The Intervener Nations submit that the federal Crown has a positive obligation to protect First Nations against any provincial decision or decisions which collectively result in anything more than an insignificant interference with Treaty harvesting rights, including decisions that result in the taking up of lands necessary for projects under provincial jurisdiction.

18. First, the plain language in the harvesting clauses of Treaties 3 to 7 contemplate the taking up of lands by the federal government, not the province.

19. Second, Treaty harvesting rights fall squarely within federal jurisdiction under s.91(24).[16] Any exercise of discretion by a province under s.92 of the *Constitution Act* that causes more than an insignificant interference with Treaty harvesting rights will be *ultra vires*.[17] A Treaty promise to guarantee hunting, fishing and trapping represents a positive source of protection against infringements by the province.[18]

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[15] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511, at para 14, Tab 3.

[16] *R v. Morris*, 2006 SCC 59, 2 SCR 915, at para. 43, Tab 5.

[17] Ibid., at paras. 47-55, Tab 5.

[18] *Simon v. The Queen*, [1985] 2 SCR 387, at para. 26, Tab 6.

20. Third, a solemn constitutional obligation to First Nations aimed at reconciling their Aboriginal interests with Crown sovereignty engages the honour of the Crown.[19]

21. Taken together, the plain language of the Treaty, s.91(24) and the honour of the Crown require the federal government to act with diligence in ensuring the protection of Treaty harvesting rights.

22. We acknowledge the Government of Canada has, to date, largely failed to take any active role to protect Treaty harvesting rights.[20] Canada's past omissions ought not relieve it of its Constitutional obligations going forward. It would be inequitable, and we submit, contrary to the purpose of s.35 and the honour of the Crown, to rely on past failures to fulfill and protect Treaty rights to justify ongoing failures. Such an approach could act as a disincentive to fulfilling Treaty promises until a Court mandates otherwise. This would undermine, not promote, reconciliation.

C. Involvement of Federal Crown not a Radical Paradigm Shift

23. Fears expressed by the Respondents and the Ontario Court of Appeal about the "evisceration" of the province's legislative competence under s.92 and s.109 over public lands are vastly overstated.[21]

24. Contrary to the assertions of the Respondents, involving the federal Crown to ensure the protection of Treaty harvesting rights does not represent a radical paradigm shift.

25. The proactive protection of Aboriginal interests and Treaty rights is not without precedent. The federal government in the United States has on several occasions commenced litigation to protect Native American interests and Treaty rights.[22]

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[19] *Manitoba Metis Federation Inc. v. Canada*, 2013 SCC 14, [2013] 1 SCR 623, at para. 9, Tab 4.

[20] For example, *Specific Claims Tribunal Act*, S.C. 2008, c. 22, s.15(1)(g):

> 15. (1) A First Nation may not file with the Tribunal a claim that
>
> …
>
> (g) is based on treaty rights related to activities of an ongoing and variable nature, such as harvesting rights.

[21] *Keewatin v. Ontario (Natural Resources)*, 2013 ONCA 158 (CanLII), at para 205, Appellants' Record, Volume 2, Tab 3.

[22] See: *Winters v. United States*, 207 U.S. 564 ,28 S. Ct. 207, 52 L. Ed. 340, 1908 U.S. LEXIS 1415, Tab 10; *United*

26. Moreover, pursuant to its jurisdiction under s.91(24), the Government of Canada is already integrated into several areas of provincial jurisdiction, such as health and social services.[23] Likewise, under the *Canadian Environmental Assessment Act, 2012*[24] and the previous version of the act[25], federal regulators work and continue to work jointly with provincial regulators to review proposed projects that fall under provincial and federal jurisdiction.[26]

27. It would not be a significant burden on the federal Crown to take steps to actively ensure that its Treaty promises are being fulfilled and respected by provincial governments. This burden, given the Treaties and the honour of the Crown, should not fall solely on the shoulders of First Nations.

28. Statements by the Respondent Goldcorp Inc.[27] that all existing provincial permits and land tenures are in jeopardy, lack any legal foundation.

29. Finally, the Respondents cite the need for "certainty" as a basis to reject federal involvement in the taking up of provincial public lands. "Certainty" cannot be judged solely by the perspective of industry and the Crown. The Intervener Nations also seek certainty – the certainty that their members' and their decedents' culture and way of life will survive based on the continued opportunity to exercise harvesting rights as promised in the Treaty.

States v. Walker River Irr. Dist., 104 F.2d 334; 1939 U.S. App. LEXIS 483, Tab 8; *United States v. Washington*, 375 F. Supp. 2d 1050; 2005 U.S. Dist. LEXIS 1031, Tab 9.

[23] See for example, Health Canada http://www.hc-sc.gc.ca/fniah-spnia/index-eng.php, as of April 30, 2013:
"Health Canada works with First Nations, Inuit, other federal departments and provincial and territorial partners to support healthy First Nations and Inuit individuals, families and communities."

[24] SC 2012, c 19, s 52.

[25] S.C. 1992, c. 37.

[26] See for example: *Joslyn North Mine Project, Total E&P Joslyn Ltd.*, ERCB Decision 2011-005, CEAA Reference No. 08-05-37519, http://www.aer.ca/documents/decisions/2011/2011-ABERCB-005.pdf ; Shell Canada Energy, 2013 ABAER 011, CEAA Reference No. 59540, http://www.ceaa.gc.ca/050/documents/p59540/90873E.pdf .

[27] Goldcorp Inc. Factum, paras. 10, and 24

PART IV – COSTS

30. The Intervener Nations do not seek costs, and ask that this Court refrain from ordering costs against them.

PART V – ORDER SOUGHT

31. The Intervener Nations respectfully request an Order granting them leave to present oral argument at the appeal hearing for a time not to exceed ten (10) minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 1st day of May 2014.

Meaghan M. Conroy
Counsel for the Intervener,
Blood Tribe, Beaver Lake Cree Nation, Ermineskin Cree Nation, Siksika Nation and Whitefish Lake First Nation #128

PART VI – TABLE OF AUTHORITIES

PART VII – STATUTORY PROVISIONS

Canadian Charter of Rights and Freedoms, s.35

Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52

Constitution Act, s. 91(24), .92

Specific Claims Tribunal Act, S.C. 2008, c. 22, s.15(1)(g)

***Canadian Charter of Rights and Freedoms*, s.35**

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. (96)

35. (1) Les droits existants — ancestraux ou issus de traités — des peuples autochtones du Canada sont reconnus et confirmés.

(2) Dans la présente loi, « peuples autochtones du Canada » s’entend notamment des Indiens, des Inuit et des Métis du Canada.

(3) Il est entendu que sont compris parmi les droits issus de traités, dont il est fait mention au paragraphe (1), les droits existants issus d’accords sur des revendications territoriales ou ceux susceptibles d’être ainsi acquis.

(4) Indépendamment de toute autre disposition de la présente loi, les droits — ancestraux ou issus de traités — visés au paragraphe (1) sont garantis également aux personnes des deux sexes. (96)

***Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52**

52. (1) For the purposes of sections 27, 36, 47 and 51, the decision maker referred to in those sections must decide if, taking into account the implementation of any mitigation measures that the decision maker considers appropriate, the designated project

(*a*) is likely to cause significant adverse environmental effects referred to in subsection 5(1); and

(*b*) is likely to cause significant adverse environmental effects referred to in subsection 5(2).

(2) If the decision maker decides that the designated project is likely to cause significant adverse environmental effects referred to in subsection 5(1) or (2), the decision maker must refer to the Governor in Council the matter of whether those effects are justified in the circumstances.

(3) If the decision maker is a responsible authority referred to in any of paragraphs 15(*a*) to (*c*), the referral to the Governor in Council is made through the Minister responsible before Parliament for the responsible authority.

(4) When a matter has been referred to the Governor in Council, the Governor in Council may decide

(*a*) that the significant adverse environmental effects that the designated project is likely to cause are justified in the circumstances; or

(*b*) that the significant adverse environmental effects that the designated project is likely to cause are not justified in the circumstances.

52. (1) Pour l'application des articles 27, 36, 47 et 51, le décideur visé à ces articles décide si, compte tenu de l'application des mesures d'atténuation qu'il estime indiquées, la réalisation du projet désigné est susceptible :

a) d'une part, d'entraîner des effets environnementaux visés au paragraphe 5(1) qui sont négatifs et importants;

b) d'autre part, d'entraîner des effets environnementaux visés au paragraphe 5(2) qui sont négatifs et importants

(2) S'il décide que la réalisation du projet est susceptible d'entraîner des effets environnementaux visés aux paragraphes 5(1) ou (2) qui sont négatifs et importants, le décideur renvoie au gouverneur en conseil la question de savoir si ces effets sont justifiables dans les circonstances.

(3) Si le décideur est une autorité responsable visée à l'un des alinéas 15*a*) à *c*), le renvoi se fait par l'entremise du ministre responsable de l'autorité devant le Parlement

(4) Saisi d'une question au titre du paragraphe (2), le gouverneur en conseil peut décider :

a) soit que les effets environnementaux négatifs importants sont justifiables dans les circonstances;

b) soit que ceux-ci ne sont pas justifiables dans les circonstances.

***Constitution Act*, s. 91(24), .92**

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

(24) Indians, and Lands reserved for the Indians.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed. (48)

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

(b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

(24) Les Indiens et les terres réservées pour les Indiens.

92. Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

1. Abrogé. (48)

2. La taxation directe dans les limites de la province, dans le but de prélever un revenu pour des objets provinciaux;

3. Les emprunts de deniers sur le seul crédit de la province;

4. La création et la tenure des charges provinciales, et la nomination et le paiement des officiers provinciaux;

5. L'administration et la vente des terres publiques appartenant à la province, et des bois et forêts qui s'y trouvent;

6. L'établissement, l'entretien et l'administration des prisons publiques et des maisons de réforme dans la province;

7. L'établissement, l'entretien et l'administration des hôpitaux, asiles, institutions et hospices de charité dans la province, autres que les hôpitaux de marine;

8. Les institutions municipales dans la province;

9. Les licences de boutiques, de cabarets, d'auberges, d'encanteurs et autres licences, dans le but de prélever un revenu pour des objets provinciaux, locaux, ou municipaux;

10. Les travaux et entreprises d'une nature locale, autres que ceux énumérés dans les catégories

suivantes :

a) Lignes de bateaux à vapeur ou autres bâtiments, chemins de fer, canaux, télégraphes et autres travaux et entreprises reliant la province à une autre ou à d'autres provinces, ou s'étendant au-delà des limites de la province;

b) Lignes de bateaux à vapeur entre la province et tout pays dépendant de l'empire britannique ou tout pays étranger;

c) Les travaux qui, bien qu'entièrement situés dans la province, seront avant ou après leur exécution déclarés par le parlement du Canada être pour l'avantage général du Canada, ou pour l'avantage de deux ou d'un plus grand nombre des provinces;

11. L'incorporation des compagnies pour des objets provinciaux;

12. La célébration du mariage dans la province;

13. La propriété et les droits civils dans la province;

14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation de tribunaux de justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux;

15. L'infliction de punitions par voie d'amende, pénalité, ou emprisonnement, dans le but de faire exécuter toute loi de la province décrétée au sujet des matières tombant dans aucune des catégories de sujets énumérés dans le présent article;

16. Généralement toutes les matières d'une nature purement locale ou privée dans la province.

***Specific Claims Tribunal Act*, S.C. 2008, c. 22, s.15(1)(g)**

15. (1) A First Nation may not file with the Tribunal a claim that

(*g*) is based on treaty rights related to activities of an ongoing and variable nature, such as harvesting rights.

15. (1) La première nation ne peut saisir le Tribunal d'une revendication si, selon le cas :

g) elle est fondée sur des droits conférés par traité relativement à des activités susceptibles d'être exercées de façon continue et variable, notamment des droits de récolte.