

Omnibus budgets bills that transformed Canada's environmental laws visited by the Federal Court

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The Federal Court issued its decision in ***Courtoreille v Governor General in Council 2014 FC 1244*** on December 19th. In this case, Chief Steve Courtoreille – on behalf of himself and the Mikisew Cree First Nation – sought relief for the federal government's failure to consult prior to introducing the 2012 omnibus budget bills which made significant changes to Canada's environmental laws (see our summaries [here](#) and [here](#)).

At page 63, the Court stated that:

...a duty to consult arose in the circumstances of this case. That duty was triggered upon the introduction of each of the Omnibus Bills in Parliament. The extent of that duty was for the Crown to give notice to the Mikisew {sic} and a reasonable opportunity to make submissions.

In other words, the Court found that the federal government proceeded improperly when it failed to consult with the Mikisew Cree First Nation upon introducing the omnibus budget bills in 2012.

The Court reviewed the impacts of the omnibus budget bills on Canada's environmental laws and the consequent impacts on the Mikisew Treaty No. 8 territory. The Court found:

- The previous *Navigable Waters Protection Act* offered protection to all navigable waters in Canada whereas the *Navigation Protection Act* only protects those navigable waters listed in the schedule of the act and only for the purposes of navigation. The Court concluded that "Clearly, the *Navigation Protection Act* reduces the number of waterways monitored... A reasonable person would expect that a reduction in the number of waterways monitored carries with it the potential risk of harm" (page 59).
- The amendments to the *Fisheries Act* have removed the protection of fish habitat and shifted protection to fisheries using a lower standard ("serious harm to fish" as opposed to the former "harmful alteration, disruption or destruction of fish habitat"). The Court concluded that "the amendment to section 35(1) of the *Fisheries Act* clearly increases the risk of harm to fish" (page 59).
- The introduction of the new *Canadian Environmental Assessment Act, 2012* has the effect of reducing the number of projects that can trigger a federal environmental assessment as compared to the previous act. The Court notes that an environmental assessment will only be required if a project is on a list of designated projects or in circumstances where the Minister orders an environmental assessment. The Court concluded that "this designated list allows for approval of projects with reduced environmental oversight. Although those projects will usually be smaller in size, they could have a cumulative effect on the

ecosystem which the Mikisew relies upon. This has the potential of affecting the Mikisew's fishing, hunting and trapping rights." (page 57)

Given the impacts on waterways within the Mikisew Treaty No. 8 territory and the potential risk to fishing and trapping rights, the Court found that the Mikisew ought to have been given notice and a reasonable opportunity to provide comments on these matters. The Court noted that, given the structure of the omnibus budget bills, they went through Parliament with "remarkable speed" (page 60).

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