Court File No.: 36692

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

HAMLET OF CLYDE RIVER, NAMMAUTAQ HUNTERS & TRAPPERS ORGANIZATION – CLYDE RIVER and JERRY NATANINE

Appellants

and

PETROLEUM GEO-SERVICES INC. (PGS), MULTI KLIENT INVEST AS (MKI), TGS-NOPEC GEOPHYSICAL COMPANY ASA (TGS) and THE ATTORNEY GENERAL OF CANADA

Respondents

and

ATTORNEY GENERAL FOR ONTARIO, ATTORNEY GENERAL FOR SASKATCHEWAN, NUNAVUT TUNNGAVIK INCORPORATED, MAKIVIK CORPORATION, THE NUNAVUT WILDLIFE MANAGEMENT BOARD, INUVIALUIT REGIONAL CORPORATION, and THE CHIEFS OF ONTARIO

Interveners

Court File No.: 36776

AND BETWEEN:

CHIPPEWAS OF THE THAMES FIRST NATION

Appellant

and

ENBRIDGE PIPELINES INC.
THE NATIONAL ENERGY BOARD
ATTORNEY GENERAL OF CANADA

Respondents

and

ATTORNEY GENERAL FOR ONTARIO, ATTORNEY GENERAL FOR SASKATCHEWAN, THE NUNAVUT WILDLIFE MANAGEMENT BOARD, SUNCOR ENERGY MARKETING INC., MOHAWK COUNCIL OF KAHNAWÀ:KE, MISSISSAUGAS OF THE NEW CREDIT FIRST NATION and THE CHIEFS OF ONTARIO

Interveners

FACTUM OF THE INTERVENER, THE CHIEFS OF ONTARIO

(Rules 37 and 42 of the *Rules of the Supreme Court of Canada)*

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PART I – OVERVIEW AND FACTS

1. The Chiefs of Ontario is composed of the one hundred and thirty three First Nations of Ontario, as represented by their respective Chiefs, which together form a population of approximately 166,000 First Nation citizens. There are four constituent nations/organizations that make up the Chiefs of Ontario – Anishinabek Nation; Nishnawbi-Aski Nation; Grand Council Treaty #3, and the Association of Iroquois and Allied Indians – as well as a number of independent First Nations. The Chiefs of Ontario is a coordinating body for its constituent nations/organizations and First Nations in Ontario. Its principal aim is to promote nation-building and to advocate and protect Aboriginal and treaty rights.

2. First Nations in Ontario have a centuries-long relationship with the Crown that can be traced to the beginnings of contact with European nations, and was formalized in the Niagara Treaty of 1764.[1] The Niagara Treaty, following quickly on the heels of the *Royal Proclamation of 1763*, held out the promise of a nation-to-nation relationship between the Crown and First Nations, based on mutual autonomy and respect. This understanding extended to use and management of Upper Canada's abundant, but not infinite, land and natural resources. Over time, that promise has given way to the very opposite: unilateral decision-making by the Crown in regard to natural resources, fed by an attitude of paternalism and the policies of assimilation.

3. Today's First Nations in Ontario are the successor nation beneficiaries of the signatories to the Niagara Treaty. The instant cases represent the latest in a line of decisions that help shape the progression of the Crown-Indigenous relationship -- and in particular whether it will be animated by a return to the spirit and intent of the Niagara Treaty: cooperation, consultation, mutual respect and reconciliation, based on an underlying nation-to-nation relationship.

4. The decisions below on both appeals, if left to stand, would help beat a path for the Crown to continue its historical pattern of unilateralism, and of evading its duty of consultation. Such a result would be antithetical to the nation-to-nation relationship that was the initial organizing principle of the Crown-First Nation founding compacts, and that must form the basis for that relationship in the 21st century.

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[1] *Chippewas of Sarnia Band* v. *Canada (Attorney General)*, 51 O.R. (3d) 641, 195 D.L.R. (4th) 135 (ONCA), Book of Authorities ("B.O.A.") of the Intervener *Chief of Ontario*, tab 1.

PART II – QUESTIONS IN ISSUE

5. The appeals together raise the following issues:

(a) Whether the Crown discharged its duty to consult and accommodate in these cases;

(b) Whether the NEB has the jurisdiction and obligation to consider and assess the adequacy of consultation prior to issuing its decision, and if so, if it did so in these cases; and

(c) Whether or when, in the absence of consultation and participation by the Crown, the Board's hearing process (and other "regulatory processes") can satisfy the requirements of the honour of the Crown.

PART III – ARGUMENT

6. Requests for regulatory approval for the use of natural resources and development activities that may impact the rights of First Nations *always* engage the duty to consult and accommodate. That duty cannot be evaded through a purported reliance on existing -- and in many cases outmoded -- statutory schemes and regulatory regimes. In such circumstances, the question is not *whether* the Crown must consult and accommodate, but *how* and *when* it must consult in the absence of explicit legislative guidance or requirements.

7. To the extent that regulatory regimes established to make decisions regarding natural resource use that may impact Indigenous rights do not include an express requirement that the duty to consult be fulfilled, this does not and cannot have the effect of dispensing with the obligation. Nor can this give rise to empty, *ex post facto* consultation.

8. In this regard, in *Ross River Dena Council v Government of Yukon*,[2] the Yukon Court of Appeal noted as follows in the face of a statutory regime -- the territorial *Quartz Mining Act* -- that was not structured in a way to allow for timely consultation:

> The duty to consult exists to ensure that the Crown does not manage its resources in a manner that ignores Aboriginal claims. It is a mechanism by which the claims of First Nations can be reconciled with the Crown's right to manage resources. Statutory regimes that do not allow for consultation and fail to provide any other equally effective means to acknowledge and accommodate Aboriginal claims are defective and cannot be allowed to subsist.
>
> The honour of the Crown demands that it take into account Aboriginal claims before divesting itself of control over land. Far from being an answer to the plaintiff's claim in

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[2] *Ross River Dena Council v Government of Yukon*, 2012 YKCA 14 at paras. 37, 38, 40, 45, B.O.A. of the Appellant *Chippewas of the Thames First Nation* ["*Chippewas*"], vol. 1, tab. 22.

> this case, the failure of the Crown to provide any discretion in the recording of mineral claims under the *Quartz Mining Act* regime can be said to be the source of the problem. [...] In my view, therefore, the chambers judge was correct in finding that the regime for the acquisition of a quartz mineral claim in Yukon is deficient in that it fails to provide any mechanism for consultation with First Nations. [...]
>
> It is not necessary or appropriate for the Court, in this proceeding, to specify precisely how the Yukon regime can be brought into conformity with the requirements of *Haida*. Those requirements are themselves flexible. What is required is that consultations be meaningful, and that the system allow for accommodation to take place, where required, before claimed Aboriginal title or rights are adversely affected.

9. The decisions below are, similarly, symptomatic of a broader trend that risks eroding the constitutional imperative affirmed by this Court in its landmark decision in *Haida Nation*. Indeed, it may be fairly said that the present appeals ultimately stem from a failure by Parliament and the legislatures to heed the following observation of this Court in *Haida*:

> [51] It is open to governments to set up regulatory schemes to address the procedural requirements appropriate to different problems at different stages, thereby strengthening the reconciliation process and reducing recourse to the courts. As noted in *R. v. Adams*, [1996] 3 S.C.R. 101, at para. 54, the government "may not simply adopt an unstructured discretionary administrative regime which risks infringing aboriginal rights in a substantial number of applications in the absence of some explicit guidance". [...][3]

10. Delegated Crown authority to statutory decision-makers, including in regard to matters affecting Indigenous rights and title, is ubiquitous. Yet in the vast majority of cases, as here, the underlying statutory regime predates the affirmation and recognition of the duty to consult and indeed of s. 35. The duty to consult is left to be shoe-horned into existing, ill-fitting statutory processes, if at all. The result for all concerned is pervasive uncertainty as to how and when the duty is triggered. Predictably, Indigenous communities, governments and courts routinely find themselves in disagreement in this regard.

11. The danger inherent in this state of affairs is not only needless and costly litigation, but the erosion of the duty to consult as a legal and constitutional imperative and the very "promise of rights recognition" which underpins s. 35.[4] To an intolerable degree, when uncertainty over when and how the duty to consult is engaged has been brought to courts for resolution, Indigenous communities have had their attempts to hold the Crown to their constitutional obligations frustrated

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[3] *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at para. 51, B.O.A. of the Appellant *Chippewas*, vol. 1. tab. 5.

[4] *Haida Nation, ibid.* at para. 20.

on procedural grounds – that their court action is too early, or too late, or brought in the wrong forum. This does not uphold the Crown's honour. Indigenous communities' right to be consulted on matters that affect them, and to seek meaningful remedies, must not be reduced to a shell-game.

12. In *Beckman*, a majority of this Court confirmed its view that "[a]dministrative law is flexible enough to give full weight to the constitutional interests"[5] of Indigenous communities, and, with reference to its earlier decision in *Taku River*,[6] that "participation in a forum created for other purposes may nevertheless satisfy the duty to consult if *in substance* an appropriate level of consultation is provided."[7]

13. Other case law states that First Nations must avail themselves of reasonable avenues for seeking relief within regulatory processes, citing the reciprocal duty of good faith and requirement to meet.[8] The intention of these pronouncements, clearly, was to strengthen the duty to consult and allow both the Crown and Indigenous communities flexibility and perhaps even promote certainty in how the duty is implemented in any given case. It could not have been the Court's intention for this flexible approach to sanction end-runs around that duty or defeating it by technical application of administrative law doctrines. And yet in many instances, as here, this has been the result.

14. Thus, in the case of the *Chippewas* appeal, the majority held that the duty to consult was not engaged before the NEB, while at the same time, incongruously, suggested that an application for judicial review ought to have been brought in relation to a separate ministerial letter which stated that the Crown would not consult. In the letter at issue, the Crown belatedly indicated that it intended to rely on the NEB's regulatory process to satisfy the duty to consult.[9] This exercise in buck-passing leaves the affected First Nation on the sidelines.

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[5] *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103 at para. 47, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 1.

[6] *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 26.

[7] *Beckman*, supra note 4 at para. 39.

[8] See below, *Gitxaala Nation v. Canada*, 2016 FCA 187, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 4; *Tsleil-Waututh Nation v. Canada (National Energy Board)*, 2016 FCA 219, B.O.A. of the Intervener *Chiefs of Ontario*, tab. 2.

[9] *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2015 FCA 222 at paras. 72-75, B.O.A. of the Appellant *Hamlet of Clyde River et al.*, vol. 1, tab 7.

15. Lost in this legal morass is the underlying objective of the duty to consult set out by this Court in *Haida Nation* and *Carrier Sekani*: the need to protect Indigenous rights *and* to preserve future use of resources claimed by Aboriginal peoples.[10]

16. As noted by Woodward, the net effect is one of manifest unfairness:

> [T]he timing of a duty to consult claim can be very tricky for Aboriginal groups. On the one hand, a claim brought prior to final decision-making risks being rejected as premature. On the other hand a claim that is commenced after a final decision has been rendered risks becoming moot (if the decision is implemented shortly after approval and the Aboriginal group cannot afford to apply for an injunction or fails in that application). The second ri*sk with brin*ging *a claim post-d*ecision is that if the claim succeeds, the court might be unwilling to provide a strong remedy out of concern for the now crystallized third party interests. In short, the window between premature litigation and litigation that comes too late may be very narrow, with a high danger of unfairness.[11]

17. These concerns are particularly apposite here. The relevant approvals in regard to the *Chippewas* matter have now been rendered and implemented, without consultation: the requested Line 9 reversal, increase in volume and change in substance are all *faits accomplis*, despite the Appellants' repeated requests to be consulted before any final decisions were made, particularly in relation to the environmental assessment of potential spills.

18. Enbridge, for its part, took the view before the NEB that "[s]cenarios concerning pipeline rupture events [were] not within the scope of the Project Environmental and Socio-Economic Assessment ("ESCIA") which is limited to … six existing fenced-in Enbridge facilities, and one new densitometer site to be located on the Enbridge Right of Way within a cornfield."[12] The Chippewas raised concerns as to the astonishing narrowness of this assessment, and also sought to engage with the Crown on the regulatory gaps it perceived to be present in that regard. Still, nothing was done, and ultimately the requested approvals were granted.

19. These gaps and uncertainty effectively result, in this case and in others, in thwarting the Crown's duty to consult altogether. Notwithstanding that the Crown has the onus of consultation, Indigenous communities are repeatedly forced to try to draw the Crown to the consultation table.

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[10] *Haida Nation, supra* note 3 at para. 38; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R. 650 at para. 33, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 22.

[11] Woodward, Jack, *Native Law*, (Toronto: Thomson Reuters Canada, 1994), (loose-leaf), at p. 5-63, B.O.A. of the Intervener *Chiefs of Ontario*, tab. 3.

[12] See transcript at 3364-3368, Record of the Appellant *Chippewas*, vol. VI at pp. 28-29.

When, as here, the Crown refuses or fails to respond positively, and tribunals refuse to uphold the Honour of the Crown, the courts have too often applied technical administrative law doctrines to the problem; the underlying asserted Indigenous rights are left ignored.

20. The examples of this are many: in the recent *Gitxaala* decision, the Federal Court of Appeal held that applications for judicial review of a final report of the NEB had been made prematurely.[13] In *Tsleil-Waututh*, it held that a judicial review of key environmental assessment scoping decisions was also premature, and the Nation ought to have first sought administrative reconsideration.[14] Other appellate courts have ruled to the contrary: that the duty to consult arises at the earliest stages of regulatory processes such as environmental assessments because such processes must be materially responsive to First Nation concerns.[15]

21. In *Carrier Sekani*, this Court expressly acknowledged "the concern that governments may effectively avoid their duty to consult by limiting a tribunal's statutory mandate [...] if a tribunal is denied the power to consider consultation issues, or if the power to rule on consultation is split between tribunals so as to prevent any one from effectively dealing with consultation arising from particular government actions, the government might effectively be able to avoid its duty to consult."[16]

22. In *Chippewas*, Rennie JA (in dissent) considered the Crown's belated letter and stated that "[t]he mischief foreshadowed by the Supreme Court [...] in *Carrier Sekani* has thus, in this case, materialized."[17] The majority disagreed and stated that it could not "realistically be suggested that in enacting of the NEB Act, – over 20 years before the enactment of the *Constitution Act* and over 40 years before the *Haida* duty to consult was enunciated by the Supreme Court – the federal government was attempting 'to avoid its duty to consult' (see paragraph 62 of *Carrier Sekani*)."[18]

23. Respectfully, the point lies elsewhere. The net *result* is that the duty to consult was simply not fulfilled. To the extent this arose from the application of an outmoded statutory regime and/or

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[13] *Gitxaala Nation v. Canada*, 2016 FCA 187, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 4.
[14] *Tsleil-Waututh Nation v. Canada (National Energy Board)*, 2016 FCA 219, B.O.A. of the Intervener *Chiefs of Ontario*, tab. 2.
[15] See *Kwikwetlem First Nation v. British Columbia Transmission Corp*, 2009 BCCA 68 at para 70, B.O.A. of the Appellant *Hamlet of Clyde River et al.*, vol. 2, tab 27.
[16] *Rio Tinto Alcan Inc.*, *supra* note 10 at para. 62.
[17] *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2015 FCA 222 at para. 127, B.O.A. of the Appellant *Hamlet of Clyde River et al.*, vol. 1, tab 7.
[18] *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, *ibid.* at para. 70.

the Crown's lack of participation in the process, this was, to channel the Yukon Court of Appeal in *Ross River*, not an answer to the problem, but its source.

24. The Chiefs of Ontario submits that this Court must address the larger phenomenon of Indigenous communities' right to be consulted and accommodated continuing to be held hostage to what amounts to a legal guessing game: if a Nation guesses wrongly about when, how, or where to raise and seek to enforce its right to be consulted, that right – a constitutional imperative – is lost.

25. It must be recalled that any approval in regard to a matter that engages the duty to consult rendered without that duty having been discharged does not meet constitutional muster. In the absence of such duty being properly discharged, statutory tribunals must exercise what authorities permitted them under their home statute to ensure that the duty to consult is met. In *Chippewas*, at minimum, the NEB had the power and the duty to decline to issue the s. 58 authorization unless and until it was satisfied that the duty to consult had been met.

26. The recent record suggests, however, that statutory tribunals are frequently reluctant to fully embrace the obligations incumbent upon them pursuant to s. 35 of the *Constitution Act, 1982*. Given that Aboriginal rights and title may not form part of the core of those tribunals' mandates, this hesitation is perhaps not surprising.

27. In this sense, analogy might be drawn to the uncertainty and hesitation surrounding statutory tribunals' implementation of the *Charter* in the years preceding this Court's landmark decision in *Cooper*, in which the Court emphasized that "the *Charter* belongs to the people. All law and law-makers that touch the people must conform to it. Tribunals and commissions charged with deciding legal issues are no exception. Many more citizens have their rights determined by these tribunals than by the courts. If the *Charter* is to be meaningful to ordinary people, then it must find its expression in the decisions of these tribunals."[19]

28. In *R. v. Conway*, this Court further reinforced that "administrative tribunals with the authority to decide questions of law and whose Charter jurisdiction has not been clearly withdrawn have the corresponding authority — and duty — to consider and apply the Constitution, including the *Charter*, when answering those legal questions."[20]

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[19] *Cooper v. Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para. 70, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 3.

[20] *R. v. Conway*, [2010] 1 SCR 765 at para. 77, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 16.

29. Similarly, there should not be a s. 35 for the courts and one for statutory tribunals. The project of reconciliation demands that all hands be on deck to grapple meaningfully with the issues that properly arise before them. As outlined above, and as signalled by the instant appeals, the constitutional imperative of consultation and accommodation risks being swallowed whole by uncertainty over how, when and by whom that duty is to be discharged in any given case.

II. The design of consultative processes must involve the affected Indigenous communities, and be animated by the nation-to-nation relationship

30. Ultimately, the problems identified above find their source in a more fundamental omission: the failure to include the affected Indigenous communities themselves in the design and development of consultative processes.

31. In *Hamlet of Clyde River et al.*, the Federal Court of Appeal held that the Crown reasonably relied upon the NEB's process to meet its duty to consult with Aboriginal peoples, relying on the reasonableness standard as described in *Haida Nation* and *Carrier Sekani*.[21]

32. In this regard, this Court held in *Khosa* that "there is always a perspective within which a statute is intended to operate" and "[r]easonableness is a single standard that takes its colour from the context."[22] In *Catalyst Paper Corp*, it stated that "[r]easonableness must, therefore, "be assessed in the context of the particular type of decision making involved and all relevant factors."[23]

33. Missing from the reasonableness analysis in the context of the duty to consult is the critical factor of whether there has been good faith involvement of Indigenous communities in the very design of the processes at issue.

34. Such involvement is particularly critical until such time as Parliament and legislatures heed this Court's call to "set up regulatory schemes to address the procedural requirements appropriate to different problems at different stages, thereby strengthening the reconciliation process," if we are to avoid reliance instead on "unstructured discretionary administrative regime[s] which [risk] infringing Aboriginal rights in a substantial number of applications in the absence of some explicit guidance"[24] this Court has cautioned against.

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[21] *Hamlet of Clyde River v. TGS-NOPEC Geophysical Company ASA (TGS)*, 2015 FCA 179 at paras. 34, 75-100, B.O.A. of the Appellant *Chippewas*, vol. 1, tab 6.
[22] *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paras. 20, 59.
[23] *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at para. 18.
[24] *Haida Nation, supra* note 3 at para. 51.

35. Where, as in these appeals and is generally the norm, the underlying, pre-existing statutory decision-making regime pre-dates the recognition of the duty to consult, affected Indigenous communities' right to be consulted risk being frustrated, in whole or in part. The Crown recognizes that in such circumstances it is required to supplement, at minimum, consultative processes. What it fails to recognize, however, is that it in doing so it must not fall into the very mindset that the duty to consult is intended to reverse: unilateral decision-making based on what the *Crown* believes to be an appropriate process for consultation.

36. Such an approach is antithetical to the nation-to-nation relationship that underlies the duty to consult, and fails to respect Indigenous communities' own asserted inherent jurisdictions in relation to management of resources and lands. It is the reconciliation of those conflicting assertions of jurisdiction – Indigenous and Crown – that the duty to consult seeks to balance. Indigenous communities are represented by their own governing authorities; it is inconceivable that in other government-to-government dialogue that one government would unilaterally impose, without discussion or input, the terms and mechanisms of that discussion.

37. The Chiefs of Ontario submit that, in failing to draw upon the Indigenous perspective, and in failing to have proper regard for the underlying nation-to-nation relationship, the decisions below share a common defect. Both are reflective of an outmoded and impermissible approach that is anathema to the very purpose of consultation and accommodation: unilateralism.

38. Accordingly, particularly in the absence of a deliberate, transparent process for consultation, courts should be loathe to either (a) close their doors on procedural grounds where a First Nation seeks an appropriate remedy at a particular stage of a regulatory process that may result in decisions affecting their rights, and (b) assess the adequacy of consultation as having been reasonable where the Crown seeks to "rely on a process" but the statutory scheme itself has not been modernized in accordance with *Haida Nation*, and the particular *ad hoc* administrative process has not been developed in consultation with affected First Nations.

39. Where the duty to consult is engaged, it is because Indigenous rights are at risk of being negatively affected. Such impacts may and often will be lasting or indeed permanent, affecting not only current but also future generations of rights-holders. As such, it is vital that the process of consultation and accommodation have buy-in and legitimacy.

40. Ultimately, for the "flexibility" of administrative law described in *Beckman* to be realized, statutory tribunals must always ensure that their decisions are made in a manner consonant with

the Constitution. The principles of administrative law must be applied in a manner which, as this Court has provided for in other areas of the law, truly accommodates the indigenous perspective and nation-to-nation dialogue, not hamstring it with technical applications of the prematurity, fairness, independence, or fettering doctrines.

41. To do otherwise risks an impermissible return to the approach observed in *Sparrow* that at one time "the rights of the Indians to their aboriginal lands – certainly as legal rights – were virtually ignored" or "honoured in the breach."[25] In *Sparrow*, this Court instead held that "s. 35(1) of the *Constitution Act, 1982*, represents the culmination of a long and difficult struggle in both the political forum and the courts for the constitutional recognition of aboriginal rights."[26]

PART IV – COSTS

42. The COO seek no costs and asks that costs not be awarded against them.

PART V – ORDER REQUESTED

43. The COO respectfully requests that it be allowed to make an oral argument of not more than ten (10) minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of November, 2016.

Maxime Faille
Jaimie Lickers
Guy Régimbald

Counsel for the Intervener,
Chiefs of Ontario

[25] *R. v. Sparrow*, [1990] 1 SCR 1075 at p. 1103, B.O.A. of the Appellant *Chippewas*, vol. 1, tab. 20.
[26] *R. v. Sparrow*, *ibid.* at p. 1105.

PART VI – TABLE OF AUTHORITIES

Document		Paragraph
A.	**Jurisprudence**	
1.	*Beckman v. Little Salmon/Carmacks First Nation,* [2010] 3 SCR 103.	12, 40
2.	*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12	32
3.	*Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2	32
4.	*Chippewas of Sarnia Band v. Canada (Attorney General),* 51 O.R. (3d) 641, 195 D.L.R. (4th) 135 (ONCA).	2
5.	*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2015 FCA 222.	14, 17, 22, 25
6.	*Cooper v. Canada (Human Rights Commission)*, [1996] 3 SCR 854.	27
7.	*Gitxaala Nation v. Canada,* 2016 FCA 187.	13, 20
8.	*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511	8, 9, 15, 22, 31, 38
9.	*Hamlet of Clyde River v. TGS-NOPEC Geophysical Company ASA (TGS)*, 2015 FCA 179	31
10.	*Kwikwetlem First Nation v. British Columbia Transmission Corp,* 2009 BCCA 68	20
11.	*R. v. Conway*, [2010] 1 SCR 765.	28
12.	*R. v. Sparrow*, [1990] 1 SCR 1075.	41
13.	*Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council,* [2010] 2 S.C.R. 650	15, 21, 22, 31
14.	*Ross River Dena Council v Government of Yukon,* 2012 YKCA 14.	8, 23
15.	*Taku River Tlingit First Nation v. British Columbia (Project Assessment Director),* [2004] 3 S.C.R. 550.	12
16.	*Tsleil-Waututh Nation v. Canada (National Energy Board),* 2016 FCA 219.	13, 20

B.	**Secondary Materials**		
1.	Woodward, Jack, *Native Law*, (Toronto: Thomson Reuters Canada, 1994), (loose-leaf), at p. 5-63		16