Courtoreille V. Canada (Aboriginal Affairs And Northern Development), Case No. 37441, Supreme Court Of Canada (Mclachlin C.J.C., Wagner And Gascon JJ.), 18 May 2017

May 18, 2017

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The Supreme Court of Canada granted leave to the Mikisew Cree First Nation to appeal a December 2016 decision of the Federal Court of Appeal. The underlying proceeding concerns omnibus bills introduced by the Harper government in 2012 that, among other things, brought changes to environmental and regulatory approval legislation. The Mikisew alleged that Canada had a duty to consult them in regards to the legislation due to potential effects on treaty rights.

In 2014, the Federal Court allowed the judicial review application in part: 2014 FC 1244. Justice Hughes issued a declaration that, although there was no duty to consult before a bill is introduced into Parliament, the Crown was under a duty to consult the Mikisew when the bills were introduced in Parliament — *i.e.*, to give notice to the Mikisew and allow them a reasonable opportunity to make submissions. In December 2016, the Federal Court of Appeal reversed this decision: 2016 FCA 311.

The Court of Appeal held that legislative action was nota proper subject for judicial review. Further, importing the duty to consult into the legislative process offends the doctrine of the separation of powers and the principle of parliamentary privilege.

The Supreme Court of Canada granted the application for leave to appeal with costs in the cause.

By

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