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Manitoulin's Tribal Council Stands Up For First Nation Self-Governance In The Fight Against Climate Change

By **Lori Thompson, Local Journalism Initiative Reporter** - October 14, 2020

Tribal Chief Chair Patsy Corbiere

M'CHIGEENG – The Supreme Court of Canada (SCC) reserved judgement on whether the federal government's Greenhouse Gas Pollution Pricing Act 2018 (GGPPA) is constitutional following hearings on September 22 and 23 with the United Chiefs and Councils of Mnidoo Mnising (UCCMM), along with the Anishinabek Nation (AN), granted intervener status.

The GGPPA sets minimum standards for carbon pricing on provinces that have not implemented an equivalent provincial program. The provinces argued that they should have control of greenhouse gas (GHG) policies while environmental advocates and other interveners asked the court to recognize the necessity of a national response to climate change.

“The UCCMM intervened in this case because climate change disproportionately affects First Nation communities, our traditional way of life and our ability to assert and exercise jurisdiction in relation to environmental issues that directly impact their lands and their people,” said Patsy Corbiere, UCCMM Tribal Chair. “As stewards of the largest freshwater island in the world we are ensuring that the courts take into account the Anishinabek perspective when determining if climate change is a matter of national concern. As the quality and quantity of our natural resources and medicines continue to diminish with the effects of climate change, it is vital that our voices be heard and our rights be respected.”

A 2019 Ontario Court of Appeal (ONCA) decision found that no one province acting alone or group of provinces acting together can establish minimum standards to reduce GHG emissions as their efforts can be undermined by the action or by the inaction of other provinces. Chief Justice Strathy, writing for the majority, found that the Act is constitutional and is within Parliament’s jurisdiction to legislate in relation to matters of national concern under the Peace, Order and good Government (POGG) clause of s. 91 of the Constitution Act, 1867. “Parliament has determined that atmospheric accumulation of greenhouse gases (GHGs) causes climate changes that pose an existential threat to human civilization and the global ecosystem,” he wrote. “The impact on Canada especially in coastal regions and in the north is considered particularly acute. The need for a collective approach to a matter of national concern and the risk of non-participation by one or more provinces permits Canada to adopt minimum national standards to reduce GHG emissions.”

“Climate change has had a particularly serious impact on some Indigenous communities in Canada,” he wrote. “The impact is greater in these communities because of the traditionally close relationship between Indigenous peoples and the land and waters on which they live.”

Chief Justice Strathy acknowledged the impact on UCCMM member nations, writing “The traditional territories of the UCCMM Nations are primarily situated on and around Manitoulin Island and the north shore of Georgian Bay. According to the affidavit of Tribal Chair Patsy Corbiere, the UCCMM nations’ intimate relationship with their lands and waters has allowed them to observe the impacts of climate change firsthand. Over recent decades, they have noted a decrease in moose populations and native whitefish stocks, less frequent but more intense bouts of precipitation, shorter and thinner ice cover in the winter and diminishing water quality due to increased green algae blooms spurred by warmer temperatures.”

In the current appeal to SCC, the AN and UCCMM urged the court to “adopt an approach to the issues in this case which allows jurisdictional space for all levels of government: federal, provincial and Indigenous, in regulation of critical environmental matters.” Patricia Lawrence from Westaway Law Group, appearing on behalf of the AN and UCCMM, argued that “First Nations should not be left without effective redress as a result of federal-provincial jurisdictional disputes. The Crown must be held accountable for the protection and preservation of the aboriginal and treaty rights recognized and affirmed by section 35 of the

Constitution Act, 1982. If the provinces are unable to effectively protect these rights, the federal government must be permitted to step in and enact legislation," said Chief Corbiere.

From the perspective of the AN and the UCCMM, this case raises even more fundamentally important questions about who has the responsibility to protect our planet and to preserve the exercise of those rights which have been recognized and affirmed in section 35 of the Constitution Act, 1982.

The AN and the UCCMM argued that should the GGPPA be deemed unconstitutional, "It would present a very real risk that the rights of the AN and the UCCMM member nations to carry out those customs and practices that are integral to their traditional way of life and their ability to exercise their inherent jurisdiction will be impacted to the point of extinguishment, thereby rendering those rights meaningless."

First Nations' lands and waters and the exercise of their inherent rights do not align with and do cross provincial borders, they argued, thus provinces are incapable of addressing concerns raised by Indigenous groups about the potential impacts of actions that occur within provincial boundaries on section 35 – protected rights that exist and are being exercised beyond those provincial boundaries.

The appeals from Ontario, Saskatchewan and Alberta were heard jointly. A majority of the Court of Appeal for Ontario found the GGPPA constitutional. Saskatchewan's Court of Appeal also found the Act to be constitutional while Alberta's disagreed. A decision from the SCC could be several months away.

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