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Manitoulin chiefs back Ottawa's right to set minimal national standards to address climate change

United Chiefs and Councils of Mnidoo Mnising intervene in Supreme Court appeal of carbon tax

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The Supreme Court of Canada is shown in Ottawa on January 19, 2018. The Supreme Court of Canada is expected to bring clarity today to the question of who should pay for cleaning up a mercury-contaminated site near Ontario's Grassy Narrows First Nation. THE CANADIAN PRESS/Sean Kilpatrick

The United Chiefs and Councils of Mnidoo Mnising jointly with the Anishinabek Nation stood before the Supreme Court of Canada last week as an intervenor in the appeal of the federal government's carbon tax.

The hearings, which took place over two days, considered three separate appeals of the Greenhouse Gas Pollution Pricing Act, which establishes a set of minimum national standards for greenhouse gas pricing in Canada to meet emission reduction targets under the Paris Agreement.

UCCMM and the Anishinabek Nation argued that 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, said UCCMM in a release issued on Oct. 1, the federal government must be permitted to step in and enact legislation.

“UCCMM is proud to stand up for our lands and waters before the Supreme Court of Canada. The key issue in this case is whether or not the federal Greenhouse Gas Pollution Pricing Act is constitutional and within the federal government’s jurisdiction,” UCCMM Tribal Chair Chief Patsy Corbiere said.

“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.

“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.”

On Sept. 23, the counsel for the Anishinabek Nation and UCCMM, Patricia Lawrence from Westaway Law Group, appeared before the court to argue that First Nations should not be left without “effective redress” as a result of federal-provincial jurisdictional disputes.

“When we talk about effective redress, we’re referring to the fact that if the federal government has jurisdiction to set national minimum standards of GHG emissions, then First Nations can go to the federal government if they don’t agree with the policies being adopted and implemented or feel that they don’t go far enough,” she said.

Alternatively, the issue of climate change and GHG emissions would be left up to the provinces to decide according to their own political priorities.

“Because GHG emissions don’t respect provincial boundaries, this approach would leave First Nations in Ontario without any effective redress if some other province or provinces aren’t doing enough. For example, it would be very difficult for a First Nation in Ontario to take the province of Saskatchewan or Alberta to court to prove that its failure to take action to address GHG emissions and climate change has had a negative impact on their exercise of their Aboriginal or Treaty rights.”

According to Lawrence, UCCMM and the Anishinabek Nation intervened in this case to defend the federal government’s ability to pass legislation that sets minimal national standards to address climate change.

“They were not defending the federal carbon tax itself, but to support the federal government’s jurisdiction to establish standards that all of the provinces must meet. We say this is the only way to ensure that section 35 rights will be adequately protected. If it is left up to the provinces to address GHG emissions and climate change, then section 35 rights could be threatened if one or more provinces don’t do enough,” she said.

“The court should define the matter that comes under federal jurisdiction (as a matter of national concern) precisely and narrowly, as that will leave more room for provinces and First Nations to exercise their respective jurisdiction over environmental matters.”

The UCCMM has been actively involved in this case since the beginning and intervened at the Ontario Court of Appeal proceedings in April 2019. On June 28, the court issued a majority decision that the Greenhouse Gas Pollution Pricing Act is constitutional.

The Sept. 23 hearing was the first in-person hearing held by the Supreme Court since the COVID-19 pandemic began in March.

Ultimately, the Supreme Court reserved judgment – a final decision is not expected for several months.

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