Form 2 S.C. No.15 ______________

(Rules 10 (1))

SUPREME COURT OF YUKON

Between

CHAMPAGNE AND AISHIHIK FIRST NATIONS
LITTLE SALMON/CARMACKS FIRST NATION
TESLIN TLINGIT COUNCIL

Petitioners

and

THE ATTORNEY GENERAL OF CANADA AND GOVERNMENT OF YUKON

Respondents

PETITION

THIS IS THE PETITION OF:
Champagne and Aishihik First Nations
Little Salmon/Carmacks First Nation And
Teslin Tlingit Council
c/o 304 Jarvis Street
Whitehorse, Yukon Y1A 2H2

ON NOTICE TO:

The Deputy Attorney General of Canada
Northern Regional Office – Yukon
Department of Justice Canada
310 – 300 Main Street
Whitehorse, Yukon Y1A 2B5

Department of Justice
Government of Yukon
Andrew Philipsen Law Centre
2134 Second Avenue
Whitehorse, Yukon Y1A 2C6

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the petitioner applies to court for the relief set out in this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in this court within the time for appearance and YOU MUST ALSO DELIVER a copy of the Appearance to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR LAWYER may file the APPEARANCE. You may obtain an APPEARANCE form at the registry.

IF YOU FAIL to file the Appearance within the proper time for appearance, the petitioner may continue this application without further notice to you.

TIME FOR APPEARANCE

Where this Petition is served on a person in Yukon, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this Petition is served on a person outside Yukon, the time for appearance by that person after service is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, where the time for appearance has been set by order of the court, within that time.]

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the Petition, you must, on or before 8 days from the end of the time for appearance provided for above,

(a) deliver to the petitioner

(i) 2 copies of a Response in Form 11, and

(ii) 2 copies of each affidavit on which you intend to rely at the hearing, and

(b) deliver to every other party of record

(i) one copy of a Response in Form 11, and

(ii) one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is:
The Law Courts
2134 Second Avenue
Whitehorse, Yukon
Y1A 5H6
Telephone: (867) 667-5937
Fax: (867) 393-6212

<table>
<tr><td>(2)</td><td>The petitioner's ADDRESS FOR DELIVERY is:

Champagne and Aishihik First Nations
Little Salmon/Carmacks First Nation And
Teslin Tlingit Council
c/o Roger Brown
304 Jarvis Street
Whitehorse, Yukon Y1A 2H2

Fax number for delivery: 1-604-988-1452
Email address for delivery: gmcdade@ratcliff.com; kblomfield@ratcliff.com</td></tr>
<tr><td>(3)</td><td>The name and office address of the petitioner's lawyer is:

Gregory J. McDade Q.C. & Kate Blomfield
Ratcliff & Company LLP
Barristers and Solicitors
500 – 221 West Esplanade
North Vancouver, BC V7M 3J3
Telephone:1-604-988-5201</td></tr>
</table>

PETITION

ORDERS SOUGHT

The Petitioners apply for the following orders:

1. A Declaration that Part 1 of *An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act* is in conflict or inconsistent with the Final Agreements of the Petitioners and is invalid and of no force and effect;

2. Costs; and

3. Such further and other relief as this honourable court considers just.

MATERIAL RELIED UPON

The petitioners will rely on:

1. *The Constitution Act*, 1982, s.35;

2. The Umbrella Final Agreement and the Final Agreements of the Champagne and Aishihik First Nations, Little Salmon/Carmacks First Nation, and Teslin Tlingit Council, including Chapters 1, 2, 5, 6, 12, 13, 14, 16, 17, 18, 22;

3. The Self-Government Agreements of the Champagne and Aishihik First Nations, Little Salmon/Carmacks First Nation, and Teslin Tlingit Council;

4. *Yukon First Nations Land Claims Settlement Act,* SC 1994, c.34;

5. *Yukon Land Claim Final Agreements, An Act Approving,* RSY 2002, c.240;

6. *Yukon First Nations Self-Government Act*, SC 1994, c. 35;

7. *First Nations (Yukon) Self Government Act,* RSY 2002, c.90;

8. *An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act* , SC 2015, c. 19;

9. *Yukon Environmental and Socio-Economic Assessment Act,* SC 2003, c.7;

10. Supreme Court of Yukon *Rules of Court*, Rules 1, 4, 10;

The following affidavits will be relied on at the hearing, copies of which will be served:

1. Affidavit of Chief Steve Smith, sworn September 30, 2015;

2. Affidavit of Chief Eric Fairclough, sworn October 1, 2015;

3. Affidavit of Deputy Chief George Magrum, sworn October 1, 2015;
4. Affidavit of Mark Wedge, sworn October 1, 2015;
5. Affidavit of Grand Chief Ruth Massie, sworn October 1, 2015;
6. Affidavit of Thomas E. Siddon, sworn October 5, 2015;
7. Affidavit of Chief Carl Sidney, sworn October 7, 2015;
8. Affidavit of Chief Roberta Joseph, sworn October 7, 2015;
9. Affidavit of Chief Roger Kyikavichik, sworn October 8, 2015;
10. Affidavit of Chief Kristina Kane, sworn October 9, 2015;
11. Affidavit of Chief Doris Bill, sworn October 9, 2015; and
12. Such further and other materials as counsel advises and this honourable Court permits.

FACTUAL BASIS

The facts upon which this Petition is based are as follows:

A. OVERVIEW

1. The legal framework for the assessment of projects and developments in Yukon is unique. It arose as a direct result and requirement of the Yukon First Nation Final Agreements negotiated between Canada, Yukon and Yukon First Nations. The Final Agreements require the enactment of Development Assessment legislation, specify key content of the legislation, and set out the process for its development. Development assessment in Yukon therefore has a constitutional dimension and is a product of and a mechanism embodying tripartite reconciliation.

2. The *Yukon Environmental and Socio-Economic Assessment Act,* SC 2003, c.7 (“YESAA”) is the Development Assessment legislation required by Treaty. YESAA was collaboratively drafted by Canada, Yukon, and Yukon First Nations and was enacted in 2003, with regulations, also jointly developed, following in 2004-2005. Under YESAA, there is a unified approach to development assessment throughout Yukon, on and off

First Nations' lands, that incorporates the input and involvement of Canada, Yukon, and Yukon First Nations, and strives to uphold the letter and values of the Final Agreements.

3. As rights guaranteed by treaty, the treaty rights relating to YESAA are protected by s. 35 of the *Constitution Act, 1982*.

4. In June 2015, over the objections of Yukon First Nations, including the Petitioners, the Respondent Canada enacted *An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act* (Part 1 of which applies to YESAA and is referred to herein as "Bill S-6") which purported to amend YESAA.

5. The amendments brought in by Bill S-6 undermine or weaken Yukon's development assessment process and the role of Yukon First Nations in it, and therefore constitute a breach of the Petitioners' Final Agreements.

6. Additionally, Canada failed to meet the procedural requirements of the Final Agreements in the steps undertaken prior to the enactment of Bill S-6, which constitutes a further treaty breach.

7. In developing Bill S-6 without meaningfully engaging First Nations, Canada and Yukon each failed to act in accordance with the honour of the Crown in the interpretation and exercise of their rights and obligations under the Final Agreements.

8. The Petitioners seek a declaration that as a consequence of these breaches, Bill S-6 is inconsistent or in conflict with the Petitioners' Final Agreements and is invalid and of no force of effect.

9. The interpretation of Chapter 12 of the Final Agreements, and the force and effect of Bill S-6 is at issue in this proceeding, which is brought pursuant to Rule 10, and is within the jurisdiction of this honorable Court.

B. THE PARTIES

1. The Petitioner First Nations

10. The Petitioner First Nations are independent, self-governing First Nations in the Yukon. Each Petitioner is a treaty First Nation, having entered into Final Agreements and a Self-Government Agreements with Canada and Yukon.

11. The Champagne and Aishihik First Nations ("CAFN" or "Champagne Aishihik") are Southern Tuchone peoples with a traditional territory that bridges Yukon and northern British Columbia. CAFN has more than 1,200 members and is one of the largest Yukon First Nations. CAFN's Final Agreement was ratified in 1995.

12. The Final Agreement of the Little Salmon/Carmacks First Nation ("LSCFN" or "Little Salmon/Carmacks") was ratified in 1997. LSCFN is a Northern Tuchone Nation with over 700 members. LSCFN's territory centres around the community of Carmacks, 180km northwest of Whitehorse.

13. The Teslin Tlingit Council ("TTC" or "Teslin Tlingit") are inland Tlingit people occupying traditional territory in southern-central Yukon and northern British Columbia with governmental offices in the Village of Teslin, Yukon. TTC has five clans, which are fundamental to its governing structure, and approximately 800 citizens. TTC remains deeply connected to its traditional territory and ratified its Final Agreement in 1995.

2. Canada

14. The Respondent Canada is a signatory to the Umbrella Final Agreement and to each of the CAFN, LSCFN and TTC Final Agreements and Self-Government Agreements.

3. Yukon

15. The Respondent Government of Yukon is equally a signatory to the Umbrella Final Agreement and to the CAFN, LSCFN and TTC Final Agreements and Self-Government Agreements.

16. Each of Canada and Yukon is subject to the duty of the honour of the Crown, and must act honourably in its dealings with First Nations, including in respect of interpreting, upholding and implementing treaty obligations.

C. THE FINAL AGREEMENTS OF THE PETITIONERS

17. The Petitioners' Final Agreements are modern comprehensive lands claims agreements. Rights recognized under a Final Agreement are treaty rights within the meaning of section 35 of the *Constitution Act, 1982.*

18. No law enacted by Canada or Yukon is enforceable if it is in conflict or inconsistent with a Final Agreement as a result of s. 13(2) of the *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c. 35.

19. The Petitioners' Final Agreements are three of 11 that arose out of and that implement the Umbrella Final Agreement ("UFA") signed in 1993 after 20 years of negotiations between representatives of all of the Yukon First Nations and the federal and territorial governments. The ratification of each First Nation's specific Agreement, under the guidance of the Umbrella Final Agreement, was an historic and monumental achievement for Yukon First Nations, Canada and Yukon, bringing First Nation self-governance to the Yukon Territory, and a tripartite approach to issues dealt with in the Final Agreements.

20. The treaty provisions of relevance to this Petition are derived from the Umbrella Final Agreement, and, unless otherwise noted, are the same in each of the Petitioner's Final Agreements. The agreements came into effect pursuant to federal and territorial legislation including *Yukon First Nations Land Claims Settlement Act,* SC 1994, c.34; and *Yukon Land Clam Final Agreements, An Act Approving,* RSY 2002, c.240.

21. Under each of the Final Agreements, the Petitioner First Nations ceded some control of lands within their traditional territories in exchange for defined rights and interests which include, amongst others, specified Settlement Lands (Ch. 5 and Ch. 9), rights to harvest fish and wildlife (Ch. 16), rights to involvement in land use planning (Ch.11) and a mandated development assessment process which would apply to both Settlement and non-Settlement lands (Ch.12).

22. A fundamental component of the treaty relationship and bargain was the creation of independent public bodies with specific mandates intended to ensure First Nations would meaningfully participate in the management of public resources throughout their traditional territories, in exchange for surrendering aboriginal rights on non-settlement lands. The development assessment board ("YESAB or the "Board") mandated under Chapter 12 of the Final Agreements is a keystone independent public body. The roles and responsibilities of all the bodies are integrated and interrelated. Undermining or altering the Board by altering the development assessment legislation undermines the interrelationships with the other associated independent public bodies, and therefore undermines the basic bargain and structure underlying the treaty.

23. The Preamble of each of the Final Agreements includes the following principles:

(a) the Petitioner First Nations assert aboriginal rights, titles and interests with respect to their Traditional Territory;

(b) the Petitioner First Nations intend to retain, subject to the Agreement, the aboriginal rights, titles and interests it asserts with respect to their Settlement Lands;

(c) the parties intend to "recognize and protect a way of life that is based on an economic and spiritual relationship" between each of the Petitioner First Nations and their land;

(d) the parties intend the agreement "to encourage and protect the cultural distinctiveness and social well-being" of each of the First Nations;

(e) the parties recognize "the significant contributions of the Petitioner First Nations to the history and culture of the Yukon and Canada";

(f) the parties intend the agreement to enhance the ability of the Petitioner First Nations "to participate fully in all aspects of the economy of the Yukon";

(g) the parties intend to achieve certainty with respect to the ownership and use of lands and other resources of the Petitioner First Nations Traditional Territory; and

(h) the parties intend the Agreements to achieve certainty with respect to ownership and use of lands and resources, as well as certainty with respect to their relationships with each other;

24. The constitutionally enshrined objectives for development assessment under Chapter 12 of the Final Agreements include guaranteed participation by Yukon Indian People, the use of knowledge and experience of Yukon Indian People in the development assessment process (12.1.1.2), the protection and maintenance of environmental quality, and ensuring that projects are undertaken in a manner consistent with the principle of Sustainable Development (12.1.1.3).

25. Canada, Yukon and Yukon First Nations agreed to enact and operate a development assessment process that is comprehensive, avoids duplication, is efficient and provides certainty, while respecting the key concepts, principles and provisions of the Final Agreements, including tripartite collaboration and governance, and reconciliation as an ongoing process.

26. Yukon First Nations entering into a Final Agreement recognized and agreed that a very significant part of their traditional lands would be under the administration and control of public government on the understanding that development assessment on those lands would have independence and integrity as intended, and specified, by the parties in Chapter 12. The significant benefits Canada and Yukon gained from Final Agreements were received in exchange for promises that they would collaborate with First Nations in developing effective legislation and any subsequent amendments.

D. YESAA

27. The *Yukon Environmental and Socio-Economic Assessment Act,* SC 2003, c.7 (“YESAA”) is the Development Assessment Legislation than was developed and approved to by Canada, Yukon and Yukon First Nations to implement the requirements of Chapter 12 of the Final Agreements.

28. With respect to the process for negotiating the Development Assessment Legislation, the Final Agreements state:

> 12.3.1 Government shall implement a development assessment process consistent with this chapter by Legislation.
>
> 12.3.2 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Development Assessment Legislation and these drafting guidelines shall be consistent with the provisions of this chapter.
>
> 12.3.3 Failing agreement on guidelines, Government shall Consult with the Council for Yukon Indians and with Yukon First Nations during the drafting of the Development Assessment Legislation.

29. In accordance with Chapter 12 and the Final Agreements as a whole, Yukon First Nations, the Council of Yukon First Nations, Canada and Yukon worked together in the development and drafting of YESAA starting in 1996. A ‘Core Group’, comprised of representatives of Canada, Yukon and Yukon First Nations, was established to negotiate the contents of the legislation and provide direction to the drafters. The Core Group kept detailed Records of Decision and operated through consensus of the three parties. The original YESAA legislation was reached through joint collaboration.

30. The joint development and drafting of YESAA was also in keeping with the 1998 Yukon Devolution Protocol which confirmed a framework that respected the rights and interests of Yukon First Nations. This was followed in 2003 by the Devolution Transfer Agreement. With the evolving relationships between the parties, where federal or territorial legislation affects the Final Agreement relationship between Canada, Yukon and Yukon First Nations, tripartite negotiations are required.

31. Yukon First Nations supported transfer of resource control in their Final Agreements and devolution of specified matters from Canada to Yukon on the understanding that the collectively negotiated development assessment legislation arising from the Final Agreements would be enacted and would remain in effect.

32. YESAA was intended by the parties to “provide a comprehensive, neutrally conducted assessment process applicable in the Yukon” as set out in the Preamble, and was intended to operate at arms-length from the federal and territorial governments.

33. Following enactment of YESAA in 2003, Yukon First Nations continued to work collaboratively with Canada and Yukon by way of a joint drafting process in the development of regulations under the Act.

34. YESAA and its regulations create a unified approach to development assessment throughout Yukon, on and off First Nations Settlement lands. The roles of First Nations, Yukon and Canada are intended to be carefully recognized, as are the responsibilities and jurisdiction of each government. Assessments of projects in Yukon are carried out by local designated offices, the Yukon Environmental and Socio-economic Assessment Board, the Executive of the Board, or jointly with other assessment agencies, and the assessing body provides a report and recommendations that the decision body in respect of the project must consider. The decision body must provide written reasons if any recommendations are not implemented. First Nations are, in many projects, decision bodies that are guided by assessment reports and recommendations, and have legal responsibilities. First Nations have governmental authority in respect of their Settlement Lands and their citizens and the protection and administration of Yukon treaty rights, including exclusive jurisdiction over management and administration of treaty rights and benefits even off-Settlement lands.

35. Unlike other federal environmental assessment legislation, YESAA prioritizes the protection of First Nations' socioeconomic and cultural interests, including traditional economies. Yukon First Nations rely upon YESAA to ensure that development decisions respect their traditional economies, cultures, and treaty rights.

E. FIVE YEAR REVIEW

36. In addition to requiring the implementation of development legislation, the parties to the Final Agreements agreed to continue to work together on the review of, and any changes to, the assessment process, and required as a term of the Final Agreements that a joint review of YESAA take place five years after the implementation of the Act (the "Five Year Review").

37. The Five Year Review Terms of Reference instructed the participants to examine YESAA "in its entirety and in the context of the objectives of the UFA" and to consider "recommendations for improvement" to the development assessment process. The Principles provided that "Decisions about the conduct of the review will be made by consensus". Under the Terms of Reference, it was intended that the outcome of the review would be a "joint response that describes the outcome of the Review". The Parties

were then intended, within their areas of respective jurisdiction, to implement "the agreed outcomes of the review".

38. The sole purpose of the Five Year Review and any consequential amendments to YESAA was therefore to consider how effective YESAA has been at achieving the objectives of Chapter 12 and related provisions of other chapters, and to 'improve' the ability of YESAA to meet those objectives through legislative and other changes. This purpose was abandoned by Canada at the eleventh hour and replaced with harmonization and other policy objectives of Canada and Yukon in reducing development assessment which were outside the proper objectives of Chapter 12 of the Final Agreement.

39. Yukon First Nations, Canada and Yukon worked collaboratively and reached agreement on 70 recommendations (the "Joint Recommendations"), the vast majority of which related to policies, practices and procedures of the Board. Five Joint Recommendations proposed short term legislative amendments to YESAA, with eight additional amendments to legislation or regulation contemplated for the future (the "Five Year Review Amendments").

40. Despite the significant work and collaboration of the parties, in the final stages of the mandated Five Year Review, Canada abandoned the process leading to a joint response and the implementation of the Joint Recommendations, and turned to the implementation of its own agenda.

F. BILL S-6 - CANADA'S PROCESS WAS FUNDAMENTALLY FLAWED

41. Canada thereafter proceeded to introduce and ultimately to enact amendments not reached through the process contemplated under the Final Agreement and the Terms of Reference of the Five Year Review. In summary, the process and substance of these new amendments did not constitute best efforts to implement the spirit of Chapter 12 and the entirety of the Final Agreements, nor comply with jointly developed guidelines for the planning and implementation of the Development Assessment Legislation required or contemplated under the Final Agreements and Umbrella Final Agreement.

42. In late 2012, following the abandonment of the joint process, Canada declared that it would focus on its Action Plan to Improve Northern Regulatory Regimes, with stated goals of “effectiveness” and “efficiency”.

43. Also in late 2012, Yukon approached Canada with new amendment proposals that went beyond the recommendations of the Five Year Review, including proposals relating to the delegation of powers and the issuance of policy direction that are of central concern to the Petitioners and Yukon First Nations more broadly. These bilateral discussions between Canada and Yukon took place without notice to or involvement of First Nations.

44. The amendments to YESAA that Canada eventually purported to enact through Bill S-6, were not the jointly developed Five Year Review Amendments, but added a suite of new amendments imposed in furtherance of an agenda set by Canada and/or Yukon, and not reached jointly or even in good faith consultation with the Petitioners. The Bill S-6 amendments are in substance a breach of the Final Agreements and s.35 rights and contrary to the honour of the Crown, and were implemented in a manner that was in breach of s.35 and contrary to the honour of the Crown.

45. In June 2013, Canada shared some proposed YESAA amendments with First Nations but these early amendments did not incorporate Yukon’s proposed amendments and did not form the basis of Bill S-6. In late 2013 Canada indicated for the first time that it proposed to adopt Yukon’s proposed amendments and began to draft the amending legislation unilaterally.

46. These amendments were not developed in consultation with the Yukon First Nations, nor with the collaborative process established to collectively develop or consider amendments coming from the Five Year Review process.

47. A draft Bill containing some of the proposed amendments was presented to Yukon First Nations by Canada at the end of February 2014. Canada’s proposed Bill had been unilaterally changed from amendments previously shared in ways adverse to First Nations interests and comments. First Nations were advised that the comment window would close two months later on April 23, 2014. This time period was insufficient for good faith consultation with multiple Yukon First Nations and their citizens.

48. Despite the short time frame, Yukon First Nations, including the Petitioners, provided comments and highlighted concerns to Canada. The comments and concerns were not fully and fairly considered and were disregarded.

49. When meeting with Yukon First Nations in May 2014, Canada presented a proposed Bill with additional amendments that did not address and were adverse to Yukon First Nation concerns. Canada advised that the input of First Nations would be recorded, but that no changes to the Bill would be made. In June 2014 Canada announced that it considered its consultation duties under the Final Agreements in respect of the amendments to have been met, and introduced Bill S-6 to the Senate.

50. Bill S-6 proceeded through the legislative process with no amendments, and it was granted royal assent on June 18, 2015. Changes made to the Bill between when it was first presented to the First Nations in February 2014 and when it was brought into law ran contrary to the interests of First Nations. None of the many concerns of the Petitioners or of Yukon First Nations more broadly were addressed or otherwise fully or fairly considered.

51. Although Canada purported to carry out consultations with First Nations in respect of Bill S-6, the ‘consultations’ were not reasonable and not in good faith including because Canada had predetermined the outcome to be reached and did not intend to, and in fact did not, fully and fairly consider the views of First Nations.

52. The Petitioners assert that the process that Canada undertook was fundamentally flawed, not consistent with the honour of the Crown, and in breach of the letter and spirit of the Final Agreements, including the requirements of Chapter 12 and the Terms of Reference of the mandated Five Year Review.

53. The provisions of s. 12.3.2 contemplated that the Parties to the Umbrella Final Agreement would reach agreement on ‘drafting guidelines’ which would have informed the original legislation and subsequent alterations. In the absence of such guidelines, the parties instead chose to work together jointly on drafting the legislation. That collaborative process continued after the legislation, and through the creation of regulations and policies. That obligation to work together continued to the stage of review and amendment.

54. The creation of a tripartite core group was followed by Canada as an alternative to prior agreed guidelines. The Petitioners claim that in the absence of guidelines and compliance with s. 12.3.2 and 12.3.3, Canada and Yukon could not abandon unilaterally the collaborative process to develop amendments to the legislation, but that Canada and Yukon in fact did so after 2013.

55. The process and substance of the amendments beyond those developed through the Five-Year Review did not constitute a good faith attempt to consider and implement the views and interests of the Petitioners as required by the Final Agreements, nor to follow the processes established by the parties in the Five Year Review and the Terms of Reference.

56. Further, Canada had an obligation to comply with minimum consultation obligations under the Final Agreement, including to:

(a) provide notice of newly proposed amendments with sufficient detail, including rationale and anticipated impacts;

(b) provide sufficient time and opportunity for Yukon First Nations to properly and in accordance with their laws and internal procedures prepare their views and respond;

(c) fully and fairly consider the views of the Petitioners and Yukon First Nations more broadly, at each stage of the review process and in regard to any newly proposed amendments;

(d) address or attempt in good faith to honorably and reasonably address the Petitioners' concerns regarding Bill S-6; and

(e) incorporate the views, experience or knowledge of the Petitioners into the process or substance of Bill S-6.

and Canada failed to do so in regards to the final version of Bill S-6.

57. Canada's failure to ensure that an adequate opportunity for consultation was afforded the Petitioners is a further breach of rights affirmed by the Final Agreements and s. 35 of the *Constitution Act*, 1982.

G. THE BILL S-6 AMENDMENTS ARE IN BREACH OF THE FINAL AGREEMENTS

58. Substantively, Canada's proposed amendments to YESAA that do not arise from the Five Year Review Joint Recommendations are in conflict and are inconsistent with the Final Agreements.

59. Broadly, the proposed Bill S-6 amendments:

(a) unlawfully permit unilateral delegation by Canada to Yukon of powers and responsibilities;

(b) undermine Yukon First Nations' collaborative participation in development assessment processes upon which they based their Final Agreements;

(c) inhibit or interfere with the independence of YESAB; and

(d) weaken the ability of development assessments to be carried out in a manner that ensures that Yukon, Canada and First Nations have the ability to make proper and informed governance decisions that meet the objectives of Chapter 12.

60. Some of the amendments of specific concern to the Petitioners:

(a) permit unilateral and unrestricted delegation of powers and responsibilities from the Federal Minister of Aboriginal Affairs and Norther Development to Yukon without the consent or consultation with Yukon First Nations;

(b) impose legislated timelines in the name of 'harmonization' while failing to appreciate the Yukon specific context and the Board's authority over its own procedures, and the existence of Board established timelines, and to thereby interfere with and limit the authority of the Board;

(c) fail to uphold the requirements of the Final Agreements regarding cumulative effects, and therefore potentially engage less thorough or satisfactory assessments;

(d) exempt projects seeking amendment or renewal from review, or allow exemptions to be determined with unstructured discretion;

(e) reduce assessment and oversight of projects regulated under the *Northern Pipeline Act;*

(f) constrain the scope of the Board's recommendations regarding transboundary projects;

(g) fail to treat First Nations governments on equal footing with Canada and Yukon; and

(h) threaten the independence and autonomy of the Board including by permitting the imposition of binding policy directives.

61. The Petitioners entered Final Agreements on the expectation and understanding that cooperative management and a strong independent and objective development assessment process would be applied in Yukon. Canada's proposed Bill S-6 amendments undermine the Petitioners' treaty rights and are in breach of the Final Agreements and contrary to s.35 of the *Constitution Act*, 1982.

62. The multi-year negotiations that the parties conducted to develop YESAA struck a careful and important balance between development and environmental and cultural preservation, and between the roles and responsibilities of First Nations, Yukon and Canada. The parties worked together to draft development assessment legislation that strove to fulfil the promises set out in the Final Agreement, guided by Chapter 12 and honouring the respective roles of and relationships between the parties to the Final Agreements.

63. The unilateral changes imposed by Bill S-6 undermine the ability of YESAA to realize the objectives of Chapter 12 through environmental and socio-economic assessment and management of the traditional lands of Yukon First Nations, including the Petitioners, and alter the Final Agreement promises made to Yukon First Nations. Unilateral changes of that type are contrary to the Final Agreements and contrary to s.35 of the *Constitution Act*, 1982.

H. ORDERS SOUGHT

64. The Petitioner applies for the following orders:

(a) A declaration that Part 1 of *An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act,* SC 2015, c. 19, is in conflict or inconsistent with the Final Agreements of the Petitioners and is invalid and of no force and effect;

(b) Costs; and

(c) Such further and other relief as this honourable court considers just.

The petitioner estimates that the application will take 4 days.

Dated October 14, 2015

Gregory J. McDade Q.C.
Counsel for the Petitioners

NOTICE OF CASE MANAGEMENT CONFERENCE

Take notice that a Case Management Conference will be held at the Law Courts, 2134 2nd Avenue, Whitehorse, Yukon on December 15, 2015 at 4pm pursuant to Rule 1 (7).

Dated October 14, 2015

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Gregory J. McDade Q.C.
Counsel for the Petitioners