

ENVIRONMENT

Judicial review of Decision Statement communicating decisions by respondent Minister of the Environment (Minister), Governor in Council (GIC) pursuant to *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19 (CEAA 2012), s. 52 that New Prosperity Gold-Copper Mine Project likely to cause significant adverse environmental effects, that these effects not justified in circumstances — Applicant seeking to secure environmental approval of Project, an open pit gold, copper mine in British Columbia within traditional territory of Tsilhqot'in peoples — Minister appointing Review Panel charged with six-step environmental assessment — Panel officiating hearings — Minister meeting with Tsilhqot'in National Government (TNG) representatives on October 8, 2013 — Applicant learning of this meeting, others, not objecting to them — Panel submitting report on October 31, 2013, concluding that seepage of toxic water from tailings storage facility (TSF) at mine site greater than estimated — In response to report, TNG providing submissions to Canadian Environmental Assessment Agency (Agency), but not to applicant — Minister referring matter with recommendation to GIC, issuing Decision Statement — Decision Statement not including reasons — Agency advising applicant that CEAA 2012, ss. 5(1), 6 preventing it from taking any action that may cause environmental effects — Issues whether applicant afforded fair process during Minister's, GIC's decision-making process; whether Minister, GIC breaching *Canadian Bill of Rights*, S.C. 1960, c. 44; whether CEAA 2012, ss. 5(1)(c), 6 unconstitutional — Applicant afforded fair process before Minister — Owed duty of procedural fairness throughout whole process, but not owed high degree of procedural fairness during Minister's decision making process — Panel process venue through which parties afforded high degree of procedural fairness — Minister's decision making process not involving any elements indicating that applicant owed high degree of procedural fairness — Degree, type of procedural fairness owed to applicant varying at different stages of whole process — Minister going above, beyond procedural fairness requirements in this case — TNG's success at "politicizing" process not forming basis for concluding that applicant denied level of procedural fairness required — Case law not supporting contention that applicant having right to be informed of any, all meetings with Minister or TNG's submissions to Minister — TNG not providing any new information to Minister — Applicant waiving its right when not objecting to meeting — Crown having to consult TNG after report released — Project proponent having to be informed if Crown intending to alter its position or make decision contrary to Panel report due to new concerns raised by a First Nation — This rule fair, practical, principled, ensuring protection of project proponents' rights — Project proponent not having right to take part in consultations between Crown, First Nation — No duty of procedural fairness attached to GIC herein — GIC generally free to exercise its power without Court interference provided no absence of good faith and statutory preconditions met — Legislation not contemplating submissions to GIC — No duty on Minister or GIC to give reasons in this case — Legislation simply indicating that proponent should be informed of decision — *Canadian Bill of Rights* not applying to processes before Minister, GIC — Minister, GIC not a "court, tribunal or similar body" — CEAA 2012, ss. 5(1)(c), 6 *intra vires* Parliament — Factual matrix or analysis necessary to make constitutional pronouncement not present herein — Language of "communication and cooperation" in purpose clause of CEAA 2012 speaking to recognition by legislature that environmental assessment process designed to satisfy Crown's duty to consult with impacted First Nations — Language of s. 5(1)(c) drawing out those potential impacts to be considered — Effect of impugned provisions is to prevent proponent of designated project (per s. 6) from taking any actions

causing environmental effects with respect to aboriginal peoples as listed in s. 5(1)(c) — Pith, substance of impugned provisions coming within Parliament's power to legislate for "Indians, and Lands Reserved for the Indians" in *Constitution Act, 1867*, s. 91(24) — Inappropriate to modify this specific power for the protection of a general power — Recognizing interjurisdictional immunity in this case "logically" extending to any local project prevented by federal law from moving forward — This would privilege provincial powers in manner not contemplated by Constitution, violate principle of cooperative federalism — Test in *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 SCR 467 not met herein — Doctrine of interjurisdictional immunity generally reserved for circumstances covered by precedent, not yet been found to cover provincial head of power — Application of this doctrine herein would be serious departure from previous case law — Application dismissed.

TASEKO MINES LIMITED V. CANADA (ENVIRONMENT) (T-744-14, 2017 FC 1100, Phelan J., judgment dated December 5, 2017, 67 pp.)