BACKGROUNDER

Background information on the negative impacts of the export monopoly on the Prince Rupert trade gateway

Metlakatla First Nation ("**Metlakatla**") and Lax Kw'alaams Indian Band (together the "**Coast Tsimshian**") hold Aboriginal rights and title to lands and waters on the north coast of British Columbia, including the Port of Prince Rupert.

In managing the Port of Prince Rupert, the Prince Rupert Port Authority ("**PRPA**") makes decisions that affect the Coast Tsimshian's rights and title.[1]

PRPA has a duty to consult, and where appropriate accommodate, the Coast Tsimshian when it considers decisions that may adversely affect the Coast Tsimshian's Aboriginal rights. The duty to consult before making decisions that can affect Aboriginal rights is a constitutional obligation rooted in the honour of the Crown.

Development of the Port of Prince Rupert has affected Metlakatla's interests

The development of the port has had direct and profound effects on Metlakatla. In 1906, the Government of Canada improperly conveyed approximately 14,000 acres of Metlakatla's reserve lands for the development of the Port of Prince Rupert. In 2022, the Specific Claims Tribunal ruled that the disposition of Metlakatla's reserve lands was an improvident transaction and that Canada breached its fiduciary duties of loyalty, good faith, and full disclosure to Metlakatla.[2]

The Port of Prince Rupert was created in 1914 upon completion of the Grand Trunk Railway, with portions of the rail terminus and port facilities located on Metlakatla's former reserve lands.

In 1972, the Government of Canada declared the Port of Prince Rupert a "national harbour".[3] Canada established PRPA as a federal port authority in 1998.

Coast Tsimshian's Aboriginal rights have been recognized and affirmed several times in the past

For many years, PRPA disputed that it was under an obligation to consult with the Coast Tsimshian in relation to the development of the port lands.[4] This led to a long period of litigation that ended in 2011 when PRPA finally acknowledged the Coast

[1] PRPA is an agent of the Government of Canada for its operation and management activities and is accountable to the federal Minister of Transport. As such, PRPA is responsible for the operation and management of federal real property, as well as port facilities and navigable waters, within the Port of Prince Rupert. The port is located on "federal real property" within the meaning of the *Federal Real Property and Federal Immovables Act*, S.C. 1991, c. 50.
[2] *Metlakatla Indian Band v. His Majesty the King in Right of Canada*, 2022 SCTC 6.
[3] The declaration was pursuant to the *National Harbours Board Act*, S.C. 1936, c. 12.
[4] See for example *Leighton v. Canada (Minister of Transport)*, 2006 FC 1129.

Tsimshian's Aboriginal rights and title to the lands and waters in the Port of Prince Rupert. PRPA acknowledged further that it was under a legal duty to consult with the Coast Tsimshian in relation to decisions affecting their Aboriginal rights and title.[5]

In 2019, Transport Canada formally recognized the Coast Tsimshian's Aboriginal rights and title when it entered into an impact benefit agreement with each of them in relation to the sale of Ridley Terminals Inc. (now Trigon Pacific Terminals Limited ("**Trigon**")).[6] Those agreements resulted in Metlakatla and Lax Kw'alaams becoming equal shareholders in Trigon.

PRPA's failure to consult about export monopoly

Notwithstanding its recognition of Metlakatla's Aboriginal rights, PRPA chose in 2015 not to notify Metlakatla that it intended to give Vopak Development Canada Inc. ("**Vopak**"), a Dutch owned company, significant power to control the development of port lands. PRPA granted Vopak extraordinary contractual rights as part of a lease to develop the Ridley Island Energy Export Facility ("**REEF**"), which is currently under construction.[7]

Under its agreement with PRPA, Vopak has the right to veto any proposed development of port lands involving a wide range of bulk liquids, including energy commodities such as liquified petroleum gas ("**LPG"**). These contractual rights create an export monopoly controlled by Vopak for LPG and other products.

Vopak failed to inform Metlakatla about the existence of its veto power during negotiations which culminated in the completion of an impact and benefits agreement in 2023. Metlakatla learned about the veto power later that year when PRPA informed Trigon that Vopak had vetoed an LPG project that Trigon was proposing for its own facility on Ridley Island.

REEF is now jointly controlled by Vopak and AltaGas Ltd.

[5] In 2011, the Coast Tsimshian and PRPA entered into an agreement to facilitate the expansion of the Fairview Container Terminal in the Port of Prince Rupert.
[6] Ridley Terminals Inc. was created as a federal Crown corporation in 1983. It operated a bulk commodity terminal on federal lands on Ridley Island that were leased from PRPA.
[7] The REEF project is a large-scale liquified petroleum gas and bulk liquids terminal and berthing facility on Ridley Island in the Port of Prince Rupert. It was approved by federal and provincial regulators in 2022.

Effects of the veto power reach far beyond Metlakatla's traditional territory

The REEF partners use of the veto to prevent the Trigon project from proceeding devalues Metlakatla's interest in Trigon. It also prevents Metlakatla, alone or with its business partners, from developing projects in the port for the range of products that are the subject of the veto power. As such, the REEF partners' veto power inhibits the port's potential for growth which in turn diminishes the economic interest that Metlakatla has in the port by virtue of its Aboriginal rights and title.

PRPA and the REEF partners refuse to say how long this veto power will continue in effect. Metlakatla has obtained a heavily redacted copy of the agreement between PRPA and Vopak. From our review, we know this veto is discretionary, broad, and operates with no transparency or accountability. We know it does not require the REEF partners to act reasonably, or to act in the broader interests of the port or of Canada for that matter. We know the REEF partners do not have to give reasons for any exercise of the veto. We know Vopak and AltaGas do not have to show that their existing businesses would be hurt, or that they are planning a similar project. Nor do the REEF partners have to consult with First Nations or anyone else before exercising their veto. And there is no appeal from any decision they may make.

This veto power gives a foreign company, and now AltaGas, substantial control over the future of an important Canadian port. Vopak and AltaGas have refused to engage in a frank discussion about modifications that could be made to their veto power to align it with the interests of Metlakatla and Canada and safeguard it from abuse. The economic impact of this veto extends far beyond the Port of Prince Rupert and Metlakatla's traditional territory: it reaches into the upstream gas sector in BC and Alberta.

The REEF partners exercised their veto power to require PRPA to deny Trigon permission to build an additional LPG terminal; this increased REEF's control of Canadian propane exports and reduced Canadian LPG producers' access to the Asia-Pacific market. Now, instead of selling overseas at a large premium, many Canadian producers have to sell into the US market at a discount.

As a result, the REEF partners' veto is undermining investor confidence in upstream gas processing by reducing the revenue from the additional propane produced. At least two upstream energy companies have indicated their investments in gas processing plants are frustrated because they cannot count on being able to ship it to Asia – the REEF veto has prevented these producers from getting their product to tidewater.

The private sector investments and jobs being blocked by this veto are shovel ready. Resolving the veto blocking the Trigon's LPG export terminal would immediately unlock over $2 billion in new private-sector investment, about one-third in the port itself, and two-thirds in the upstream gas processing areas in BC and Alberta.

Metlakatla's recourse to litigation

In 2024, Metlakatla commenced an action against PRPA in the Supreme Court of British Columbia due to the port's failure in 2015 to disclose that it had granted Vopak the

power to maintain a monopoly over LPG and other products shipped through the port by means of a veto power over the other projects and PRPA's subsequent failure to disclose the existence and terms of its agreement with Vopak during the consultation process for the REEF project.

Metlakatla's causes of action are based on PRPA's breach of fiduciary duty, breach of the duty to consult, negligent misrepresentation, and unjust enrichment. Metlakatla claims compensation from PRPA for general, special, and aggravated damages; restitution; and an accounting of the profits that will accrue to PRPA due to its breach of the duties and obligations it owes Metlakatla.

PRPA sought to have Metlakatla's claim struck on jurisdictional grounds. In a decision released on 30 January 2026, the Court completely dismissed the PRPA challenge, ruling that Metlakatla has pleaded a reasonable cause of action and "should be allowed to get on with it."[8]

[8] *Metlakatla First Nation v. Prince Rupert Port Authority*, 2026, BCSC 152.