

Court of Queen's Bench of Alberta



Citation: Cold Lake First Nation v. Alberta (Tourism, Parks and Recreation), 2012 ABQB 579

Date: 20120924
Docket: 1103 07145
Registry: Edmonton

Between:

Cold Lake First Nations

Applicant

- and -

**The Queen In Right of Alberta as Represented by the
Minister of Tourism, Parks and Recreation**

Respondent

Corrected judgment: A corrigendum was issued on October 10, 2012; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Memorandum of Decision
of the
Honourable Madam Justice B.A. Browne**

[1] Treaty #6 was signed by Chief Kinoosayoo on behalf of Cold Lake First Nations and by various British Government Officials near Fort Pitt on the September 9, 1876. The preamble to Treaty #6 provides in part:

... And whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty and arrange with them, so that there may be peace and good will

[84] As recorded in the notes of the final meeting between the parties in December 2010, there is little “goodwill” (to use the words of the Treaty) between the parties in this case. The honour of the Crown requires good faith which will include taking the initiative to offer to reestablish a positive negotiating relationship. In my view, a simple change of the name in negotiations from English Bay to Jié Hochálá could make a significant difference to the process.

[85] I would add that my review of the history of the negotiations and observations of the parties lead me to believe that the relationship between the parties has deteriorated to such an extent that a mediator or arbitrator may well be essential to encourage effective communication and decision making. Both parties have an obligation to cooperate in the process and to engage in and facilitate effective communication and good faith negotiations. Despite their success on this judicial review, I would remind the First Nation that while it is entitled to adequate consultation, it does not have veto power and therefore it must engage in the negotiation process.

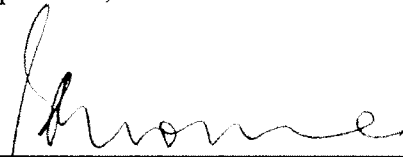
[86] Accordingly, I set aside the decision of the Director of Parks for the North East Region to unilaterally terminate further discussions and to proceed with construction of the expansion of English Bay. The process of consultation must continue to a proper conclusion with both parties acting in good faith towards a mutually beneficial solution.

Costs

[87] The parties may speak to costs, if need be, within 30 days of the date of this decision.

Heard on June 5th to 8th, 2012.

Dated at the City of Edmonton, Alberta this 21st day of September, 2012.



B.A. Browne
J.C.Q.B.A.

Appearances:

Keltie L. Lambert / Liam C. Kelly
Witten LLP
for the Applicant

Stephanie C. Latimer / Angela L. Edgington / Jamie Speer
Alberta Justice Aboriginal Law
for the Respondent

**Corrigendum of the Memorandum of Decision
of
The Honourable Madam Justice B.A. Browne**

Please note the following change. Paragraph 87 of the original decision has been deleted and the remaining paragraph renumbered.