

Consultation and Accommodation Updates

Paul First Nation v. Parkland, 2006 ABCA 128

Decision date: April 19, 2006

This case affects Chapter 4 (The Crown's Obligations to Consult and Accommodate) of EAGLE's "Nation to Nation: The Law of Consultation and Accommodation" materials.

Paul First Nation challenged a gravel pit on private land, because they were not given adequate notice, they were not consulted, and the gravel pit development was an infringement on their treaty rights. The lower court in Alberta held that there was no duty to consult, and the Paul First Nation applied for leave to appeal this decision to the Court of Appeal.

In denying leave to appeal the decision, Alberta's Court of Appeal held that neither the approving body nor the gravel company had a duty to consult. The Court distinguished the *Haida* (2004 SCC 73) and *Mikisew* (2005 SCC 69) Supreme Court of Canada decisions, saying that those cases involved "Crown" lands, whereas this case involved private lands. The Alberta Court of Appeal held that neither the Crown nor landowners have a duty to consult regarding privately owned lands.

The Supreme Court of British Columbia came to the opposite conclusion in the *Hupacasath* case, where it held that the Crown had a duty to consult when considering the removal of private lands from tree farm licences. The Alberta Court of Appeal distinguished *Hupacasath* (2005 BCSC 1712) as follows:

While the British Columbia Supreme Court determined...that a duty to consult can arise in some instances involving private lands, any such duty must be restricted to the facts of that case as it involved an operative transfer of the lands into a publicly funded government program followed by an attempt to transfer the lands out of that program. The extensive involvement of the government was the primary factor that precipitated the duty to consult in that instance.

In this case, there was no allegation that government was involved in the proposed development. Therefore, the Court found that duty to consult did not arise in relation to the privately owned lands.