Date: 20071101

Docket: T-754-07

Citation: 2007 FC 1131

Ottawa, Ontario, November 1, 2007

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

THE TZEACHTEN FIRST NATION,
THE SKOWKALE FIRST NATION, and
THE YAKWEAKWIOOSE FIRST NATION

Applicants

and

THE ATTORNEY GENERAL OF CANADA,
CANADA LANDS COMPANY LIMITED, and
CANADA LANDS COMPANY CLC LIMITED

Respondents

REASONS FOR ORDER AND ORDER

I. Introduction

[1] Two motions are before the Court:

(a) A motion by the Attorney General of Canada (Canada) filed on August 17, 2007, seeking to strike the Applicants' judicial review application filed on May 3, 2007, on the

grounds that it is out of time as it challenges a federal decision made and communicated in 2003; alternatively, Canada seeks an order from this Court that the Applicants be required to obtain an order granting them an extension of time before this proceeding can continue further.

(b) In the alternative, a notice of motion by the Applicants for an extension of time to file its judicial review application. The Applicants' motion for time extension is framed in the alternative because they argue the 30-day time limit to challenge a decision or order of a federal tribunal has no application in this case relying on the Federal Court of Appeal's decision in *Krause v. Canada*, [1999] F.C.J. No. 179.

[2] The parties agreed with the Court's suggestion the Applicants' motion for an extension of time and its argument on *Krause*, above, should proceed first because the Court's determination on these two issues would be determinative of the two motions.

II. Background

[3] The Applicants are communities of the Chilliwack Tribe with Indian Reserves within the boundaries of the City of Chilliwack close to the lands comprising the former Canadian Forces Base (CFB) Chilliwack (the Base). The Chilliwack Tribe is a subgroup within the Sto:lo who are part of the Coast Salish Aboriginal People.

[4] The judicial review application which is the subject matter of the two motions challenges "a decision by Treasury Board on a date unknown to the Applicants, to transfer to Canada Lands

Company CLC Limited (CLC) substantially all of the land which remained in the Base's land inventory. CLC is a wholly owned subsidiary of Canada Lands Company Limited (CLC Parent). The lands affected by the judicial review application are referred to as Parcel C consisting of two areas known as the "Rifle Range" and "Promontory Heights" which substantially surround the Reserve of the first Applicant, the Tzeachten First Nation (the Tzeachten).

[5] In their judicial review application the Applicants also seek relief "in respect of the legal obligations of the Minister of National Defence (MND), CLC Parent and CLC to consult with the Applicants and accommodate their interests in the CFB Chilliwack lands" and an injunction to restrain any further transfer of the CFB Chilliwack lands by CLC. In particular, the judicial review application seeks:

(i) a declaration the transfer to CLC was unlawful or invalid;

(ii) a declaration Treasury Board and MND have since June 16, 2000, and CLC and CLC Parent had since CLC acquired title to Parcel C, a legal obligation to consult with the Applicants and to accommodate their interests prior to transferring, selling or otherwise disposing or developing…the Rifle Range or Promontory Heights;

(iii) an order of *mandamus* directing the MND, CLC Parent and CLC to consult with the Applicants and accommodate their interest in Parcel C; and

(iv) an order in the nature of an injunction restraining CLC from transferring, selling or otherwise disposing of any further land in Parcel C without agreement of the Applicants or further order of the Court.

[6] The Applicants have made it clear they seek no relief in respect of the sale in 2004 by CLC of 14 acres of Parcel C to the Chilliwack School District.

[7] The Applicants assert two distinct claims in Parcel C. The first claim is that Parcel C was set apart in or about 1864 as part of the Reserve which was unlawfully taken first for non-aboriginal settlement and later to establish the Base. The second claim is that Parcel C is within the traditional territories of the Chilliwack Tribe of the Sto:lo and as such is subject to the unextinguished aboriginal title and rights of the Applicants. The reserve claim was pursued in 1988 by the Applicants and other Sto:lo communities pursuant to the specific claims policy of the federal government. In 1999, the federal authorities refused to recognize the reserve claim as a specific claim. This issue was appealed to the Indian Claims Commission and the appeal is currently in abeyance.

[8] The aboriginal title claim has been the subject matter of treaty negotiations since 1995 when 18 Sto:lo communities, including the Applicants, filed a statement of intent to negotiate a treaty under the auspices of the British Columbia Treaty Commission (the BCTC) with respect to traditional territories which includes Parcel C. The negotiations are currently at stage four of the six-stage BCTC process where the parties negotiate an agreement in principle.

[9] The Applicants' motion for an extension of time was supported by the affidavit of Joseph Hall, the elected Chief of the Tzeachten. He was not cross-examined. Among other matters, Chief Hall deposed as to the discussions with the federal government and CLC prior to June 2000, and specifically between 1996 and June of 2000, concerning the CFB Chilliwack lands and the

Applicants' claims to Parcel C both in terms of the reserve claim and the aboriginal title claim. Chief Hall described the pressing need for land to provide housing for its growing membership and to meet the social and economic needs of its present and future generation. He stated the Reserve had only 30 acres left for expansion.

[10] Chief Hall referred to Canada's informal suggestion the Applicants give up their interests in the Base lands in exchange for land located several kilometres away in the Columbia Valley, some portion of the Rifle Range and possibly further land in the Chilliwack Valley that could become surplus at some date. That informal offer was rejected. A counter-offer was tabled by the First Nations which involved Canada acquiring the Base lands at fair market value. He concludes by stating that following this Canada ended the discussions and "did not make any further proposal directed to finding a middle ground between our respective positions." The government simply proceeded with the decommissioning of CFB Chilliwack and the transfer of land to CLC for sale and development, according to Chief Hall.

[11] Chief Hall then addressed what he called the June 2000 decision identified in a letter addressed to the Applicants' legal counsel by the Director of the Real Property Management Division of Treasury Board dated June 16, 2000.

[12] That letter stated Canada had decided to sell Parcel A of the Base's lands to CLC "for value enhancement and subsequent resale." The letter also advised:

- 2/3 of the Base lands including Parcel C would be retained in the federal inventory for two years to permit discussions on possible land selection under the treaty process;

- DND will coordinate property management on the retained lands. CLC will lead discussions related to the redevelopment of the Base and would be instructed to consider socio-economic measures with the City of Chilliwack and Sto:lo First Nations communities;

- Indian and Northern Affairs Canada (INAC) will lead discussions related to treaty including land selection; and

- The Department of National Defence (DND), CLC and INAC will move forward quickly with respect to their responsibilities concerning Base lands.

[13] Chief Hall states the Applicants were not consulted on the June 2006 decommissioning decision and its terms. A legal challenge to the June 2000 decision was launched by the Applicants and another First Nation. Ultimately this proceeding in Federal Court was discontinued after CLC proceeded to sell Parcel A for development after the First Nations failed to enjoin its transfer.

[14] Chief Hall states since the June 2000 decision and the discontinuance of the Federal Court proceeding, there have been no further discussions between Canada and CLC with the Applicants regarding the remaining Base lands. He states neither he nor, to his knowledge, other representatives of the Applicants have been approached by any representative of the federal government to discuss the Base land issues either in terms of the reserve claim or the aboriginal title claim.

[15] Chief Hall then discusses what he calls the transfer decision. He deposed "at some point in time, and without any prior discussion or consultation with the First Nation applicants, Canada

decided to transfer substantially all the remaining CFB Chilliwack lands including Parcel C to CLC." He states Canada did not communicate the transfer decision to the Applicants and has not done so up to this time.

[16] He identifies a letter dated August 8, 2003, by DND stating "the Federal government has authorized the sale of the remainder of the surplus lands from [the Base] to CLC" indicating “the transfer will be completed within the coming months." The second paragraph of that letter said CLC's approach to planning for development of the land for re-use "will involve open public consultation and invite extensive discussions with all interested parties. I encourage you to follow up with Canada Lands so that your views on the future of this land can be taken into account."

[17] Prior to the transfer decision by letter dated June 26, 2002, Chief Hall had been advised by Brigadier-General Irwin of DND the two-year period identified in the June 16, 2000 letter had expired, INAC had decided they would not be acquiring any of the former CFB Chilliwack lands for treaty settlement purposes. This letter advised him DND was now preparing to return to Treasury Board “in accordance with the June 2000 disposal plan for further direction regarding the disposal of the remainder of the Chilliwack lands”.

[18] Chief Hall then discussed the plans by the Chilliwack School District to acquire part of Parcel C from CLC for a new secondary school. Upon inquiry, the Applicants were told on May 12, 2004 by CLC’s British Columbia legal counsel the title to Parcel C including the proposed lands for the secondary school had been transferred to CLC. He stated no contact had been made with the Sto:lo Nation about the school project despite a plea on August 19, 2004, for consultation

and accommodation. Finally, on December 14, 2004, CLC's legal counsel advised CLC would not consult with the Tzeachten on any matter relating to the Base lands because it was a non-agent of the federal Crown. CLC was like the third party in *Haida Nation v. British Columbia* [2004], 3 S.C.R. 511, counsel for CLC advanced.

[19] Counsel for the Tzeachten then wrote to Treasury Board on December 22, 2004, about the transfer of Parcel C to CLC for disposal despite the fact there had been no consultation. The First Nation was advised by Treasury Board "Ministerial responsibility for this project was transferred from Treasury Board to MND in July 2000, the same time that the original transaction was approved." Counsel for the Tzeachten then wrote to the Director General of Realty Policy and Plans at DND on February 11, 2005, about the lack of consultation and accommodation. Legal counsel at Justice Canada responded on March 23, 2005. He stated there had been discussions until June 2002 on selecting land for the treaty process but no agreement had been reached. Counsel at Justice Canada stated he had been advised that in June 2003 Treasury Board had authorized MND to transfer the lands to CLC and the First Nations had been advised of this fact in August 2003 but DND had received no response from them. He advised the transfer took place in March 2004. He expressed the view Canada had met any legal obligations to consult regarding the Base lands.

[20] On June 6, 2005, the Applicants in this proceeding filed a representative action in the Supreme Court of British Columbia against Canada, CLC and CLC Parent. That action mirrors in terms of facts, legal obligation to consult and accommodate and relief, the subsequent judicial review application filed in this Court on May 3, 2007 which is the subject of these motions.

[21] The Attorney General of Canada moved the B.C. Supreme Court to strike him as a defendant from the representative action. CLC and CLC Parent did not contest the B.C. Supreme Court's jurisdiction. The chambers judge dismissed the Attorney General's motion to strike but he was overruled by a unanimous five-member bench of the British Columbia Court of Appeal on March 3, 2007 (see *Chief Joe Hall v. Canada (Attorney General)*, 2007 BCCA 133).

[22] In the British Columbia proceeding, Canada argued the Federal Court had exclusive jurisdiction over the case, i.e. over the claims against Treasury Board and MND, while the First Nations applicants argued the B.C. Supreme Court and the Federal Court had concurrent jurisdiction over the issues raised in the Statement of Claim.

[23] Chief Justice Finch wrote the following at paragraphs 46 and 51:

> [46] The fundamental question in this case as framed by the plaintiffs in their Statement of Claim is whether the August 2003 decision of the Treasury Board, on the recommendation of the Minister of Defence, was of no force or effect, and hence whether the subsequent transfer of title to CLC was unlawful or invalid. Whether the federal Crown was in breach of its duty to consult might well be an issue to be decided in the course of determining whether the Treasury Board's decision was made in conformity with the law. But whatever the outcome of that decision might be (assuming that it will be made by the Federal Court of Canada) the provincial superior court will never be in a position of having to enforce or to apply a federal statute that is invalid. If the Federal Court of Canada decides that the Crown is in breach of its duty to consult, it may afford whatever relief is appropriate. Such a decision will in no way impair or limit the powers of the B.C. Supreme Court to decide other cases involving the duty to consult as may appear appropriate on the law and the facts there presented.
>
> [51] There will remain pending the claims against the other two defendants. Counsel for the Crown agreed during oral submissions that the Federal Court of Canada would also have jurisdiction over

> both companies, including the subsidiary that is not a Crown agent. In view of the fact that only the Federal Court has jurisdiction over the claims against the Attorney General of Canada, it would be most convenient if the claims against all three defendants were heard in the Federal Court.

III. Analysis

[24] There are two issues to be decided on the Applicants' subsidiary motion to extend time to commence this judicial review application:

1. Does *Krause*, above, apply with the result that the 30-day time limit is not material?

2. If the answer is that *Krause* does not apply, have the Applicants met the test for the grant of an extension of time?

[25] Although represented by counsel at the hearing before me, counsel for CLC and CLC Parent took no position on any issue in the two motions. Its counsel had filed brief written representations which were not adverted to.

1. The applicability of Krause, above

[26] Counsel for the Applicants argues *Krause* applies. He argues the Applicants are seeking the review of a matter under section 18.1 consisting of a course of conduct of several actions by federal actors to which the 30-day time limit under section 18.1(2) is inapplicable. He argues the matter is the Crown's continuing failure to meet its duty to consult with the Applicants and to seek to accommodate their interests. Applicants say that the jurisprudence clearly establishes the Crown's duty is a present and ongoing one, that is not restricted in its application to one decision, and this

Court has the jurisdiction to ensure representatives of the federal Crown comply with its duty without being limited to any specific decision.

[27] I am of the view the reasoning in *Krause*, above, applies to this case and no extension of time is required here when the object of the litigation is to obtain relief in a case where the duty to consult and accommodate reserve and aboriginal interests is engaged. The relief sought in this case is a combination of declarations, prohibition and mandamus: three types of relief which Justice Stone, in *Krause*, above at paragraph 23, held which are not caught by the time limit imposed by subsection 18.1(2).

[28] At paragraph 17, Justice Stone held the design of a prohibition was preventative rather than corrective and affords a measure of judicial supervision not of administrative tribunals but of administrative authorities generally. See also his comments at paragraphs 16 and 18 in respect of mandamus and declaratory relief.

[29] The remedies sought by the Applicants in this proceeding do not seek to quash or set aside a decision of a federal tribunal as such and are, in my view, particularly apt in a case where the duties to consult and accommodate First Nations' interests are at stake.

[30] My view stems from the underlying rationale which flows from the Chief Justice's reasons in *Haida*, above, where she ruled the legal duty was to consult and accommodate asserted but yet unproven aboriginal claims. This legal obligation to consult and accommodate was seen by the Supreme Court of Canada as a mechanism, springing from the honour of the Crown, which

provides an alternative remedy to an interlocutory injunction. The legal obligation to consult and accommodate is essentially preservative of aboriginal title and rights until they are proven, which may take a considerable amount of time. The Chief Justice held the duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of the aboriginal right or title and contemplates conduct that might adversely affect it. It also held the context of the duty to consult is variable depending on the strength of the asserted claim and the seriousness of the potential adverse effect upon the right and the title claimed.

[31] In *Harold Leighton et al v. Her Majesty in Right of Canada* as represented by the Attorney General of Canada, 2007 FC 553, this Court came to a similar conclusion on the applicability of *Krause*, above, in similar circumstances as in the present case where the duty to consult and accommodate was engaged (see paragraphs 50 and 58).

[32] I also note that my colleague Justice Phelan, in dismissing the Crown's motion to strike because the application had been filed beyond the 30 day limit took a similar view of *Krause* in *Airth v. the Minister of National Revenue*, 2006 FC 1442 namely that the type of proceeding before him was a judicial review of a matter.

[33] The conclusion I reached on the applicability of *Krause*, above, accords well with the reasoning of the B.C. Court of Appeal's decision in *Chief Joe Hall*, above, where that Court recognized the exclusive judicial review jurisdiction of the Federal Court where a duty to consult on aboriginal interests was raised against a Federal entity.

[34] The application of *Krause*, in this instance, also meshes well with the comments made by the Honourable Madam Justice Southin in *Musqueam Indian Band v. British Columbia (Minister of Sustainable Resource Management*, docket: CA031826, another case involving the duty to consult. In that case, Justice Southin expressed the view B.C.'s judicial review procedure Act was "inapt to the claims asserted here because the appellant does not assert that the transaction in issue is not authorized by statute. To put it another way, no administrative grounds are asserted." At paragraph 17, she asserted "These cases arising from aboriginal land claims addressed themselves, in substance, not to whether powers conferred by an enactment are lawfully exercised but to an overarching constitutional imperative."

2. The Applicants' Motion to Extend Time

[35] Should I have erred on the application of *Krause*, above, to this case, I am of the view the Applicants' motion to extend time should succeed. In *Harold Leighton*, above, I had an opportunity to summarize a recent restatement, particularly by the Federal Court of Appeal, of the relevant principles relating to when an extension of time should be granted. Those principles are set out at paragraphs 33, 34 and 41 of that decision which I cite:

> [33] To grant or refuse a request for an extension of time to launch a judicial review application is a matter of discretion which must be exercised on proper principles. Those principles are well known with the Federal Court of Appeal's decision in *Grewal* v. *Canada (Minister of Employment and Immigration)* [1985] 2 F.C. 263, being the seminal case.
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> [34] From *Grewal*, above, and other decisions of the Federal Court of Appeal, the task at hand is as follows:
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> > • A number of considerations or factors must be taken into account in the exercise of the discretion;
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> > • These factors include: (1) a continuing intention to bring the application, (2) any prejudice to the parties opposite, (3) a reasonable explanation for

> the delay, (4) whether the application has merit i.e., discloses an arguable case (hereinafter the four-prong test) and (5) all other relevant factors particular to the case [emphasis mine], see James Richardson International Ltd. v. Canada [2006] FCA 180 at paragraphs 33 to 35;
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> • As explained in *Jakutavicius* v. *Canada (Attorney General)* [2004] FCA 289, these factors or consideration are not rules that fetter the discretionary power of the Court. Once the relevant consideration or factors are selected, sufficient weight must be given to each of those factors or considerations;
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> • The weight to be given to each of the factors or considerations will vary with the circumstance of each case (*Stanfield* v. *Canada*, 2005 FCA 107);
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> • The underlying consideration in an application to extend time is to ensure that justice is done between the parties. The usual consideration in the standard four-prong test of continuing intention, an arguable case, a reasonable explanation for the delay and prejudice to another party is a means of ensuring the fulfilment of the underlying consideration of ensuring that justice is done between the parties. An extension of time can be granted even if one of the standard criteria is not satisfied (*Minister of Human Resources Development* v. *Hogervrost*, 2007 FCA 41; and
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> • The factors in the test are not conjunctive (*Grewal*, above, at pages 11 and 13).
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> [41] As an overall comment, the respondents adopted a rigid formula approach to the Court's discretion on a motion for an extension of time. This approach has been discarded by the Federal Court of Appeal which has indicated flexibility was required in terms of relevant factors to each particular case, the weight to be given to each factor varying on the circumstances of each case and the balancing of all factors in order that a just result is arrived at between the parties.

[36] Before analysing and weighing the relevant factors for an extension of time, I signal what seems to the Court to be an oddity in this case which touches upon the existence and communication of the relevant decision. Concurrently with the filing of its judicial review application, the Applicants, pursuant to Rule 317 of the *Federal Courts Rules, 1998* requested from the Tribunal material relevant to the application that was in the possession of the Tribunal. The Federal Crown resisted disclosure invoking, on October 1, 2007 the certificate signed by Kevin G.

Lynch, Clerk of the Queen's Privy Council for Canada and Secretary to the Cabinet, invoking section 39 of the *Canada Evidence Act* in respect of three documents:

- Chain of e-mails between various officials at Treasury Board and DND dated March 13, 2003, March 20, 2003 and June 3, 2003 concerning a Treasury Board submission and précis;

- Draft Treasury Board submission, prepared by the Minister of National Defence undated [prepared on or around February 25, 2003]; and

- Treasury Board decision forwarded to the Deputy Minister of National Defence by the Assistant Secretary, Government Operations Sector, Treasury Board Secretariat, dated June 18, 2003, and attachments.

I note that under section 18.1(1) time to commence a judicial review application does not begin to run until the decision or order was first communicated by the Federal Board, Commission or other Tribunal to the party directly affected by it.

[37] Although I need not decide the point, some doubt exists when, if ever, the appropriate decision of the appropriate Federal Board was communicated to the Applicants. The record before the Court does not reveal the nature of the Treasury Board's decision of June 18, 2003, nor the MND's decision to transfer Parcel C to CLC.

[38] For the purpose of the extension of time, I assume the relevant decision to be the Treasury Board's decision in June 2003 because that is the decision referred to by the Applicants in their judicial review application of May 3, 2003. The extension of time sought, however, covers only the time span from June 2003 to the date the Applicants commenced their representative action in 2005 before the B.C. Supreme Court, as the parties had agreed.

[39] In my view, the application of the four part standard test favours the Applicants. In the circumstances of this case, I accord the most weight to the factors of the merit of the application and the lack of prejudice to the Respondents. I would attribute some but little weight to the factors of a continuing intention to bring the application and a reasonable explanation for the delay.

[40] Clearly, the jurisprudence holds that considerable weight must be accorded where the underlying judicial review application evidences merit. In *Leighton*, above, I note at paragraph 49 the following on the point:

> [49] The jurisprudence is clear that considerable weight must be accorded on a motion to extend time where the underlying judicial review application which is out of time evidences merit and provides an indication that the decision-maker challenged was in error. Such was the case in *Grewal*, above, where the delay was over a year but where the applicant had a very strong case on the merits. Such was also the case in *Jakutavicius*, above, where Justice Rothstein, then a member of the Federal Court of Appeal, found that the decision-maker "may well be in error." Such was the case in a recent decision dated February 20, 2007 by my colleague Justice Martineau, in *Huard* v. *Procureur Général du Canada*, 2007 CF 195, where he authorized a judicial review which had been out of time for several years taking into account the underlying application for judicial review had considerable merit. Such is the case here in respect of the October 27, 2005, decision.

[41] I agree with counsel for the Applicants that, through the affidavit of Joseph Hall who was not cross-examined, the Applicants have placed before the Court evidence of the Federal Crown's

knowledge of a *prima facie* case of both aboriginal title and Reserve interest in Parcel C as well as the clear prospect of adverse impact if the land is conveyed by CLC for private development. Furthermore, the Applicants raised an important issue with respect to CLC Parent and CLC and only need refer to Justice Phelan's decision in *Musqueam Indian Band v. Canada (Governor in Council)*, 2004 FC 1564 at para. 32 which reads:

> [32] While these respondents have many characteristics of a private corporation, there are aspects of its organization and mandate that have a significant government component. The parent company is a Crown agent; the subsidiary acts as agent for the parent or on its behalf. Both respondents have the same policies and these policies are in line with government policies. CLCL, as parent company, reports to Parliament through a Minister and complies with federal Crown objectives. The sources of both respondents' mandates are the federal Crown.

[42] I find absence of prejudice to the Respondents. Parcel C has apparently been conveyed to CLC who has conveyed fourteen acres of Parcel C to the Chilliwack School District, a transaction which the Applicants do not seek to impugn. CLC and its Parent have not submitted any affidavit evidence claiming prejudice should the Court grant this extension time.

[43] The prejudice invoked by the Attorney General of Canada in response to the extension of time request does not appear to the Court to be of a substantive nature but rather confined to procedural issues related to the relief sought, to an appropriate remedy being in damages and to equitable considerations in the form of the inability of the Applicants to approbate Canada's 2000 decommissioning strategy for the Base's lands and thereafter reprobating it.

[44] Technically speaking, the Attorney General may be correct to say the Applicants have not made out an intention within and not until May 3, 2006 to seek a judicial review of the June 2000

decision. However, in the circumstances of this case, this factor is more one of form than of substance. The federal Crown has known since 1988 of the Applicants' claim to Parcel C when they filed a specific claim. Canada has also known since 1995 of the Applicants' claim to an unextinguished aboriginal title to Parcel C when eighteen Sto:lo communities filed a statement of intent to negotiate a treaty under auspices of the BCTC. I accord, in the circumstances, little weight to this factor.

[45] The Applicants have persuaded me that they have made out a reasonable explanation for delaying their application. When they became aware of the transfer of the lands by DND to CLC, they sought consultation rather than litigation. They asked for consultation with CLC, Treasury Board, DND only to be sidetracked. They then sought relief through a representative action filed in the B.C. Supreme Court but were denied access on jurisdictional grounds. Shortly after the B.C. Court of Appeal rendered its decision, the Applicants instituted this proceeding in the Federal Court. I agree with the submission by counsel for the Applicants that time and time again the Courts have stated that negotiated resolutions are superior to litigated outcomes in the process of reconciling Crown sovereignty with prior aboriginal occupation. The Applicants should not be penalized for seeking consultations rather than litigation.

[46] Finally, there are additional factors particular to this case which affects the exercise of my discretion and the weight to be given to any particular relevant factor. I adopt the considerations which I outline in paragraph 50 of Leighton, above.

[47] Balancing all of the appropriate factors with the weight I have assigned to them in the context of justice between the parties, I am persuaded that time should extended to allow the Applicants the opportunity to seek judicial review of Treasury Board's June 2003 decision.

ORDER

THIS COURT ORDERS that the Applicants' motion to extend time is granted with costs. Time is extended to May 3, 2007 when the Applicants filed their judicial review application;

THIS COURT FURTHER ORDERS that the Attorney General's motion to strike is dismissed without costs on the grounds of mootness in the circumstances.

"François Lemieux"

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Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-754-07
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