Date: 20080103

Docket: T-1996-05

Citation: 2008 FC 3

Ottawa, Ontario, January 3, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

CHIEF LLOYD CHICOT suing on his own behalf and on behalf of all Members of the Ka'a'Gee Tu First National and the KA'A'GEE TU FIRST NATION

Applicants

and

MINISTER OF INDIAN AND NORTHERN AFFAIRS CANADA and PARAMOUNT RESOURCES LTD.

Respondents

REASONS FOR ORDER AND ORDER

[1] This is a motion by the Applicants to amend the Amended Notice of Application to include Land Use Permit (LUP) MV2006A0030 issued to Paramount Resources Ltd. (Paramount) on December 21, 2006 by the Mackenzie Valley Land and Water Board (the Board).

[2] In my decision, dated July 20, 2007, as a consequence of my finding on the same day that the Crown had failed to discharge its duty to consult with and accommodate the Ka'a'Gee Tu First Nation, I determined that LUP MV2002A0046, the subject matter of the underlying application, was to be set aside.

[3] Further, in my reasons for decision, I stressed the desirability of having the outstanding issues in such a complex undertaking resolved between the parties. I remarked that such an approach was consistent with the teachings of the Supreme Court of Canada in *Haida Nation v. British Columbia (Minister of Forests),* 2004 SCC 73, which emphasizes that reconciliation is the heart of the Crown's duty to consult. To that end, I invited the parties to address whether a stay order quashing LUP2002A0046 for a limited time was desirable in the circumstances. Such a stay would permit the parties to engage in a consultation process without bringing the entire project to a standstill.

[4] On August 13, 2007, the Respondent notified the Court that through inadvertence, the parties had failed to advise the Court that LUP MV2002A0046 had expired on November 30, 2006.

[5] The Applicant subsequently filed the within motion seeking to have LUP MV2006A0030 added to the Amended Notice of Application, the underlying proceeding.

[6] The Applicant contends that the activities provided for under LUP MV2002A0046 and those proposed to be undertaken in LUP MV2006A0030 are essentially the same. It is alleged that the amendment is no more than a "housekeeping matter" and allowing the amendment would cause

no prejudice to the Respondent. Moreover, the Applicants note that throughout the process leading to the issuance of LUP MV2006A0030, the term “renewal” was used consistently by all concerned. This suggests, according to the Applicants, that LUP MV2002A0030 sought to be included in the application by this motion is no more than a renewal of LUP MV2002A0046.

[7] The Respondents raise a number of objections to the amendment sought. I summarize below their main objections.

i. The Respondents submit that LUP MV2006A0030 is not a renewal of the amended LUP MV2002A0046 and that there are substantial differences between the two. It is argued that an application for a new permit or a renewal must undergo a distinct process pursuant to the Act and the regulations enacted thereunder. Moreover, in its October 6, 2006 application, Paramount had expressly noted that it was applying for a new LUP.

ii. The Respondents contend that the scope of the LUP MV2006A0030 differs substantially from the LUP that is the subject of the judicial review. In fact, Paramount’s October 6, 2006 application sought a land use permit and water license dealing with 9 new oil and gas wells while LUP MV2006A0030 authorized five new gas wells. Although the activities under both permits may be similar, the Respondents contend that the scope of LUP MV2006A0030 is different and as a result, should not be considered a renewal of LUP MV2002A0046.

iii. The Respondents submit that the present case involves separate and distinct decision-making processes. They claim that the Reasons for Decision that accompany permit MV2006A0030 reveal that the Board considered not only the material available to it when it made the decision to approve the now expired permit but also new relevant information. This would indicate that a new assessment was made which went beyond a mere renewal.

[8] In my view, the Respondents have raised valid concerns about allowing the motion at this late stage of the proceedings. Not only has all of the evidence been adduced, arguments completed, but final reasons for decision have issued. Submissions made and arguments advanced at the hearing made no reference to LUP MV2006A0030. More importantly, the process which led the

Board to approve LUP MV2006A0030 was not before the Court in the underlying application. It is speculative at best to suggest that all material evidence to that process was before the Court. Moreover, we do not know what other factors were before the Board in approving LUP MV2006A0030. The record may well be incomplete. I am satisfied that LUP MV2006A0030, issued on December 21, 2006, is not simply a renewal of the now expired LUP and that its issuance arguably involved a different process. Without re-opening the underlying application and receiving new evidence and submissions, the Court would be speculating on such matters.

[9] The amendment sought extends well beyond that which could be labelled “a housekeeping mater”. Allowing the amendment in such circumstances would require that the Court re-visit its reasons for order. Given the finality of the conclusions reached in the issued reasons and the limited scope of what remained to be considered by the Court, it would be unfair to the Respondents and inappropriate at this late stage to allow the amendment.

[10] For the above reasons, the motion to amend will be dismissed.

[11] Since LUP MV2002A0046, which was the subject matter of the underlying application, is now expired, there is little use receiving submissions on whether I should stay my order quashing the said permit. Before exercising my discretion in deciding whether there remains a live controversy in the underlying application, I will afford the parties an opportunity to make submission on the issue of mootness and the nature of the order that should be issued. To that end, the parties shall have until January 25, 2008, to serve and file their submissions on the draft order. The parties may serve and file their reply, if any, no later than February 5, 2008.

ORDER

THIS COURT ORDERS that

1. The motion to amend is dismissed.

2. The Respondents shall have their costs.

3. The Parties shall, no later than January 25, 2008, serve and file their submissions on the draft order not to exceed ten pages respectively. The parties also may serve and file their reply submissions, if any, not to exceed five pages respectively, no later than February 5, 2008.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1996-05
STYLE OF CAUSE:	Chief Lloyd Chicot et al. v. Minister of Indian and Northern Affairs Canada et al.
PLACE OF HEARING:	Ottawa, Ontario by videoconference
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REASONS FOR ORDER:	BLANCHARD J.
DATED:	January 3, 2008

APPEARANCES:

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Mr. Ron Kruhlak	FOR THE RESPONDENT MACKENZIE LAND AND WATER BOARD

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