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ELC Associates April 18.2011 Teleconference Backgrounder

Consultation and Accommodation

> The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The honour of the Crown is always at stake in its dealings with Aboriginal peoples [citations omitted]. It is not a mere incantation but rather a core precept that finds its application in concrete practices.
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> The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve the "reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown" [citation omitted].[1]

A. Introduction

The renewal of the Crown's duty to consult and accommodate indigenous peoples in state decision-making expressed in *Delgamuukw v. British Columbia* in 1997 was viewed by many environmental lawyers as a promising avenue for achieving environmental results.[2] This was in particular in the forestry context where First Nations had not been adequately consulted on all manner of government process from operational permits to higher level plans. There were even rumours that some BC environmental groups were offering funding to lawyers practicing aboriginal law to find and litigate duty to consult cases. After a string of early cases challenging specific impacts, the results were sobering. The duty to consult was producing procedural remedies, in particular the remedy of more consultation, but virtually never parlayed into a substantive accommodation result of the government denying a proposed project or relocating it to a different area.

Fast forward to April 2011 and the question of the substantive utility of the duty is still outstanding. With the duty to consult found for operational decisions that have an immediate impact on the exercise of hunting, fishing, and other aboriginal rights, it is also triggered by strategic planning decisions such as the transfer of ownership of forestry licences,[3]approving forest stewardship plans,[4] and creating water management plans[5] that will have an impact on aboriginal rights. What is the aggregate result of the many cases based on this duty to consult and accommodate? Has it been one tool in the environmental protection toolkit in addition to assisting indigenous communities to obtain substantive results? Case law from the fall 2010 and spring 2011 sheds further light on this subject and provides additional case-specific examples for discussion.

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[1] *Haida Nation v. British Columbia and Weyerhaeuser* 2002 SCC 79 at para. 16-17.
[2] [1997] 3 S.C.R. 1010.
[3] *Haida Nation v. British Columbia (Minister of Forests)* 2004 CarswellBC 2656, 2004 SCC 73 (SCC)
[4] *Brown v. Sunshine Coast Forest District (District Manager)*, 2008 CarswellC 2587, 2008 BCSC 1642 (BCSC)
[5] *Tsuu T'ina Nation v. Alberta (Minister of Environment),* 2010 CarswellAlta 804, 2010 ABCA 137 (Alta. CA)

The purpose of this backgrounder is to discuss some of the new developments, if any, in the consultation and accommodation of aboriginal rights insofar as they promote environmental protection. Section B sets out the basic law of consultation and accommodation. Section C discusses two recent cases that address consultation and accommodation, what they add to the basic law, and specifically their environmental protection slant. Section D invites the reader to consider questions posed in anticipation of the ELC Associates teleconference on Monday, April 18, 2011.

This backgrounder is prefaced with the recognition that the purpose of the doctrine of consultation and accommodation is to provide indigenous communities with a process for addressing potential negative impacts on rights now enshrined in section 35 of the *Constitution Act, 1982* pending ultimate reconciliation of section 35 rights with the colonial regime.[6] While there is often an environmental protection aspect to the protection of aboriginal rights, this may not be the primary concern of an indigenous community bringing a claim based on failure to adequately consult and accommodate. Recognition of continuing aboriginal rights and title and the ability to continue to carry out the activities associated with those rights across a traditional territory is often the fundamental concern for many nations.

B. Basic Law of the Duty to Consult and Accommodate[7]

While it is beyond the scope of this paper to represent the diversity of fact-specific decisions in the law of the duty to consult and accommodate, several key principles are useful for anchoring this discussion. As noted in the opening quote on page 1, the federal and provincial governments' duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The duty is held by the Crown and must be fulfilled by the Crown either directly or as part of other activities or regulatory processes. Crown corporations and other entities closely associated with the Crown also share the duty.[8] While the Crown can delegate procedural aspects of consultation to third party private entities, it retains responsibility for the consultation and accommodation process.

The duty to consult and accommodate is triggered when the Crown has knowledge of a claim, is making a decision or contemplating action that engages Aboriginal rights, and that decision/action could have a negative impact on section 35 rights.[9] These Crown decisions or actions are not limited to decisions that have an immediate impact on aboriginal rights, but also strategic and higher level

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[6] 35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
(2) In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.
Hereafter referred to as "section 35 rights".

[7] These principles are taken from *Haida Nation v. British Columbia (Minister of Forests)* 2004 CarswellBC 2656, 2004 SCC 73 (SCC) and largely affirmed in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (*sub nom. Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2010 CarswellBC 2867 (SCC) unless where indicated otherwise.

[8] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (*sub nom. Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2010 CarswellBC 2867 (SCC) at para. 81.

[9] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (*sub nom. Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2010 CarswellBC 2867 (SCC) at para. 43.

decisions.[10] Whatever the decision or action, to trigger a duty to consult and accommodate it must have the real potential to adversely affect section 35 rights.

The duty applies in three different situations involving section 35 rights.[11] First, for proven section 35 rights, the Crown can seek to justify infringement of those rights. Consultation and accommodation are required to justify the infringement. Second, for asserted but unproven section 35 rights, the Crown has a positive duty to consult the indigenous community about potential infringement of claimed rights. The intensity of consultation depends on the strength of the claim. Third, for treaty rights, both historic and modern, that are grounded in section 35, courts have found a duty to consult.

The extent of the duty lies on a spectrum from shallow to deep consultation and accommodation. The two key factors that determine where on the spectrum the duty fall in a particular case are the strength of the section 35 rights and the severity of the potential harm to the right. For example, where the right is proven or extensive and easily proven and the potential harm will virtually extinguish the right, the Crown will be required to seek to reasonably accommodate the section 35 rights: There is no duty to agree.

In general, the duty to consult/accommodate includes the duty to:[12]

- give notice early in the decision-making process of the proposed decision or action;
- engage in consultation in good faith;
- disclose information;
- allow a reasonable time for consultation;
- provide reasons;
- discuss any issues raised in response to the notice given (in other words, to be responsive);[13]and
- at the "deep consultation" end of the spectrum, explore ways of adjusting the proposed project or course of action to accommodate the indigenous community's reasonable concerns (for example, mitigating environmental impacts, economic compensation, environmental monitoring, providing the indigenous community with a decision-making role).

If a court finds that the Crown has breached the duty to consult and accommodate, it typically awards one or more of the following remedies:[14]

- set aside the decision that was made in breach of the duty;
- suspend the effect of the decision or approval to provide time for consultation to occur;

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[10] *Ibid* at para. 44 and 47.

[11] These three "streams" of Aboriginal law in which the duty of consultation and accommodation are addressed are discussed in McLaughlin, Brian. Consultation and Accommodation: Latest Developments in the Case Law (Vancouver: Continuing Legal Education Society, 2010). The first derives from *R. v. Sparrow*, [1990] 1 S.C.R. 107, the second from *Haida Nation v. British Columbia (Minister of Forests)* 2004 CarswellBC 2656, 2004 SCC 73 (SCC) and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 CarswellBC 2654, 2004 SCC 74 (SCC), and the third from *Miksew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69.

[12] These are distilled from Woodward, Jack. Native Law (Toronto : Carswell 1989 loose-leaf) at para. 5-1190 to 5-2590.

[13] *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 CarswellBC 2654, 2004 SCC 74 (SCC) at para. 25.

[14] These are distilled from Woodward, Jack. Native Law (Toronto : Carswell 1989 loose-leaf) para. 5-1650 to 5-1690.

- issue declarations such as that the Crown breached its duty to consult and/or accommodate or that it has an ongoing duty to consult and reasonably accommodate; or
- impose orders or declarations requiring the parties to do something such as consult in good faith, consider specific accommodations, appoint a mediator, or enter into a consultation protocol.

C. Recent Case Law

While each case pursued by an indigenous community based on a duty to consult and accommodate arguably adds to the development of this area of law given the unique circumstance of every First Nation, three recent cases give a snapshot of the courts' current interpretation of the law.

1. *Rio Tinto Alcan Inc.* v. *Carrier Sekani Tribal Council*[15]

Prior to the duty to consult and accommodate being recognized in law, the provincial government altered the water flow of the Nechako River through dam building in the 1950s. This changed the water quantity, both in volume and timing, and affected the nations of the Carrier Sekani Tribal Council's (CSTC) ability to fish. In the intervening years Alcan, as owner of the dam, sold excess energy to BC Hydro through energy purchase agreements. As part of the ongoing impact of this altered flow regime, the CSTC asserted that the 2007 energy purchase agreement should be subject to consultation and accommodation though the BC Utilities Commission (BCUC) approval process. The issue before the court was whether the BCUC is required to consider the issue of consultation with the CSTC nations in determining whether the energy sale is in the public interest.

Three aspects of the Supreme Court of Canada decision are of note for the purposes of this paper. First, the court clarified the "Crown knowledge" aspect of the trigger for engagement of the duty to consult and accommodate. This knowledge threshold is low. Actual knowledge occurs where a claim has been filed, and constructive knowledge arises when lands are "reasonably suspected to have been traditionally occupied by an Aboriginal community or an impact on rights may reasonably be anticipated."[16]

The logical conclusion of the application of this standard set out by the court, given that the entire land base of the province is implicated in a claim under the BC Treaty process or by First Nations filing protective writs in relation to their aboriginal title claims, one can conclude that the Crown has sufficient knowledge of claims to engage a duty to consult and accommodate for most land use decisions.

Second, the court found that administrative tribunals may have a duty to consult and/or a duty to determine the adequacy of the Crown's consultation. Whether or not these duties exist for tribunals depends on the tribunal's statutory powers, with the mandate to engage in this subject being explicit or implicit. An implicit empowerment of the duty to consult arises from statutory authority that gives a tribunal the authority to decide questions of law. This includes determining whether the Crown has adequately fulfilled its duty to consult. However, whether an administrative tribunal has itself a duty to consult depends on the "remedial powers" of the tribunal.[17] The court found that the

[15] 2010 SCC 43 (*sub nom. Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2010 CarswellBC 2867 (SCC)
[16] *Ibid* at para. 40.
[17] *Ibid* at para. 60

BCUC had the authority, and because of the "public interest" aspect of its decision, an obligation to assess the adequacy of consultation by the Crown as part of its decision making.

Third, the Supreme Court of Canada concluded that the BCUC did not have a duty to consult before entering into the energy purchase agreement in this case because the agreement did not have an impact on the Aboriginal rights and territory of the CSTC nations. This was an ongoing project that was already in existence and would carry on irrespective of the energy purchase agreement. The energy purchase agreement would have no impact on the management of the water resources and thus no negative impact on the Aboriginal rights of the CSTC nations. The court heightened the threshold for adverse impacts in the case of ongoing activities by requiring a "novel" adverse impact where there were historic impacts on a present claim or right.[18] Impact from previous decisions would have to be addressed through the courts or negotiation.

2. *Adams Lake Indian Band v. British Columbia*[19]

Following closely after *Rio Tinto Alcan* and relying on its requirement for "novel" adverse impact on a present or existing claim, this case involved challenging the provincial government's issuance of letters patent for the incorporation of a new municipality in response to a request by the citizens in the area to be incorporated. The Adams Lake Indian Band is part of the Lakes Division of the Secwepemc aboriginal people who have claimed the lands encompassing Sun Peaks (40 kilometres northeast of Kamloops) since 1860 when James Douglas was Governor of B.C. Since 1993 the ski resort at Sun Peaks has developed rapidly pursuant to a master development agreement between the provincial government and what is now Sun Peaks Resort Corporation. The Lakes Division bands have repeatedly asserted their aboriginal title to the area inside and outside the court in highly publicized activities.

Between 2005 and 2010 the residents of Sun Peaks undertook a process to obtain status as a municipality and achieved that goal on March 25, 2010 with the provincial government's issuance of Letters Patent for the Sun Peaks Mountain Resort Municipality pursuant to Order in Council No. 18/2010. While there were attempts at consultation during the incorporation process, the Adams Lake Indian Band challenged the grant of incorporation status on the basis of incomplete and inadequate consultation. The municipality asserted that the Order in Council is a legislative act that is not subject to the duty to consult, while the Attorney General accepted that there was a duty to consult but that the court had no authority to quash the Order in Council.

The first issue the court addressed was whether the decision in this case, issuing the Order in Council, was a legislative act. The court concluded that an order in council issuing letters patent to a municipality may be an instrument that has legislative character. Since neither the Minister's discretion to recommend incorporation nor the Lieutenant Governor's discretion to grant the incorporation require a legislative act, at the core they are exercising a statutory power of decision. The court concluded that a duty to consult exists that cannot be extinguished on the basis that the exercise of a statutory power became law by the issuance of an order in council.

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[18] *Ibid* at para 45 and 49.
[19] 2011 BCSC 266

After setting out in detail the interaction between the citizens seeking incorporation, the Band, the provincial government and the corporation in the period 2005 to 2010, the court examined the strength of claim and whether the province met its duty to consult. The court found that:[20]

> On the evidence before me, the Province did not conduct a preliminary assessment of the strength of the claim for aboriginal rights and title advanced by the Band for the purpose of its consultation about the incorporation of the Municipality. Nor did the Province provide the Band with an opportunity to comment on its preliminary assessment of the strength of its claims regarding Sun Peaks. Further, the Province did not make inquiries of the Band in regard to the nature and scope of the aboriginal rights and title they were advancing as part of the Secwepemc Nation. Accordingly, I find the Province failed to adequately fulfill the first stage of the consultation process.

Applying the requirement of a "novel" adverse impact on a present claim or existing right from *Rio Tinto Alcan*, the court closely examined the impact of incorporation as a municipality; that is the shift in decision-making authority to the local community with significantly reduced provincial oversight. The court concluded that municipal governance "…had a direct and significant impact on the Band's ability to effectively consult with the Province about proposed municipal decisions and the enhance influence and control of Sun Peaks Resort Corporation on Municipal policies changed the character of the decision maker to their [the Band's] detriment."[21]

While finding that deep consultation was warranted in this case and that the provincial government had essentially ignored the Band's requests for impact studies and an integrated approach to evaluating the resort development as well as the municipal corporation, the court found that the sole accommodation by the province, requiring the Municipality to establish a First Nations Advisory Committee, was not within the range of reasonable outcomes. Establishing a committee did not address the concerns of the Band and did little to redress the imbalance of power between the Band and the Corporation.

Finally, in awarding a remedy the court declared that the provincial government did not fulfill its constitutional duty to consult with the Band and ordered the provincial government to consult with the Band to uphold the honour of the Crown in a manner that reflects the strength of the claim and serious impact on the Band's interests. This consultation includes ongoing consultation about the master development agreement and transfer of timber administration. In declining to quash the Order in Council incorporating the municipality, the court indicated that it was not satisfied that it was appropriate in this case because of the need to balance the interests of third parties (the Municipality and its residents) and the Band. Operating since June 2010, a decision to quash the Order in Council would result in "chaos" for the Municipality.[22] And failure to quash would not result in "irrevocable harm" to the aboriginal rights and title at Sun Peaks. Viewed from another perspective, the court found that six months of municipal operations outweighed at least hundreds of years of aboriginal rights and title by the Secwepemc people.

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[20] *Ibid* at para. 138.
[21] *Ibid* at para. 166.
[22] *Ibid* at para. 208.

3. *Upper Nicola Indian Band v. British Columbia (Minister of Environment)*[23]

This application for judicial review, released March 31, 2011, involves several First Nations challenging the approval of an Environmental Assessment Certificate under the *Environmental Assessment Act* to permit the construction of a high voltage transmission line from the interior to the Lower Mainland that would require widening 49 kilometres of existing right-of-way and constructing 73 kilometres of new right-of-way.

In short, the court rejected the petitioner's reading of the law as asserting that once a duty to consult is triggered, the scope and content of the duty includes existing and ongoing impacts of past action. The duty to consult does not apply to impacts from previous works or the ongoing existing impacts arising from historic decisions. The subject matter of the duty to consult involves the current decision under consideration. The court concluded that the consultation process in this case amounted to deep consultation, and that the Crown had not made other commitments to consult that altered the approval process.

In summary:

> It is important to understand the role that the courts generally assume in the consultation and accommodation process, including the limits of that role. The Supreme Court of Canada and many lower court judges are striving to strike a balance between, on the one hand, ensuring that consultation unfolds in a productive way that is fair to aboriginal peoples, and on the other hand, leaving the executive branch of government with extensive discretion to resolve issues with aboriginal groups in the ways that it considers most appropriate in light of its numerous public policy objectives.
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> Thus, the courts are generally comfortable wading into dispute about consultation processes and accommodation, but only up to a point. They have not hesitated to pass judgment on whether the Crown has a duty to consult, or whether basic rules of procedural fairness were followed in the consultation process, but they typically avoid imposing a specific consultation process or consultation forum on the parties. Moreover, while they may be comfortable recognizing that accommodation of some kind is in order, they will generally avoid pronouncing on precisely what that accommodation should look like. Rather than make any detailed order about the consultation process or the accommodation that the Crown must provide, the court will typically order that consultation take place or continue, set some general parameters for the process, and retain jurisdiction to become involved only if the parties reach an impasse in their discussions.
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> The courts' approach is consistent with what they have recognized as the overarching objective of s.35 of the *Constitution Act, 1982*, namely fostering reconciliation between the Crown and aboriginal peoples. True reconciliation can only be achieved by mutual agreement of the parties, and thus although judges can steer the parties towards it in the courtroom, reconciliation ultimately requires a meeting of the minds in the political arena.[24]

[23] 2011 CarswellBC 730, 2011 BCSC 388 (B.C. S.C. [In Chambers] Mar 31, 2011)
[24] Woodward, Jack. Native Law (Toronto : Carswell 1989 loose-leaf) para. 5-1730 to 5-1750.

D. Discussion

This paper is a modest attempt to identify some of the recent developments in the law of the Crown's duty to consult and accommodate First Nations. This area of law and its interaction with environmental protection over the past fifteen years raises questions about the potential for using it to achieve substantive results. Looking at it one way this could be characterized as another representation of the procedural fix in which environmental law has always been stuck. We invite Associates to consider the following list of questions at our next teleconference on Monday, April 18 from 4pm to 6pm.[25]

1. If "[t]rue reconciliation can only be achieved by mutual agreement of the parties, and thus although judges can steer the parties towards it in the courtroom, reconciliation ultimately requires a meeting of the minds in the political arena",[26] might indigenous communities and the environmental organizations that support them be more effective outside the courtroom?

2. In *Hupacasath First Nation v. British Columbia (Minister of Forests)* the BC Supreme Court, citing unique circumstances, ruled that a duty to consult can arise in instances involving private land.[27] The case involved the removal of private land from government regulation through a tree farm license without consultation. In declining to find a duty to consult where the lands in question were privately held, a chambers judge of the Alberta Court of Appeal in *Paul First Nation v. Parkland (County)* found that such a duty must be restricted to the facts of the *Hupacasath* case as "[t]he extensive involvement of the government was the primary factor that precipitate the duty to consult in that instance."[28] In addition to the removal of land from tree farm licences, what other circumstances may create a duty to consult in relation to private lands?

3. It may be important for indigenous communities to understand the potential impacts of a proposed project within the broader context of cumulative activities across a traditional territory. When asked by West Moberly to address the issue of cumulative impacts of Crown-approved development on the caribou herds in the permit process, the Crown answered that the issue is "beyond the scope of the review of this project to fully assess."[29] The Court commented that such a statement by a Crown decision-maker—that it does not have the authority to assess the "taking up" of a treaty right—fails to uphold the Crown's honour.[30] Does this mean cumulative impact assessment is arguably now part of the Crown's duty to consult and accommodate?

4. Can the honour of the Crown be upheld absent funding for indigenous communities to engage in consultation activities? Under what circumstances would the honour of the Crown require state funding? In cases of deep consultation only?

5. The Alberta Court of Appeal refused to rule on whether the Crown has a duty to consult before passing an enactment that may have a negative impact on section 35 rights:

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[25] Thanks to the writers of Native Law (Toronto : Carswell 1989 loose-leaf) at para. who inspired several of these questions.
[26] Woodward, Jack. Native Law (Toronto : Carswell 1989 loose-leaf) para. 5-1730 to 5-1750.
[27] 2005 BCSC 1712 para 200.
[28] 2006 ABCA 128 para. 14.
[29] *West Moberly First Nation v. British Columbia (Chief Inspector of Mines)*, 2010 BCSC 359.
[30] At para. 55.

> Accordingly, even if the Legislature itself does not have duty to consult prior to passing legislation, the duty may still fall upon those assigned the task of developing the policy behind the legislation, or upon those who are charged with making recommendations concerning future policies and actions.[31]

The provincial government is engaged in modernizing the BC *Water Act* for the first time in over 100 years. The *Water Act* vests ownership of water resources in the provincial Crown. Aboriginal rights and title in water are virtually unacknowledged in the water management regime. Does the duty to consult and accommodate extend to proposed laws that may have an adverse effect on section 35 rights?

6. At what point and under what conditions might a collective claim arise for failure to uphold the honour of the Crown by repeated failure to consult or accommodate adequately? Would the potential for a substantive remedy increase if a systemic claim was proven?

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[31] *Tsuu T'ina Nation v. Alberta (Minister of Environment)*, 2010 CarswellAlta 804, 2010ABCA 137 (Alta. CA) at para. 55.

For More Information:

Case Law

Adams Lake Indian Band v. British Columbia, 2011 BCSC 266

Haida Nation v. British Columbia and Weyerhaeuser, 2002 SCC 79

Haida Nation v. British Columbia (Minister of Forests) 2004 CarswellBC 2656, 2004 SCC 73 (SCC)

Hupacasath First Nation v. British Columbia (Minister of Forests) 2005 BCSC 1712

Moses c. Canada (Procureur general), 2010 CarswellQue 4341, 2010 SCC 17 (SCC)

Paul First Nation v. Parkland (County) 2006 ABCA 128

Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council, 2010 SCC 43 (*sub nom. Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2010 CarswellBC 2867 (SCC)

Tsuu T'ina Nation v. Alberta (Minister of Environment), 2010 CarswellAlta 804, 2010ABCA 137 (Alta. CA)

Upper Nicola Indian Band v. British Columbia (Minister of Environment) 2011 CarswellBC 730, 2011 BCSC 388 (B.C. S.C. [In Chambers] Mar 31, 2011)

West Moberly First Nation v. British Columbia (Chief Inspector of Mines), 2010 BCSC 359

Books, Articles and Reports

Grant, Peter. The Scope of Consultation ad the Role of Administrative Tribunals in Upholding the Honour of the Crown: the *Rio Tinto Alcan* Decision (case comment dated November 5 2010, on file with author)

Hunter, John. Current Themes in Consultation and Accommodation (Vancouver: Continuing Legal Education Society, 2006)

McLaughlin, Brian. Consultation and Accommodation: Latest Developments in the Case Law (Vancouver: Continuing Legal Education Society, 2010)

Woodward, Jack. Native Law (Toronto: Carswell 1989 loose-leaf) para. 5-1730 to 5-1750.