

Media Release
For Immediate Release

Treaty One Kapyong Victory

December 14, 2012

On December 13, 2012 the Honourable Justice Hughes of the Federal Court Trial Division issued Reasons for Judgment and Judgment regarding the Treaty One First Nations and the Kapyong Lands (the “Judgment”). At issue are the Treaty One First Nations rights pursuant to Treaty No. 1 to acquire Kapyong Barracks located in central Winnipeg and Canada’s duty to consult and accommodate.

This Court action has a long history. A Notice of Application for Judicial Review was filed by the Treaty One First Nations on January 25, 2008 (the “Application”). The Application sought a declaration that the Canada had a legal duty to consult and accommodate in good faith with the Treaty One First Nations with respect to the Kapyong Lands before any disposition was made. The Treaty One First Nations further sought a declaration from the Court that Canada had not fulfilled its’ legal and constitutional duties. The matter was initially heard by Campbell J. of the Federal Court Trial Division and the Treaty One First Nations were successful. On September 30, 2009 Justice Campbell issued his Reasons for Judgment and Judgment and held that the November 2007 Decision (to dispose of Kapyong to Canada Lands Company) was invalid; that Canada had a legal duty to consult on its decision to dispose of surplus federal lands at Kapyong Lands and Canada did not meet that duty; and, in particular, that Canada acted contrary to law by failing to meet the mandatory legal requirement of consultation with the Treaty One First Nations.

The matter was appealed to the Federal Court of Appeal by Canada. The Appeal was heard on February 22, 2011 and the Decision was rendered on May 3, 2011. Justice M. Nadon, for the Court of Appeal allowed the appeal and held that the Judge’s reasons were inadequate, and referred the matter back to the Federal Court Trial Division for redetermination of the issues.

The matter was heard in Winnipeg before the Honourable Justice Hughes on Tuesday December 4, 2012 and Wednesday December 5, 2012. At issue was 1) whether there was a duty to consult some or all of the Treaty One First Nations 2) the scope of that duty and 3) whether Canada fulfilled that duty.

In his Judgment, Justice Hughes found that Canada conceded it had a duty to consult. The Court held that Treaty One First Nations have an arguable claim to Kapyong, and held that the duty to consult was at least in the middle of the ‘consultation spectrum’ which Hughes J. citing *Haida Nation* (SCC) held to be:

“...a duty to meet with the Applicants, to hear and discuss their concerns, to take those concerns into meaningful consideration and to advise as to the course of action taken and why. I emphasize taking the concerns into meaningful consideration...”

The Court found that during 2001 to 2004 even at the minimum scope of consultation, Canada did not meet its’ obligations. The Court further held that Canada’s conduct was “more egregious” during 2006-2007 where it ignored the Treaty One First Nations completely.

The Court ultimately held that there was a duty to consult and that Canada failed to fulfill this duty in a meaningful way and allowed the Application. The 2007 decision of Canada to sell Kapyong to Canada Lands Corporation was set aside and Canada is enjoined from selling Kapyong until it can demonstrate to the Court that it has fulfilled its duty in a meaningful way.

Most importantly, the Judgment is a step towards reconciliation, and is a victory not only for Treaty One First Nations, but for the citizens of Winnipeg, Manitoba and all of Canada. First Nations development at Kapyong is something to be embraced and will consider and incorporate the interests of the broader community. Treaty One First Nations' vision for Kapyong is one that will be of benefit to all.

When asked to comment with regard to the Court's decision Chief Hudson of the Peguis First Nation on behalf of Treaty One First Nations stated; "we feel entirely vindicated by this decision. Justice Hughes specifically found the Crown's conduct and the way we were treated to be "egregious". We are extremely pleased the Court has issued an injunction prohibiting Canada from transferring these lands to anyone until we are dealt with fairly. Peguis First Nation will be pursuing its rights under our Treaty Land Entitlement Agreement and hopes this time that Canada will honour its commitments to us to use best efforts to transfer these lands to our care and control. Peguis First Nation is committed to honouring its obligations under its Treaty Land Entitlement Agreement with regard to other Treaty One First Nations. Peguis First Nation also looks forward to working cooperatively with the City of Winnipeg, to develop these lands in a way consistent with or respectful of appropriate urban planning in consultation with our neighbouring communities."

News Conference is scheduled for 11:30 at the Assembly of Manitoba Chiefs
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For further information, contact:

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