Court of King's Bench of Alberta

Citation: Whitefish Lake First Nation #128 v Alberta (Minister of Environment and Protected Areas), 2025 ABKB 499

Date: 20250828
Docket: 2303 16220
Registry: Edmonton

Between:

Cold Lake First Nations

Third Party Applicant

- and -

Whitefish Lake First Nation #128

Respondent

- and -

His Majesty the King in Right of Alberta as Represented by the Minister of Environment and Protected Areas and the Minister of Indigenous Relations and His Majesty the King in Right of Canada as Represented by the Minister of National Defence

Respondents

Reasons for Decision
of the
Honourable Justice K.H. Oviatt

Overview

[1] Cold Lake First Nations (Cold Lake) applies to strike a judicial review application because it was not served as a "directly affected" person or body under Rule 3.15 of the *Alberta Rules of Court*. In the alternative, Cold Lake seeks intervenor status in the judicial review.

[2] I dismiss the application. The judicial review application does not directly affect Cold Lake. Cold Lake's alternative application for intervenor status in the judicial review is likewise dismissed.

Background

[3] On the merits of the judicial review, Whitefish Lake First Nation #128 (Whitefish) seeks to quash a decision of His Majesty the King in Right of Alberta as represented by the Minister of Environment and Protected Areas and the Minister of Indigenous Relations (Alberta). The decision being reviewed is Alberta's refusal to negotiate access for Whitefish to the Cold Lake Air Weapon's Range (CLAWR). The CLAWR is an area controlled by Canada's Department of National Defence but owned by Alberta.

[4] The other named respondent, His Majesty the King in Right of Canada as Represented by the Minister of National Defence (Canada), has not participated in these proceedings to date.

[5] Cold Lake is a third party First Nation that has access to the CLAWR under an access agreement signed between it, Alberta and Canada (the Cold Lake Access Agreement). The Cold Lake Access Agreement requires that, before Canada can grant access to the CLAWR to any other person, Alberta must provide its written consent, and Canada must consult with Cold Lake.

[6] Whitefish did not name Cold Lake as a respondent in the originating application for judicial review and did not serve it within six months of Alberta's decision. The parties agreed that a failure to serve the originating application on a directly affected person or body is fatal to the judicial review. They disagreed on whether Cold Lake was directly affected.

Issues

[7] The issues for this application are:

1. Does Whitefish's judicial review application directly affect Cold Lake within the meaning of Rule 3.15(3)(c) of the *Alberta Rules of Court*?
2. If not, should Cold Lake be granted intervenor status in the judicial review?

Analysis

1. Is Cold Lake a directly affected party?

<u>The Effect of Rule 3.15</u>

[8] Rule 3.15(2) and (3) of the *Alberta Rules of Court* address service of an originating application for judicial review. Rule 3.15(2) includes a six-month limitation period for filing and serving the originating application. Rule 3.15(3) then sets out who must be served, including every person or body directly affected by the judicial review application:

(3) An originating application for judicial review must be served on

(a) the person or body in respect of whose act or omission a remedy is sought,

(b) the Minister of Justice or the Attorney General for Canada, or both, as the circumstances require, and

(c) every person or body directly affected by the application.

[9] The parties all acknowledged that Rule 3.15 is mandatory and applied strictly: ***ENMAX Corp v Alberta (Labour Relations Board)***, 2018 ABQB 431 [***ENMAX***] at para 18. Further, this strict Rule is substantive in nature, not procedural: ***Tartal v Alberta (Human Rights Commission)***, 2023 ABKB 381 [***Tartal***] at para 54. A directly affected person or body cannot waive the mandatory service requirements, although they may choose not to participate: ***ENMAX*** at para 29. Accordingly, formal service of a judicial review application is required: ***ENMAX*** at para 21.

[10] In discussing Rule 3.15, the Alberta Court of Appeal noted, "courts have no jurisdiction...to extend, or otherwise provide relief from, a time limit imposed by a statute or the *Rules of Court*": ***Julien v Alberta (Appeals Commission for Alberta Workers' Compensation)***, 2023 ABCA 8 [***Julien***] at para 15.

[11] The effect of Rule 3.15 is that failure to file and serve an originating application for judicial review on the required persons or bodies within the limitation period is fatal to the judicial review application. In ***Kainaiwa/Blood Tribe v Alberta***, 2024 ABKB 401 [***Kainaiwa***] at para 13, this Court succinctly summarized that effect:

> Alberta jurisprudence has recognized the harsh consequences that can flow from non-compliance with *Rule* 3.15; nevertheless, the Court has no authority to allow for relief from its strict application...

[12] Cold Lake argued that Whitefish's judicial review application should be struck for non-compliance with Rule 3.15 because it failed to serve Cold Lake as a directly affected person or body.

Meaning of "Directly Affected" in Rule 3.15

[13] The central issue for this application is whether Whitefish's judicial review application directly affected Cold Lake.

[14] The starting point for the meaning of "directly affected" is the Alberta Court of Appeal's instruction in ***Julien*** at para 8 that "the words 'directly affected' must be given their ordinary meaning, applied to the particular facts of each case."

[15] Since administrative law encompasses many different statutory schemes and objectives, creating a variety of legal and factual contexts for the application of Rule 3.15, Alberta jurisprudence to date has not clearly defined the meaning of "directly affected person or body" in Rule 3.15(3)(c). Nevertheless, several cases discuss and apply the term.

[16] In ***Kainaiwa*** at para 53, for example, this Court observed that an adverse effect will often mean the person or body is directly affected, but the Court also noted that an adverse effect is not the only criterion for such a finding. Contractual relationships, economic relationships or ownership may also result in the person or body being directly affected:

> While it will often be the case that a party will be **adversely affected,** an adverse effect is not necessary to be directly affected for purposes of service under *Rule* 3.15. There are other relevant considerations, such as **contractual** and **economic relationships** or **ownership**. [emphasis added]

[17] The following non-exhaustive examples of persons or bodies have been found to be "directly affected" under Rule 3.15:

a. The person or body who was entitled to appear before the original decision maker, either as applicant or respondent, whether they participated in earlier proceedings or not.

   - An employer who had a right to participate in workers' compensation proceedings before both the WCB and the Appeals Commission was a directly affected party. The employer faced allegations of wrongdoing and a risk of increased premiums if a finding was made against it: ***Julien*** at paras 8 – 9; ***Yuill v Alberta (Workers' Compensation Appeals Commission)***, 2016 ABQB 369 at paras 63, 78; ***Baker v Drouin***, 2017 ABQB 204.
   - The respondent to a human rights complaint was a directly affected party. A successful judicial review would put the human rights respondent back in jeopardy of damages for a discrimination and reputational harm: ***Tartal*** at para 64; ***Raczynska v Alberta (Human Rights Commission)***, 2015 ABQB 494 at para 76.
   - Police officers subject to professional discipline complaints were directly affected parties and separate from the original decision maker, the Chief of Police. The judicial review proceeding asked the Court to put the officers back into the risk of facing disciplinary sanctions: ***Kyambadde v Calgary Police Service***, 2024 ABKB 370 at paras 15, 19.

b. Persons or bodies who were granted standing as intervenors before the original decision maker, whether they participated or not.

   - The Alberta Labour Relations Board granted standing to engineers in training and the professional regulator for engineers in a Board proceeding that addressed whether engineers in training were employees for the purposes of labour legislation. Those parties continued to be directly affected at the judicial review of the Board's decision: ***ENMAX*** at paras 7-12. The Court noted at para 12, "A party that was directly affected by the decision of the [original decision maker]...will be affected by this decision."

c. Persons or bodies who faced direct contractual and economic relationship changes.

   - Leaseholders to subsurface rights were directly affected by a judicial review that sought to change title of the subsurface rights

from the Province to a First Nation. The individual leaseholders needed to be served because they would be directly affected by a change in subsurface rights ownership, which would directly impact their contractual and economic relationship with Alberta: ***Kainaiwa*** at para 75.

d. A person required to be served under the legislative scheme at issue.

- The *Employment Standards Code* made the Director of Employment Standards a mandatory party to any proceeding resulting from a decision of the Labour Relations Board. This meant that, on judicial review of a Board proceeding, the Director was a directly affected party regardless of whether they expressed interest in participating: ***Douglas v NE2 Canada Inc et al***, 2025 ABKB 321 [***Douglas***].

e. Landowners whose rights, use and enjoyment of their property were directly affected.

- A landowner was a directly affected person in judicial review proceedings about a land development decision made under the *Environmental Protection and Enhancement Act*. A designated director under that legislation determined that a land development project could proceed under a previous approval. Several First Nations judicially reviewed the decision but did not serve a major landowner. The landowner owned a significant portion of the land in question and had actively participated in discussions about development; therefore, they were a directly affected person: ***Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)***, 2025 ABKB 158 at paras 11-12.

- A potential change to a land use bylaw directly affected ten area residents. The applicant sought a change to the bylaw to allow it to develop a parcel of land in a residential area. The municipality denied the application and the developer judicially reviewed the decision but did not serve area residents. The court accepted that the proposed bylaw change directly affected the area residents because of traffic, safety concerns, and the potential for property damage. A consultant, however, was not directly affected: ***Hazkar Developments Inc v Cochrane (Town)***, 2019 ABQB 552 [***Hazkar***] at paras 54-55.

[18] In Federal Court cases, a legal framework for standing to bring judicial review applications has developed around the phrase "directly affected": see for example ***Canwest MediaWorks Inc v Canada (Minister of Health),*** 2007 FC 752 [***Canwest***] at para 13, aff'd by 2008 FCA 207. Whitefish relied on ***Canwest*** and many of the Federal Court cases applying a similar framework. While the language of "directly affected" in the federal legislation and the context of federal judicial reviews are similar, the purpose and intent of the federal legislation is slightly different

than that of Rule 3.15. The federal language is about standing to bring a judicial review application while Rule 3.15 is about service.

[19] Recent Alberta cases interpreting and applying Rule 3.15 have recognized the significance of this difference. For example, in ***Kainaiwa*** at paras 52-53, this Court emphasized the service aspect of Rule 3.15:

> **...[T]here is an important distinction between the requirements for standing or for party or intervenor status and the requirement for service under *Rule* 3.15**. To be added as a party or granted standing or intervenor status in a judicial review application, a party must make application to the Court. Therefore, it is logical that such addition, standing or status would be granted only to a party who can demonstrate a potential adverse effect on its rights or interests.
>
> By contrast, *Rule* 3.15(3) speaks only to service. [emphasis added]

[20] Similarly, in ***Douglas*** at para 18, this Court recently distinguished standing cases from service cases:

> ...cases cited ... were dealing with a party's standing to participate, not whether or not the applicant had served everyone it was required to serve.

[21] Accordingly, while cases about standing can assist in some aspects of the interpretation of "directly affected", they are not directly analogous.

[22] Similarly, I am cautious about relying on the principle that the term "directly affected" in Rule 3.15 should be "interpreted restrictively". There is some case law that refers to a restrictive interpretation for Rule 3.15: see for example, ***Hazkar*** at para 45; ***Kainaiwa*** at para 41, citing ***Hazkar***; ***Gill v Alberta Environmental Appeals Board***, 2025 ABKB 373 at para 53, citing ***Hazkar***.

[23] ***Hazkar*** appears to be the first decision from this Court that used the exact phrase "interpreted restrictively" about Rule 3.15: see para 45. In framing the interpretation that way, the Court in ***Hazkar*** relied on ***Normtek Radiation Services Ltd v Alberta (Environmental Appeals Board)***, 2018 ABQB 911 [***Normtek QB***], a case about standing under the *Environmental Protection and Enhancement Act*. However, as this Court recently noted in ***Douglas*** at para 17, not only was ***Normtek QB*** about standing in a specific statutory regime, it was overturned after ***Hazkar*** was released. The Court of Appeal overturned both the panel's and the reviewing court's interpretation of the phrase "directly affected" for being "unjustifiably restrictive": ***Normtek Radiation Services Ltd v Alberta Environmental Appeal Board***, 2020 ABCA 456, at para 7. Subsequent cases adopting the restrictive interpretation principle from ***Hazkar*** do not appear to have considered the effect of Court of Appeal's decision on ***Normtek QB***, upon which ***Hazkar*** relied, nor do they acknowledge that it was a standing case.

[24] Accordingly, I reject the premise that "directly affected" should be interpreted restrictively. That comment in ***Hazkar*** relied on a case the Court of Appeal later overturned. Other aspects of the ***Hazkar*** decision, however, remain good law.

[25] Instead of a restrictive interpretation, normal rules of statutory interpretation apply. Accordingly, I must read the words of the legislation (e.g., Rule 3.15) "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the Legislature]": ***Rizzo & Rizzo Shoes Ltd. (Re),*** [1998] 1 SCR 27

at para 21. In the context of whether a judicial review proceeding directly affects a particular person or body, the analysis is also highly fact dependent.

Application to the Facts

[26] The nature and context of this judicial review are important to determining whether Whitefish's judicial review application directly affects Cold Lake.

[27] The CLAWR is a military controlled area straddling Alberta and Saskatchewan. On the Alberta side, Canada leases the land from Alberta, but it remains provincial Crown land. Canada and Alberta have negotiated access agreements to the Alberta side of the CLAWR with limited third parties, including some industrial access and with one First Nation, Cold Lake.

[28] Whitefish views the CLAWR as part of its traditional territory. It claims entitlement to access the CLAWR to exercise its Treaty rights, including for the traditional purposes of hunting, fishing, trapping, gathering, travelling, and cultural practices.

[29] In 2022, Whitefish approached Canada about accessing the CLAWR. According to Whitefish's originating application, Canada agreed to begin negotiations, while advising that Alberta's consent would be required.

[30] Whitefish then contacted Alberta to begin negotiations about access to the CLAWR. However, Alberta decided not to participate in such discussions, and advised Whitefish that it would not consider any new requests to access the CLAWR:

> In the Alberta portion of the CLAWR, natural resources remain with the Government of Alberta. The existing access to the Alberta portion of the CLAWR for one specific First Nation (Cold Lake First Nations) is in the context of Alberta's and Canada's relations with that specific First Nation approximately 20 years ago, and this is constrained by the overarching limitations for all non-military access to the CLAWR. There has been only limited space and time when access for non-military purposes can occur. Alberta expects this to continue for the foreseeable future.
>
> There is no existing access to the Alberta portion of the CLAWR for trapping, fishing, hunting, harvesting, or cultural practices to the public generally, nor to First Nations generally. Accordingly, Alberta does not anticipate expanding access to the CLAWR in response to new requests that fall outside the limited purposes for which access currently exists.

[31] This is the decision for which Whitefish seeks judicial review. Specifically, the judicial review application seeks an order directing reconsideration of Alberta's refusal to negotiate with Whitefish.

[32] Cold Lake is not a leaseholder to the CLAWR, but the Cold Lake Access Agreement gives it a contractual right to consultation before Canada grants access to any other person. Article 7.12(a) of the Cold Lake Access Agreement provides:

> For so long as [Cold Lake] is entitled to access to, entry upon and use of the Access Area under this Agreement, Canada agrees that it shall not grant access to any other person, for the activities permitted in Article 7 without the consent of Alberta in writing and after having first consulted with [Cold Lake] with respect to such access[.]

[33] Notably, the contractual duty to consult belongs to Canada, not Alberta. That is, Cold Lake's contractual right to be consulted arises when Canada contemplates granting expanded CLAWR access. However, Whitefish's judicial review application is for a reconsideration of Alberta's refusal to negotiate access. The decision at issue here involves bilateral negotiations between Whitefish and Alberta, which do not directly affect Cold Lake.

[34] The Federal Court recently considered Cold Lake's consultation rights under a parallel agreement involving the Saskatchewan side of the CLAWR. In ***Cold Lake First Nations v Canada (Attorney General)***, 2024 FC 925, 2024 CarswellNat 7397 [***Cold Lake FC***], Canada granted access to the CLAWR to two other First Nations. Before granting access, Canada consulted Cold Lake over a period of three years. Cold Lake's arguments against this access focused on the other two First Nations' entitlement, including whether the CLAWR really was their traditional territory. The Federal Court held that those arguments were not appropriate and the duty to consult was limited to addressing how additional access would impact Cold Lake's own right of access, including the sufficiency of resources. At paras 4 – 5 of ***Cold Lake FC***, the Federal Court explained that the scope of the contractual duty to consult was limited to Cold Lake's own access rights. It did not extend to other Indigenous communities' entitlements:

> The duty to consult in this case **does not give Cold Lake the right to be consulted regarding another Indigenous community's entitlement** to access nor to question the grounds on which Canada decides to settle another community's claim...
>
> In contrast, **the scope of the duty to consult encompassed the impacts that granting access** to others would have on the exercise of Cold Lake's right of access, for example, through the depletion of scarce resources or the loss of economic opportunities. [emphasis added]

[35] The Federal Court noted that "[t]he circumstances in which a duty [to consult] is triggered implicitly define its breadth": ***Cold Lake FC*** at para 30. Here, Alberta did not consent to grant access to Whitefish, so one of the preconditions for triggering the contractual duty to consult between Canada and Cold Lake did not occur.

[36] If Alberta had agreed to begin negotiations, one of the first steps would be to determine entitlement, including whether the CLAWR was part of Whitefish's traditional territory. Entitlement and determination of the scope of traditional territories of another First Nation are issues which do not directly affect Cold Lake. I agree with the Federal Court's observation at paras 32-33 of ***Cold Lake FC*** that allowing one Indigenous community to insert itself into another Indigenous community's entitlement discussions would harm reconciliation:

> ... [E]xtending the scope of the duty to consult in the manner proposed by Cold Lake is unwarranted and **would hamper reconciliation**... Reconciliation relies heavily on negotiations between federal and provincial governments and specific Indigenous groups in order to settle grievances out of court... In many cases, the circumstances giving rise to a claim and the **source of the rights involved are specific to each Indigenous community**. Settling the claim involves the mending of a bilateral relationship between the community and Canada.
>
> **Where negotiation focuses on a specific bilateral relationship, third parties should not be allowed to invoke the duty to consult to gain unrestricted**

> **access to the discussions between the parties and effectively transform a bilateral process into a multilateral one.** The law protects the bilateral aspect of negotiation by ensuring its confidentiality, in particular through settlement privilege... Negotiation would be severely hampered if the parties had to answer to third parties or if the outcome of their discussions could be scrutinized by third parties. **Reconciliation would only be made more difficult**. [emphasis added]

[37] Since Alberta's decision was about negotiating with Whitefish regarding its rights and entitlements, the judicial review of that decision does not directly affect Cold Lake.

[38] Cold Lake argued that Alberta's reference to it in the decision at issue, Whitefish's requests for copies of the Cold Lake Access Agreement, and Whitefish's reference to Cold Lake in the originating application demonstrate that the judicial review application directly affects it. While this argument is compelling at first blush, looking deeper at the full circumstances reveals that references to Cold Lake and to the Cold Lake Access Agreement were simply part of the factual background and context, and not central to the decision or the judicial review. That is, these references did not change the fundamental nature of the decision between Alberta and Whitefish from being a bilateral discussion about Whitefish's rights to a multilateral one that includes Cold Lake.

[39] In ***Kainaiwa***, the applicant First Nation's prior contact with the leaseholders was cited as one indication that the leaseholders were directly affected: para 71. However, Whitefish's prior contact with Cold Lake and, specifically, its requests for copies of the Cold Lake Access Agreement are distinguishable. In ***Kainaiwa***, the applicant sought to become a party to the contracts. Those are not the circumstances here. There is no suggestion here that Whitefish seeks to become a party to the Cold Lake Access Agreement.

[40] Further, it does not follow that because Cold Lake has contractual access to the CLAWR that the Court in Whitefish's judicial review will need to interpret the Cold Lake Access Agreement or consider Cold Lake's Treaty rights. The fact that Alberta has provided consent to other parties to access the CLAWR, including Cold Lake, may be relevant to the judicial review and to whether Alberta's refusal to negotiate with Whitefish was reasonable. However, the specific terms of third-party agreements, including the Cold Lake Access Agreement, are not central to Whitefish's judicial review application.

[41] Similarly, Cold Lake argued that the fact that Whitefish named and served two out of three signatories to the Cold Lake Access Agreement showed that it should also have been served. However, the record does not support that Whitefish served either Alberta or Canada as signatories to the Cold Lake Access Agreement. Rather, they were served as: the decision maker of the decision being reviewed (Alberta) under Rule 3.15(3)(a), specifically named parties under Rule 3.15(3)(b), the landowner (Alberta) under Rule 3.15(3)(c), and the leaseholder (Canada) under Rule 3.15(3)(c).

[42] Initial discussions about whether Alberta should consent to Whitefish's access to the CLAWR did not directly affect Cold Lake. Eventually, if Alberta provides consent and Canada intends to grant access, Cold Lake will have a right of consultation and may be directly affected by Canada's decision. However, that is premature on the facts of this judicial review and not a question for this Court.

2. Intervenor Status

[43] In the alternative to its application to strike Whitefish's judicial review application, Cold Lake applied for intervenor status in the judicial review.

[44] Although it is within the Court's discretion to grant intervenor status, and to impose any conditions it deems necessary, Cold Lake has not provided any cases where intervenor status was granted as an alternative to an application to strike under Rule 3.15.

[45] As outlined above, the approach for determining "directly affected" for service under Rule 3.15 is lower than for establishing standing. In ***Kainaiwa*** at para 52, this Court noted that for standing, including as an intervenor, the person must demonstrate a potential adverse effect on its rights or interests:

> To be added as a party or granted standing or intervenor status in a judicial review application, a party must make application to the Court. Therefore, it is logical that such addition, standing or status would be granted **only to a party who can demonstrate a potential adverse effect** on its rights or interests. [emphasis added]

[46] Rule 2.10 of the *Alberta Rules of Court* addresses applications for intervenor status:

> On application, a Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

[47] Rule 2.10 involves a two-step test: ***Sedwick v Edmonton Real Estate Board Co-Operate***, 2020 ABQB 578. First, the subject matter of the proceedings must be determined. Second, the proposed intervenor's interest in the subject matter must be determined, including whether the intervenor will be directly and significantly affected by the outcome, and whether the intervenor will provide some expertise or fresh perspective on the subject matter.

[48] The subject matter of the proceeding is a judicial review of Alberta's decision to refuse to negotiate with Whitefish about access to the CLAWR. For the reasons outlined above, Cold Lake is not directly affected by that decision. Further, it will not provide special expertise or fresh perspective on the subject matter.

[49] Relevant factors for the second consideration were set out in ***Orphan Well Assn v Grant Thornton Ltd***, 2016 ABCA 238 at para 10 and applied to Rule 2.10 applications in several cases including ***Governors of the University of Calgary v Alberta Information and Privacy Commissioner***, 2024 ABKB 522 at para 24, and ***TransAlta Corporation v Alberta (Minister of Environment and Parks)***, 2023 ABKB 459 at paras 6-8. These factors include:

1. Will the intervener be directly affected by the appeal;
2. Is the presence of the intervener necessary for the court to properly decide the matter;
3. Might the intervener's interest in the proceedings not be fully protected by the parties;
4. Will the intervener's submission be useful and different or bring particular expertise to the subject matter of the appeal;

5. Will the intervention unduly delay the proceedings;
6. Will there possibly be prejudice to the parties if intervention is granted;
7. Will intervention widen the *lis* between the parties; and
8. Will the intervention transform the court into a political arena?

[50] None of these factors weigh in Cold Lake's favour for standing as an intervenor. Cold Lake's participation is not necessary, nor will it assist the Court to have Cold Lake's perspective on Whitefish's negotiations with Alberta about Whitefish's Treaty rights. There is a very real concern that Cold Lake's participation will complicate and delay the judicial review proceedings while undermining important objectives like reconciliation between Whitefish and Alberta.

Conclusion

[51] The application to strike the judicial review is dismissed.

[52] The alternative application for intervenor status is likewise dismissed.

[53] Whitefish is presumptively entitled to costs. If the parties cannot agree on costs, they may file written submissions, not exceeding 5 pages, within 60 days of this decision.

Heard on the 23rd day of May, 2025.
Dated at the City of Edmonton, Alberta this 28th day of August, 2025.

K.H. Oviatt
J.C.K.B.A.

Appearances:

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