Your Application has been scheduled by the clerk.
**Date:** Nov 4, 2025 @ 10:00
**Location:** Civil Justice Chambers
**In person:** 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2

**Form 7**
[Rule 3.8]

Clerk's Stamp
JUDICIAL CENTRE OF EDMONTON
FILED DIGITALLY
2503 20600
Oct 7, 2025
3:26 PM
CLERK OF THE COURT

| | |
|---|---|
| COURT FILE NUMBER | |
| COURT | COURT OF KING'S BENCH OF ALBERTA |
| JUDICIAL CENTRE | EDMONTON |
| APPLICANT | STURGEON LAKE CREE NATION |
| RESPONDENTS | HIS MAJESTY THE KING IN RIGHT OF ALBERTA as represented by the MINISTER OF INDIGENOUS RELATIONS (Aboriginal Consultation Office), MINISTER OF ENVIRONMENT AND PROTECTED AREAS and MUNICIPAL DISTRICT OF GREENVIEW No. 16 |
| DOCUMENT | **ORIGINATING APPLICATION (For Judicial Review)** |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | Orlagh O'Kelly<br>O'KELLY LAW<br>403, 10113 – 104 Street<br>Edmonton, Alberta T5J 1A1<br>Telephone: 587-525-8348<br>Facsimile: 780-669-7672<br>Email: orlagh.okelly@okellylaw.ca<br>File Number: 125-00111 |

**NOTICE TO THE RESPONDENT AND TO THE MINISTER OF INDIGENOUS RELATIONS AND ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA:**

This application is made against you. You are a Respondent.
You have the right to state your side of this matter before the Court.
To do so, you must be in Court when the application is heard as shown below:

**Date**: November ___, 2025.
**Time:** 10:00 am
**Where**: Law Courts Building, in the City of Edmonton
**Before**: Presiding Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

***Basis for this Application:***

**The Parties**

1. The Applicant, Sturgeon Lake Cree Nation ("**SLCN**" or "**Nation**"), are the descendants of Cree *nêhiyaw* ancestors who adhered to Treaty No. 8 in 1900. SLCN has and maintains Treaty, inherent and aboriginal rights protected under Treaty No. 8, section 35 (1) of the Constitution Act, 1982 and the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**"). Sufficient clean water is essential to SLCN's continued exercise of their Treaty, inherent and aboriginal rights.

2. The Respondent, the Minister of Indigenous Relations through the Aboriginal Consultation Office, has been delegated the jurisdiction to determine whether the Crown's duty to consult and accommodate ("**DTCA**") is triggered and, if triggered, whether consultation can be deemed adequate.

3. The Aboriginal Consultation Office ("**ACO**") delegated powers exist under several policies including:
    a. *Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013* ("***Consultation Policy***")
    b. *Ministerial Order 105/214* ("***Ministerial Order***"),
    c. *Government of Alberta Guidelines on Consultation With First Nations on Land and Natural Resource Management, 2014* ("***Guidelines***"); and
    d. *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities*.

    According to the Consultation Policy and Guidelines, the ACO reports to the Minister of Indigenous Relations and manages all aspects of consultation including pre-consultation assessment, assessment of the adequacy of the consultation, determining notification requirements, determining whether accommodation is required and dealing with those follow-up issues. The ACO acts on behalf of the Minister in making these decisions.

4. The Respondent, the Minister of Environment and Protected Areas, is responsible for overseeing the issuance of licences under the *Water Act,* RSA 2000 c W-3 pursuant to

section 9(1)(r) of the *Designation and Transfer of Responsibility Regulation*, Alta Reg 11/2032.

5. The Respondent, the District Municipality of Greenview No. 16 ("**Greenview**") is a creature of provincial statute and thus agent of the provincial Crown. By contrast to SLCN, Greenview have no constitutionally protected rights. Greenview was issued the water licence over which the Crown failed to consult with the Nation.

**SLCN's Territory**

6. SLCN has territory that spans north to Peace River, west to British Columbia and down to include Jasper National Park, and south to Edmonton. SLCN's reserve land is less than 16 kilometres from the town of Valleyview, Alberta. SLCN members' hold registered traplines located south of Valleyview throughout an area referred to by the Respondent as "Greenview Industrial Gateway" ("**GIG**"), although many of these traplines have been unlawfully sold or appropriated by the provincial Crown.

7. The GIG was previously provincial Crown land that was transferred to Greenview. This "**Land Transfer**", which is in the heart of SLCN territory, was consummated in 2024. Despite SLCN raising 188 concerns with the Land Transfer, the ACO deemed consultation on the Land Transfer adequate in 2021 (the "**Adequacy Decision**"). SLCN disagrees that consultation was adequate. The ACO has never found consultation with SLCN to have been inadequate in relation to any projects or development occurring in SLCN's territory. Moreover, neither the ACO, nor the Crown, proposed or implemented any accommodations or mitigations prior to the Adequacy Decision.

8. On March 4, 2021, and prior to the Adequacy Decision on the Land Transfer in 2021, the ACO expressly provided the reasonable expectation to SLCN that their 42 water-based concerns would be addressed when specific applications were submitted for *Water Act* licences ("**Reasonable Expectations**").

9. The Little Smoky River Watershed was previously placed on a no withdrawal restriction. In 2016, the Little Smoky River Watershed was one of the most overdrawn for industrial water allocations and the Smoky River Watershed was in the second most overdrawn category. Of note, the Energy Sector and Municipal allocations are characterized as different allocations. A report explaining the basis for this restriction was published by the

Alberta Energy Regulator ("**AER**") at https://maps.aer.ca/Foxcreek/. This link is now broken and there are no withdrawal restrictions in the Little Smoky River Watershed. Of note, the Energy Sector and Municipal allocations are characterized as different allocations.

**Alberta's partnership on O'Leary AI Data Centre**

10. On December 9 2024, Kevin O'Leary of O'Leary Ventures Inc. ("**O'Leary**"), an American based company, declared their intention to build a $70 billion AI Data Centre in the GIG. The O'Leary statement included quotes from Premier Danielle Smith in support of the proposed O'Leary project. Later, O'Leary claimed that the Premier had had granted his entity a natural gas permit and/or millions of acres under permit from Alberta. SLCN received no notice of this announcement; of any disposition of natural gas permits; and/or any further disposition of the Land Transfer to O'Leary for use on his AI Data Centre.

11. A few days prior, on December 4, 2024, the Government of Alberta (the "**Province**") coordinated an announcement on the *Alberta's AI data centre strategy: powering the future of artificial intelligence* ("**AI Data Centre Policy**" or "**Policy**"). This Policy made no mention of consultation with First Nations. The AI Data Centre Policy promises more than it can deliver on water, baldly stating that "Alberta's existing water infrastructure enables AI data centres to reduce both time and costs associated with accessing resources and establishing operations." Alberta appears to be marking AI Data Centre's to be streamlined as Designated Industrial Zones. SLCN was not consulted on the AI Data Centre Policy, or the impacts of AI Data Centres in their territory.

12. On December 12, 2024, Minister Nate Glubish referred to a "partnership" with O'Leary and Greenview. Minister Glubish announced that he had been assisting O'Leary in navigating the Province's regulatory processes for several months. SLCN does not get assistance navigating the province's regulatory processes. AI Data Centres are known to consume enormous amounts of water for their operations, which require, in turn, enormous amounts of electricity.

13. Greenview announced publicly in December 2024 and, O'Leary announced privately, through his staff, that he had obtained a "water licence" from the municipality on January 31, 2025.

14. On January 13, 2025, not having received notice of anything related to the AI Data Centre, SLCN wrote an open letter to Premier Danielle Smith on January 13, 2025 ("**Open Letter**").

15. On February 14, 2025, in response to SLCN's open letter, Minister Rick Wilson responded. In his response, Minister Wilson denied that there was a "water licence" as communicated by O'Leary. He stated that a preliminary water certificate was issued to Greenview ("**Preliminary Certificate**"). SLCN had not heard of the Preliminary Certificate prior to this letter, nor did they receive any details of when it was granted and to whom. However, Minister Wilson advised that any issuance of a *Water Act* licence would be contingent on all "mandatory conditions" being met, including "appropriate consultations with First Nations." This contributed to the SLCN's Reasonable Expectations that they would be consulted prior to the issuance of any water licence for the AI Data Centre.

16. SLCN requested a copy of the Preliminary Certificate on multiple occasions. As of October 7, 2025, SLCN has not received a copy of the Preliminary Certificate, or any notice of application submitted by Greenview or O'Leary in relation to the AI Data Centre. Despite working in partnership with O'Leary to ensure licences are in place through Greenview, Alberta continues to claim that the AI Data Centre is a "non-project" due to the absence of a formal application.

17. In the development of the AI Data Centre, the Province has been working in concert with O'Leary and Greenview to ensure this project moves forward, even without an application, while the Province entirely abdicates its obligations to SLCN. These actions, cumulatively or singularly, breach the duty to consult and accommodate SLCN, the duty to honourably implement the Treaty and the Honour of the Crown.

**Water Act Decision**

18. SLCN continued to ask for the Preliminary Certificate prior to a meeting scheduled with Minister Rick Wilson, Minister Nate Glubish and representatives of the ACO on April 8, 2025.

19. Instead of receiving the Preliminary Certificate, SLCN received a copy of the *Water Act* licence ("**Water Act Decision**" or "**Licence**") on April 7, 2025 through a third party. The Water Act Decision was dated April 7, 2025 (Licence Number: DAUT0021649). This Licence was granted to Greenview, for 6 million m3 from the Smoky River for industrial

and commercial purposes. SLCN received no prior notice of nor application related to the Water Act Decision.

20. In issuing the Water Act Decision to Greenview, the Respondent Ministers have deliberately circumvented their obligations to SLCN. Moreover, the Province has the municipality to bypass any assessment as would typically be required for such a largescale Energy Sector water allocation.

**Secret DTCA Decision**

21. At the April 8, 2025 meeting with the Ministers, SLCN asked why they were not consulted prior to the Licence being granted and contrary to the Reasonable Expectations conveyed by the Province in 2021 and 2025. The Water Act Decision had the potential to adversely impact SLCN's Treaty and aboriginal rights, including water rights. The ACO officials advised that they had made an "assessment" and determined that the issuance of the Licence would have no impacts on SLCN's Treaty and aboriginal rights and therefore the duty to consult and accommodate was not triggered ("**DTCA Decision**") .SLCN received no prior notice of the DTCA Decision, nor opportunity to respond to this determination regarding their rights.

22. On or about April 9, 2025, SLCN requested a copy from the ACO official of the DTCA Decision and was refused. SLCN does not even know the date of or the reasons for the apparently secret DTCA Decision.

23. The Water Act Decision and DTCA Decision are collectively referred to as the "**Decisions**". The Decisions are factually intertwined and form the part of one continuing course of action.

**Environmental Appeal Board**

24. SLCN duly appealed the issuance of the Licence to the Environmental Appeal Board ("**EAB**"). Only following EAB requests for information, the Respondent disclosed that the Preliminary Certificate was distinct from the *Water Act* Licence and granted to Greenview on February 24, 2024, for 24 m3 litres. There was no notice to SLCN nor consultation regarding the Preliminary Certificate.

25. At the EAB, Greenview has attempted to strike the appeal on preliminary grounds. The Respondent, Minister of the Environment and Protected Area, has attempted to withhold the records related to the *Water Act* Decision. The EAB decision regarding the refusal to disclose the records relating to the issuance of the Licence is under reserve with the EAB.

26. In their motion to strike, Greenview has argued that the EAB has no jurisdiction to consider the DTCA, to discharge the DTCA and to determine any constitutional questions related to section 35(1) of the *Constitution Act, 1982*.

27. Accordingly, the Respondents have submitted the only remedy for challenging the DTCA Decision and the issuance of the *Water Act* Licence, on grounds related to the DTCA, is before this Honourable Court. This remedy must exist pursuant to section 96 of the *Constitution Act, 1867*.

**Decisions should be Quashed and Declarations should Issue**

28. The decision to issue the *Water Act* Licence without any notice or consultation should be set aside and re-determined because:
    a. The Respondent Ministers failed to comply with SLCN's Reasonable Expectations that they were owed a duty of fairness, which included at minimum a notice requirement;
    b. The Respondent Ministers breached SLCN's rights to procedural fairness;
    c. The Respondent Ministers were biased due to their creation of a partnership with Greenview and/or O'Leary, giving rise to the appearance that the Minister of Environment and Protected Areas was not acting impartially;
    d. The Water Act Decision constitutes an abuse of process, deliberately designed to circumvent SLCN's rights to seek meaningful remedies, including under section 96 of the Constitution Act, 1867 and UNDRIP.
    e. The Water Act Decision was unreasonable and/or made without jurisdiction;
    f. The Water Act Decision was made without SLCN's free, prior, and informed consent;
    g. In issuing the *Water Act* Licence, the Crown did not discharge its obligations in accordance with the Honour of the Crown.
    h. Such other grounds as this Honourable Court may permit.

29. Further and/or in the alternative, the DTCA Decision should be set aside and re-determined because:

a. The Respondent Ministers failed to disclose the existence of the DTCA Decision;
b. The Respondent Ministers failed to give prior notice of the DTCA Decision and an opportunity to respond;
c. The Respondent Ministers failed to comply with SLCN's Reasonable Expectations that they would be consulted prior to any water licence being granted and they were owed a duty of fairness, which included at minimum a notice requirement;
d. The Respondent Ministers breached SLCN's rights to procedural fairness;
e. The Respondent Ministers were biased in their partnership with Greenview and/or O'Leary, giving rise to the appearance that the ACO was not acting impartially;
f. The DTCA Decision constitutes an abuse of process, deliberately designed to circumvent SLCN's rights to seek meaningful remedies, including under section 96 of the *Constitution Act, 1867* and UNDRIP.
g. The DTCA Decision was unreasonable and/or made without jurisdiction;
h. Such other grounds as this Honourable Court may permit.

30. Declarations should issue that:
    a. The Respondent Ministers owed SLCN a duty to consult and accommodate in relation to the *Water Act* Licence;
    b. The Respondent Ministers breached the Honour of the Crown and the duty to consult and accommodate SLCN in relation to the *Water Act* Licence, including by favouring Greenview and/or O'Leary over the Nation;
    c. The Respondent Ministers failed to honourably implement Treaty No. 8 through the failures to comply, in any respect, with the duty to consult and accommodate, in favour of a municipality, Greenview, and a foreign proponent, O'Leary;
    d. Such other declarations as this Honourable Court may permit.

**Remedy sought:**

31. The Applicant seeks an interim Order that the Record of Proceedings be produced within 45 days of filing this application.

32. The Applicant may seek an interim Order staying the effect of the Decisions until this application can be determined on its merits.

33. The Applicant seeks an Order:
    a. Of *certiorari*, setting aside and quashing the Decisions;

b. Further and/or in the alternative, of certiorari, setting aside the Decisions and sending the Decisions for re-determination in accordance with this Court's reasons;
c. Declaring that the Respondent Ministers owed SLCN a duty to consult and accommodate in relation to the *Water Act* Licence;
d. Declaring that the Respondent MInisters breached the duty to consult and accommodate owed to SLCN;
e. Declaring that the Respondent Ministers failed to honourably implement Treaty No. 8 in relation to the Decisions;
f. Granting costs on a substantial indemnity basis to SLCN in any event of the cause given the public interest nature of this matter.

34. The Applicant seeks their costs on a substantial indemnity basis in any event of the cause.

**Affidavit or other evidence to be used in support of this application:**

35. The Record of Proceedings (Form 8) to be filed and served within forty-five (45) days of this application being filed and served.

36. The Affidavit of Chief Sheldon Sunshine, to be sworn.

37. The Affidavit of Rosalyn Goodswimmer, to be sworn.

**Applicable Acts and regulations:**

38. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 3.15-3.24, Rule 3.69, and Rule 3.70

39. *Water Act*, RSA 2000, c W-3, section 51.

40. *Constitution Act, 1982*, sections 24 and 35(1).

41. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), section 96.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You

will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

APPENDIX "A"

| | |
|---|---|
| COURT FILE NUMBER | |
| COURT | COURT OF KING'S BENCH OF ALBERTA |
| JUDICIAL CENTRE | EDMONTON |
| APPLICANT | STURGEON LAKE CREE NATION |
| RESPONDENTS | HIS MAJESTY THE KING IN RIGHT OF ALBERTA as represented by the MINISTER OF INDIGENOUS RELATIONS (Aboriginal Consultation Office), MINISTER OF ENVIRONMENT AND PROTECTED AREAS, and MUNICIPAL DISTRICT OF GREENVIEW No. 16 |
| DOCUMENT | **ORDER** |

Clerk's Stamp


| | |
|---|---|
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | Orlagh O'Kelly<br>O'KELLY LAW<br>403, 10113 – 104 Street<br>Edmonton, Alberta T5J 1A1<br>Telephone: 587-525-8348<br>Facsimile: (780) 669-7672<br>Email: orlagh.okelly@okellylaw.ca<br>File Number: 125-00111 |


DATE ORDER WAS PRONOUNCED:

LOCATION OF HEARING: Edmonton, Alberta

JUSTICE WHO MADE THIS ORDER:

UPON THE APPLICATION OF THE APPLICANT; AND UPON having read the application materials put before the Court; AND UPON Hearing submissions from Counsel for the Applicant and Counsel for the Respondents;

IT IS ORDERED THAT:

1. An interim Order be granted that the Record of Proceedings be produced within 45 days of filing this application.

2. An interim Order be granted staying the effect of the Decisions until this application can be determined on its merits.

3. An Order be granted:
    a. Of *certiorari*, setting aside and quashing the Decisions;
    b. Further and/or in the alternative, of *certiorari*, setting aside the Decisions and sending the Decisions for re-determination in accordance with this Court's reasons;
    c. Declaring that the Respondent Ministers owed a duty to consult and accommodate to SLCN in relation to the Water Act Decision;
    d. Declaring that the Respondent Ministers breached the Honour of the Crown and the duty to consult and accommodate owed to SLCN in issuing the *Water Act* Licence;
    e. Declaring that the Respondent Ministers failed to honourably implement Treaty No. 8 in relation to the Decisions;
    f. Granting costs on a substantial indemnity basis to SLCN in any event of the cause given the public interest nature of this matter.

4. Costs for the Applicant on a substantial indemnity basis in any event of the cause.

_____