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NATIONAL PARKS

Related subject: Indigenous Peoples

Application for judicial review of decision by President and Chief Executive Officer of Parks Canada (PCEO) denying applicant's application for business licence to operate commercial tourism, sport fishing lodge located in Thaidene Nëné National Park Reserve — Seven bilateral agreements (Park Agreements) provide for shared management of Thaidene Nëné Park — Park Agreements together establish, empower two management boards: (1) regional management board, (2) operational management board (Thaidene Nëné Xá Dá Yáłı (TDNXDY)) — Trophy Lodge located near Fort Reliance, at extreme eastern end of Great Slave Lake, in Northwest Territories (NWT) — Following creation of Thaidene Nëné Park, Land Transfer Agreement between Canada, NWT, Trophy Lodge became subject to Parks Canada's jurisdiction under *Canada National Parks Act*, S.C. 2000, c. 32, *National Parks of Canada Businesses Regulations*, SOR/98-455 (Regulations) — Applicant purchased Trophy Lodge in 2022 — Parks Canada, having become property owner following Land Transfer Agreement, entered into assumption agreement whereby Parks Canada, former owner of Trophy Lodge, assigned existing commercial lease on lands to applicant — Parks Canada reviewed applicant's application package for new business licence — Revised application package later submitted to TDNXDY for consideration — Briefing note from Parks Canada submitted to TDNXDY stated that TDNXDY must use Regulations to assess Trophy Lodge's application — More specifically, briefing note explained that Parks Canada, Łutsël K'é Dene First Nation (LKDFN) worked together to develop proposed terms, conditions compatible with Park Agreements and regulations — TDNXDY recommended that Trophy Lodge's business licence application not be granted — Opined that issuing business licence to Trophy Lodge would undermine spirit, intent of shared management agreement between Parks Canada, LKDFN, despite LKDFN supporting business licence application — Acting Field Unit Superintendent of Parks Canada (Superintendent) subsequently wrote to applicant, denying their application for business licence — Applicant not given opportunity to provide submissions to Superintendent in response to TDNXDY's recommendation to deny issuance of licence — In their reasons, Superintendent placed greater weight on factors relevant to Regulations, ss. 5(1)(a),(d) — PCEO dismissed applicant's request for review — Stated that principles of "mutual trust-building and reconciliation after decades of exclusion and separation" supersede all other considerations in deciding licence application — Whether PCEO's decision breached procedural fairness — Whether PCEO's decision unreasonable — Process followed by Parks Canada breached applicant's right to procedural fairness — PCEO's duty under Regulations, s. 10(2) is to determine if Superintendent's decision to deny applicant's proposed business licence was "incorrect" — Had to be in possession of materials on which Superintendent based its earlier decision — However, PCEO was not in possession of applicant's business licence application package — Applicant never able to make its case to PCEO — Incumbent on Parks Canada to provide PCEO with all material or information on which Superintendent relied upon to make its decision — Briefing note important element in Parks Canada's process — Superintendent ought to have been in possession of the briefing note, in order to be able to properly evaluate TDNXDY's recommendation — Fact that PCEO was not in possession of applicant's business licence application package precluded PCEO from properly assessing proposed business licence and determining if Superintendent's decision to deny business licence was "incorrect" — While TDNXDY acted in good faith, clear that TDNXDY did not provide individualized, objective assessment of

applicant's business licence application package — TDNXY's recommendation that issuance of business licence would have impact on reconciliation must be based on relevant criteria, evidence — TDNXY's reasons for recommendation did not demonstrate that it meaningfully grappled with key issues, evidence, central arguments of applicant, LKDFN's support for business licence — As result, PCEO, Superintendent could not rely nor adduce any probative weight to TDNXY's recommendation in circumstances — Superintendent failed to analyze validity of TDNXY's opposition to issuance of business licence, determine whether or not it could rely on its opinion regarding objective of reconciliation — Failed to adequately consider that proposed business licence supported by LKDFN, elected Council thereof — LKDFN's support for business licence evidence that, contrary to TDNXY's view, objective of reconciliation would not be undermined — Superintendent's decision contained significant errors; PCEO's reliance on same grounds unreasonable — PCEO entitled to approach license request from reconciliation perspective — However, in determining that reconciliation required denial of business licence, PCEO provided no reasons justifying its rationale — PCEO's failure to provide reasons as to why TDNXY's opinions were wholeheartedly accepted on reconciliation despite contrary evidence constituting fundamental flaw, lack of internal logic in reasoning, lack of justification — PCEO must ground its decision on evidence, arguments presented by parties, provide reasons why refusal necessary — Had to review correctness of Superintendent's decision, but also analyze TDNXY's recommendation on which Superintendent's decision was based, balance TDNXY recommendation, objective of reconciliation, with other Parks Canada objectives — PCEO's decision set aside — Application allowed.

TROPHY LODGE NWT LTD. V. CANADA (ATTORNEY GENERAL) (T-1225-23, 2024 FC 618, Régimbald J., reasons for judgment dated April 24, 2024, 74 pp.)