

Neskonlith Indian Band (appellant/petitioner) v. The City of Salmon Arm and Salmon Arm Shopping Centres Inc. (respondents/respondents) and Union of British Columbia Municipalities (intervenor)  
(CA039875; 2012 BCCA 379)

**Indexed As: Neskonlith Indian Band v. Salmon Arm (City) et al.**

British Columbia Court of Appeal  
Newbury, Hall and D. Smith, J.J.A.  
September 24, 2012.

**Summary:**

The Neskonlith Indian band brought a petition against the City of Salmon Arm and Salmon Arm Shopping Centre Inc. seeking to quash a development permit. Neskonlith claimed that the City had a constitutional duty to consult with it with respect to decisions that could have an impact on aboriginal rights or title it claimed within municipal boundaries.

The British Columbia Supreme Court, in a decision reported at [2012] B.C.T.C. Uned. 499, dismissed the petition. Neskonlith appealed. The Union of British Columbia Municipalities (UBCM) and the Gitzaala Nation applied for intervenor status.

The British Columbia Court of Appeal, per Low, J.A., in a decision reported at [2012] B.C.A.C. TBEEd. OC.006, allowed UBCM's application and dismissed the Gitzaala Nation's application.

The British Columbia Court of Appeal dismissed the appeal.

**Indians, Inuit and Métis - Topic 3**

General - Duty owed to Indians by Crown (incl. fiduciary duties, consultation duties and honour of the Crown) - The Neskonlith Indian band brought a petition against the City of Salmon Arm and Salmon Arm Shopping Centre Inc. seeking to quash a development permit - Neskonlith claimed that the City had a constitutional duty to consult with it with respect to decisions that could have an impact on aboriginal rights or title it claimed within municipal boundaries - An application judge dismissed the petition - Neskonlith appealed - The British Columbia Court of Appeal dismissed the appeal - As creatures of statute, municipalities did not in general have the authority to consult with and if indicated, accommodate First Nations as a specific group in making the day-to-day operational decisions that were the diet of local governments - Further, municipal governments lacked the practical resources to consult and accommodate - Finally, the 'push-down' of the Crown's duty to consult, from the Crown to local governments, such that consultation and accommodation would be thrashed out in the context of the mundane decisions regarding licenses, permits, zoning restrictions and local bylaws, would be completely impractical - See paragraphs 61 to 73.

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### **Cases Noticed:**

*Haida Nation v. British Columbia (Minister of Forests) et al.*, [2004] 3 S.C.R. 511; 327 N.R. 53; 206 B.C.A.C. 52; 338 W.A.C. 52; 2004 SCC 73, *refd to.* [para. 1].

*Haida Nation v. British Columbia (Minister of Forests) et al.* (2002), 164 B.C.A.C. 217; 268 W.A.C. 217; 2002 BCCA 147, *refd to.* [para. 1].

*Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* - see *Carrier Sekani Tribal Council v. British Columbia Utilities Commission et al.*

*Carrier Sekani Tribal Council v. British Columbia Utilities Commission et al.*, [2010] 2 S.C.R. 650; 406 N.R. 333; 293 B.C.A.C. 175; 496 W.A.C. 175; 2010 SCC 43, *refd to.* [para. 2].

*Catalyst Paper Corp. v. North Cowichan (District)* (2012), 425 N.R. 22; 316 B.C.A.C. 1;

537 W.A.C. 1; 2012 SCC 2, refd to. [para. 8].  
Gardner v. Williams Lake (City) et al. (2006), 228 B.C.A.C. 120; 376 W.A.C. 120; 2006 BCCA 307, refd to. [para. 9].  
ARA Holdings Ltd. v. Dodds (2001), 154 B.C.A.C. 81; 252 W.A.C. 81; 2001 BCCA 397, refd to. [para. 58].  
Fort St. John (City) v. Northern Plains Ventures Ltd. et al. (1991), 3 M.P.L.R.(2d) 303 (B.C.C.A.), refd to. [para. 58].  
Kehler et al. v. Surrey (District) and Vollrath (1992), 16 B.C.A.C. 231; 28 W.A.C. 231; 70 B.C.L.R.(2d) 381 (C.A.), refd to. [para. 58].  
Little Salmon/Carmacks First Nation et al. v. Beckman et al., [2010] 3 S.C.R. 103; 408 N.R. 281; 295 B.C.A.C. 1; 501 W.A.C. 1; 2010 SCC 53, refd to. [para. 60].  
Godbout v. Longueuil (Ville), [1997] 3 S.C.R. 844; 219 N.R. 1, refd to. [para. 62].  
Davidson v. Slight Communications Inc., [1989] 1 S.C.R. 1038; 93 N.R. 183, refd to. [para. 62].  
Westfair Foods Ltd. v. Saanich (District) (1997), 100 B.C.A.C. 223; 163 W.A.C. 223; 49 B.C.L.R.(3d) 299 (C.A.), refd to. [para. 68].  
511784 BC Ltd. et al. v. Salmon Arm (District), [2001] B.C.T.C. 245; 19 M.P.L.R.(3d) 232; 2001 BCSC 245, refd to. [para. 68].  
Yearsley v. White Rock (City), [2009] B.C.T.C. Uned. 719; 2009 BCSC 719, refd to. [para. 68].  
0742848 B.C. Ltd. v. Squamish (District), [2011] B.C.T.C. Uned. 747; 84 M.P.L.R.(4th) 1; 2011 BCSC 747, refd to. [para. 68].  
R. v. Sparrow, [1990] 1 S.C.R. 1075; 111 N.R. 241, refd to. [para. 76].  
R. v. Douglas (K.A.) et al. (2007), 242 B.C.A.C. 164; 400 W.A.C. 164; 2007 BCCA 265, refd to. [para. 80].  
Taku River Tlingit First Nation et al. v. Tulsequah Chief Mine Project (Project Assessment Director) et al., [2004] 3 S.C.R. 550; 327 N.R. 133; 206 B.C.A.C. 132; 338 W.A.C. 132; 2004 SCC 74, refd to. [para. 88].

**Authors and Works Noticed:**

British Columbia, Hansard, Official Reports of Debates of the Legislative Assembly, vol. 16, No. 12 (2006), generally [para. 10].  
Dillon on Municipal Corporations (4th Ed. 1890), generally [para. 8].  
Hansard (B.C.) - see British Columbia, Hansard, Debates of the Legislative Assembly.  
Hoehn, Felix, Municipalities and Canadian Law: Defining the Authority of Local Governments (1996), p. 1 [para. 8].

**Counsel:**

M.G. Underhill and N. Schabus, for the appellant;  
R. Harding and G. Cockrill, for the respondent, City of Salmon Arm;  
N.R. Hughes, A.L. Cameron and T. Isaac, for the respondent, Salmon Arm Shopping Centres Inc.;  
G. Allison and H. Wang, for the intervenor, Union of British Columbia Municipalities.

This appeal was heard at Vancouver, British Columbia, on August 14 and 15, by Newbury, Hall and D. Smith, J.J.A., of the British Columbia Court of Appeal. The following

reasons for judgment of the Court of Appeal were delivered by Newbury, J.A., on September 24, 2012.

Appeal dismissed.

Editor: Anick Ouellette-Levesque