

Case Name:

**Standing Buffalo Dakota First Nation v. Enbridge Pipelines
Inc.**

**Standing Buffalo Dakota First Nation, Chief Rodger Redman,
Councillor Wayne Goodwill, Councillor Dion Yuzicappi,
Councillor Vergil Bear, Councillor Herman Goodpipe, Councillor
Stella Isnana & Councillor Conrad Tawiyaka as representatives
of the Members of Standing Buffalo Dakota First Nation**

v.

**Enbridge Pipelines Inc., Canadian Association of Petroleum
Producers, National Energy Board - and - Attorney General of
Canada, Attorney General of Saskatchewan, Attorney General of
Alberta**

[2009] S.C.C.A. No. 499

[2009] C.S.C.R. no 499

File No.: 33480

Supreme Court of Canada

Record created: December 21, 2009.

Record updated: December 2, 2010.

Appeal From:

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Status:

Application for leave to appeal dismissed with costs (without reasons) December 2, 2010.

Catchwords:

*Constitutional law -- Aboriginal rights -- Crown -- Honour of Crown -- Duty to consult and
accommodate Aboriginal peoples prior to decisions that might adversely affect their Aboriginal
rights and title claims -- Did the appeal court err in finding that courts are the appropriate venue*

for the adjudication of Aboriginal issues -- Did the appeal court err in law by not applying established common law principles with respect to the duty to consult.

Case Summary:

Enbridge Pipelines Inc. requested that the National Energy Board ("NEB") approve the Alberta Clipper Project, which passes through lands claimed by the Standing Buffalo Dakota First Nation Dakota Band and the Sweetgrass and Moosomin First Nations. Standing Buffalo participated as an intervener in the hearing concerning the project on the strength of its claim to Aboriginal rights and title unextinguished by treaty. The Crown has not admitted the validity of the claims.

The adequacy of Crown consultation, the need for Crown participation in the hearing, and the consequences of the Crown's failure to participate were raised by motion prior to the hearing. The NEB found that it was not required to address the consultation issue prior to making the substantive decision with respect to the approvals sought, and that its process was designed to ensure that it understands all the concerns about a project before making a decision. Aboriginal peoples with concerns about a project were entitled to participate in the regulatory process on several levels, and their concerns would be weighed when the NEB determined whether the project was in the public interest. Standing Buffalo's appeal was dismissed along with appeals of the NEB's decisions in relation to two other projects (the Keystone Project and the Southern Lights Project) which are also now subject to applications for leave to appeal (SCC File Nos. 33481 and 33482). Standing Buffalo has applied for leave to appeal, as have Sweetgrass and Moosomin (SCC File No. 33462).

Counsel:

Mervin C. Phillips (Phillips & Co.), for the motion.

Steven Mason (McCarthy Tétrault LLP), contra.

Chronology:

1. Application for leave to appeal:

FILED: December 21, 2009. S.C.C. Bulletin, 2010, p. 1.
SUBMITTED TO THE COURT: February 8, 2010. S.C.C.
Bulletin, 2010, p. 178.
DISMISSED WITH COSTS: December 2, 2010 (without reasons).
S.C.C. Bulletin, 2010, p. 1577.

Before: McLachlin C.J. and Abella and Rothstein JJ.

The application for leave to appeal is dismissed with costs to the respondent Enbridge Pipelines Inc.

Procedural History:

Judgment on appeal: Appeals dismissed with costs.
Federal Court of Appeal, Noël, Layden-Stevenson, Ryer
JJ.A., October 23, 2009.
Neutral citation: 2009 FCA 308; [2009] F.C.J. No. 1434.

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