

COURT NO. 7-1225-23

FEDERAL COURT

BETWEEN

TROPHY LODGE NWT LTD.

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F I L E D	FEDERAL COURT COUR FÉDÉRALE
14-JUN-2023	
Alastair Ling	
VAN	1

APPLICANT

AND

THE ATTORNEY GENERAL OF CANADA AND THE
PARKS CANADA AGENCY

RESPONDENTS

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*,

RSC 1985, c F-7

NOTICE OF APPLICATION

TO: THE ATTORNEY GENERAL OF CANADA

AND TO: PARKS CANADA AGENCY

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court in Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in FORM 305 prescribed by the

Federal Court Rules and serve it on the applicant's solicitor, or if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: June 13, 2023

Issued by: _____

(Registry Officer)

Address of local office: Federal Court
Courts Administration Service
PO Box 10065, 3rd Floor
701 West Georgia Street
Vancouver BC V7Y 1B6

TO: Attorney General of Canada
284 Wellington Street
Ottawa ON K1A 0H8

AND TO: Parks Canada Agency
c/o 30 Victoria St
Gatineau QC J8X 0B3

APPLICATION

This is an application for judicial review in respect of Parks Canada's decision to deny the Applicant's application for a business licence to continue its existing business operations at the Trophy Lodge in the Northwest Territories (the "**Licence**") further to the decision dated May 17, 2023 made by the Chief Executive Officer of the Parks Canada Agency, Mr. Ron Hallman, pursuant to section 10.1(1) of the *National Parks of Canada Business Regulations* (the "**Regulations**") following his review of the decision dated February 15, 2023 made by the Acting Field Unit Superintendent of Parks Canada Agency, Calvert Martin, pursuant to sections 4 & 5 of the *Regulations* (the "**Decision**").

The applicant makes application for an order or orders:

1. Declaring that Canada, including the Parks Canada Agency ("**Parks Canada**") (collectively, the "**Crown**"), failed to observe a principle of natural justice and procedural fairness that it was required by law to observe in denying the Decision to deny the business Licence;
2. Declaring that the Crown's Decision to deny the application for the Licence was unreasonable in that Parks Canada erred in law and beyond its jurisdiction by considering erroneous factors which were not authorized by the governing legislation as set out in section 5 of the *Regulations* in determining whether to issue a licence and under what terms, including, without limitation, placing unreasonable weight and reliance on the decision of the Thaidene Nënë Xá Dá Yáftı (the "**Board**");
3. Declaring that the Crown's Decision to deny the application for the Licence was unreasonable in that Parks Canada erred in law by failing to consider, or failing to reasonably consider, the required criteria set out in section 5 of the *Regulations*;

4. Declaring that the Decision is unenforceable, invalid and unlawful and/or without legal effect pursuant to section 18.1 of the *Federal Courts Act* and ordering Parks Canada to issue the Licence;
5. Quashing the Decision issued by Parks Canada;
6. Directing that the Court will retain jurisdiction to resolve issues that may arise;
7. A writ of *mandamus* and an interlocutory injunction ordering Parks Canada to immediately renew and issue a business licence to the Applicant to continue operating the Trophy Lodge until the judicial review application is heard and decided;
8. Costs of and incidental to this application against the Crown;
9. Declaring that the Applicant shall not be required to pay costs to the Respondents of this application, pursuant to Rule 400 of the *Federal Court Rules*, in the event that this application is dismissed; and
10. Such further and other relief as this Honourable Court may deem appropriate and just.

THE GROUNDS FOR THE APPLICATION ARE:

Background

11. The Trophy Lodge business has operated as a commercial fishing outpost lodge at Fort Reliance which is located at the extreme eastern end of Great Slave Lake, 170 air miles or 275 miles by boat from Yellowknife, Northwest Territories ("NWT") since the mid-1960s.
12. The business is comprised of a lodge facility, a small concession store which offers necessities, and historical buildings which were used as a detachment for

the Royal Canadian Mounted Police (“RCMP”) during the years 1927 to 1965. At full capacity, Trophy Lodge accommodates 16 people in four fully equipped housekeeping units. There are also four staff/owners’ cabins and several other buildings which have various uses, including storage and as common use areas.

13. On August 3, 2006, His Majesty the King in Right of Canada (“HMKC”) demised and leased to Sutherland’s Drugs Limited (“Sutherland”) for a period of twenty (20) years commencing on April 1, 2006 and terminating on March 31, 2026 (the “**Term**”), all that certain parcel or tract of land situate, lying and being composed of the whole of Lots Numbered 6 and 7, Group 967, Fort Reliance, in the Northwest Territories, as said Lot is shown on a plan of survey of record number 56582, in the Canada Lands Surveys Records at Ottawa, a copy of which is filed in the Land Titles Office for the Northwest Territories Land Registration District under number 652 (the “**Reliance Lands**”)(the “**Lease**”).
14. On July 18, 2019, the Commissioner of the Northwest Territories (the “**Commissioner**”) and Sutherland amended and confirmed the terms of the Lease to provide, *inter alia*, a renewal upon the same terms and conditions as contained within the Lease and the Commissioner acquiring the administration and control of the Reliance Lands on April 1, 2014 pursuant to section 51 of the *Northwest Territories Act* S.C. 2014, c. 2, section 2.
15. In April 2019, the Government of Canada introduced amendments to the *Canada Parks Act*, SC 2000, c. 32 (the “**Parks Act**”) to establish the Thaidene Nënë National Park Reserve (the “**Thaidene Nënë Park Reserve**”), which were given Royal Assent on June 20, 2019 and entered into force on September 4, 2019.
16. On August 21, 2019, a Land Transfer Agreement between HMKC and the Government of the Northwest Territories as represented by the Minister of Environment and Natural Resources and the Minister of Lands (the “**Land**”

Transfer Agreement") was completed to transfer the land from the Government of the Northwest Territories to Canada for the Thaidene Nënë Park Reserve.

17. As part of the formal establishment of the Thaidene Nënë Park Reserve, the following agreements were signed on August 20 and 21, 2019:

- (a) an Establishment Agreement between the Government of Canada and the Łutsël K'é Dene First Nation ("LKDFN");
- (b) an Establishment Agreement between the Government of the Northwest Territories and the LKDFN (the "**LKDFN NWT Establishment Agreement**");
- (c) an Impact and Benefit Agreement between the Government of Canada and the Northwest Territory Métis Nation ("NWTMN");
- (d) an Establishment Agreement between the Government of the Northwest Territories and the NWTMN;
- (e) Denesoltiné, an agreement between Parks Canada and the Deninu K'ue First Nation ("DKFN");
- (f) an Establishment Agreement between the Government of the Northwest Territories and the DKFN; and
- (g) an agreement in principle between the Government of Canada and the Yellowknives Dene First Nation ("YDFN")

(collectively, the "**August 2019 Agreements**").

18. On September 25, 2020, the Government of Canada signed the finalized agreement with the YDFN (collectively with the August 2019 Agreements, the **“Establishment Agreements”**).
19. Many of the Establishment Agreements are not publically available and the Applicant is not party to such agreements.
20. Management of the Thaidene Nënë Park Reserve is shared with the Indigenous governments of the Indigenous Nations who have a cultural connection to the landscape, which are the LKDFN, NWTMN, DKFN, and the YDFN (the **“Indigenous Partners”**).
21. The Trophy Lodge is located within the Thaidene Nënë Park Reserve, and the Thaidene Nënë Park Reserve is located within the Thaidene Nënë Territorial Protected Area and the Thaidene Nënë Indigenous Protected Area.
22. The Board is a management body responsible for the operational management of the Thaidene Nënë Indigenous Protected Area. In accordance with the Establishment Agreements, the LKDFN, the Government of Canada as represented by Parks Canada, and the Government of the Northwest Territories appoint individuals to the Board as follows:
 - (a) the LKDFN appoints three individuals for all Thaidene Nënë who participate in all deliberations;
 - (b) Parks Canada and the Government of the Northwest Territories jointly appoint three individuals for the Thaidene Nënë Park Reserve and the Thaidene Nënë Territorial Protected Area who participate in all deliberations;

- (c) the Government of the Northwest Territories and LKDFN jointly appoint one individual for the Thaidene Nënë Territorial Protected Area who only participates in deliberations regarding the territorial protected area; and
 - (d) all parties, in consultation with the Board, jointly appoint an independent facilitator.
23. Prior to the Applicant's purchase of the Trophy Lodge, the LKDFN had been in negotiations to purchase the Trophy Lodge from Sutherland. The Applicant was invited to make an offer to purchase the Trophy Lodge after the owner notified the LKDFN that it was not happy with their offer.
24. By letter dated April 27, 2022, LKDFN advised the Applicant that with respect to the Applicant's accepted offer to purchase the Trophy Lodge, securing Trophy Lodge was a key piece and critical part of LKDFN's homeland and that before the Applicant got further invested in the property, LKDFN was prepared to discuss purchasing it from the Applicant.
25. On May 7, 2022, the Applicant completed the purchase of the Trophy Lodge pursuant to an Asset Purchase Agreement with Sutherland in which the Applicant purchased assets of the Trophy Lodge, including the facility buildings and the Lease (the "**Asset Purchase Agreement**").
26. The Applicant's owners are all RCMP officers and the historical significance of the Trophy Lodge, including the RCMP detachment, is important to them. One of the owners has extensive experience operating a fishing outfitter business and has worked at the Trophy Lodge, and other of the owners have experience with other businesses operating in Yellowknife.
27. One of the owners of the Applicant, Mr. Andrew Moore, has owned and operated a charter and fishing business known as Yellowknife Sport Fishing Adventures

which is based in Yellowknife and conducts fishing trips in and around Great Slave Lake and the East Arm. He has extensive experience in operating a fishing outfitter business. He worked at the Trophy Lodge over the summer of 2022 and learned about the business from the previous owner and the Trophy Lodge manager. Another of the owners, Ms. April Bell, is a registered member of the Jean Marie River First Nation (known as the Tthets'ek'ehdeli) located in the Dehcho Region of the Northwest Territories.

28. On June 13, 2022, Parks Canada consented to assign the Lease to the Applicant. The Applicant has the right under the Lease to use the lands for the purposes of a commercial outpost camp.
29. On September 16, 2022, Parks Canada, on behalf of HMKC, entered into an Assumption Agreement where Sutherland and Parks Canada agreed to assign the Lease to the Applicant and the Applicant agreed to pay the rent and perform the covenants, provisos and conditions contained in the Lease.

Licencing History

30. The Trophy Lodge business has been licenced as a tourism and fishing outpost business by the Government of the Northwest Territories and that licence has been renewed on an ongoing basis every year from 1965 until 2019, after which time the Land Transfer Agreement was completed and Trophy Lodge's business licence was renewed and issued by Parks Canada every year until the Decision on May 17, 2023.
31. On March 16, 2022, prior to the purchase of the assets of the Trophy Lodge in May 2022, the Applicant's representative owners met with Parks Canada to discuss the licencing process for the Trophy Lodge. During the meeting, Parks Canada advised that a new application for a business licence was required following the transfer of the Lease and that licences are renewed annually.

32. Parks Canada advised that the licencing process for the Trophy Lodge would include a Board review to provide Parks Canada with guidance as the Board reviews all licence and permit applications in the Thaidene Nënë Park Reserve. The Applicant was told that the Board was not yet aware that LKDFN was not successful in purchasing the Trophy Lodge.
33. Parks Canada assured the Applicant that the licencing for the Trophy Lodge should be straightforward, but that if a decision was not favourable, Parks Canada would start the dispute resolution process.
34. On September 25, 2022, the Applicant applied for a business licence to continue the business operations at Trophy Lodge, and after incorporating comments and terms and conditions from Parks Canada, the Applicant submitted a revised application to Parks Canada on November 9, 2022.

Legislative Regime

35. Consideration of a business licence application is determined in accordance with the *Regulations* promulgated under the *Parks Act*. Pursuant to section 4(1) of the *Parks Act*, the national parks of Canada are dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks are to be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.
36. Park reserves are established in accordance with section 4(2) of the *Parks Act* for the purpose referred to in subsection 4(1) where an area or a portion of an area proposed for a park is subject to a claim in respect of aboriginal rights that have been accepted for negotiation by the Government of Canada.

37. Section 5 of the *Regulations* provides a list of factors which shall be considered to assess the effect of the business on the park when determining whether to issue a licence and under what terms and conditions, if any, and are as follows:
- (a) the natural and cultural resources of the park;
 - (b) the safety, health and enjoyment of persons visiting or residing in the park;
 - (c) the safety and health of persons availing themselves of the goods or services offered by the business; and
 - (d) the preservation, control and management of the park.
38. Pursuant to sections 5(2) and (3) of the *Regulation*, terms and conditions of a business licence could include, amongst other things, the types of goods and services offered by the business and an address and description of the area in the park where the business will be carried on, and can specify environmental protection requirements and any other matter that is necessary for the preservation, control and management of the park.
39. Effective January 1, 2013, Parks Canada established the *Cultural Resource Management Policy* (the “**CRM Policy**”) which provides policy requirements for managing the wide range of cultural resources administered by Parks Canada. The CRM Policy applies to all “protected heritage places” administered by Parks Canada, which is defined as including, amongst other places, all national parks and national park reserves.
40. Once a new national park or national park reserve is established, Parks Canada develops a management plan for this protected heritage place through extensive consultation and input from various people and organizations, including

Indigenous peoples, local and regional residents, visitors and Parks Canada staff.

41. Management plans are then recommended by Parks Canada and approved by the Minister of Environment and Climate Change (who is the Minister responsible for Parks Canada). The management plan sets a vision for the future of the national park reserve, with strategies and objectives aimed at reaching that vision including, without limitation, the management of visitors and licenced guides and businesses that operate within the park.
42. Management plans typically address issues such as providing information to visitors of licenced available guides operating within the park or licenced accommodation and/or conditions to a licence consistent with the management of the park such as accommodation of storage of licenced outfitter canoes.
43. There is no management plan in place for the Thaidene Nënë Park Reserve.
44. In the reasons for denying the Trophy Lodge Licence, Parks Canada determined that it could not approve the Licence because of “the principles of reconciliation” and because “joint management planning and policy development have yet to occur” with respect to the Thaidene Nënë Park Reserve which the CEO of Parks Canada said “strongly implicate section 5(1)(d) of the *Regulations*”.

UNREASONABLE DECISION ON THE MERITS

45. The terms and conditions of the Lease authorized the Applicant to use the lands and the Trophy Lodge for commercial outpost camp purposes and there is no reasonable basis upon which a licence based on the application submitted by the owners of Trophy Lodge would not be renewed to facilitate this purpose. The Applicant pleads that Parks Canada had no legislative basis under the *Regulations* to require the Applicant to apply for a new business licence and, in

any event, Parks Canada ought to have renewed the Licence in accordance with its past conduct, and standard policies and practices.

46. The Applicant pleads that the Crown consented to the assignment of the Lease and the Applicant assumed the obligations under the Lease. In reaching his decision, the CEO of Parks Canada failed to consider, or reasonably consider, or give sufficient weight to the rights of the Applicant under the Lease. The Applicant complied with applicable legislation as required, and has sufficient financial resources to conduct its business in a responsible manner and in accordance with the general conditions of the Lease. The CEO of Parks Canada ought to have acted reasonably in the performance of his duties, he did not, and as such the Decision is unreasonable.
47. Parks Canada had no grounds, or alternatively, no reasonable grounds to deny the application for a business licence for 2023. Trophy Lodge is an existing business which dates back to the 1960s and has a right under the Lease to use the land for commercial outpost camp purposes. The Trophy Lodge business has been in operation with valid business licences issued by Parks Canada (and the Government of the NWT) for decades. The Applicant simply applied in a given year for a usual business licence.
48. The Applicant pleads that the CEO of Parks Canada failed to consider, or reasonably consider, subsections 5(b) & (c) of the *Regulations* which require a reasonable consideration of the enjoyment of persons visiting in the park including guests who access the park to fish and lodge at the Trophy Lodge, and the safety and health of persons availing themselves of the goods or services offered by the Trophy Lodge business and he failed to reasonably do so.
49. The proper exercise of Parks Canada's jurisdiction in declining to issue a business licence to the Applicant depends upon compliance with, *inter alia*, section 5 of the *Regulations*, which provision delineates the scope or ambit of

Parks Canada's jurisdiction. The Applicant pleads that Parks Canada erred in exceeding its jurisdiction by considering additional criteria which were not authorized by the governing legislation for consideration of whether to issue a business licence within a park reserve, and further erred in failing to consider, or failing to reasonably consider, the required criteria set out in section 5 of the *Regulations*.

50. The factors set out in section 5 of the *Regulations* were promulgated under the *National Parks Act*, RSC 1985, c N-14, pursuant to section 7(1)(p), which is similar to section 16(1)(n) of the *Parks Act*, and which provides that the Governor in Council may make regulations for:

7(1)(p) controlling trades, business, amusements, sports, occupations and other activities or undertakings and prescribing the places where any such activities or undertakings may be carried on, and the levying of licence fees in respect thereof;

51. In determining the effect of the business on the park further to a regulation made to control businesses, Parks Canada failed to consider, or failed to reasonably consider, the required factors set out in section 5 of the *Regulations*, and further erred in considering additional criteria which were not authorized by the governing legislation for consideration of whether to issue a business licence within a park reserve, and as a result the Decision ought to be quashed and set aside, and remitted back to the decision-maker with reasons and direction.
52. The Applicant pleads that the Respondents interpreted their jurisdiction under the *Regulations* in a manner that was overly broad as the intent of the *Regulations* promulgated under the *Parks Act* is to control business and activities, including prescribing the location of the activities, and the levying of licence fees, in the park.
53. The Applicant pleads that in accordance with the *Parks Act* and the *Regulations*, it was unreasonable for Parks Canada to deny the Applicant's application for the

Licence of an existing business in the Thaidene Nënë Park Reserve, and Parks Canada acted outside of its jurisdiction, when it considered any of the following factors, without limitation:

- (a) that the Trophy Lodge Ltd., is not a businesses owned by its Indigenous Partners including LKDFN members or LKDFN Businesses;
 - (b) that the LKDFN wanted to purchase the Trophy Lodge;
 - (c) that the Establishment Agreement with LKDFN required Parks Canada to allocate Business Licences primarily related to Thaidene Nënë to LKDFN and LKDFN Businesses to the maximum extent possible in accordance with the legislation and policies of the respective Parties; or
 - (d) to accommodate its Indigenous Partners by denying the Licence.
54. Alternatively, if the Establishment Agreement with LKDFN requires Parks Canada to allocate business licences primarily related to Thaidene Nënë to LKDFN and LKDFN Businesses to the maximum extent possible, which is unknown to the Applicant at this time, then the Applicant pleads that in accordance with the legislation, it was not possible, nor was it required, for Parks Canada to deny the Licence.
55. Finally, the concerns raised by Parks Canada in the Decision ought to have been the subject of terms and conditions to the Licence, not the basis for a denial of the Licence.

Natural and Cultural Resources

56. There were no changes to the business operations of Trophy Lodge that could affect the natural and cultural resources of the Reliance Lands and surrounding

area in the Thaidene Nënë Park Reserve, and if there were, which is not admitted but denied, Parks Canada ought to have considered the CRM Policy and ought not to have denied the Licence on the basis of section 5(1)(a) of the *Regulations*.

57. The Applicant's application for a business licence does not propose any change to the business operations, that is, no expansion was proposed that could have such an effect on the park. The effect of the Trophy Lodge business on the park remains *status quo* and is unaffected by a change in ownership as there is no proposed change in use of the Trophy Lodge.
58. In 2019, Parks Canada completed a preliminary screening in which they concluded that the establishment of the national park reserve "will not increase the existing environmental impacts of existing facilities", including the existing Trophy Lodge.
59. The Applicant pleads that there was no reasonable basis upon which the decision maker denied the application for a Licence under section 5(1)(a) of the *Regulations*.
60. The Decision was unreasonable in that Parks Canada based its decision regarding the effect of the business on the natural and cultural resources of the park on, *inter alia*, advice from the Board and its Indigenous partners that the Kache area where the Trophy Lodge is located is highly culturally sensitive and that management planning, zoning, and policy development for this area have yet to occur. The undetermined content of future plans, policies and developments should not have any bearing on the review of an annual business licence.
61. Moreover, one of Parks Canada's proposed terms and conditions to the Licence, would have required the Licensee: "to operate in an environmentally sensitive

manner and support the ecological and visitor use objectives of the Licence Area as outlined in the Thaidene Nene National Park Reserve of Canada Management Plan (to be developed) and any other directives, policies or guidelines” (at Article 1.08).

62. The Applicant has a valid Lease and has met all the conditions of the Lease. The fact that the owners are RCMP members, which would mean a continued RCMP presence at the site of the Trophy Lodge, is not a reasonable basis for Parks Canada to accept the Board’s guidance not to issue the Licence.

Preservation, control and management of the park

63. The Applicant also pleads that there was no reasonable basis upon which the decision maker denied the application for a Licence under section 5(1)(d) of the *Regulations*.
64. Parks Canada denied the Licence in part because joint management planning and policy development for the Thaidene Nënë Park Reserve have yet to occur, and wrongfully concluded that section 5(1)(d) of the *Regulations* necessitated the finalization of a management plan for the Thaidene Nënë Park Reserve before a business licence could be issued for the Trophy Lodge.
65. Section 11(1) of the *Parks Act* dictates that a management plan be prepared within five years after a park is established, and there is no basis to reasonably conclude that the Trophy Lodge will not fit within or be unable to adapt to the vision, key strategies, objectives and targets for the management of the Thaidene Nënë Park Reserve once it is negotiated and finalized.
66. The requirement to consider the effect of the business licence on the “preservation, control and management of the park” cannot be read in such a

way as to include a consideration of future management plans and policies which may or may not impact the Licence.

67. Section 9.1 of the Land Transfer Agreement states that “Parks Canada will provide for the activities and land uses in Annex 3” in the Thaidene Nëné Reserve; Annex 3 includes sport fishing.
68. Appendix G of the LKDFN NWT Establishment Agreement indicates that all existing tourism operator licences may be renewed, provided that the tourism operator remains in good standing; complies with any policy developed under section 4.1.2(e); and conforms with the Management Plan. Trophy Lodge remains in good standing, and no policies or Management Plans for the Thaidene Nëné Park Reserve have been completed to date.

Consideration of Additional Criteria

69. In addition, and in the alternative, Parks Canada made its decision to deny the Licence based on alien criteria it imported which are not prescribed in the *Regulations* and which overwhelmed any consideration of the relevant factors as set out in section 5(1) of the *Regulations*, which include, *inter alia*, as follows:
 - (a) Unduly relying on a misguided concern that Parks Canada would be “severely compromising the spirit and intent of Thaidene Nëné” if it were to issue the Licence;
 - (b) Unduly relying on advice from the LKDFN and the Board to deny the Licence while knowing that LKDFN’s interests were adverse to the Applicant’s in respect of the LKDFN’s desired ownership of the Trophy Lodge and its ownership of the competing Frontier Lodge, that LKDFN would benefit if the Licence was denied, and that LKDFN appoints or

jointly appoints five of the eight individuals (including the facilitator) on the Board;

- (c) Wrongfully considering and relying on the Board's decision and reasons in making the Decision, in which the Board, *inter alia*, indicates its discontent with the bad faith of the Crown when the Crown changed the terms of the Lease, a concern that is not relevant to the determination of the Licence application; and
 - (d) Such further and other grounds as the Applicant may discover upon disclosure of the record.
70. The Board's reasons for decision also state that it is the opinion of the Board that Parks Canada should have acquired the lease and assets of Trophy Lodge during the establishment process and worked with the other parties to the Establishment Agreements to establish joint control and management of this strategic and important ecological and cultural area within Thaidene Nënë, such that the vision for the Kache area can be realized.
71. The Applicant states that Parks Canada gave undue weight to the Board's concerns in denying the Licence.
72. Additionally, at or about the same time that Parks Canada denied a business licence to the Trophy Lodge, it granted a business licence to the LKDFN's Frontier Lodge, a fishing lodge owned by LKDFN, which Parks Canada both licences and promotes on its website at: <https://parks.canada.ca/pn-nt/thaidene-nene/visit/guides>. The Frontier Lodge is located approximately 50 kilometres by plane from the Trophy Lodge and is its primary competition in this area.

73. The Crown erred in law and the Decision should be quashed or set aside in that:
- (a) There was no evidence before Parks Canada that the Trophy Lodge would have a potential adverse effect on the ability of Indigenous Nations to exercise their aboriginal title and aboriginal rights in the Thaidene Nënë Park Reserve;
 - (b) It cannot be the law that only Indigenous businesses are granted licences in the Thaidene Nënë Park Reserve, particularly in the absence of any policies or Management Plan laying out such a rule; in any event, the Applicant is a partially Indigenous-owned business and should have been granted the Licence;
 - (c) The Crown failed to consider the effect of the business on the Thaidene Nënë Park Reserve as required by section 5 of the *Regulations*, and instead incorrectly considered the effect of the business on Parks Canada's Indigenous partners; and
 - (d) The Crown gave too much weight to the Board's decision which was based on misinformation and a lack of information on material facts and which failed to afford the Applicant due process and procedural fairness.
74. Lastly, Parks Canada failed to give any or adequate reasons for denying the application for a Licence based on the section 5 criteria set under the *Regulations*.

BREACH OF PROCEDURAL FAIRNESS

75. Procedural fairness was owed to the Applicant and the Applicant had a legitimate expectation as the owner of a business who applied for a renewal of a licence that had been issued for several decades, and who had been assured by Parks

Canada staff that a business licence would be straightforward, that its application would be granted.

76. The denial of the Licence takes away the right of the Applicant under the Lease to operate the Trophy Lodge business. The CEO of Parks Canada had no legal authority to, in effect, expropriate that right by refusing to grant it a licence under the *Regulations*. The Applicant states that the expectation to receive a licence arises from the Lease and that as such, the content of fairness must be higher than was accorded to the Applicant, and that the procedural fairness requirements under the *Regulations* were high.
77. The Applicant pleads that it was not given an opportunity to meet with the Board, the Acting Superintendent, or the CEO of Parks Canada and thus, there was a breach of the duty of fairness owed.
78. Further, Parks Canada denied the Applicant procedural fairness including the opportunity to be heard, to present evidence, and to make argument to the Board and to Parks Canada. Parks Canada unreasonably relied on a decision of the Board and put undue weight on it. Notwithstanding that the Applicant requested to appear before the Board, the Applicant was told by Parks Canada that the Board did not have any questions for the Applicant.
79. Parks Canada took it upon itself to make submissions to the Board in respect of the Applicant's application for a Licence and made representations to the Board that the Applicant was not privy to.
80. Parks Canada did not afford the Applicant procedural fairness in making its Decision. The Applicant was not invited to the meetings of the Board on each of January 17 and 18, 2023 and was not afforded an opportunity to be heard prior to the reasons for the decision of the Board being issued on January 30, 2023.

81. The Applicant was not afforded an opportunity to be heard and to present evidence which led to conclusions by the Board and Parks Canada based on materially incorrect facts and assumptions, which were then unduly relied on by Parks Canada in the Decision.
82. Further, the Crown considered the advice of LKDFN not to issue a licence where LKDFN was in a conflict of interest as a potential purchaser competing with the Applicant to purchase Trophy Lodge and the owner of a competing fishing outpost business in the vicinity of the Trophy Lodge. Parks Canada ought not to have considered LKDFN's advice in respect of the Decision.
83. Further, Parks Canada created a legitimate expectation with the Applicant that it would be treated fairly and reasonably and that the Licence would be straightforward, but that if a decision was not favourable, Parks Canada would start the dispute resolution process. The Applicant has no knowledge of the outcome of the dispute resolution process.
84. The obligation to observe the principles of natural justice is a condition governing the exercise of statutory power. The procedure adopted by Parks Canada was not reasonable or fair in the circumstances in which the power was exercised. The duty of procedural fairness was not discharged and the Decision should be quashed and remitted back to the decision maker with reasons.

Conclusion

85. The Applicant submits that it is patently clear that Parks Canada made the Decision based on irrelevant or improper evidence which overtook the consideration of relevant factors set out in the governing legislation.
86. Given all of the foregoing, Parks Canada acted unreasonably and exceeded its jurisdiction in making the Decision. As such, the Decision should be quashed and remitted back to the decision maker, with reasons and directions from the Court.

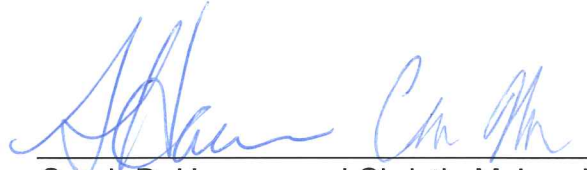
87. The Applicant ought to be granted relief *mandamus* directing Parks Canada to issue a business licence for the Trophy Lodge, conditional on the outcome of Parks Canada's reconsideration of the Applicant's application for a business licence.
88. The Applicant reserves the right to amend this notice of application after it has reviewed the records in accordance with the Rule 317 request below.

This application will be supported by the following material:

89. Affidavit of Mr. Andrew Moore sworn June 9, 2023, to be filed;
90. Such further and other affidavits as counsel will advise and this Honourable Court may permit;
91. *Canada National Parks Act*, SC 2000, c 32;
92. *Interpretation Act*, R.S.C. 1985, c. I-21 s. 43;
93. *Parks Canada Agency Act*, SC 1998, c 31;
94. *National Parks Business Regulations, 1998*, SOR/98-455;
95. *National Parks of Canada Lease and Licence of Occupation Regulations*, SOR/92-25;
96. *Federal Courts Act*, RSC 1985 c. 41;
97. *Federal Court Rules*; and
98. Such further and other material as counsel may advise and this Honourable Court may permit.

99. Pursuant to Rule 317, the Applicant requests material relevant to an application that is in the possession of Parks Canada and the Board whose Decision is the subject of the application and not in the possession of the Applicant including, without limitation:
- (a) A certified copy of all the material relied on in making the Decision;
 - (b) The Terms of Reference, Minutes of Meetings, and/or Rules of Procedure, if any, for the Board;
 - (c) All evidence produced by Parks Canada at meetings of the Board regarding the Business Licence or the Board Decision;
 - (d) A transcript, if any, of the oral evidence given at a hearing before or meeting of the Board regarding the Business Licence;
 - (e) Any internal memorandums and correspondence to and from or within the Board and its advisors, Parks Canada, or Trophy Lodge regarding Trophy Lodge, the Business Licence, the Decision, and/or the Board Decision;
 - (f) Copies of the agreements referred to in the Decision and/or the Board Decision, including all of the Establishment Agreements; and
 - (g) The record of advice of the Board, LKDFN, and the NWTMN to Parks Canada referred to in paragraph 3 of the Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of June 2023.



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COURT NO. _____

FEDERAL COURT

BETWEEN

TROPHY LODGE NWT LTD.

APPLICANT

AND

THE ATTORNEY GENERAL OF CANADA AND PARKS
CANADA AGENCY

RESPONDENTS

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*,

RSC 1985, c F-7

NOTICE OF APPLICATION

Filed by:

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