

## IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Le Chameau Exploration Ltd v. Nova Scotia (Attorney General), 2007 NSSC 386

**Date:** 2007/12/11

**Docket:** S. Sn. No. 277337

**Registry:** Sydney

**IN THE MATTER OF:** An application by the Applicants for an Order in the nature of Certiorari to quash the decision of the Executive Director of the Nova Scotia Museum to refuse to issue a Category B Heritage Research Permit the Applicant Le Chameau Explorations Limited

**AND**

**IN THE MATTER OF:** An application by the Applicants for an Order for Mandamus to compel the Minister of Tourism, Heritage and Culture for the Province of Nova Scotia, or his authorized representative, to issue a Category B Heritage Research Permit to the Applicants

**Between:**

**Le Chameau Exploration Limited**, a body corporate incorporated pursuant to the laws of the Province of Nova Scotia, **3185716 Nova Scotia Limited**, a body corporate incorporated pursuant to the laws of the Province of Nova Scotia, **Soverign Exploration Associates International Inc.**, a body corporate, incorporated pursuant to the laws of the State of Utah

Applicants

v.

**The Attorney General of Nova Scotia** representing Her Majesty The Queen in the right of the Province of Nova Scotia, **The Honourable Len Goucher** Minister of Tourism, Culture and Heritage, and **Bill Greenlaw**, in his capacity as Executive Director of the Nova Scotia Tourism

Respondents

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**Judge:** The Honourable Justice A. David MacAdam

**Heard:** December 11, 2007, in Sydney, Nova Scotia

**Written Decision:** March 28, 2008

**Subject:** Administrative Law - Procedural Fairness

**Summary:** The Applicant, Le Chateau, a company engaged in exploring and recovering artifacts from shipwrecks off the coast of Nova Scotia, sought an order in the nature of certiorari quashing the decision of the Executive Director of the Nova Scotia Museum to deny a Category B Research Permit pursuant to the *Special Places Protection Act*, R.S.N.S. 1989, c. 438, and an order in the nature of mandamus, to compel the Director to issue the permit. The applicant also alleged that the Director acted in excess of jurisdiction and erred in law by determining that the government of the United Kingdom owned a wreck thought to be in the area covered by the Permit. In the alternative, it was argued that the Director breached the rules of natural justice and procedural fairness by denying the Applicant the opportunity to be heard with respect to the claim to ownership of the wreck asserted by the government of the United Kingdom.

**Issue:** Whether certiorari and mandamus should be granted in the circumstances?

**Result:** The decision by the Director was an administrative decision affecting the rights, privileges or interests of the Applicant, and was subject to a duty of procedural fairness. The Applicant had a significant interest in having the Permit issued, and there was a legitimate expectation that the Director would consider and decide the issue in accordance with the procedures in the legislation and the principles of natural justice. It was a fundamental error for the Director to accept the British claim without question and without offering the Applicant an opportunity to be heard.

An order in the nature of certiorari issued on the basis of the breach of procedural fairness. It was not appropriate to grant mandamus, as there was no determination that the Applicant was entitled to have the Permit issued. The other issues raised were left to be decided in accordance with the legislatively-mandated procedures, after the parties who might be affected received an opportunity to present their positions.

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