

SUPREME COURT OF NOVA SCOTIA

Citation: Maloney v. Eskasoni First Nation, 2009 NSSC 177

Date: 20090602

Docket: Pic No. 256278

Registry: Halifax

Between:

James Victor Maloney

Plaintiff

- and -

The Eskasoni Indian Band

Defendant

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Judge: The Honourable Justice Gerald R P Moir

Heard: January 3, 4, 8, 9, 10, 11, 2008 and October 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 2008 at Sydney

Last Written Submissions: November 13, 2008

Summary: The plaintiff is a senior and respected security expert and educator. He signed a five year employment contract to implement and administer a difficult program for controlling alcohol and other drug abuse in workplaces at Eskasoni. He was fired. Eskasoni pleaded that the contract was not binding as it was signed by the Chief without Band Council approval and that it was unconscionable.

Issue: (1) Whether the contract was binding on Eskasoni? (2) Whether it is void as a penalty, or otherwise unconscionable?

Result: The contract was binding. Subsection 2(3) of the *Indian Act* should not be given an expansive interpretation. Eskasoni Band Council gave the Chief authority to enter into an employment contract. Even if it had not done so, Eskasoni would have been bound through the Chief's ostensible authority. The contract contained no penalty and it was not otherwise unconscionable.