# SUPREME COURT OF NOVA SCOTIA

**Citation:** Beadle v. Pictou Landing First Nation, 2013 NSSC 25

**Date:** 20130121
**Docket:** Tru No 392566
**Registry:** Truro

**Between:**

Gerald Lee Beadle, Linda Ann Francis, Jonathan Lee Beadle, Priscilla Marie Beadle, Faron Lee Beadle, Melanie Francis, Rachel Francis, Allan Francis, Travis Francis, Dion Paul, John Francis, Hughie Francis

Applicants

and

Pictou Landing Micmac

Respondent

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**Judge:** The Honourable Justice Pierre L. Muise

**Heard:** November 26 2012 at Truro, Nova Scotia

**Final Written Submissions received:** December 13 2012

## Summary:

The Applicants filed a Claim for Compensation (the "Claim") with the Chief and Council of Pictou Landing Indian Band, pursuant to the Boat Harbour Trust Settlement Agreement (the "Agreement"). The Claim sought compensation from the Continuing Compensation Account (the "CCA") and the Community Development Account (the "CDA"), established in implementation of the Agreement.

The Agreement provided that the Chief and Council shall appoint a Tribunal to "hear and determine the claim" within 30 days of receiving it. That did not occur. The Agreement provided that any party to an eligible dispute within Pictou Landing Micmac "may" submit it to arbitration. There was no express requirement that any other party consent to the submission. The Applicants

gave written notice to the Chief and Council that they were submitting the matter for resolution by an arbitrator. No agreement was reached on the appointment of an arbitrator. The Applicants filed this Application for an order appointing an Arbitrator.

The parties subsequently agreed that, if an arbitrator were appointed, it should be Professor A. Wayne MacKay.

**Issues:**

1. Whether arbitration, under the Agreement, was permissive or mandatory;

2. Whether the notice requirements were complied with;

3. Whether the Arbitration should be stayed or set aside because the matter was one for summary judgment and too complex;

4. What the Court's role is on an application to a appoint an arbitrator;

5. Whether the Applicants' claims were arbitrable under the Agreement;

6. Whether the Applicants could make a claim under paragraph 5.6.1 of the Agreement; and,

7. Whether the Court should intervene in the Arbitration.

## Result:

1. If arbitration was chosen by any party it was mandatory.

2. Notice to the Chief and Council was found to be sufficient notice to Pictou Landing Micmac. There was no requirement to give notice to Canada, even if the releases between the Applicants and Canada were in issue, as the determination would not be binding on Canada.

3. The authorities presented dealt with situations where a court proceeding had been started in relation to the arbitrable matter in issue. There was no such corresponding court proceeding, nor summary judgment motion, in the case at hand. The authorities were inapplicable. The matter was not too complex for arbitration.

4. The Court's role, on an application to a appoint an arbitrator, is: to determine whether the dispute is one which it was intended, under the Agreement, would be decided by an arbitrator; and, not to assess the merits of the dispute.

5. The Applicants' claims against the CCA were arbitrable. Those against the CDA were not.

6. The Applicants' claims under paragraph 5.6.1 were arbitrable. It was for the arbitrator to determine whether or not the claims were valid, including whether they were barred or released.

7. The Respondent had not established that the Court should intervene in the Arbitration to prevent manifestly unfair or unequal treatment of a party.

8. Professor MacKay was appointed the Arbitrator to hear and determine the claims against the CCA.