

SUPREME COURT OF NOVA SCOTIA

Citation: *Glooscap First Nation v. Howard*, 2025 NSSC 318

Date: 20251006

Docket: *Ken*, No. 538237

Registry: Kentville

Between:

Glooscap First Nation, Glooscap Landing #1 GP LTD in its capacity as general partner of Glooscap Landing #1 Limited Partnership, and Glooscap First Nation Economic Development Corporation Ltd., doing business as Glooscap Ventures Management

Applicants

v.

Clinton Ray Howard, carrying on business as Glooscap's Finest Herbal Body Care

Respondent

Oral Decision Disposing of Motions

Judge: The Honourable Justice Gail L. Gatchalian

Heard: October 6, 2025, in Kentville, Nova Scotia

Oral Decision: October 6, 2025

Counsel: Derek Simon and Eliza Richardson, for the Applicants
Michael Curry, for the Respondent

By the Court, Orally:

[1] Three motions were set down for hearing today in this matter:

- A motion of the Applicants to strike certain affidavits and portions of affidavits filed by the Respondent.
- A motion of the Respondent to strike certain portions of the affidavits filed by the Applicants.
- A motion of the Respondent to dismiss the application because the Applicants are allegedly relying on an illegal contract.

[2] The question I must decide is whether I should hear from the Respondent today, given that he has not filed a Notice of Contest. The Respondent attempted to file a Notice of Contest fifteen minutes before court today. I have not accepted it for filing.

[3] The Respondent says I should hear from him, as the Respondent has been participating throughout these proceedings, and the grounds for his contesting the application are not a surprise.

[4] Relevant to my decision whether to hear from the Respondent are the following factors:

- The Notice of Application in Chambers was filed on November 13, 2024.
- The Applicants' motion for an interlocutory injunction was heard by me on December 3 and 5, 2025, and granted on December 5, 2025.
- The merits hearing was set down for February 12, 2025.
- Mr. Howard filed a Notice of Constitutional Question and affidavits.
- On February 12, 2025, counsel for Mr. Howard appeared and requested an adjournment of the hearing on the merits, as he had just been retained.
- The merits hearing was adjourned to October 6, 2025.
- The merits hearing was eventually rescheduled to be heard on November 10, 2025.
- A hearing on the standing of Mr. Howard to raise treaty and Aboriginal rights, as raised in the Notice of Constitutional Question, took place on April 29, 2025.
- On May 6, 2025, I released my decision, finding that Mr. Howard does not have standing to raise treaty and Aboriginal rights in this proceeding: *Glooscap First Nation v. Howard*, [2025 NSSC 161](#).

- Civil Procedure Rule 5.06(2) requires a Notice of Contest to be filed, for an appointed time, ten days after the date of notification.
- The Respondent purported to file the Notice of Contest 15 minutes before court this morning, approximately eight months after counsel was retained, and approximately one month before the application hearing on the merits.
- Civil Procedure Rule 5.25(2) states that a judge may grant an order summarily disposing of an application against a respondent if the judge is satisfied that the respondent was notified of the application, the respondent filed no notice of contest (or failed to appear at the hearing or on the motion for directions), the applicant discloses to the judge all communications between the applicant and the respondent about the application, and the evidence supports the granting of the order.
- Mr. Curry says that it would not be just for the court not to hear from the Respondent today, given that Mr. Howard has been participating throughout the proceeding. However, the Notice of Contest frames the issues, and is not optional.
- Mr. Curry says it should not be a surprise to the court or to the Applicants what the grounds of contest are. However, neither the court

nor the other party should be required to guess what the grounds of contest are.

[5] Taking all of the above factors into account, I have determined that I will not be hearing from the Respondent on the motions filed by him and scheduled to be heard today. It would not do justice between the parties to do so. The Respondent's motions are dismissed. Unless and until the Respondent files a motion for permission to file a late Notice of Contest and he is successful on that motion, the court will not be hearing from Mr. Howard on the merits. Put another way, if the Respondent files a motion for permission to file a late Notice of Contest, and he obtains a favourable decision in time for the hearing on the merits, he may refile his motions, and the Court will hear from him on the merits.

Conclusion

[6] Given my decision, it is not necessary to hear from the Applicants today with respect to their motion to strike the affidavits and portions of the affidavits of the Respondent. This is because, as things stand today, the court will not be hearing from the Respondent at the hearing of the merits. The Applicants' motion to strike is adjourned without day.

[7] If the parties cannot agree on the costs of the motions scheduled to be heard today, I will receive written submissions from the Applicants within one week, and from the Respondent within two weeks of today's decision.

Gatchalian, J.