

SUPREME COURT OF NOVA SCOTIA

Citation: Acadia First Nation v. Canada (Attorney General), 2013 NSSC 284

Date: 20130918

Docket: Hfx. No. 412642

Registry: Halifax

Between:

Chief Deborah Robinson and Acadia First Nation, on their own behalves and on behalf of the members of the Acadia Valley First Nation, **Chief Janette Peterson and Annapolis Valley First Nation**, on their own behalves and on behalf of the members of the Annapolis Valley First Nation, **Chief Frank Meuse and Bear River First Nation**, on their own behalves and on behalf of the members of the Bear River First Nation, **Chief Leroy Denny and Eskasoni First Nation**, on their own behalves and on behalf of the members of the Eskasoni First Nation, **Chief Sidney Peters and Glooscap First Nation**, on their own behalves and on behalf of the members of the Glooscap First Nation, **Chief Terrance Paul and Membertou First Nation**, on their own behalves and on behalf of the members of the Membertou First Nation, **Chief Robert Gloade and Millbrook First Nation**, on their own behalves and on behalf of the members of the Millbrook First Nation, **Chief Gerard Julian and Paqtnkek First Nation**, on their own behalves and on behalf of the members of the Paqtnkek Mi'kmaw Nation, **Chief Andre Paul and Pictou Landing First Nation**, on their own behalves and on behalf of the members of the Pictou Landing First Nation, **Chief Wilbert Marshall and Potlotek First Nation**, on their own behalves and on behalf of the members of the Potlotek First Nation, **Chief Norman Bernard and Wagmatcook First Nation**, on their own behalves and on behalf of the members of the Wagmatcook First Nation, **Chief Roderick Googoo and Waycobah First Nation**, on their own behalves and on behalf of the members of the Waycobah First Nation

Applicants / Respondents on Motion

v.

The Attorney General Of Canada

Respondent/Applicant on Motion

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Judge: The Honourable Justice Peter P. Rosinski

Heard: September 4 and 5, 2013, in Halifax, Nova Scotia

Subject: Pleadings in support of declaratory relief in Aboriginal treaty right context - *CPR 38.07(5)* were subject to a claim of summary judgment on pleadings - *CPR 13.03*

Summary: In **Marshall No.1**, [1999] 3 SCR 456 and **Marshall No.2**, [1999] 3 SCR 533 the Supreme Court confirmed a treaty right to a moderate livelihood fishing in favour of the Applicant Aboriginal persons. The Court did not, however, deal with the questions of whether the existing regulatory limitations thereon accommodated or infringed the treaty right, and whether Canada could justify any infringements, because Canada did not argue or place evidence before the trial court to support such arguments.

The Applicants therefore now seek a declaration that would in effect attempt to answer those questions left unanswered in **Marshall**. Canada made a motion to strike out the pleadings contained in a Notice of Application in Court as being “clearly unsustainable” under *CPR 13.03*.

Issue: Are the pleadings “clearly unsustainable” as presently drafted?

Result: Pleadings are “clearly unsustainable” under *CPR 13.03* as they do not plead sufficient material facts, and rest on legal premises not in accord with the present state of the law. Nevertheless, the pleadings will not be struck if the Applicants file an Amended Notice of Application, as they requested, within 30 days.

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QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***