

Saskatchewan (Attorney General) V. Pasqua First Nation, File No. 37084, Supreme Court of Canada, 22 December 2016

March 02, 2017

Download the entire Aboriginal Legal Issues e-Newsletter – March 2, 2017.

The Supreme Court of Canada dismissed a leave application in regards to the 2016 order of the Federal Court of Appeal (2016 FCA 133).

The underlying appeal concerns whether the Federal Court has jurisdiction over a claim by the Pasqua First Nation (PFN) relating to a treaty land entitlement agreement. The Federal Court of Appeal affirmed that the Federal Court possesses jurisdiction over the portions of the PFN's claim that allege a breach of Saskatchewan's obligations under the PFN Settlement Agreement. However, the portion of the claim which alleges a violation by Saskatchewan of its duty to consult with the PFN with respect to the grant of a subsurface lease fell outside the jurisdiction of the Federal Court, and the Court therefore allowed the appeal in part. Saskatchewan sought leave to appeal this order, and the PFN sought leave to cross-appeal.

A summary of the case found on the Court's website was as follows:

Courts – Federal Court – Jurisdiction – Canada, Province of Saskatchewan and respondent First Nation entering into agreement to implement terms of unfulfilled historical treaty – Whether the Federal Court can assume jurisdiction and grant relief against a province in a contractual dispute between a province and a First Nation over provincial lands and minerals – Whether parties to a contract can override the constitutional and statutory limits of Federal Court jurisdiction – Whether the constitutional doctrine of the honour of the Crown can rebut provincial Crown immunity from federal statutes or otherwise ground Federal Court jurisdiction over a province – Whether the Federal Court can assume jurisdiction over the provinces in advance of any statutory grant of jurisdiction.

In September, 1874, the Crown and various First Nations concluded Treaty Number 4. Among the promises made by the Crown was to provide the signatory First Nations with reserve land "of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families". This promise was not fulfilled, and there was a

shortfall in the amount of reserve land provided to Treaty Number 4 First Nations, including the respondent, Pasqua First Nation ("PFN"). In 1993, Canada, Saskatchewan and a number of First Nation signatories to Treaty 4 concluded the Saskatchewan Treaty Land Entitlement Framework Agreement, a comprehensive agreement, designed to fulfill the Crown's outstanding obligations under Treaty 4 and two other treaties. Both the Framework Agreement and the PFN Settlement Agreement provided that disputes arising under them would be referred to the Federal Court for determination. On June 17, 2014, the PFN commenced an action in the Federal Court against Canada and Saskatchewan as respondents, alleging that both Canada and Saskatchewan had violated their obligations under the PFN Settlement Agreement and that both had also failed to discharge their obligations to consult with the PFN regarding, in particular, the grant of a subsurface mineral lease for the Legacy Mining Project. Saskatchewan brought a motion to strike the PFN's action, arguing that notwithstanding the attornment clauses in the Agreements the Federal Court did not have jurisdiction over Saskatchewan or over the subject matter of the PFN's claim against Saskatchewan.

The applications for leave to appeal and leave to cross -appeal were dismissed with costs to the respondents, Chief M. Todd Peigan on behalf of himself and all other members of the Pasqua First Nation and the Pasqua First Nation.

<https://scc-csc.lexum.com/scc-csc/news/en/item/5398/index.do>

By

[Scott Kerwin](#)

Expertise

[Indigenous Law](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.