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

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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

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