SUPREME COURT OF YUKON

Citation: *Ross River Dena Council* v. *Attorney General of Canada,* 2011 YKSC 86

Date: 20111114
Docket S.C. No.: 05-A0043
06-A0092
Registry: Whitehorse

BETWEEN:

ROSS RIVER DENA COUNCIL

Plaintiff

AND:

THE ATTORNEY GENERAL OF CANADA

Defendant

AND:

BETWEEN:

ROSS RIVER DENA COUNCIL

Plaintiff

AND:

THE ATTORNEY GENERAL OF CANADA
on behalf of and as the representative for
Her Majesty the Queen in right of Canada

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
Stephen Walsh — Counsel for the Plaintiff
Suzanne Duncan — Counsel for the Defendant

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH
(Ruling on amendment to Statement of Defence)

[1] GOWER J. (Oral): This is an application by the Attorney General of Canada to

amend its statement of defence in the 2006 action, specifically at para. 22. The amendments are set out in detail at para. 6 of Canada's outline on this application and I do not think there is any need to read them into the record. There is, however, one change to the amendment in para. 22(b) of the proposed amended fresh amended statement of defence, and that is that it will now read:

> "he admits that the provisions of the *Rupert's Land* and *North-Western Territory Order*, including the terms and conditions referred to by the plaintiffs, are part of the *Constitution of Canada*, and, as such, their constitutional effect, if any, is subject to being interpreted and applied by this Court;"

[2] One of the leading cases on the principles to be considered in such an amendment is *Langret Investments S.A.* v. *McDonnell*, [1996] B.C.J. No. 550, a decision of the British Columbia Court of Appeal. At para. 34 of that decision, Rowles J.A., speaking for the Court, said:

> "Rule 24(1) of the Rules of Court in British Columbia allows a party to amend an originating process or pleading. Amendments are allowed unless prejudice can be demonstrated by the opposite party or the amendment will be useless. The rationale for allowing amendments is to enable the real issues to be determined. The practice followed in civil matters when amendments are sought fulfils the fundamental objective of the civil rules which is to ensure the just, speedy and inexpensive determination of every proceeding on the merits."

[3] Mr. Walsh has made it clear in his submissions that he is not asserting any prejudice from the proposed amendment, but wished to put his remarks on the record because, in his view, the Crown has resiled from a previous position in a case management conference.

[4] However, another British Columbia Court of Appeal decision *McNaughton* v. *Baker*, [1988] B.C.J. No. 515, was summarized in the *British Columbia Supreme Court Rules Annotated 2008*, by A.P. Seckel, Q.C. & J.C. MacInnis (Thomas Carswell: 2007), as saying that evidence should not be considered on an application to amend a pleading. I take that as a direction to essentially ignore what has been put before the Court in terms of what did or did not take place at a previous case management conference.

[5] It seems to me that the amendment sought does help to define the real issue between the parties. It is not a useless amendment. It does not prejudice the Plaintiff, and therefore it should be allowed and I so rule.

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GOWER J.