

THE QUEEN IN RIGHT OF CANADA v. CHIEF WILLIAM JOE ET AL.

Unreported at date of publication

Federal Court of Appeal, Pratte, Le Dain JJ., and Lelands D.J., June 21, 1983

I.G. Whitehall, Q.C., and J. McCann, for the appellant  
James O'Reilly and D.A. Pearson, for the respondents

The respondents sued the appellant in the Trial Division for a declaration that they have the status of Indians and, second, for a declaration that a piece of land where they lived, which was the property of the Province of Newfoundland, was an Indian reserve. A notice of motion filed in the Trial Division by the appellant to strike out that part of the statement of claim relating to the second declaration sought was dismissed. On appeal, the appellant argued that the Federal Court, in an action directed solely against Her Majesty in Right of Canada, does not have the jurisdiction to declare that the provincial lands are an Indian reserve.

Held: (Pratte J., for the Court)

1. The declaration sought by the respondents is a declaration against the Province of Nrefoundland which could not be made in an action directed against the appellant.
2. The Federal Court under the Federal Court Act, R.S.C. 1970 (2<sup>nd</sup> Supp.) c. 10 does not have jurisdiction to grant relief against a province. Therefore, the relief sought by the respondents (i.e. declaration that the lands which otherwise beloong to the Province of Newfoundland are an Indian reserve) could not be granted even if the Province of Neewfoundland were a defendant in this section.
2. Appeal allowed.

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PRATTE J.: This is an appeal from a judgment of the Trial Division dismissing a motion made by the appellant to strike out part of a statement of claim filed by the respondents.

[The notice of motion filed in the Trial Division by the appellant referred only to certain specified paragraphs of the statement of claim. However, the application which, according to both counsel, was made and argued in the Trial Division was an application to strike out, in addition to the allegations contained in the paragraphs of the statement of claim specified in the notice of motion, the part of the prayer for relief relating to those paragraphs. The appeal was also argued on that basis. The appellant's application, therefore, should be considered as directed against both the specified paragraphs of the statement of claim and the part of the prayer for relief relating to those paragraphs.]

The respondents sued the appellant in the Trial Division for a declaration, first, that they had the status of Indians and, second, that a piece of land where they lived in the Province of Newfoundland, and which could otherwise have been the property of that Province, was an Indian Reserve.

The appellant's motion to strike is directed against that part of the statement of claim which relates to the second declaration sought. According to the appellant, the Court, specially in an action directed solely against Her Majesty in Right of Canada, does not have the jurisdiction to declare that lands which otherwise belong to a Province are an Indian Reserve.

In my view, the appeal should succeed. In the part of the statement of claim that is here in issue, the respondents seek, in effect, a declaration that they have an interest in lands belonging to the Province of Newfoundland. Such a declaration, if it were made, would clearly have an indirect effect on the appellant who, as a consequence of the declaration, would have to assume certain responsibilities and exercise certain powers in respect of those lands. However, the main and primary effect of such a declaration would be, in my opinion, to affect the property rights of the Province of Newfoundland. For that reason, I consider that the declaration sought by the respondents is, in truth, a declaration against the Province of Newfoundland which could not be made in an action directed against the appellant. Moreover, as section 17 of the Federal Court Act [R.S.C. 1970 (2<sup>nd</sup> Supp.) c. 10] does not give the Court jurisdiction to grant relief against a

Province, the relief sought by the respondents could not be granted by the Court even if the Province of Newfoundland were a defendant in this action.

For these reasons, I would allow the appeal, set aside the order of the Trial Division and strike out the following parts of the respondents' statement of claim: paragraphs 25, 26, 27, the portion of paragraph 28 which reads:

...that the land described in paragraph 21 hereof is land reserved for the Indians within the meaning of section 91(24) of the Constitution Act, 1867, that the said Constitution Act, 1867 applies to the said land, that the said land is an interest other than that of the Province in same, that the Crown's rights therein are subject to an existing trust in relation thereto and that Plaintiffs are entitled to the exclusive use and benefit of the said land described in paragraph 21 and the natural resources thereof;

and paragraphs g) and h) of the prayer for relief. I would grant the appellant Her costs both in this Court and in the Trial Division.