

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160419

Docket: A-313-15

Citation: 2016 FCA 118

CORAM: NADON J.A.
RENNIE J.A.
GLEASON J.A.

BETWEEN:

**HWLITSUM FIRST NATION, as represented
by its Chief and Council CHIEF RAYMOND
CLAYTON WILSON AND COUNCILLORS
LINDSAY WILSON, JANICE WILSON, JIM
HORN BROOK and DANNY WILSON on their
own behalf and on behalf of the members of the
HWLITSUM FIRST NATION**

Appellants

and

**THE ATTORNEY GENERAL OF CANADA,
HALALT FIRST NATION, CHEMAINUS
FIRST NATION, LYACKSON FIRST
NATION, PENELAKUT FIRST NATION,
COWICHAN TRIBES, MUSQUEAM FIRST
NATION, TSAWWASSEN FIRST NATION,
KATZIE FIRST NATION, KWIKWETLEM
FIRST NATION, QAYQAYT FIRST NATION
(NEW WESTMINSTER),
SEMIAHMOO FIRST NATION, SQUAMISH
FIRST NATION, STS'AILES (CHEHALIS)
FIRST NATION, TSLEIL-WAUTHUTH
NATION, UNION BAR FIRST NATION, YALE
FIRST NATION, AITCHELITZ FIRST
NATION, LEQ'A:MEL FIRST NATION,
MATSQUI FIRST NATION, POPKUM FIRST
NATION, SKAWAHLOOK FIRST NATION,**

**SKOWKALE FIRST NATION, SHXWHA:Y
VILLAGE (SKWAY FIRST NATION),
SQUALA FIRST NATION, SUMAS FIRST
NATION, TZEACHTEN FIRST NATION,
YAKWEAKWIOOSE FIRST NATION,
SEABIRD ISLAND BAND, SCOWLITZ FIRST
NATION, SOOWAHLIE FIRST NATION,
KAW-KAW-APILT FIRST NATION,
KWANTLEN FIRST NATION,
SHXW'ŌWHÁMEL FIRST NATION,
CHAWATHIL FIRST NATION AND
CHEAM INDIAN BAND**

Respondents

Heard at Vancouver, British Columbia, on April 18, 2016.
Judgment delivered from the Bench at Vancouver, British Columbia, on April 18, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Federal Court of Appeal



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KWAU-KWAU-APILT FIRST NATION,
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SHXW'ŌWHÁMEL FIRST NATION,
CHAWATHIL FIRST NATION AND
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Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on April 18, 2016).

NADON J.A.

[1] Although we cannot entirely endorse the reasons given by Manson, J in support of his order and in particular in regard to the serious issue component of the tripartite test put forward by the Supreme Court of Canada in *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110, (*Metropolitan Stores*) we see no basis to interfere with the impugned decision.

[2] In our view, the judge's conclusions with respect to the irreparable harm and balance of convenience components of the *Metropolitan Stores* tripartite test were clearly open to him in light of the evidence and we find no reviewable error in regard thereto.

[3] In our view, many if not most of the issues raised by the Appellants in their application for interim relief and hence in this appeal are issues which, by reason of their complexity and the

extensive evidence required to determine these issues, necessitate in depth factual findings which can only be made in the context of their application for judicial review or preferably in the context of a full trial of the issues. To be clear, it is our opinion that it is in the context of the judicial review application or a trial that the issues raised by the Appellants should be dealt with and not in the context of an application for interim relief.

[4] For these reasons, we are satisfied that we should not interfere with the judge's order. We also see no basis to disturb his order on costs.

[5] Consequently, the appeal will be dismissed with costs.

“M. Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-313-15

**(APPEAL FROM AN ORDER AND REASONS OF THE HONOURABLE MR. JUSTICE
MICHAEL D. MANSON OF THE FEDERAL COURT, DATED JUNE 26, 2015,
DOCKET NO. T-2072-14.)**

STYLE OF CAUSE:

HWLITSUM FIRST NATION, as
represented by its Chief and Council
CHIEF RAYMOND CLAYTON
WILSON AND COUNCILLORS
LINDSAY WILSON, JANICE
WILSON, JIM HORNBROOK and
DANNY WILSON on their own
behalf and on behalf of the members
of the HWLITSUM FIRST
NATION v. THE ATTORNEY
GENERAL OF CANADA,
HALALT FIRST NATION,
CHEMAINUS FIRST NATION,
LYACKSON FIRST NATION,
PENELAKUT FIRST NATION,
COWICHAN TRIBES,
MUSQUEAM FIRST NATION,
TSAWWASSEN FIRST NATION,
KATZIE FIRST NATION,
KWIKWETLEM FIRST NATION,
QAYQAYT FIRST NATION (NEW
WESTMINSTER),
SEMIAHMOO FIRST NATION,
SQUAMISH FIRST NATION,
STS'AILES (CHEHALIS) FIRST
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NATION, YALE FIRST NATION,
AITCHELITZ FIRST NATION,
LEQ'AM:EL FIRST NATION,
MATSQUI FIRST NATION,
POPKUM FIRST NATION,
SKAWAHLOOK FIRST NATION,
SKOWKALE FIRST NATION,
SHXWHA:Y VILLAGE (SKWAY
FIRST NATION),

SQUIALA FIRST NATION,
SUMAS FIRST NATION,
TZEACHTEN FIRST NATION,
YAKWEAKWIOOSE FIRST
NATION, SEABIRD ISLAND
BAND, SCOWLITZ FIRST
NATION, SOOWAHLIE FIRST
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FIRST NATION, KWANTLEN
FIRST NATION,
SHXW'ŌWHÁMEL FIRST
NATION, CHAWATHIL FIRST
NATION AND CHEAM INDIAN
BAND

PLACE OF HEARING:

VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING:

APRIL 18, 2016

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NADON J.A.
RENNIE J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY:

NADON J.A.

APPEARANCES:

Jeffrey R.W. Rath and Paul E. Reid

FOR THE APPELLANTS

Steven Postman and Alex Semple

FOR THE RESPONDENT
THE ATTORNEY GENERAL OF
CANADA

Geoff Plant, Q.C. and Fred Sheppard

FOR THE RESPONDENT
TSAWWASSEN FIRST NATION

Cheryl Sharvit and Aaron Wilson

FOR THE RESPONDENT
MUSQUEAM FIRST NATION

Graham Kosakoski

FOR THE RESPONDENTS
HALALT FIRST NATION,
CHEMAINUS FIRST NATION,
PENELAKUT FIRST NATION
AND COWICHAN TRIBES

SOLICITORS OF RECORD:

Rath & Company
Barristers and Solicitors
Priddis, Alberta

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

Gall Legge Grant & Munroe LLP
Barristers and Solicitors
Vancouver, British Columbia

Mandell Pinder LLP
Barristers and Solicitors
Vancouver, British Columbia

Rosenberg Law
Barristers and Solicitors
Vancouver, British Columbia

FOR THE APPELLANTS

FOR THE RESPONDENT
THE ATTORNEY GENERAL OF
CANADA

FOR THE RESPONDENT
TSAWWASSEN FIRST NATION

FOR THE RESPONDENT
MUSQUEAM FIRST NATION

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