

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150324

Docket: A-307-14

Citation: 2015 FCA 82

**CORAM: PELLETIER J.A.
WEBB J.A.
BOIVIN J.A.**

BETWEEN:

**CHIEF R. DONALD MARACLE IN HIS PERSONAL CAPACITY
AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF
THE MEMBERS OF THE MOHAWKS OF THE BAY OF
QUINTE, CHIEF WILLIAM MONTOUR IN HIS PERSONAL
CAPACITY AND IN A REPRESENTATIVE CAPACITY ON
BEHALF OF THE MEMBERS OF THE SIX NATIONS OF THE
GRAND RIVER, CHIEF JOEL ABRAM IN HIS PERSONAL
CAPACITY AND IN A REPRESENTATIVE CAPACITY ON
BEHALF OF THE MEMBERS OF THE ONEIDA NATION OF
THE THAMES, and CHIEF HAZEL FOX-RECOLLET IN HER
PERSONAL CAPACITY AND IN A REPRESENTATIVE
CAPACITY ON BEHALF OF THE MEMBERS OF
WIKWEMIKONG UNCEDED INDIAN RESERVE**

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on March 24, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on March 24, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court of Appeal



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GRAND RIVER, CHIEF JOEL ABRAM IN HIS PERSONAL
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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 24, 2015).

PELLETIER J.A.

[1] We are all of the view that this appeal should be dismissed.

[2] It is common ground that the standard of review of the Commission's decision is reasonableness. The Commission concluded that the appellants had not shown that the differential treatment of which they complained was as a result of discrimination on a prohibited ground. We are agreed that this conclusion is reasonable for the following reasons.

[3] Even if we assume that the PwC study demonstrates that the appellant First Nations are subject to differential treatment, the evidence only shows that the "special characteristic" (*Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536 at paragraph 19) of the appellants which gives rise to this differential treatment is their size relative to other First Nations in Ontario. Size is not a prohibited ground of discrimination.

[4] The Commission did not have before it evidence which would allow it to find that the size of a First Nation was in some way a proxy for the national or ethnic character of that First Nation.

[5] In *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.) (Meiorin Grievance)*, [1999] 3 S.C.R. 3, for example, it was the evidence of the difference in the aerobic capacity between men and women which allowed the tribunal to make the link between an apparently

neutral rule and systemic gender based discrimination. In this case, recognizing that we are at the Commission and not at the Tribunal stage, the appellants have not pointed to any facts or any line of reasoning which would allow the Commission to make a link between band size and national or ethnic origin.

[6] As a result, the Commission's decision that any differential treatment was not based on national or ethnic origin was reasonable.

[7] The appeal will therefore be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-307-14

STYLE OF CAUSE:

CHIEF R. DONALD MARACLE
IN HIS PERSONAL CAPACITY
AND IN A REPRESENTATIVE
CAPACITY ON BEHALF OF THE
MEMBERS OF THE MOHAWKS
OF THE BAY OF QUINTE, CHIEF
WILLIAM MONTOUR IN HIS
PERSONAL CAPACITY AND IN
A REPRESENTATIVE CAPACITY
ON BEHALF OF THE MEMBERS
OF THE SIX NATIONS OF THE
GRAND RIVER, CHIEF JOEL
ABRAM IN HIS PERSONAL
CAPACITY AND IN A
REPRESENTATIVE CAPACITY
ON BEHALF OF THE MEMBERS
OF THE ONEIDA NATION OF
THE THAMES, AND CHIEF
HAZEL FOX-RECOLLET IN HER
PERSONAL CAPACITY AND IN
A REPRESENTATIVE CAPACITY
ON BEHALF OF THE MEMBERS
OF WIKWEMIKONG UNCEDED
INDIAN RESERVE v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING:

Ottawa, Ontario

DATE OF HEARING:

MARCH 24, 2015

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.
WEBB J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY:

PELLETIER J.A.

APPEARANCES:

Paul Champ
Bijon Roy

FOR THE APPELLANTS
CHIEF R. DONALD MARACLE
IN HIS PERSONAL CAPACITY

AND IN A REPRESENTATIVE
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MOHAWKS OF THE BAY OF
QUINTE, CHIEF WILLIAM
MONTOUR IN HIS PERSONAL
CAPACITY AND IN A
REPRESENTATIVE CAPACITY
ON BEHALF OF THE
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RIVER, CHIEF JOEL ABRAM IN
HIS PERSONAL CAPACITY
AND IN A REPRESENTATIVE
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THE MEMBERS OF THE
ONEIDA NATION OF THE
THAMES, AND CHIEF HAZEL
FOX-RECOLLET IN HER
PERSONAL CAPACITY AND IN
A REPRESENTATIVE
CAPACITY ON BEHALF OF
THE MEMBERS OF
WIKWEMIKONG UNCEDED
INDIAN RESERVE

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AND IN A REPRESENTATIVE
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CHIEF WILLIAM MONTOUR IN
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MEMBERS OF THE ONEIDA
NATION OF THE THAMES, AND
CHIEF HAZEL FOX-RECOLLET
IN HER PERSONAL CAPACITY
AND IN A REPRESENTATIVE
CAPACITY ON BEHALF OF THE
MEMBERS OF WIKWEMIKONG
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