



A-344-95

CORAM: HUGESSEN J.A.
LINDEN J.A.
ROBERTSON J.A.

B E T W E E N :

THE ATTORNEY GENERAL OF CANADA
on behalf of Her Majesty the Queen in Right of Canada

APPELLANT
(DEFENDANT)

- and -

**EDWARD ANDERSON, GARNET WOODHOUSE,
MARSHALL WOODHOUSE, ROBERT MCLEAN,
PATRICK ANDERSON, ORMAND STAGG and
GEORGE TRAVERSE on their own behalf and on behalf of all
members of the FAIRFORD FIRST NATION,
a body of Indians described as the
Fairford Band and declared to be a band for
the purposes of the *Indian Act*, by P.C. 1973-3571**

RESPONDENTS
(PLAINTIFFS)

Heard at Ottawa, Ontario, Tuesday, September 10, 1996.

Judgment rendered from the Bench, September 10, 1996.

REASONS FOR JUDGMENT OF THE COURT
DELIVERED BY:

HUGESSEN J.A.



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario,
Tuesday, September 10, 1996.)

HUGESSEN J.A.

We are in general agreement with the reasons of the learned motions judge. In particular, we agree that the effect of section 19 of the *Federal*

*Court Act*¹ and section 1 of the *Federal Courts Jurisdiction Act*² of Manitoba was to give this Court jurisdiction over the appellant's proposed third party claim against the province of Manitoba. Assuming, which we doubt, that section 19 requires a substratum of federal law other than section 19 itself, we also agree with the judge that the respondents' action against the appellant will turn primarily on issues of aboriginal title, the *Indian Act*, and the Crown's fiduciary obligation to aboriginal peoples, all undisputably matters of federal law. Finally, we agree

1 R.S.C. 1985, c. F-7

19. Where the legislature of a province has passed an Act agreeing that the Court, whether referred to in that Act by its present name or by its former name of the Exchequer Court of Canada, has jurisdiction in cases of controversies

- (a) between Canada and that province, or
- (b) between that province and any other province or provinces that have passed a like Act,

the Court has jurisdiction to determine the controversies and the Trial Division shall deal with any such matter in the first instance.

19. Lorsque l'assemblée législative d'une province a adopté une loi reconnaissant sa compétence en l'espèce, qu'elle y soit désignée sous son nouveau nom ou celui de Cour de l'Échiquier du Canada, la Cour fédérale est saisie des cas de litige:

- a) entre le Canada et cette province;
- b) entre cette province et une ou plusieurs autres provinces ayant adopté une loi semblable.

C'est la Section de première instance qui connaît de ces affaires.

2 R.S.M. 1987, c. C270

1. The Supreme Court of Canada and the Federal Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Acts of the Parliament of Canada known as the Supreme Court Act and the Federal Court Act have or has jurisdiction in cases of

- (a) controversies between Canada and the Province of Manitoba;
- (b) controversies between any other province of Canada, that may have passed an Act similar to this Act, and the Province of Manitoba.

1. Conformément aux dispositions des lois du Parlement du Canada, à savoir la Loi sur la Cour suprême et la Loi sur la Cour fédérale, la Cour suprême du Canada et la Cour fédérale du Canada ou la Cour suprême du Canada seule ont compétence:

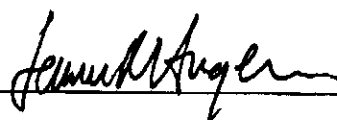
- a) dans les litiges survenant entre le Canada et la province du Manitoba;
- b) dans les litiges survenant entre la province du Manitoba et toute autre province du Canada qui a adopté une loi semblable à celle-ci.

that the judge correctly distinguished the decision in *Union Oil Co. of Canada Ltd.*
*v. The Queen in Right of Canada et al*³.

The appeal will be dismissed.

(Later)

On the issue of costs, while we do not believe this is a matter where
solicitor and client costs should be awarded, we think it appropriate to direct that
the costs of the appeal be taxed in accordance with Column V of Tariff "B" and
we shall so order.



J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: A-344-95

STYLE OF CAUSE: Attorney General of Canada v.
Edward Anderson et al.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 10, 1996

REASONS FOR JUDGMENT OF THE COURT (Hugessen, Linden & Robertson JJ.A.)

RENDERED FROM THE BENCH BY: Hugessen, J.A.

APPEARANCES:

Mr. Craig J. Henderson
Mr. Sidney R. Restall for the Appellant

Mr. E. Anthony Ross
Mr. Brian Hebert for the Respondent

SOLICITORS OF RECORD:

Mr. George Thomson
Deputy Attorney General of Canada
Ottawa, Ontario for the Appellant

Ross Barrett & Scott
Halifax, Nova Scotia for the Respondent