

Court File No. SICA-1397

PRINCE EDWARD ISLAND COURT OF APPEAL

BETWEEN:

The MI'KMAQ OF PRINCE EDWARD ISLAND,
CHIEF MATILDA RAMJATTAN, on her own behalf and on behalf of all of the members of the
LENNOX ISLAND FIRST NATION, and
CHIEF BRIAN FRANCIS, on his own behalf and on behalf of all of the members of the
ABEGWEIT FIRST NATION

Appellants
(Applicants)

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD
ISLAND, 9711864 CANADA INC., and DONALD J. MCDUGALL

Respondents
(Respondents to application)

APPLICATION UNDER *Judicial Review Act*, R.S.P.E.I., 1988, J-3

NOTICE OF APPEAL

THE Mi'kmaq of Prince Edward Island and, Chief Matilda Ramjattan, on her own behalf and on behalf of all of the members of the Lennox Island First Nation, and Chief Brian Francis, on his own behalf and on behalf of all of the members of the Abegweit First Nation (the "Appellants"), APPEAL to the Court of Appeal from the Judgment of the Honourable Justice Gordon L. Campbell filed on July 31, 2018.

THE APPELLANTS ASK that the Judgment be set aside and judgment be granted as follows:

1. A declaration that the Respondent, Her Majesty the Queen in Right of the Province of Prince Edward Island (the "Crown"), has failed to adequately consult and accommodate the Appellants with respect to its decision to convey 325.59 acres of land at Woodstock, Lots 5 and 6, Prince County, Province of Prince Edward Island (hereinafter referred to as

the "**Lands**") to the Respondents Donald J. McDougall and 9711864 Canada Inc. (the "**Company**");

2. A declaration that Order in Council EC 2017-6 and Order in Council EC 2017-12 (collectively the "**Orders in Council**") are invalid and set aside to the extent that they purport to grant permission to the Company and Mr. McDougall the right to acquire the Lands from the Province;
3. A declaration that the transfer of the Lands which has already purported to have taken place is without effect or, alternatively, a declaration that the Orders in Council are suspended or postponed until the Province has adequately consulted and accommodated the Mi'kmaq of Prince Edward Island;
4. In the alternative, that the Judgment be set aside and the matter be remitted to the Supreme Court of Prince Edward Island for a rehearing;
5. Costs in this court and below; and
6. Such further and other relief as this Honourable Court may deem just and expedient.

THE GROUNDS OF APPEAL are as follows:

1. That the Chambers Judge erred in failing to find that the Crown in the course of transferring the Lands to the Respondent Company and Respondent McDougall failed to properly consult the Appellants, the Mi'kmaq of Prince Edward Island.
2. The Chambers Judge erred in failing to find that the transfer of the Lands to the Respondents could have an adverse effect on the claimed Aboriginal title to the Lands.
3. The Chambers Judge erred in finding that there was an adequate degree of consultation in this case, as this finding was based on a number of erroneous propositions, as follows:
 - (a) That the transfer of the Lands from the Crown to a private party could not have an adverse effect on the claimed Aboriginal title to the Lands;

- (b) That the Appellants/Applicants were required to establish continuity of occupation in this case;
 - (c) That the degree of present day site-specific use and occupation of the Lands was the main factor, or a significant factor, in determining whether adequate consultation had taken place in this case;
 - (d) In finding that the degree of consultation required in this case is at the low end of the Haida spectrum, because that finding was premised on the degree of site-specific present day use and occupation of the Lands by the Appellants;
 - (e) That the Crown obligations to consult were minimal in this case, if triggered at all, because present day use and occupation of the Lands as a golf course would not change in the immediate future even if the Lands were transferred;
 - (f) That there was no requirement in this case to determine whether or not the duty to consult had been triggered because there was no immediate contemplated change of use of the Lands.
4. The Chambers Judge erred in the legal test he applied in this case because he applied the test that is appropriate for proof of Aboriginal title in an action brought for a declaration of Aboriginal title, and he did not apply the correct test for a judicial review application to determine whether or not the Crown had fulfilled its duty to consult.
5. The Chambers Judge erred in the legal test he applied in this case, as he applied the test for “infringement” as that term has been developed in the case law concerning whether or not a Section 35 right had been breached. He should have applied the correct test to be applied on a judicial review application to determine whether or not the Crown has fulfilled its duty to consult which is whether there could be an adverse effect on the claimed right from the proposed Crown activity.
6. In this case, the Chambers Judge should have considered whether the proposed transfer of the Lands from the Crown to private individuals could have an adverse effect upon the

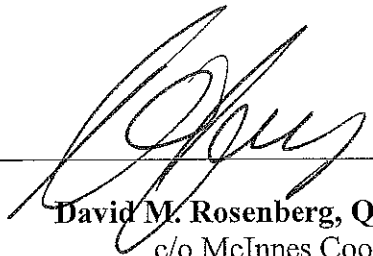
Mi'kmaq Aboriginal title to those lands, and not whether the transfer constituted an infringement.

7. Such other grounds as counsel may advise.

BASIS FOR THE APPELLATE COURTS JURISDICTION:

1. Judgment appealed from is final.
2. It is not necessary to obtain leave to appeal.

Date: August 24, 2018



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PRINCE EDWARD ISLAND COURT OF APPEAL

The Mi'Kmaq of Prince Edward Island, et al

Appellants

Her Majesty the Queen in right of the Province of Prince Edward
Island, et al

Respondents

NOTICE OF APPEAL
(Judicial Review Act)

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DMR/JWH