

**Cheslatta Carrier Nation v. Canada**

**Between**

**Marvin Charlie, Chief of the Cheslatta Carrier Nation, on  
behalf of himself and all past, present and future members of  
the Cheslatta Carrier Nation as defined in the Indian Act,  
R.S.C. 1970, c. 1-6, ascertained and unascertained, and their  
legal personal representatives, Plaintiffs, and**

**Her Majesty the Queen, Defendant**

**[1991] F.C.J. No. 1286**

**[1991] A.C.F. no 1286**

**30 A.C.W.S. (3d) 1119**

**Action No. T-3009-90**

**Federal Court of Canada - Trial Division**

**Vancouver, British Columbia**

**Pinard J.**

**Heard: December 9, 1991**

**Judgment: December 13, 1991**

**(6 pp.)**

**Practice — Evidence — Production of documents from non-party — Relevant tests met.**

These were applications for production of documents from a person not a party to the action. The main action concerned the surrender to the Crown and subsequent transfer of Indian reserves.

HELD: The applications were allowed. The relevant tests of specificity, convenience and compellability were met. There was a balance of probability that the documents were in the possession of the non-party. The production of the documents could be compelled by way of Subpoena Duces Tecum which might cause inconvenience, delay and possible further discoveries.

**STATUTES, REGULATIONS AND RULES CITED:**

Court Order Interest Act, R.S.B.C. 1979, c. 76. Federal Court Rules, Rule 454, 454(1).  
Indian Act, R.S.C. 1985, c. I-6.

Dick Byl, for the Plaintiffs.

Mitchell Taylor, for the Defendant.

Chris W. Sanderson, for Non-Party Respondent.

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Pinard J. (Reasons for Order):— Before this Court are two applications made on behalf of the Plaintiffs pursuant to Rule 454 [Footnote appended to judgment], to compel production of documents from a person not a party, in this case Alcan Smelters and Chemicals Ltd. (Alcan). The main action concerns the Surrender to Her Majesty the Queen and the subsequent transfer to

Alcan, in 1952, of some 10 Indian Reserves, and is directed against Her Majesty the Queen only. In the Statement of Claim, relief is sought as follows:

- 1. A Declaration that the Surrender of I.R. Nos. 1, 2, 5, 7, 9, 10, 11, 12, 13 and 16 by the Band is null and void and be set aside;
- 2. A Declaration that the transfer of I.R. Nos. 1, 2, 5, 7, 9, 10, 11, 12, 13 and 16 to Alcan is null and void and be set aside;
- 3. Recision of the surrender documents and all ancillary agreements relating to the surrender of I.R. Nos. 1, 2, 5, 7, 9, 10, 11, 12, 13 and 16;
- 4. General Damages;
- 5. Special Damages;
- 6. Punitive or Exemplary Damages;
- 7. Costs of this Action;
- 8. Court Order Interest, pursuant to the Court Order Interest Act, RSBC 1979 chapter 76 and amendments thereto;
- 9. Such further and other relief as this Court deems meet.

Upon reading all the affidavits and the other documents filed, upon consideration of the arguments presented by learned counsel for the Plaintiffs, the Defendant and Alcan, and upon considering the particular situation and the nature of this particular case, I am satisfied that the relevant tests of specificity, convenience and compellability at trial have all been met in this case (see *Bowlen v. The Queen* [1978] 1 F.C. 798; and *Main Fisheries Ltd. et al. v. The Queen* [1980] 1 F.C. 104).

Indeed, the documents, production of which is requested in these Notices of Motion, fall in three precise classes:

- a. The class of documents evidencing the settlements made with the Ootsa Settlers in or about 1951 and 1952;
- b. Correspondence, notes, memoranda, minutes and the like between Alcan and Her Majesty the Queen as represented by the Department of Citizenship and Immigration, Department of Indian Affairs; and
- c. Notes, memoranda, correspondence and the like between Alcan and Her Majesty the Queen as represented by the Department of Fisheries in the years 1951 and 1952.

The classes of documents are narrowly defined, and a prima facie case is presented that they exist. There is also a balance of probability that the documents are in the legal possession of Alcan. Finally, I am of the view that at the trial of the herein action, those documents could be compelled by way of a Subpoena Duces Tecum and constant inconvenience, delay, likely adjournment and possible further discoveries would be required by virtue of such a last minute production of documents.

Consequently, this Court will grant the two applications in part, without costs to any party, and order the production of the following documents in the possession of Alcan Smelters and Chemicals Ltd.:

- a) All Appraisal Reports, Field Surveys, valuations, letters, memoranda, Title Deeds and all documents as are material to the acquisition of a land by the said Alcan Smelters and Chemicals Ltd. in and about the shores of Ootsa Lake, South of the Village of Burns Lake, in the Province of British Columbia, in the years 1951 and 1952; and
- b) All correspondence, notes, minutes, memoranda, notes of telephone conversations and other communications between Alcan Smelters and Chemicals Ltd., or its associated, related, or predecessor companies, and Her Majesty the Queen in Right of the Government of Canada, as represented by the Department of Fisheries or the Department of Citizenship and Immigration, Indian Affairs Branch, with respect to the acquisition of various Reserve Lands owned by the Plaintiffs, along or in the vicinity of Cheslatta Lake, in the Province of British Columbia, and, without limiting the generality of the foregoing, specifically, all memoranda, documents, letters, correspondence, and the like in any way relating to, having bearing on, or relevant to the alleged surrender of various Reserves owned by the Plaintiffs on or about the 21st day of April, 1952;
- This Court will further order:
  - 1) That the said Alcan Smelters and Chemicals Ltd. provide Counsel for the Plaintiffs with legible, certified copies of the said documents forthwith, or in any event, as soon as reasonably practicable upon service of this Order upon them;
  - 2) That Counsel for the Plaintiffs pay to Counsel for the said Alcan Smelters and Chemicals Ltd. his reasonable costs for the photocopying of these documents; and
  - 3) That forthwith upon Counsel for the Plaintiffs receiving copies of the aforesaid documents from Counsel for Alcan Smelters and Chemicals Ltd. he shall provide a list of said documents to Counsel for the Defendant.

PINARD J.

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Footnote

- Rule 454(1) The Court may, on application order the production of any document in the possession of a person who is not a party to the action, if production of the document might be compelled at trial.
- (2) This Rule applies to documents in the possession of the Crown.
- (3) The notice of motion shall be served on the person who is in possession of the document or, in the case of the Crown, on the Deputy Attorney General of Canada.
- (4) The Court may in its order give directions for the preparation of a certified copy of the document to be used instead of the original.