

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140617**

**Dockets: A-299-13  
A-360-13  
A-363-13**

**Citation: 2014 FCA 163**

**CORAM: SHARLOW J.A.  
GAUTHIER J.A.  
WEBB J.A.**

**Docket: A-299-13**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**ALDERVILLE INDIAN BAND now known as Mississaugas of  
Alderville First Nation, and Gimaa Jim Bob Marsden, suing on his  
own behalf and on behalf of the members of the Mississaugas of  
Alderville First Nation ET AL**

**Respondents**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Respondent**

**Docket: A-360-13**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**ALDERVILLE INDIAN BAND now known as Mississaugas of  
Alderville First Nation, and Gimaa Jim Bob Marsden, suing on his**

**own behalf and on behalf of the members of the Mississaugas of  
Alderville First Nation ET AL**

**Respondents**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Respondent**

**Docket: A-363-13**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Appellant**

**and**

**ALDERVILLE INDIAN BAND now known as Mississaugas of  
Alderville First Nation, and Gimaa Jim Bob Marsden, suing on his  
own behalf and on behalf of the members of the Mississaugas of  
Alderville First Nation**

**BEAUSOLEIL INDIAN BAND now known as Beausoleil First  
Nation, and Gimaaniniikwe Valerie Monague, suing on her own  
behalf and on behalf of the Beausoleil First Nation**

**CHIPPEWAS OF GEORGINA ISLAND INDIAN BAND now  
known as Chippewas of Georgina Island First Nation, and Gimaa  
William Mccue, suing on his own behalf and on behalf of the  
members of the Chippewas of Georgina Island First Nation**

**CHIPPEWAS OF RAMA INDIAN BAND now known as  
Mnjikaning First Nation, and Gimaaniniikwe Sharon Stinson-Henry,  
suing on her own behalf and on behalf of the members of the  
Mnjikaning First Nation**

**CURVE LAKE INDIAN BAND now known as Curve Lake First  
Nation, and Gimaa Keith Knott, suing on his own behalf and on  
behalf of the members of the Curve Lake First Nation**

**HIAWATHA INDIAN BAND now known as Hiawatha First Nation,  
and Gimaa Greg Cowie, suing on his own behalf and on behalf of the**

**members of the Hiawatha First Nation**

**MISSISSAUGAS OF SCUGOG INDIAN BAND, now known as  
Mississaugas of Scugog Island First Nation, and Gimaaniniikwe  
Tracy Gauthier, suing on her own behalf and on behalf of the  
Members of the Mississaugas of Scugog Island First Nation**

**Respondents**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Ottawa, Ontario, on June 17, 2014.

Judgment delivered from the Bench at Ottawa, Ontario, on June 17, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

**Federal Court of Appeal**



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**Appellant**

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**Respondents**

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**Docket: A-360-13**

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Alderville First Nation ET AL**

**Respondents**

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**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Respondent**

**Docket: A-363-13**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Appellant**

**and**

**ALDERVILLE INDIAN BAND now known as Mississaugas of  
Alderville First Nation, and Gimaa Jim Bob Marsden, suing on his  
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Alderville First Nation**

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suing on her own behalf and on behalf of the members of the  
Mnjikaning First Nation**

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**HIAWATHA INDIAN BAND now known as Hiawatha First Nation,**

**and Gimaa Greg Cowie, suing on his own behalf and on behalf of the  
members of the Hiawatha First Nation**

**MISSISSAUGAS OF SCUGOG INDIAN BAND, now known as  
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Members of the Mississaugas of Scugog Island First Nation**

**Respondents**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on June 17, 2014).**

**SHARLOW J.A.**

[1] Before the Court are three appeals of two interlocutory orders of Justice Mandamin made in the course of a trial in the Federal Court (T-195-92). These orders are discretionary and are owed significant deference on appeal. They will not be reversed in the absence of an error of law or principle, a serious misapprehension of the facts, or an obvious injustice.

**Procedural history**

[2] The relevant aspects of the procedural history are summarized as follows.

[3] A number of First Nations in Ontario are asserting claims against Canada relating to the 1923 Williams Treaties. Ontario has been named as a third party. The trial is expected to be lengthy and complex, with a large volume of oral and documentary evidence, including expert evidence from all parties and oral history evidence from the First Nations.

[4] The trial began in May of 2012 before Justice Mandamin. There were a number of lengthy but apparently unavoidable adjournments. As a result, by October 23, 2013, Justice Mandamin had heard only the oral history evidence and some of the expert evidence from both parties.

[5] At a trial management conference in June of 2013, the First Nations gave notice of their intention to seek leave to amend their statement of claim. The motion was filed on July 19, 2013. On July 26, 2013, after a trial management conference, Justice Mandamin directed that the motion would be heard during the course of the trial in September, 2013. He also directed that an expert witness for the First Nations, Dr. Armstrong, would testify at the resumption of the trial on September 4, 2013 based on the existing pleadings.

[6] On August 6, 2013, the Crown filed a notice of motion to seek an order varying Justice Mandamin's July 26, 2013 direction. They wished to defer the presentation of the evidence of Dr. Armstrong until after the determination of the motion for leave to amend, and they wished to have the trial stayed or adjourned pending that determination. The Crown submitted that it would suffer prejudice if it was obliged to cross-examine Dr. Armstrong without knowing whether the statement of claim would be amended. On September 11, 2013, Justice Mandamin dismissed the motion (*Alderville Indian Band v. Canada*, 2013 FC 948). Canada's appeal of that order (T-195-92) is one of the appeals now before this Court.

[7] Justice Mandamin heard the First Nations' motion on September 18 and 20, 2013. On October 23, 2013, he granted the motion in part (*Alderville Indian Band v. Canada*, 2013 FC

1067). Appeals from that order by Canada and Ontario (A-360-13 and A-363-13 respectively) are the other two appeals now before this Court.

[8] By order of Justice Webb dated December 20, 2013, the appeals in A-360-13 and A-363-13 were consolidated, the October 23, 2013 order was stayed, and it was determined that the appeal in A-299-13 and the consolidated appeal would be heard on the same date.

### Discussion

[9] We do not consider it necessary to discuss in detail the many issues raised by the appellants in these appeals. In our view, the most important controversy relates to the addition to the statement of claim of a number of allegations of failure to uphold or act consistently with the honour and integrity of the Crown, and an allegation that certain acts of the Crown or Crown officials amounted to equitable fraud.

[10] Justice Mandamin concluded, after a comprehensive analysis of the jurisprudence, that the amendments should be allowed because they raise a triable issue, they serve to assist in the determination of the real issues in controversy, and they facilitate the Court's understanding of the merits of the action. He also concluded that the amendments would not cause undue delay or non-compensable prejudice to Canada or Ontario, because the trial was still at a relatively early stage and the First Nations were proposing to continue with their expert evidence on the basis of the reports already provided. He proposed certain measures to meet the requirements of Rule 75(2)(c), and was open to considering further measures at the next trial management meeting.



[11] Having reviewed the record and considered the written and oral submissions of counsel for Canada and Ontario, we have not been persuaded that the intervention of this Court is warranted.

[12] We have not ignored the submissions of Canada and Ontario that some of the amended pleadings could be interpreted to allege separate causes of action arising from events that occurred in the decades before the Williams Treaties. The amended pleadings to which we were referred are ambiguous in that regard. The new allegations against the Crown relating to prior treaties could be intended as factual background and context rather than as a basis for a separate remedy, and it seems to us that is how Justice Mandamin interpreted them. In our view, any ambiguity in that regard is best addressed by Justice Mandamin as part of his continuing trial management.

### Conclusion

[13] The appeals will be dismissed with costs.

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-299-13, A-360-13 and A-363-13

**DOCKET:** A-299-13

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN v.  
ALDERVILLE INDIAN BAND et  
al and HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO

**DOCKET:** A-360-13

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN v.  
ALDERVILLE INDIAN BAND et  
al, and HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO

**DOCKET:** A-363-13

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN IN  
RIGHT OF ONTARIO v.  
ALDERVILLE INDIAN BAND et  
al and HER MAJESTY THE  
QUEEN

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** JUNE 17, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW J.A.  
GAUTHIER J.A.  
WEBB J.A.

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

**APPEARANCES:**

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THE QUEEN

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ALDERVILLE INDIAN BAND et  
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THE QUEEN IN RIGHT OF  
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THE QUEEN IN RIGHT OF  
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