

**Date: 20080611**

**Docket: T-568-07**

**Citation: 2008 FC 729**

**BETWEEN:**

**EDOUARD VOLLANT, AGNÈS MCKENZIE, JEAN-YVES PINETTE,  
MICHEL PINETTE, JACQUES MCKENZIE, ALPHONSE AMBROISE,  
JEAN-GUY PINETTE, ÉRIC ROCK, GEORGE MCKENZIE,  
PHILOMÈNE MCKENZIE, GEORGES-ERNEST GRÉGOIRE,  
RONALD FONTAINE, RAYMOND JOURDAIN, DANIEL ST-ONGE,  
ANDRÉ JÉRÔME, FRANÇOIS FONTAINE, LÉO GRÉGOIRE,  
ANTOINE JOURDAIN, SYLVIO JOURDAIN, ISRAEL ST-ONGE,  
MARC ST-ONGE, ANGÉLINE JOURDAIN AMBROISE**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**and**

**ATTORNEY GENERAL OF QUEBEC**

**and**

**ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR**

**Intervenors**

**REASONS FOR ORDER**

**(Delivered from the bench at Montréal on June 6, 2008)**

**HUGESSEN J.**

[1] It is clear that some parts of the amended statement of claim fall within the jurisdiction of this Court under subsection 17(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act).

[2] However, read in its entirety, it is also clear that the action is essentially an action against the province of Newfoundland and Labrador.

[3] It is impossible to separate the allegations against Canada from the ones against the province. The plaintiffs, who are Innu, claim aboriginal rights, treaty rights and interests in land in Labrador. In my view, it is obvious that the province of Newfoundland and Labrador is an essential party to the dispute.

[4] If I had the jurisdiction, I would make an order under Rule 104(2) of the *Federal Courts Rules*, SOR/98-106 (the Rules), adding it as a defendant to the dispute.

[5] But the Act does not grant me this jurisdiction. It is immaterial that the dispute raises issues of federal law within the meaning of the second and third tests in *ITO –Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752. The first test, the statutory grant of jurisdiction, is completely missing here, and without that the Court lacks jurisdiction. *Joe v. Her Majesty the Queen in Right of Canada* (1983), 49 N.R. 198 (F.C.A.), aff'd [1986] 2 S.C.R. 145 deals with this specific issue and is the leading authority.

[6] The position of the Attorney General of Quebec, who also brought a motion to strike out, is less clear. In my view, his presence is not necessary to resolve the dispute completely. But the plaintiffs made him a party and served him with a notice of constitutional questions. That alone gives him the right to ask to be removed as a party. His motion should also be granted but without costs.

[7] With respect to the Attorney General of Canada, although he supported the position of the two provinces, he did not ask that the action be dismissed. Therefore, if the action were to be dismissed after the amended statement of claim is struck out, it would be without costs.

[8] It follows that it is clear and indisputable that the motion by the Attorney General of Newfoundland and Labrador should be granted with costs and that the amended statement of claim should be struck out in its entirety without leave to amend. The motion of the Attorney General of Quebec will also be granted without costs. The plaintiffs' action will be dismissed with costs.

[9] An order to that effect will issue.

“James K. Hugessen”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-568-07

**STYLE OF CAUSE:** EDOUARD VOLLANT et al v.  
HER MAJESTY THE QUEEN et al

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 5-6, 2008

**REASONS FOR ORDER BY:** HUGESSEN J.

**DATED:** JUNE 11, 2008

**APPEARANCES:**

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