

Citation
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Paul v.
Forest
Appeals
Commission

Date: 20011030

2001
BCCA 644

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CA026440/V035
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Registry: Vancouver

COURT OF APPEAL FOR BRITISH COLUMBIA **In the Matter of the
Judicial Procedure Act, R.S.B.C. 1996, Chap. 241, and in the
Matter of the Decision of the Forest Appeals Commission
dated April 24, 1998, made under the *Forest Practices Code*,
R.S.B.C. 1996, Chap. 159**

BETWEEN:

THOMAS PAUL

PETITIONER (APPELLANT)

AND:

THE FOREST APPEALS COMMISSION

RESPONDENT (RESPONDENT)

AND:

**THE ATTORNEY GENERAL OF BRITISH COLUMBIA AND THE MINISTRY OF
FORESTS**

RESPONDENT (APPELLANT)

AND:

THE COUNCIL OF FOREST INDUSTRIES

INTERVENOR

Before:

The Honourable Mr.
Justice Lambert

The Honourable Mr.
Justice Donald

The Honourable Madam
Justice Huddart

H. Braker, Q.C. and A.
Brown

Counsel for the
Appellant Thomas Paul

T.P. Leadem, Q.C.
and K. Kickbush M.
Rankin, Q.C. and M.
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Counsel for the
Appellants The Attorney
General of British
Columbia and the Ministry
of Forests Counsel for
the Respondent The Forest
Appeals
Commission Counsel for
The Council of Forest
Industries, Intervenor

Place and Date
of Supplementary
Judgment:

Vancouver, British Columbia 30
October 2001

Supplementary Written Reasons by: The Honourable Mr. Justice Lambert The Honourable Mr. Justice Donald **And by:** The Honourable Madam Justice Huddart **Supplementary Reasons for Judgment of the Honourable Mr. Justice Lambert and the Honourable Mr. Justice Donald:**

[1] Reasons for Judgment were handed down in this appeal on 14 June 2001. Judgment was pronounced at the same time, in these terms:

The appeal is allowed. The Reasons of Mr. Justice Lambert are concurred in by Mr. Justice Donald. Madam Justice Huddart dissents. The nature of the remedy should be spoken to.

[2] On 4 July 2001, a letter was directed to counsel asking for responsive written submissions on "the nature of the remedy". Written submissions have now been received from all

parties.

[3] We propose to assume that anyone interested in these Supplemental Reasons for Judgment will be familiar with the Reasons of 14 June 2001.

[4] What started out as an appeal to the Supreme Court of British Columbia from a preliminary ruling by the Forest Appeals Commission affirming its jurisdiction to hear Mr. Paul's appeal based on his assertion of an aboriginal right was discontinued at the suggestion of the trial judge and with the concurrence of all counsel, and instead an expedited hearing of a petition for judicial review of the preliminary ruling of the Forest Appeals Commission was substituted on short notice.

[5] We have the benefit of the prayer for relief in Thomas Paul's notice of appeal from the preliminary ruling of the Forest Appeals Commission, the prayer for relief in his petition, and his statement of the nature of the order sought in his factum. We also have the submissions of the parties on what should be the terms of the formal judgment of the Court.

[6] Because the appeal from the decision of the Forest Appeals Commission was effectively discontinued, we do not propose to consider the relief which might have been appropriate if that appeal had continued and had ultimately formed the basis of the decision of this Court. Instead, we propose to confine our judgment on the appropriate remedy in this appeal to the formal judgment that ought to follow solely from our decision to allow the appeal from the dismissal of the petition for judicial review of the preliminary ruling of the Forest Appeals Commission.

[7] In our opinion, the judgment of the Court in the appeal by Thomas Paul should be in these terms:

[1] The appeal is allowed.

[2] The order of the Honourable Mr. Justice Pitfield pronounced on the 23rd of September 1999 is set aside.

[3] An order in the nature of *certiorari* is issued quashing the preliminary ruling of the Forest Appeals Commission dated 24 April 1998 in which the Commission gave its opinion that

it had jurisdiction to decide the aboriginal rights issue in the appeal taken to it by Mr. Paul under the **Forest Practices Code**.

[4] An order in the nature of *prohibition* is issued prohibiting the Forest Appeals Commission from taking jurisdiction to decide any question of aboriginal rights in relation to the appeal taken to it by Mr. Paul under the **Forest Practices Code**.

[5] A declaration is made that the Forest Appeals Commission does not have jurisdiction to decide any question of aboriginal rights or aboriginal title in the course of exercising its functions under the **Forest Practices Code**.

[6] A declaration is made that the Legislature of British Columbia does not have the legislative capacity to confer on the Forest Appeals Commission, established under the **Forest Practices Code**, any jurisdiction to decide questions of aboriginal rights or aboriginal title in the course of exercising its functions under the **Forest Practices Code**.

[7] An order is made that Thomas Paul is entitled to party and party costs against the Forest Appeals Commission on Scale 3, with liberty to apply for an order for costs against the Attorney General of British Columbia and the Ministry of Forests.

[8] In our opinion, the judgment of the Court in the appeal by the Attorney General of British Columbia and the Ministry of Forests should contain the same paragraphs (a) to (f) inclusive. The appellants in that appeal did not wish a declaration in the terms of paragraph (f) but the respondent in the appeal, Thomas Paul, wished for such a declaration and is entitled to have it made.

[9] The order for costs in the appeal by the Attorney General of British Columbia and the Ministry of Forests is that they are entitled to party and party costs against the Forest

Appeals Commission on Scale 3, if they seek costs.

[10] In our opinion, we ought not to venture beyond the strict limits of the terms of the petition for judicial review and the orders that the decision on the petition require. Accordingly, there are a number of matters raised in the submissions of the parties on the appeal and in the submissions of the parties on the remedy which we are not addressing and which we do not decide. I will set some of them out.

[1] We make no decision about whether an order ought properly to be made confirming or denying any jurisdiction on the part of the Forest Appeals Commission to consider any aspect of Mr. Paul's appeal to the Commission.

[2] We make no order referring any question to or back to the Forest Appeals Commission. Any jurisdiction or continuing jurisdiction of the Forest Appeals Commission should be decided as a matter of law and not by our order.

[3] We make no decision about the status, effect or validity of the decision of the District Manager or the decision of the Administrative Review Panel in relation to the alleged violation of the **Forest Practices Code** in this case. Accordingly, we make no decision about the validity of the appeal proceedings to the Forest Appeals Commission.

[4] We make no decision about whether, in this case or other cases where matters of aboriginal rights or aboriginal title are raised, the District Manager, the Administrative Review Panel and the Forest Appeals Commission have jurisdiction to consider all matters that can be said to be in issue other than aboriginal rights or aboriginal title, or have jurisdiction to consider any other matters which are not raised in circumstances where the only issue raised is an issue of aboriginal title or aboriginal rights.

[5] We make no decision about the application of administrative law principles in relation to natural justice and no decision about the applicability of the **Canadian Charter of Rights and Freedoms** (including s. 7 and s. 11(d) of the **Charter**) to any continuing proceedings in relation to Mr. Paul or to any similar proceedings in which aboriginal rights or aboriginal title have been raised.

[6] We make no decision about whether Mr. Paul is required to establish that he was exercising an aboriginal right when he cut three trees and possessed four trees; nor do we make any

decision about whether the Attorney General, the Ministry of Forest, or the Forest Appeals Commission is required to establish that Mr. Paul was not exercising an aboriginal right in relation to those trees. If any party is required or wishes to establish any proposition in relation to whether Mr. Paul was exercising an aboriginal right we make no decision about the appropriate forum or procedure to do so or about any appropriate interim orders.

[7] We make no decision about the propriety of criminal proceedings under the **Forest Practices Code** and the **Offence Act** in relation to Mr. Paul, nor about the propriety of such proceedings if they had been brought when the relevant facts first came to the attention of the District Manager.

[8] We make no decision about the ownership of the four logs taken by Mr. Paul to Vargas Island or to the proceeds of sale of the logs.

"The Honourable Mr. Justice Lambert"

"The Honourable Mr. Justice Donald"

Because I would dismiss the appeal, I will not express my opinion as to the remedy that flows from the Reasons of my colleagues.

"The Honourable Madam Justice Huddart"