

*Case Name:*

**R. v. Cardinal**

**Between**

**Her Majesty the Queen, Respondent, and  
Ernest Cardinal and William James Cardinal, Applicants**

[2011] A.J. No. 203

2011 ABCA 72

Dockets: 1003-0328-A, 1003-0329-A

Registry: Edmonton

Alberta Court of Appeal  
Edmonton, Alberta

**P.T. Costigan J.A.**

Heard: February 22, 2011.

Judgment: March 1, 2011.

(6 paras.)

*Aboriginal law -- Hunting, fishing and logging rights -- Hunting, fishing or trapping -- Purpose -- For sale -- Aboriginal lands and waters -- Regulation of -- Application by members of Beaver Creek Cree Nation for leave to appeal from the dismissal of their appeal from convictions for selling fish on reserve without licences dismissed -- The Province's jurisdiction to regulate the sale of fish within the province, including on reserves, was not up for debate -- The doctrine of interjurisdictional immunity did not apply.*

*Criminal law -- Appeals -- Leave to -- Application by members of Beaver Creek Cree Nation for leave to appeal from the dismissal of their appeal from convictions for selling fish on reserve without licences dismissed -- The Province's jurisdiction to regulate the sale of fish within the province, including on reserves, was not up for debate -- The doctrine of interjurisdictional immunity did not apply.*

*Natural resources law -- Fishing -- Licensing and registration -- Offences and penalties -- Fishing*

*without a licence -- Application by members of Beaver Creek Cree Nation for leave to appeal from the dismissal of their appeal from convictions for selling fish on reserve without licences dismissed -- The Province's jurisdiction to regulate the sale of fish within the province, including on reserves, was not up for debate -- The doctrine of interjurisdictional immunity did not apply.*

Application by members of the Beaver Creek Cree Nation for leave to appeal from the dismissal of their appeal from convictions for selling fish without a commercial licence on the Beaver Lake reserve. Both the trial judge and the appeal judge found that the Province of Alberta had jurisdiction to regulate the sale of fish by Indians on reserves in the province. The members argued that these conclusions evinced errors in law.

HELD: Application dismissed. There was no question that Alberta had jurisdiction to regulate the sale of fish in the province. The laws establishing this jurisdiction were extended to all Indians including those on reserves by section 12 of the Natural Resources Transfer Agreement. The same section extinguished any right to hunt commercially. The doctrine of interjurisdictional immunity had no application.

**Statutes, Regulations and Rules Cited:**

Constitution Act, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 35, s. 92(13), s. 92(16)

General Fisheries (Alberta) Regulation, Alta. Reg. 203/1997,

Indian Act, R.S.C. 1985, c. I-5, s. 88

Natural Resources Transfer Agreement, s. 9, s. 10, s. 12

**Appeal From:**

Application for Leave to Appeal Summary Conviction.

**Counsel:**

T.G. Rothwell/S.J. Lopetinsky, for the Respondent, Alberta Justice and Attorney General - Aboriginal Law.

T.L. Couillard, for the Respondent, Alberta Justice and Attorney General - Appeals, Education and Public Policy Branch.

P.E. Kennedy, for the Applicants.

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## Reasons for Decision

**1 P.T. COSTIGAN J.A.:**-- The applicants, members of the Beaver Lake Cree Nation, sold fish without a commercial license on the Beaver Lake Indian reserve and were convicted of offences under the *General Fisheries (Alberta) Regulation*, Alta. Reg. 203/1997: **R. v. Cardinal**, 2009 ABPC 77, 470 A.R. 41. Their summary conviction appeal was dismissed: **R. v. Cardinal**, 2010 ABQB 673, [2010] A.J. No. 1245 (QL). The applicants seek leave to appeal to this Court. Leave to appeal may be granted on an arguable question of law of sufficient public importance.

**2** Both the trial judge and the appeal judge concluded that decisions of the Supreme Court of Canada and of this Court have definitively determined that the Province of Alberta has jurisdiction to regulate the sale of fish by Indians on reserves in the province. The applicants argue that these conclusions evince errors in law. They say the seminal case in this area, **Cardinal v. Alberta (Attorney General)**, [1974] S.C.R. 695, 40 D.L.R. (3d) 553 [**Cardinal** cited to S.C.R.] was wrongly decided; the decision in **Cardinal** no longer applies because of s. 35 of the *Constitution Act, 1982*; Alberta has no jurisdiction over fishing and, in any event, no jurisdiction over fishing on an Indian reserve because of s. 10 of the *Alberta Natural Resources Transfer Agreement [NRTA]* and the decision in **R. v. Blais**, 2003 SCC 44, [2003] 2 S.C.R. 236 [**Blais**]; s. 12 of the *NRTA* only modified the treaty right to hunt commercially, not to fish commercially; and Alberta lacks the necessary jurisdiction as a result of the application of the doctrine of interjurisdictional immunity. All of the issues raised in this application have been conclusively determined against the applicants or are patently unarguable.

**3** There is no question that Alberta has jurisdiction to regulate the sale of fish in the province: s. 9 of the *NRTA* and ss. 92(13) and (16) of the *Constitution Act, 1867*. Section 12 of the *NRTA* extended provincial hunting and fishing laws to all Indians, including those on reserves: **Cardinal** at 708. **Cardinal** was affirmed in **R. v. Horseman**, [1990] 1 S.C.R. 901, 4 W.W.R. 97 [**Horseman** cited to S.C.R.], which also affirmed that s. 12 extinguished any treaty right to hunt commercially: **Horseman** at 931-936. Because s. 35 of the *Constitution Act, 1982* addresses existing treaty rights, it is not arguable that it has any application to the treaty rights found to have been extinguished in **Horseman**: **R. v. Gladue** (1995), 130 D.L.R. (4th) 577, 178 A.R. 248 at para. 7 (C.A.) [**Gladue**]. The principles set out and affirmed in **Cardinal** and **Horseman** with respect to hunting laws apply equally to fishing laws: **Gladue**; **R. v. Jacko**, 2000 ABCA 178, 261 A.R. 396 [**Jacko**].

**4** It is not arguable that s. 10 of the *NRTA* or **Blais** have any impact on the principles at issue on this application. Section 10 was considered in **Cardinal**. **Blais** considered whether the Métis are Indians under the hunting rights provisions of the *Manitoba Natural Resources Transfer Agreement* and says nothing that derogates from the principles set out in **Cardinal** and **Horseman**.

**5** Nor is it arguable that the doctrine of interjurisdictional immunity has any application. Section 12 of the *NRTA* specifically recognizes that provincial hunting and fishing laws apply to all Indians, including those on reserves: see also *Indian Act*, R.S.C. 1985, c. I-5, s.88. Furthermore, provincial

hunting and fishing laws do not relate to Indians as Indians: *Cardinal* at pg. 706.

**6** The applications for leave to appeal are dismissed.

P.T. COSTIGAN J.A.

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