

Burns Bog Conservation Society (plaintiff) v. The Attorney General of Canada; The Minister of Transport and Infrastructure; The Minister of Environment; The Minister of Fisheries and the Queen in Right of Canada (defendants)  
(T-1963-10; 2012 FC 1024)

**Indexed As: Burns Bog Conservation Society v. Canada (Attorney General) et al.**

Federal Court  
Russell, J.  
August 29, 2012.

**Summary:**

Two municipalities and the Province of British Columbia, the owners of Burns Bog, one of the largest peat bogs in the world, entered into conservation and management agreements with the federal government respecting the bog. Thereafter, the federal government and the British Columbia agreed to build the South Fraser Perimeter Road which was to run adjacent to Burns Bog. The Burns Bog Conservation Society, a non-profit society dedicated to preserving the bog and raising public awareness of its ecological significance, filed a statement of claim compelling the defendants (collectively Canada) to protect Burns Bog. The defendants moved for summary judgment on the ground that there was no legal basis for the Society's claim.

The Federal Court granted the defendant's motion for summary judgment and dismissed the Society's claim.

**Equity - Topic 3606**

Fiduciary or confidential relationships - General principles - What constitutes a fiduciary relationship - [See **Equity - Topic 3611**].

**Equity - Topic 3611**

Fiduciary or confidential relationships - General principles - Crown - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim compelling the defendants (collectively Canada) to protect the bog on the basis of fiduciary duty - The defendants moved for summary judgment dismissing the action - The Federal Court granted the motion - Canada did not owe a fiduciary duty to the public at large, nor to the bog itself - The society's relationship with Canada did not fall into any of the recognized categories of fiduciary relationship - Therefore, to succeed, the society would have to demonstrate an ad hoc fiduciary relationship, which it could not - See paragraphs 113 to 125.

**Pollution Control - Topic 8006**

Land - Conservation of land - Duty of Crown - [See **Equity - Topic 3611, Practice - Topic 5702, Trusts - Topic 104, and Trusts 124**].

**Practice - Topic 5702**

Judgments and orders - Summary judgments - Jurisdiction or when available or when appropriate - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim, asserting that Canada had contractual, trust (environmental and public trust), fiduciary and statutory obligations to protect the bog - The defendants moved for summary judgment - The Federal Court held that none of the sources of duty relied on by the society was a valid basis for any obligation on Canada to protect the bog - There were no contested facts and the claim had no chance of success - The court, therefore, granted summary judgment dismissing the society's claim - See paragraphs 77 to 130.

### **Practice - Topic 5719**

Judgments and orders - Summary judgments - To dismiss action - [See **Practice - Topic 5702**].

### **Trusts - Topic 104**

General principles - General - Public trust (incl. environmental trust) - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim compelling the defendants (collectively Canada) to protect the bog - The society argued that, regardless of whether Canada owned the bog, the bog was subject to a public trust created by operation of Canadian environmental law - The defendants moved for summary judgment dismissing the action - The Federal Court granted the defendant's motion - No Canadian courts had recognized a public trust duty requiring the Crown to take positive steps to protect the environment generally or a specific property - Here, Canada did not own the bog - There was no basis in law or equity for the imposition of such a duty on Canada in this case - See paragraphs 106 to 112.

### **Trusts - Topic 424**

Creation of trust - Transfer of property to trustee, requirement of - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim compelling the defendants (collectively Canada) to protect the bog - The society argued that Canada had a duty to protect the bog because of trust obligations - The defendants moved for summary judgment dismissing the action - The Federal Court granted the defendant's motion - There was no trust with respect to the bog - Canada (alleged trustee) did not own the bog (i.e., the property was not vested in the trustee) - See paragraphs 94 to 200.

### **Cases Noticed:**

TPG Technology Consulting Ltd. v. Canada (2011), 396 F.T.R. 276; 2012 FC 276, refiled to. [para. 25].

Scrimmes v Nickle, [1980] A.J. No. 514, reld to. [para. 35].  
Zeitler v. Zeitler Estate, [2008] B.C.T.C. Uned. 434; 2008 BCSC 775, appld. [paras. 14, 37].  
Green v. Ontario, [1973] 2 O.R. 396 (H.C.), reld to. [para. 38].  
British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74; 321 N.R. 1; 198 B.C.A.C. 1; 324 W.A.C. 1; 2004 SCC 38, reld to. [para. 39].  
Elder Advocates of Alberta Society et al. v. Alberta et al., [2011] 2 S.C.R. 261; 416 N.R. 198; 499 A.R. 345; 514 W.A.C. 345; 2011 SCC 24, reld to. [para. 41].  
Lameman et al. v. Canada (Attorney General) et al., [2008] 1 S.C.R. 372; 372 N.R. 239; 429 A.R. 26; 421 W.A.C. 26; 2008 SCC 14, reld to. [para. 63].  
Kanematsu GmbH v. Acadia Shipbrokers Ltd. et al. (2000), 259 N.R. 201 (F.C.A.), reld to. [para. 68].  
White v. Cananada (1998), 152 F.T.R. 39 (T.D.), reld to. [para. 73].  
Rude Native Inc. et al. v. Tyrone T. Resto Lounge et al., [2010] F.T.R. Uned. 836; 2010 FC 1278, reld to. [para. 73].

**Statutes Noticed:**

Land Titles Act, R.S.B.C. 1996, c. 250, sect. 219(1), sect. 219(2), sect. 219(9) [para. 24].

**Counsel:**

James L. Straith, for the plaintiff;  
Sheri Vigneau and Lindsay Morphy, for the defendants.

**Solicitors of Record:**

James L. Straith, Straith Law Corporation, Ocean House (Pacific), Vancouver, British Columbia, for the plaintiff;  
Myles J. Kirvan, Q.C., Deputy Attorney General of Canada, Ottawa, Ontario, for the defendants.

This motion was heard in Vancouver, British Columbia, on July 12, 2012, before Russell, J., of the Federal Court, who delivered the following decision on August 29, 2012.

Motion granted.

Editor: Elizabeth M.A. Turgeon

**Equity - Topic 3606**

Fiduciary or confidential relationships - General principles - What constitutes a fiduciary relationship - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim compelling the defendants (collectively Canada) to protect the bog on the basis of fiduciary duty - The defendants moved for summary judgment dismissing the action - The Federal Court granted the motion - Canada did not owe a fiduciary duty to the public at large, nor to the

bog itself - The society's relationship with Canada did not fall into any of the recognized categories of fiduciary relationship - Therefore, to succeed, the society would have to demonstrate an ad hoc fiduciary relationship, which it could not - See paragraphs 113 to 125.

#### **Pollution Control - Topic 8006**

Land - Conservation of land - Duty of Crown - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim compelling the defendants (collectively Canada) to protect the bog on the basis of fiduciary duty - The defendants moved for summary judgment dismissing the action - The Federal Court granted the motion - Canada did not owe a fiduciary duty to the public at large, nor to the bog itself - The society's relationship with Canada did not fall into any of the recognized categories of fiduciary relationship - Therefore, to succeed, the society would have to demonstrate an ad hoc fiduciary relationship, which it could not - See paragraphs 113 to 125.

#### **Pollution Control - Topic 8006**

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**Practice - Topic 5719**

Judgments and orders - Summary judgments - To dismiss action - Two municipalities and British Columbia, the owners of a large peat bog, entered into conservation and management agreements with the federal government respecting the bog - Thereafter, Canada and British Columbia agreed to build a road adjacent to the bog - A conservation society filed a statement of claim, asserting that Canada had contractual, trust (environmental and public trust), fiduciary and statutory obligations to protect the bog - The defendants moved for summary judgment - The Federal Court held that none of the sources of duty relied on by the society was a valid basis for any obligation on Canada to protect the bog - There were no contested facts and the claim had no chance of success - The court, therefore, granted summary judgment dismissing the society's claim - See paragraphs 77 to 130.