



## ABORIGINAL PEOPLES

### LANDS

Application seeking registration of adjudicator's award with Court's registry — Present dispute focusing on promise contained in Treaties 1, 3, 4, 5, 6, 10 pertaining to Manitoba, i.e. creation of reserves therein — That promise not kept to satisfaction of treaty First Nations — Manitoba First Nations deciding to negotiate settlement — Entering into Manitoba Framework Agreement (MFA) with Canada, Manitoba — MFA complex agreement setting out in detail process for creation of reserves to fulfil promise of treaties — Providing for detailed, exhaustive dispute resolution process — Also containing releases in favour of Canada, i.e. First Nations agreeing not to sue Canada with respect to failure to comply with provisions of treaties regarding creation of reserves — Applicant Treaty Land Entitlement (TLE) Committee beginning in 2016 formal process set forth in MFA for alleging that Canada's consultation with Métis constituted material failure to comply with MFA — After unsuccessful negotiations, parties agreeing to send matter to binding arbitration — Adjudicator's terms of reference identifying 35 parcels selected or acquired by seven First Nations — Adjudicator holding, *inter alia*, that Canada's conduct amounting to breach of MFA, s. 40.07, which provides that MFA can only be amended by agreement of parties — Finding that Canada effectively amended MFA by inserting into agreed upon implementation process step not provided for in MFA, which has significant impact on MFA's implementation — Also determining that Canada breaching MFA, s. 8.02, which requires amendments to Additions to Reserves Policy to be agreed to by parties — Declaring that Canada had committed event of default — Ordering Canada to negotiate amendment to MFA — Following adjudicator's award, negotiations took place without result — Thus applicants asking Court to register award, to declare that releases, indemnities contained in each applicant First Nation's TLE agreement now void — Canada arguing that applicants not showing that registering award would serve any purpose — Also of view that voiding releases would be unjust, because 28 of 35 parcels at issue now added to reserves — Asserting that parties to MFA intending Court to exercise discretion regarding appropriateness of issuance of declaration — Whether award should be registered — Applicants entitled as of right to have award registered — Contrary to philosophy underpinning *Commercial Arbitration Code* (Code), being Schedule to *Commercial Arbitration Act*, R.S.C., 1985 (2nd Supp.), c. 17 to refuse registration — Code, arts. 35, 36 providing that registration of arbitral award obtained as of right, refused only for grounds enumerated in art. 36 — Whether applicant First Nations' entitled to declaration voiding their releases — All applicant First Nations entitled to declaration — Conditions for issuance of declaratory judgment met — MFA product of careful balancing of parties' interests — Court should not, through exercise of its discretion, displace detailed, negotiated bargain as primary source of justice between parties — Overall intent emerging from reading of entire dispute resolution provisions that courts only playing subsidiary role in resolution of disputes — Invoking Court's discretion must not be manner of relitigating issues already decided in arbitration — Applicants should not be deprived of remedy contemplated by MFA because reserve creation process has reached its conclusion with respect to 28 parcels — Event of default is lack of agreement, not failure to negotiate — Canada not relieved of its duty to reach agreement to amend MFA because it feels it has negotiated enough or that its negotiating position reasonable — Canada's submissions regarding disproportionality attempt to relitigate issue under another name — Canada asking for more lenient consequence for its default than what is contemplated in MFA — Contrary to honour of Crown to allow Canada to impose its own view of what is just in circumstances — Adjudicator's award directed to be registered — Releases, indemnities given by applicant First Nations in their TLE agreements declared void, ineffective in whole — Application allowed.

TREATY LAND ENTITLEMENT COMMITTEE INC. V. CANADA (INDIGENOUS AND NORTHERN AFFAIRS) (T-336-19, 2021 FC 329, Grammond J., reasons for judgment dated April 23, 2021, 36 pp.)