

## CONSTITUTIONAL LAW

### ABORIGINAL AND TREATY RIGHTS

Appeal from Prothonotary decision allowing defendants' motion to remove defendant Governor General as party to underlying action challenging constitutionality of *First Nations Financial Transparency Act*, S.C. 2013, c. 7 (FNFTA) — Plaintiff asserting in statement of claim that Onion Lake Cree Nation comprised of two treaty peoples who are the successors to those who made treaty with Crown in 1876 — Asserting that passage, implementation of FNFTA breach of defendants' treaty obligations, violation of plaintiff's treaty rights — Also asserting, *inter alia*, that Governor General breaching fiduciary duty to consult with plaintiff, offending Crown's honour by not upholding treaty, that FNFTA passed into law without royal consent — Prothonotary relying on *Galati v. Canada (Governor General)*, 2015 FC 91 [2015] 4 F.C.R. 3, concluding, *inter alia*, that Governor General's discretion with respect to granting royal assent entirely controlled by convention of responsible government; Governor General's role forming part of legislative process over which courts having no oversight; that no duty to consult arising during legislative process; plain, obvious that allegations in impugned paragraphs of statement of claim not disclosing reasonable cause of action — Issue whether Prothonotary erring by limiting analysis of justiciability of claim against Governor General to justiciability of act of royal assent — Prothonotary's decision turning on question of whether act of royal assent justiciable — Prothonotary not erring in relying on *Galati* to support conclusion that grant of royal assent by Governor General in present case not justiciable — *Galati* not distinguishable from present case — Prothonotary also relying on *Canada (Governor General in Council) v. Mikisew Cree First Nation*, 2016 FCA 311, [2017] 3 F.C.R. 298 because of its endorsement of finding in *Galati*, its conclusion no duty to consult prior to passage of legislation even where treaty rights affected — Clear that Prothonotary aware that plaintiff also alleging Governor General having duty to consult — Not clear how Governor General's lack of consent to proposed legislation supporting cause of action against him — No royal consent sought for legislation, none given — Plaintiff's arguments surrounding Governor General's conferral of royal consent, duty to warn failing on same basis as those related to royal assent, duty to consult — Governor General's role in legislative process not justiciable — Appeal dismissed.

ONION LAKE CREE NATION V. CANADA (T-2428-14, 2017 FC 1049, Southcott J., order dated November 20, 2017, 28 pp.)