

***Guerin v R*, [1984] 2 SCR 335**

[*This case concerns the lease of valuable reserve lands situated within the geographical boundaries of the City of Vancouver. In 1957, members of the Musqueam Indian Band voted to “surrender” 162 acres of their reserve lands to the federal Crown on the understanding that these lands would in turn be leased by the Crown to the Shaughnessy Heights Golf Club for use as a golf course. Rents and other benefits from this lease were to be paid to band. The final terms on which the Crown ultimately leased the lands to Shaughnessy Heights, however, were very unfavourable to the band. The Chief and Councillors of the Musqueam Indian Band sued the Crown for breach of trust and damages in the amount of \$10,000,000.*]

Dickson J. :—

[1] The question is whether the appellants, the Chief and Councillors of the Musqueam Indian Band, suing on their own behalf and on behalf of all other members of the band, are entitled to recover damages from the federal Crown in respect of the leasing to a golf club of land on the Musqueam Indian Reserve. Collier J., of the Trial Division of the Federal Court, declared that the Crown was in breach of trust. He assessed damages at \$10,000,000. The Federal Court of Appeal allowed a Crown appeal, set aside the judgment of the Trial Division and dismissed the action.

I. General

[2] Before adverting to the facts, reference should be made to several of the relevant sections of the *Indian Act*, R.S.C. 1952 c.149 as amended. Section 18(1) provides in part that reserves shall be held by Her Majesty for the use of the respective Indian bands for which they were set apart. Generally, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of until they have been surrendered to Her Majesty by the band for whose use and benefit in common the reserve was set apart (s.37). A surrender may be absolute or qualified, conditional or unconditional (s.38(2)). To be valid, a surrender must be made to Her Majesty, assented to by a majority of the electors of the band, and accepted by the Governor in Council (s.39(1)).

[3] The gist of the present action is a claim that the federal Crown was in breach of its trust obligations in respect of the leasing of approximately 162 acres of reserve land to the Shaughnessy Heights Golf Club of Vancouver. The band alleged that a number of the terms and conditions of the lease were different from those disclosed to them before the surrender vote and that some of the lease terms were not disclosed to them at all. The band also claimed failure on the part of the federal Crown to exercise the requisite degree of care and management as a trustee.

[...]

IV. Fiduciary Relationship

[4] The issue of the Crown's liability was dealt with in the courts below on the basis of the existence or non-existence of a trust. In dealing with the different consequences of a "true" trust, as opposed to a "political" trust, Le Dain J. noted that the Crown could be liable only if it were subject to an "equitable obligation enforceable in a court of law". I have some doubt as to the cogency of the terminology of "higher" and "lower" trusts, but I do agree that the existence of an equitable obligation is the *sine qua non* for liability. Such an obligation is not, however, limited to relationships which can be strictly defined as "trusts". As will presently appear, it is my view that the Crown's obligations *vis-à-vis* the Indians cannot be defined as a trust. That does not, however, mean that the Crown owes no enforceable duty to the Indians in the way in which it deals with Indian land.

[5] In my view, the nature of Indian title and the framework of the statutory scheme established for disposing of Indian land places upon the Crown an equitable obligation, enforceable by the courts, to deal with the land for the benefit of the Indians. This obligation does not amount to a trust in the private law sense. It is rather a fiduciary duty. If, however, the Crown breaches this fiduciary duty it will be liable to the Indians in the same way and to the same extent as if such a trust were in effect.

[6] The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal, native or Indian title. The fact that Indian bands have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between the Indians and the Crown. The conclusion that the Crown is a fiduciary depends upon the further proposition that the Indian interest in the land is inalienable except upon surrender to the Crown.

[7] An Indian band is prohibited from directly transferring its interest to a third party. Any sale or lease of land can only be carried out after a surrender has taken place, with the Crown then acting on the band's behalf. The Crown first took this responsibility upon itself in the Royal Proclamation of 1763. It is still recognized in the surrender provisions of the *Indian Act*. The surrender requirement, and the responsibility it entails, are the source of a distinct fiduciary obligation owed by the Crown to the Indians. In order to explore the character of this obligation, however, it is first necessary to consider the basis of aboriginal title and the nature of the interest in land which it represents.

(a) The Existence of Indian Title

[8] In *Calder v. Attorney General of British Columbia*, [1973] S.C.R. 313, this Court recognized aboriginal title as a legal right derived from the Indians' historic occupation and possession of their tribal lands. With Judson and Hall JJ. writing the principal judgments, the Court split three-three on the major issue of whether the Nishga Indians' aboriginal title to their ancient tribal territory had been extinguished by general land enactments in British Columbia. The Court also split on the issue of whether the Royal Proclamation of 1763 was applicable to Indian lands in that Province. Judson and Hall JJ. were in agreement,

however, that aboriginal title existed in Canada (at least where it had not been extinguished by appropriate legislative action) independently of the Royal Proclamation. Judson J. stated expressly that the Proclamation was not the “exclusive” source of Indian title (pp.322-23, 328). Hall J. said (at p.390) that “aboriginal Indian title does not depend on treaty, executive order or legislative enactment”.

[9] The Royal Proclamation of 1763 reserved “under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson’s Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid” (R.S.C. 1970, Appendices 123, at p.127). In recognizing that the Proclamation is not the sole source of Indian title the *Calder* decision went beyond the judgment of the Privy Council in *St. Catherine’s Milling and Lumber Co. v. The Queen* (1888), 14 App. Cas. 46. In that case Lord Watson acknowledged the existence of aboriginal title but said it had its origin in the Royal Proclamation. In this respect *Calder* is consistent with the position of Chief Justice Marshall in the leading American cases of *Johnson v. McIntosh* (1823), 8 Wheaton 543, and *Worcester v. State of Georgia* (1832), 6 Peters 515, cited by Judson and Hall JJ. in their respective judgments.

[10] In *Johnson v. McIntosh* Marshall C.J., although he acknowledged the Proclamation of 1763 as one basis for recognition of Indian title, was nonetheless of opinion that the rights of Indians in the lands they traditionally occupied prior to European colonization both predated and survived the claims to sovereignty made by various European nations in the territories of the North American continent. The principle of discovery which justified these claims gave the ultimate title in the land in a particular area to the nation which had discovered and claimed it. In that respect at least the Indians’ rights in the land were obviously diminished; but their rights of occupancy and possession remained unaffected. Marshall C.J. explained this principle as follows, at pp.573-74:

The exclusion of all other Europeans, necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.

Those relations which were to exist between the discoverer and the natives, were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.

In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. *They were admitted to be the rightful occupants of the soil, with a legal as well as just*

claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it. (emphasis added)

[11] The principle that a change in sovereignty over a particular territory does not in general affect the presumptive title of the inhabitants was approved by the Privy Council in *Amodu Tijani v. Secretary of State*, Nigeria, [1921] 2 A.C. 399. That principle supports the assumption implicit in *Calder* that Indian title is an independent legal right which, although recognized by the Royal Proclamation of 1763, nonetheless predates it. For this reason *Kinloch v. Secretary of State for India*,^{supra}; *Tito v. Waddell*, ^{supra}, and the other “political trust” decisions are inapplicable to the present case. The “political trust” cases concerned essentially the distribution of public funds or other property held by the government. In each case the party claiming to be beneficiary under a trust depended entirely on statute, ordinance or treaty as the basis for its claim to an interest in the funds in question. The situation of the Indians is entirely different. Their interest in their lands is a pre-existing legal right not created by Royal Proclamation, by s.18(1) of the *Indian Act*, or by any other executive order or legislative provision.

[12] It does not matter, in my opinion, that the present case is concerned with the interest of an Indian band in a reserve rather than with unrecognized aboriginal title in traditional tribal lands. The Indian interest in the land is the same in both cases: see *Attorney General of Quebec v. Attorney General of Canada*, [1921] 1 A.C. 401 at pp.410-11 (the *Star Chrome* case). It is worth noting, however, that the reserve in question here was created out of the ancient tribal territory of the Musqueam band by the unilateral action of the Colony of British Columbia, prior to Confederation.

(b) The Nature of Indian Title

[13] In the *St. Catherine’s Milling* case, ^{supra}, the Privy Council held that the Indians had a “personal and usufructuary right” in the lands which they had traditionally occupied. Lord Watson said that “there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever the title was surrendered or otherwise extinguished” (at p.55). He reiterated this idea, stating that the Crown “has all along had a present proprietary estate in the land, upon which the Indian title was a mere burden” (at p.58). This view of aboriginal title was affirmed by the Privy Council in the *Star Chrome* case. In *Amodu Tijani*, ^{supra}, Viscount Haldane, adverting to the *St. Catherine’s Milling* and *Star Chrome* decisions, explained the concept of a usufructuary right as “a mere qualification of or burden on the radical or final title of the Sovereign. . .” (p.403). He described the title of the Sovereign as a pure legal estate, but one which could be qualified by a right of “beneficial user” that did not necessarily take the form of an estate in land. Indian title in Canada was said to be one illustration “of the necessity

for getting rid of the assumption that the ownership of land naturally breaks itself up into estates, conceived as creatures of inherent legal principle.” Chief Justice Marshall took a similar view in *Johnson v. McIntosh*, *supra*, saying, “All our institutions recognize the absolute title of the Crown, subject only to the Indian right of occupancy...” (p.588).

[14] It should be noted that the Privy Council’s emphasis on the personal nature of aboriginal title stemmed in part from constitutional arrangements peculiar to Canada. The Indian territory at issue in *St. Catherine’s Milling* was land which in 1867 had been vested in the Crown subject to the interest of the Indians. The Indians’ interest was “an interest other than that of the Province”, within the meaning of s.109 of the *Constitution Act, 1867*. Section 109 provides:

All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

[15] When the land in question in *St. Catherine’s Milling* was subsequently disencumbered of the native title upon its surrender to the federal government by the Indian occupants in 1873, the entire beneficial interest in the land was held to have passed, because of the personal and usufructuary nature of the Indians’ right, to the Province of Ontario under s.109 rather than to Canada. The same constitutional issue arose recently in this Court in *Government of Canada v. Smith* (1983), 47 N.R. 132, in which the Court held that the Indian right in a reserve, being personal, could not be transferred to a grantee, whether an individual or the Crown. Upon surrender the right disappeared “in the process of release”.

[16] No such constitutional problem arises in the present case, since in 1938 the title to all Indian reserves in British Columbia was transferred by the provincial government to the Crown in right of Canada.

[17] It is true that in contexts other than the constitutional the characterization of Indian title as “a personal and usufructuary right” has sometimes been questioned. In *Calder*, *supra*, for example, Judson J. intimated at p.328 that this characterization was not helpful in determining the nature of Indian title. In *Attorney General of Canada v. Giroux* (1916), 53 S.C.R. 172, Duff J., speaking for himself and Anglin J., distinguished *St. Catherine’s Milling* on the ground that the statutory provisions in accordance with which the reserve in question in *Giroux* had been created conferred beneficial ownership on the Indian band which occupied the reserve. In *Cardinal v. Attorney General of Alberta*, [1974] S.C.R. 695, Laskin J., dissenting on another point, accepted the possibility that Indians may have a beneficial interest in a reserve. The Alberta Court of Appeal in *Western International Contractors Ltd. v. Sarcee Developments Ltd.*, [1979] 3

W.W.R. 630, accepted the proposition that an Indian Band does indeed have a beneficial interest in its reserve. In the present case this was the view as well of Le Dain J. in the Federal Court of Appeal. See also the judgment of Kellock J. in *Miller v. The King*, [1950] S.C.R. 168, in which he seems implicitly to adopt a similar position. None of these judgments mentioned the *Star Chrome* case, however, in which the Indian interest in land specifically set aside as a reserve was held to be the same as the “personal and usufructuary right” which was discussed in *St. Catherine’s Milling*.

[18] It appears to me that there is no real conflict between the cases which characterize Indian title as a beneficial interest of some sort, and those which characterize it a personal, usufructuary right. Any apparent inconsistency derives from the fact that in describing what constitutes a unique interest in land the courts have almost inevitably found themselves applying a somewhat inappropriate terminology drawn from general property law. There is a core of truth in the way that each of the two lines of authority has described native title, but an appearance of conflict has nonetheless arisen because in neither case is the categorization quite accurate.

[19] Indians have a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown. While their interest does not, strictly speaking, amount to beneficial ownership, neither is its nature completely exhausted by the concept of a personal right. It is true that the *sui generis* interest which the Indians have in the land is personal in the sense that it cannot be transferred to a grantee, but it is also true, as will presently appear, that the interest gives rise upon surrender to a distinctive fiduciary obligation on the part of the Crown to deal with the land for the benefit of the surrendering Indians. These two aspects of Indian title go together, since the Crown’s original purpose in declaring the Indians’ interest to be inalienable otherwise than to the Crown was to facilitate the Crown’s ability to represent the Indians in dealings with third parties. The nature of the Indians’ interest is therefore best characterized by its general inalienability, coupled with the fact that the Crown is under an obligation to deal with the land on the Indians’ behalf when the interest is surrendered. Any description of Indian title which goes beyond these two features is both unnecessary and potentially misleading.

(c) The Crown’s Fiduciary Obligation

[20] The concept of fiduciary obligation originated long ago in the notion of breach of confidence, one of the original heads of jurisdiction in Chancery. In the present appeal its relevance is based on the requirement of a “surrender” before Indian land can be alienated.

[21] The Royal Proclamation of 1763 provided that no private person could purchase from the Indians any lands that the Proclamation had reserved to them, and provided further that all purchases had to be by and in the name of the Crown, in a public assembly of the Indians held by the governor or commander-in-chief of the colony in which the lands in question lay. As Lord Watson pointed

out in *St. Catherine's Milling, supra*, at p.54, this policy with respect to the sale or transfer of the Indians' interest in land has been continuously maintained by the British Crown, by the governments of the colonies when they became responsible for the administration of Indian affairs, and, after 1867, by the federal government of Canada. Successive federal statutes, predecessors to the present *Indian Act*, have all provided for the general inalienability of Indian reserve land except upon surrender to the Crown, the relevant provisions in the present Act being ss.37-41.

[22] The purpose of this surrender requirement is clearly to interpose the Crown between the Indians and prospective purchasers or lessees of their land, so as to prevent the Indians from being exploited. This is made clear in the Royal Proclamation itself, which prefaces the provision making the Crown an intermediary with a declaration that "great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians. . .". Through the confirmation in the *Indian Act* of the historic responsibility which the Crown has undertaken, to act on behalf of the Indians so as to protect their interests in transactions with third parties, Parliament has conferred upon the Crown a discretion to decide for itself where the Indians' best interests really lie. This is the effect of s.18(1) of the Act.

[23] This discretion on the part of the Crown, far from ousting, as the Crown contends, the jurisdiction of the courts to regulate the relationship between the Crown and the Indians, has the effect of transforming the Crown's obligation into a fiduciary one. Professor Ernest Weinrib maintains in his article "The Fiduciary Obligation" (1975), 25 U.T.L.J. 1 at p.7, that "the hallmark of a fiduciary relation is that the relative legal positions are such that one party is at the mercy of the other's discretion." Earlier, at p.4, he puts the point in the following way:

[Where there is a fiduciary obligation] there is a relation in which the principal's interests can be affected by, and are therefore dependent on, the manner in which the fiduciary uses the discretion which has been delegated to him. The fiduciary obligation is the law's blunt tool for the control of this discretion.

[24] I make no comment upon whether this description is broad enough to embrace all fiduciary obligations. I do agree, however, that where by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power, the party thus empowered becomes a fiduciary. Equity will then supervise the relationship by holding him to the fiduciary's strict standard of conduct.

[25] It is sometimes said that the nature of fiduciary relationships is both established and exhausted by the standard categories of agent, trustee, partner, director, and the like. I do not agree. It is the nature of the relationship, not the specific category of actor involved that gives rise to the fiduciary duty. The

categories of fiduciary, like those of negligence, should not be considered closed. See, e.g. *Laskin v. Bache & Co. Inc.* (1972), 23 D.L.R. (3d) 385 (Ont.C.A.) at p.392; *Golder Mines Ltd. v. Revill* (1974), 7 O.R. 216 (Ont.C.A.) at p.224.

[26] It should be noted that fiduciary duties generally arise only with regard to obligations originating in a private law context. Public law duties, the performance of which requires the exercise of discretion, do not typically give rise to a fiduciary relationship. As the “political trust” cases indicate, the Crown is not normally viewed as a fiduciary in the exercise of its legislative or administrative function. The mere fact, however, that it is the Crown which is obligated to act on the Indians’ behalf does not of itself remove the Crown’s obligation from the scope of the fiduciary principle. As was pointed out earlier, the Indians’ interest in land is an independent legal interest. It is not a creation of either the legislative or executive branches of government. The Crown’s obligation to the Indians with respect to that interest is therefore not a public law duty. While it is not a private law duty in the strict sense either, it is nonetheless in the nature of a private law duty. Therefore, in this *sui generis* relationship, it is not improper to regard the Crown as a fiduciary.

[27] Section 18(1) of the *Indian Act* confers upon the Crown a broad discretion in dealing with surrendered land. In the present case, the document of surrender, set out in part earlier in these reasons, by which the Musqueam band surrendered the land at issue, confirms this discretion in the clause conveying the land to the Crown “in trust to lease . . . upon such terms as the Government of Canada may deem most conducive to our Welfare and that of our people”. When, as here, an Indian band surrenders its interest to the Crown, a fiduciary obligation takes hold to regulate the manner in which the Crown exercises its discretion in dealing with the land on the Indians’ behalf.

[28] I agree with Le Dain J. that before surrender the Crown does not hold the land in trust for the Indians. I also agree that the Crown’s obligation does not somehow crystallize into a trust, express or implied, at the time of surrender. The law of trusts is a highly developed, specialized branch of the law. An express trust requires a settlor, a beneficiary, a trust corpus, words of settlement, certainty of object and certainty of obligation. Not all of these elements are present here. Indeed, there is not even a trust corpus. As the *Smith* decision, *supra*, makes clear, upon unconditional surrender the Indians’ right in the land disappears. No property interest is transferred which could constitute the trust res, so that even if the other *indicia* of an express or implied trust could be made out, the basic requirement of a settlement of property has not been met. Accordingly, although the nature of Indian title coupled with the discretion vested in the Crown are sufficient to give rise to a fiduciary obligation, neither an express nor an implied trust arises upon surrender.

[29] Nor does surrender give rise to a constructive trust. As was said by this Court in *Pettikus v. Becker*, [1980] 2 S.C.R. 834 at p.847, “The principle of unjust enrichment lies at the heart of the constructive trust”. See also *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436. Any similarity between a constructive trust

and the Crown's fiduciary obligation to the Indians is limited to the fact that both arise by operation of law; the former is an essentially restitutionary remedy, while the latter is not. In the present case, for example, the Crown has in no way been enriched by the surrender transaction, whether unjustly or otherwise, but the fact that this is so cannot alter either the existence or the nature of the obligation which the Crown owes.

[30] The Crown's fiduciary obligation to the Indians is therefore not a trust. To say as much is not to deny that the obligation is trust-like in character. As would be the case with a trust, the Crown must hold surrendered land for the use and benefit of the surrendering band. The obligation is thus subject to principles very similar to those which govern the law of trusts concerning, for example, the measure of damages for breach. The fiduciary relationship between the Crown and the Indians also bears a certain resemblance to agency, since the obligation can be characterized as a duty to act on behalf of the Indian bands who have surrendered lands, by negotiating for the sale or lease of the land to third parties. But just as the Crown is not a trustee for the Indians, neither is it their agent; not only does the Crown's authority to act on the band's behalf lack a basis in contract, but the band is not a party to the ultimate sale or lease, as it would be if it were the Crown's principal. I repeat, the fiduciary obligation which is owed to the Indians by the Crown is *sui generis*. Given the unique character both of the Indians' interest in land and of their historical relationship with the Crown, the fact that this is so should occasion no surprise.

[31] The discretion which is the hallmark of any fiduciary relationship is capable of being considerably narrowed in a particular case. This is as true of the Crown's discretion *vis-à-vis* the Indians as it is of the discretion of trustees, agents, and other traditional categories of fiduciary. The *Indian Act* makes specific provision for such narrowing in ss.18(1) and 38(2). A fiduciary obligation will not, of course, be eliminated by the imposition of conditions that have the effect of restricting the fiduciary's discretion. A failure to adhere to the imposed conditions will simply itself be a *prima facie* breach of the obligation. In the present case both the surrender and the Order-in-Council accepting the surrender referred to the Crown leasing the land on the band's behalf. Prior to the surrender the band had also been given to understand that a lease was to be entered into with the Shaughnessy Heights Golf Club upon certain terms, but this understanding was not incorporated into the surrender document itself. The effect of these so-called oral terms will be considered in the next section.

(d) Breach of the Fiduciary Obligation

[32] The trial judge found that the Crown's agents promised the band to lease the land in question on certain specified terms and then, after surrender, obtained lease on different terms. The lease obtained was much less valuable. As already mentioned, the surrender document did not make reference to the "oral" terms. I would not wish to say that those terms had nonetheless somehow been incorporated as conditions into the surrender. They were not formally assented to by a majority of the electors of the band, nor were they accepted by the

Governor in Council, as required by s.39(1)(b) and s.39(1)(c). I agree with Le Dain J. that there is no merit in the appellants' submission that for purposes of s.39 a surrender can be considered independently of its terms. This makes no more sense than would a claim that a contract can have an existence which in no way depends on the terms and conditions that comprise it.

[33] Nonetheless, the Crown, in my view, was not empowered by the surrender document to ignore the oral terms which the band understood would be embodied in the lease. The oral representations form the backdrop against which the Crown's conduct in discharging its fiduciary obligation must be measured. They inform and confine the field of discretion within which the Crown was free to act. After the Crown's agents had induced the band to surrender its land on the understanding that the land would be leased on certain terms, it would be unconscionable to permit the Crown simply to ignore those terms. When the promised lease proved impossible to obtain, the Crown, instead of proceeding to lease the land on different, unfavourable terms, should have returned to the band to explain what had occurred and seek the band's counsel on how to proceed. The existence of such unconscionability is the key to a conclusion that the Crown breached its fiduciary duty. Equity will not countenance unconscionable behaviour in a fiduciary, whose duty is that of utmost loyalty to his principal.

[34] While the existence of the fiduciary obligation which the Crown owes to the Indians is dependent on the nature of the surrender process, the standard of conduct which the obligation imports is both more general and more exacting than the terms of any particular surrender. In the present case the relevant aspect of the required standard of conduct is defined by a principle analogous to that which underlies the doctrine of promissory or equitable estoppel. The Crown cannot promise the band that it will obtain a lease of the latter's land on certain stated terms, thereby inducing the band to alter its legal position by surrendering the land, and then simply ignore that promise to the band's detriment. See, e.g. *Central London Property Trust Ltd. v. High Trees House Ltd.*, [1947] 1 K.B. 130 ; *Robertson v. Minister of Pensions*, [1949] 1 K.B. 227 (C.A.) .

[35] In obtaining without consultation a much less valuable lease than that promised, the Crown breached the fiduciary obligation it owed the band. It must make good the loss suffered in consequence.

[...]

Appeal allowed.