SUPERIOR COURT
(Criminal and Penal Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL

N°: 505-01-183000-237

DATE: December 18, 2024

BY THE HONOURABLE DANIEL ROYER, J.S.C.

HIS MAJESTY THE KING
RESPONDENT- Prosecution
v.

LOGAN KANE
FREDERICK FRANCIS LEBLANC
CHRISTINA WILLIAMS
TEHORIWATHE BEAUVAIS
CODY RAVEN JACOBS
APPLICANTS-Accused
and

ATTORNEY GENERAL OF QUÉBEC
ATTORNEY GENERAL OF CANADA
IMPLEADED PARTIES

JUDGMENT ON AN APPLICATION TO ACQUIT

I. OVERVIEW

[1] Logan Kane, Frederick Francis Leblanc, Christina Williams, Tehoriwathe Beauvais and Cody Raven Jacobs are charged with conspiracy and fraud against the Government of Canada under Sections 465(1)c) and 380(1)a) of the *Criminal Code*. Mr. Beauvais and Mr. Jacobs are also charged with trafficking in property obtained by crime under Sections 355.1(a)(b) and 355.5(a) of the *Criminal Code*.

[2] It is undisputed that the applicants are Mohawks of the Haudenosaunee family residing within the communities that constitute the Mohawk Nation. As in the *Montour* case,[1] the charges are based on a violation of section 42 of the *Excise Act,*[2] for failure to pay the duty on tobacco products. The applicants seek an order of acquittal based on the decision of Bourque J. in the *Montour* case, declaring section 42 of the *Excise Act* constitutionally inapplicable and inoperative in relation to Mr. White and Mr. Montour, pursuant to section 52 of the *Constitution Act, 1982*.

[3] The Crown and the Attorneys General contend that the application is premature and should be heard after the trial if the accused are found guilty. The Court has already ruled in an earlier judgment that the application is not premature in this case, considering all the advantages for the administration of justice.

[4] The Attorneys General go on to argue that this Court is bound by the framework developed by the Supreme Court of Canada in *Van der Peet*[3] with respect to Aboriginal rights, not the framework developed by Bourque J. in *Montour*. With respect to treaty rights, this Court should not follow the *Montour* decision because it is not binding and, in the alternative, because its rationale has been undermined by subsequent appellate decisions.

[5] For the reasons that follow, the Court concludes that it is bound by vertical *stare decisis* on the issue of Aboriginal rights, but by horizontal *stare decisis* on the issue of treaty rights. Accordingly, the application is granted, and the applicants are acquitted.

II. THE *RATIO DECIDENDI* OF THE *MONTOUR* DECISION

[6] The *ratio decidendi* of a decision is a statement of law, not fact, which is binding as a matter of *stare decisis*. In *Montour*, Bourque J. held that

> A. Circumstances warrant a departure from vertical *stare decisis* by articulating a new framework applicable to the recognition of Aboriginal rights; as a result, the applicants' participation in the Mohawks of Kahnawake tobacco trade industry is protected by an Aboriginal right to freely pursue economic development.[4] The Government of Canada's tobacco regulatory regime has unjustifiably infringed the applicants' Aboriginal right to freely pursue economic development.[5]

---

1 *R.* c. *Montour*, 2023 QCCS 4154.
2 *Excise Act, 2001*, S.C. 2002, c. 22.
3 *R.* v. *Van der Peet*, [1996] 2 S.C.R. 507.
4 *R.* c. *Montour*, *supra*, note 1, para. 1237, 1296, 1297, 1409, 1410.
5 *Id.*, para. 1496, 1522, 1647 and 1651.

B. The Covenant Chain is a treaty of peace and friendship between the Crown and the Haudenosaunee that includes a dispute resolution process guaranteed by section 35(1) of the *Constitution Act*.[6] The Crown unjustifiably breached its obligation under the Covenant Chain by not attempting to discuss tobacco-related issues with the Mohawks of Kahnawake prior to the passage of the *Excise Act*.[7]

[7] Bourque J. held that section 42 of the *Excise Act* was constitutionally inapplicable and inoperative under section 52 of the *Constitution Act, 1982*, in respect of the applicants Derek White and Hunter Montour, because it violated their Aboriginal and treaty rights as guaranteed by section 35(1) of the *Constitution Act, 1982*. As they had already been found guilty, Bourque J. ordered a permanent stay of the criminal proceedings. The declaration of unconstitutionality was not suspended pending legislative amendments or appeal.

III. ANALYSIS

A. The Court is bound by vertical stare decisis on the issue of Aboriginal rights

[8] For over 25 years, the Supreme Court of Canada has applied a framework for recognizing Aboriginal rights set out in *Van der Peet*.[8] The last time it did so was in *Desautel* in 2021.[9] As a matter of *stare decisis*, a court is bound by an earlier interpretation of a legal provision, whether by the same court or a higher court, until that interpretation is overruled by a court of higher authority.[10] The Court concludes that it is bound by the *Van der Peet* framework to recognize Aboriginal rights until a different framework is approved by the Quebec Court of Appeal or the Supreme Court of Canada.

[9] Courts are not entitled to ignore binding precedents. However, they may reconsider settled decisions of higher courts when new legal issues are raised as a result of significant developments in the law, or when there is a change in circumstances or evidence that fundamentally alters the parameters of the debate.[11] This is the conclusion that Bourque J. reached when, after months of hearing expert testimony and reviewing documentary evidence, she designed a new framework for recognizing Aboriginal rights.

---

6 *Id.*, para. 1085, 1086, 1087 and 1100.
7 *Id.*, para. 1519, 1522, 1650 and 1651.
8 *R.* v. *Van der Peet*, *supra*, note 3.
9 *R.* v. *Desautel*, 2021 SCC 17, [2021] 1 S.C.R. 533, para. 51 and 52.
10 *R.* v. *Kirkpatrick*, 2022 CSC 33, para. 130.
11 *Canada (Attorney General)* v. *Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, para. 42 and 44; *Carter* v. *Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, para. 44; *R.* v. *Comeau*, 2018 SCC 15, [2018] 1 S.C.R. 342, para. 26 and 34.

[10] This Court is not in a position to cast aside binding precedents on these parameters, given the minimal evidence submitted in this application.[12] The threshold cannot possibly be met under the circumstances. The Court is bound by vertical *stare decisis* and the *Van der Peet* framework to recognize Aboriginal rights. Therefore, the *Montour* decision cannot be followed on this issue.

B. *The Court is bound by horizontal stare decisis on the issue of treaty rights*

[11] The situation is different with respect to the issue of treaty rights. The Court is not bound by vertical *stare decisis* on this issue. The decisions in which the Ontario Court of Appeal referred to the Covenant Chain did not determine its precise legal nature and status.[13] It has been described as a "symbol" or a "metaphor".

[12] Bourque J. considered these decisions and found that the historical and cultural context surrounding the reference to the Covenant Chain in these cases was different from that in *Montour*.[14] The Alliance was originally between the British and the Haudenosaunee Confederacy before it was later extended to the Anishinaabe of the Upper Great Lakes. The Supreme Court noted this in its analysis of *Restoule*.[15] Bourque J. decided to characterize the Covenant Chain as an unwritten general treaty or meta-treaty.[16] No prior judgment had done so, but no prior binding judgment had held that it was not.

i. Horizontal *Stare Decisis* Applies to Decisions Under Appeal

[13] The Attorneys General contend that the *Montour* decision is not binding because it is under appeal. It is not a settled matter under the doctrine of *res judicata*. This argument is flawed.

[14] In the first place, the Court is not aware of any such rule under which the losing party in a dispute can automatically suspend the effect of a first instance judgment simply by lodging an appeal. Assuming that the Court of Appeal has jurisdiction to do so in respect of a decision which applies *erga omnes*, which the Court strongly doubts, no such application to suspend the effect of the *Montour* judgment has been made.

---

12 A-1: *Montour* decision; A-2: Direct indictment in present file; A-3: Warrant for arrest in *Montour*; A-4: Summary of facts in present file; A-5: Summaries – Transactional loops in present file.

13 *Restoule* v. *Canada (Attorney General)*, 2021 ONCA 779, para. 16, 17 and 20; *Mississaugas of Scugog Island First Nation* v. *National Automobile, Aerospace, Transportation and General Workers Union of Canada*, 2007 ONCA 814, para. 50.

14 *R.* c. *Montour*, *supra*, note 1, para. 490, 606 and 607.

15 *Ontario (Attorney General)* v. *Restoule*, 2024 SCC 27, para. 19.

16 *R.* c. *Montour*, *supra*, note 1, para. 1084, 1087 and 1100.

[15] Then, the Attorneys General confuse *stare decisis* with *res judicata*. *Res judicata* prevents relitigation of particular cases. *Stare decisis* guards against this systemically by preventing relitigation of settled law. Such relitigation contributes to delay and wastes judicial resources.[17] *Stare decisis* is the better framework to apply to constitutional issues because it better protects against relitigation of law, while *res judicata* protects against relitigation of fact.[18]

[16] Courts have consistently held that the doctrine of horizontal *stare decisis* binds coordinate courts, notwithstanding the fact that the decision is under appeal.[19] Indeed, *stare decisis* promotes legal certainty and stability, the rule of law so that people are subject to similar rules, and the legitimate and efficient exercise of judicial authority.[20] Adherence to precedent promotes fundamental values of the rule of law, such as consistency, certainty, fairness, predictability, and sound judicial administration.[21] Ignoring a decision of a coordinate court because it is under appeal would frustrate these legitimate goals of *stare decisis*.

[17] Moreover, the effect of a declaration of unconstitutionality has always been immediate unless the effect is suspended by the court, as in *Bedford*[22] and *Carter*.[23] Bourque J. did not suspend her declaration of unconstitutionality. The Attorneys General's position would mean that the *Montour* decision is the equivalent of a constitutional exemption, in which case the applicants in the present case could have asked for the same treatment.[24] It is not, even though the declaration of unconstitutionality applies to a particular class of people. A declaration that a law has no force or effect does not operate on a case-by-case remedial basis but applies *erga omnes*.[25] If the law is declared unconstitutional, it is of no force or effect for all future cases.[26]

[18] A court is required by the principles of judicial comity and horizontal *stare decisis* to follow a binding prior decision of the same court in the province. A decision may not be binding if it is distinguishable on its facts.[27] The *Montour* decision is binding on the treaty rights issue: the applicants are Mohawks of the Haudenosaunee family residing within the

---

17 *R.* v. *Kirkpatrick*, *supra*, note 10, para. 187.
18 *R.* v. *Sullivan*, 2022 SCC 19, [2022] 1 S.C.R. 460, para. 68.
19 *Rix* v. *Koch*, 2021 BCSC 1526, para. 72; *Clark* v. *Energy Brands Inc.*, 2014 BCSC 1891, para 41-42.
20 *R.* v. *Kirkpatrick*, *supra*, note 10, para. 183.
21 *R.* v. *Sullivan*, *supra*, note 18, para. 64.
22 *Canada (Attorney General)* v. *Bedford*, *supra*, note 11, para. 169.
23 *Carter* v. *Canada (Attorney General)*, supra, note 11, para. 128 and 147
24 *Québec (Procureur général)* c. *D'Amico*, 2015 QCCA 2138, para. 36.
25 *R.* v. *Sullivan*, *supra*, note 18, para. 52; *R.* v. *Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96, para. 35.
26 *R.* v. *Sullivan*, *supra*, note 18, para. 54.
27 *Id.*, para. 86.

communities that constitute the Mohawk Nation; the charges are based on a violation of section 42 of the *Excise Act*; and the treaty at issue in both cases is the Covenant Chain.

ii. Exceptions to Horizontal *Stare Decisis* Do Not Apply to the *Montour* Decision

[19] Courts should depart from binding decisions of a court of coordinate jurisdiction, including on questions of constitutional law, only in three narrow circumstances: 1. The rationale of an earlier decision has been undermined by subsequent appellate decisions; 2. The earlier decision was made *per incuriam* ("through carelessness" or "by inadvertence"); or 3. The earlier decision was not fully considered, e.g., it was made under exigent circumstances.[28]

[20] The Attorneys General argue that horizontal *stare decisis* does not apply to the *Montour* decision because its rationale has been undermined by subsequent appellate decisions. They contend that the *Montour* decision is an isolated one. It would be more accurate to say that it is the only decision on the issue.

[21] The Covenant Chain was referred to by the Ontario Court of Appeal after the *Montour* decision in *Chippewas of Nawash Unceded First Nation*.[29] The legal nature or status of the Covenant Chain was not discussed. In *Restoule*, the Supreme Court of Canada recognized the existence of the Covenant Chain, but the issue was decided in an analysis of the Robinson Treaties. The question of whether the Covenant Chain should be given treaty status was not specifically addressed.[30]

[22] A judge need not follow an earlier decision if the authority of the earlier decision has been undermined by later decisions. "This may arise in a situation where a decision has been overruled by, or is necessarily inconsistent with, a decision by a higher court."[31] *Montour* was not overruled. Nor can it be said to be necessarily inconsistent with a decision of a higher court. The issue decided in *Montour* regarding the legal nature or status of the Covenant Chain has not yet been addressed by a higher court.

[23] The Attorneys General make an interesting case that the *Montour* decision would be plainly wrong. That is a question for the Court of Appeal to decide, not this Court. A prior decision cannot be ignored because it is "plainly wrong" or because there is a "good reason" for doing so. "The institutional consistency and predictability rationales of *stare*

---

28 *Id.*, para. 44 and 75.
29 *Chippewas of Nawash Unceded First Nation* v. *Canada (Attorney General)*, 2023 ONCA 565, para. 59.
30 *Ontario (Attorney General)* v. *Restoule*, *supra*, note 15, para 19-20.
31 *R.* v. *Sullivan*, *supra*, note 18, para. 76.

decisis are undermined by standards that enable difference in a single judge's opinion to determine whether precedent should be followed."[32]

[24] The Court concludes that horizontal *stare decisis* applies to the issue of treaty rights and that none of the exceptions allowing the Court not to follow the *Montour* decision applies.

FOR THESE REASONS, THE COURT:

[25] **GRANTS** the application;

[26] **DECLARES** that section 42 of the *Excise Act, 2001*, S.C. 2002, c. 22, is constitutionally inapplicable and inoperative under section 52 of the *Constitution Act, 1982*, in respect of the applicants Logan Kane, Frederick Francis Leblanc, Christina Williams, Tehoriwathe Beauvais and Cody Raven Jacobs as it violates their treaty rights as guaranteed by section 35(1) of the *Constitution Act, 1982*;

[27] **ACQUITS** the applicants.

DANIEL ROYER, J.S.C.

---

[32] *Id.*, para. 74.

Me Chantal-Andrée Morin
chantal-andree.morin@dpcp.gouv.qc.ca
Me Carol-Anne Perreault
carol-anne.perreault@dpcp.gouv.qc.ca
Directeur des poursuites criminelles et pénales
Counsel for HIS MAJESTY THE KING

Me Philip D. Schneider
pschneider@schneideravocats.com
Me Joël Girard
jgirard@schneideravocats.com
Schneider, Girard & Associés
Counsel for LOGAN KANE

Me Julio Péris
julio@jperis.com
Counsel for FREDERICK FRANCIS LEBLANC

Me Pierre L'Ecuyer
pistolpet@icloud.com
L'Ecuyer, Rouleau, Lamarche et ass
Counsel for CHRISTINA WILLIAMS

Me Emmanuelle Rheault
e.rheault@cdravocats.com
Corbeil Demchuck Roy avocats
Counsel for TEHORIWATHE BEAUVAIS

Me Anne-Marie Campeau
amcampeau@legroupecr.com
Le Groupe Campeau Raymond inc.
Counsel for CODY RAVEN JACOBS

Me Daniel Benghozi
daniel.benghozi@justice.gouv.qc.ca
Me Éric Bellemare
eric.bellemare@justice.gouv.qc.ca
Me Valérie Gourvil
valerie.gourvil@justice.gouv.qc.ca
Bernard, Roy (Justice – Québec)
Counsel for the ATTORNEY GENERAL OF QUÉBEC

M^e David Lucas
david.lucas@justice.gc.ca
M^e Sean Doyle
sean.doyle@justice.gc.ca
Department of Justice Canada – Quebec Regional Office
Counsel for the ATTORNEY GENERAL OF CANADA

Dates of Hearing: September 16 and October 29, 2024