



Case in Brief: **Southwind v. Canada**

Judgment of July 16, 2021 | On appeal from the Federal Court of Appeal
Neutral citation: 2021 SCC 28

The Supreme Court rules that \$30 million award to Lac Seul First Nation was not enough compensation for flooded reserve land.

Part of Lac Seul First Nation (LSFN)'s reserve land in northern Ontario was flooded for a hydroelectricity project that began in the 1920s. The project involved the governments of Canada, Manitoba and Ontario. The project went ahead without the consent of the LSFN and without compensation. The flooding caused major damage.

Years later, the LSFN brought a claim for that damage. The Federal Court ordered the government of Canada to pay the LSFN \$30 million in compensation. The judge considered the value of the land in the 1920s but without the added value for the hydroelectricity project.

The LSFN appealed to the Federal Court of Appeal. The LSFN said that amount did not sufficiently compensate them for the loss of the flooded land. The Federal Court of Appeal disagreed.

But the Supreme Court of Canada agreed. It said \$30 million did not sufficiently compensate the LSFN. It therefore allowed the appeal.

Damage to reserve land due to the hydroelectricity project

The Supreme Court noted that the hydroelectricity project caused major damage to the LSFN reserve land. A majority of the judges wrote that approximately “17% of the LSFN Reserve — 11,304 acres or approximately 4,575 hectares — is now permanently flooded. Homes were destroyed, as were wild rice fields, gardens, haylands, and gravesites. Fishing, hunting, and trapping were all impacted. The community was separated because one part of the reserve became an island. And, despite the sacrifices suffered by the community to make the hydroelectricity project possible, the reserve was not provided with electricity until the 1980s.”

Assessment of equitable compensation

The majority of judges said the compensation amount should have included the added value for the hydroelectricity project. They explained that the compensation owed by Canada to the LSFN should be the amount that a properly negotiated deal by Canada would have earned them. This meant a deal based on the value of the land to those who were wanting to use it, which in this case was the hydroelectricity project. The majority agreed with the LSFN that \$30 million was not enough to include that project and ordered that the Federal Court reassess the amount.

Canada's “fiduciary duty” towards Indigenous Peoples

The majority explained that Canada's specific duty towards Indigenous Peoples is called a “fiduciary duty”. Fiduciary duty means that Canada is obliged to act in the best interest of Indigenous Peoples, especially as concerns reserve land. If that land is to be taken away or damaged, as it was in this case, Canada must get the best price for the land on their behalf.

Breakdown of the decision: **Majority:** Justice Andromache [Karakatsanis](#) said that \$30 million was insufficient compensation to the LSFN because that amount only accounted for the loss of the reserve land without considering the land's value to the hydroelectricity project. She ordered that the case be sent back to the Federal Court to reassess the amount based on the clarifications provided by the majority (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Brown](#), [Rowe](#), [Martin](#) and [Kasirer](#) agreed) | **Dissenting:** Justice Suzanne [Côté](#) said the trial judge made no error in principle in concluding that \$30 million was an appropriate compensation amount, having reviewed, analysed and weighed the evidence before him.

More information (case # 38795): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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