

## ABORIGINAL PEOPLES

### TAXATION

Judicial review of First Nations Tax Commission decision approving law (Fee Law) made by respondent imposing fee for sewer, waste water treatment services for casino operated by applicant — Applicant arguing that fee imposed lacking nexus with projected service cost, that report provided by respondent to justify fee not supported by adequate financial data — *First Nations Fiscal Management Act*, S.C. 2005, c. 9 (Act), s. 5, empowering First Nation council to enact “local revenue laws,” including laws regarding land taxes as well as laws “respecting the charging of fees for the provision of services ... in relation to ... sewers” — S. 5 also providing that such laws must be approved by Commission — Commission establishing, pursuant to Act, s. 35, *Standards for First Nations Fee Laws, 2017* “respecting ... the form and content of local revenue laws” as well as “procedures respecting ... approval of those laws” (Act. s. 35) — Prior to approval by Commission of Fee Law at issue herein, applicant writing to respondent to express concerns with draft Fee Law — Respondent replying that concerns not related to non-compliance with requirements of Act — Commission subsequently approving Fee Law, having before it Fee Law, report describing basis for calculation of service fee (Sewer Fee Report), technical review form, document checklist form completed by Commission staff, applicant’s written submissions — Whether Commission’s decision made in procedurally fair manner, complying with requirements of Act — Whether Commission’s decision substantively reasonable — Supreme Court of Canada recognizing that facilitation of self-government purpose of First Nations’ taxing power — In context of self-government, where power recognized under certain substantive conditions, mainly for self-governing entity to implement those conditions, to determine what they entail in specific case — While Commission not a First Nation, not itself exercising self-government, Parliament intending that it play narrow but significant role in exercise of self-government by participating First Nations — Commission’s mandate is to ensure compliance with statutory requirements, not to perform detailed audit of projected costs — Commission simply having to ensure that First Nation establishing fee reflecting projected cost of service — Manner in which this is done remaining within First Nation’s powers of self-government — When scheme of Act considered, apparent that Parliament sought to achieve transparency, accountability, protect ratepayers’ interests through mechanisms that ensure fees used for purposes for which collected rather than allowing ratepayers to challenge amount of fees before such fees approved — In present instance, requirements of Standards complied with if Sewer Fee Report, on its face, establishing projected cost, explaining how cost determined, demonstrating that fee reflecting projected cost — Reasons provided by Commission for approving fee relying on such report, decision rendered reasonable — Decision also reasonable when assessed in light of applicant’s submissions to Commission — Respondent, Commission complying with procedural requirements, which requirements set by Act, not common law — In conclusion, Commission’s approval of Fee Law not unreasonable or breaching requirements of procedural fairness — Commission fully complying with provisions of Act — Application dismissed.

ONTARIO LOTTERY AND GAMING CORPORATION V. MISSISSAUGAS OF SCUGOG ISLAND  
FIRST NATION (T-508-18, 2019 FC 813, Grammond J., reasons for judgment dated  
June 14, 2019, 35 pp.)