



A-649-95  
(T-1126-95)

Vancouver, British Columbia, Monday, the 5th day of February, 1996

CORAM: THE HONOURABLE MR. JUSTICE MARCEAU  
THE HONOURABLE MR. JUSTICE ROBERTSON  
THE HONOURABLE MR. JUSTICE McDONALD

Between:

NANCY THOMAS, CHIEF OF THE LAKE BABINE BAND,  
A BODY OF INDIANS DECLARED TO BE A BAND  
FOR THE PURPOSES OF THE *INDIAN ACT* BY  
P.C. 1973-3571, AND GARNET WILLIAM, AND  
FRED WILLIAM

Respondents  
(Plaintiffs)

- and -

EMMA WILLIAMS, WARNER ADAM,  
MARY ANNE PERRY, SYLVESTER CHARLIE,  
TED LOWLEY SR., FRANK MICHELL,  
SUE ANNE ALEC, JOHN WEST JR.,  
LEONARD LOWLEY AND  
HER MAJESTY THE QUEEN

Appellants  
(Defendants)



JUDGMENT

The appeal is allowed, the impugned order of the Trial Division is set aside and the action is struck. The Appellants are entitled to their costs here and in the Court below.

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the Registry of the Federal Court of Canada the \_\_\_\_\_ day

(Sgd.) "Louis Marceau"

J.A.

of FEB - 5 1996 A.D. 19\_\_\_\_

Dated this FEB - 5 1996 day of \_\_\_\_\_ 19\_\_\_\_

*Wendy Petersmeyer*  
WENDY PETERSMEYER  
REGISTRY OFFICER



A-649-95

**CORAM:** MARCEAU J.A.  
ROBERTSON J.A.  
McDONALD J.A.

**BETWEEN:**

**EMMA WILLIAMS, WARNER ADAM, MARY ANN PERRY,  
SYLVESTER CHARLIE, TED LOWLEY SR., FRANK MICHELL,  
SUE ANN ALEC, JOHN WEST JR., LEONARD LOWLEY  
AND HER MAJESTY THE QUEEN**

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(Defendants)

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AND FRED WILLIAM**

Respondents  
(Plaintiffs)

Heard at Vancouver, B.C. on Monday, February 5, 1996

Reasons delivered from the Bench at Vancouver, B.C.  
on February 5, 1996

**REASONS FOR JUDGMENT: ROBERTSON, J.A.**



A-649-95

**CORAM:** MARCEAU J.A.  
ROBERTSON J.A.  
McDONALD J.A.

**BETWEEN:**

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Respondents  
(Plaintiffs)

**REASONS FOR JUDGMENT**

(Delivered orally from the Bench at Vancouver, B.C.  
on Monday, February 5, 1996)

**ROBERTSON J.A.**

This is an appeal from an order of the Trial division dismissing an application to strike a statement of claim. The essential facts are not in dispute. The plaintiffs were elected to the positions of Chief and Band Councillors in an election held in June of 1994. Subsequently, concerns were raised by Band members about the election procedures, and as a result a

second election was held in August of 1994. On September 30, 1994 the Chief and Councillors elected in the second election were "recognized" by the Minister of Indian Affairs and Northern Development. Nine months after the second election, on May 29, 1995, the plaintiffs filed a statement of claim alleging that the "second election was invalid and a nullity" for diverse reasons. The plaintiffs sought, *inter alia*, a declaration that the Chief and Council sworn in during July of 1994 is the only legal governing body, or alternately that a further election be held. On September 8, 1995 the defendants filed an amended Notice of Motion to strike the statement of claim. The motion was dismissed by order dated October 3, 1995. As the Trial judge gave no reasons for his order, the deference normally due to the exercise of a discretionary power by a motions judge does not have to be applied here, and it rests upon this Court to determine afresh whether the order sought should have been granted.

The appellants reiterated before us their contention that the statement of claim should be struck pursuant to paragraph 419(1)(a) of the *Federal Court Rules* on the ground that it discloses no reasonable cause of action. They argue first that the Court lacks jurisdiction to entertain an action commenced by statement of claim, in respect of the relief being sought, and second that even if properly sought, the Court would lack jurisdiction to grant such relief because of the respondents' delay in initiating proceedings. (See *Cairns v. Farm Credit Corp. (T.D.)*, [1992] 2 F.C. 115; *Beauvais v. The Queen*, [1982] 1 F.C. 171 (T.D.); and *Banerd v. Canada (1994)*, 88 F.T.R. 14 (T.D.)).

It is to be noted at the outset that the appellants do not dispute the

jurisdiction of the Court to address the issues herein. The respondents seek declaratory and injunctive relief, which in these circumstances essentially amount to a request for a writ of *quo warranto*. *Quo warranto* allows a challenge of an individual's right to hold a particular office: see *Jock v. Canada (Minister of Indian and Northern Affairs)*, [1991] 2 F.C. 355 (T.D.); *Huron-Wendat Nation (Council) v. Laveau*, [1987] 3 F.C. 647 (T.D.); and *Bruce v. Reynett*, [1979] 2 F.C. 697 (T.D.). The Court's jurisdiction to grant such prerogative relief is expressly provided for in section 18 of the *Federal Court Act*, R.S.C. 1895, c. F-7 as amended, which reads in part as follows:

18 (1) Subject to section 28, the Trial Division has exclusive original jurisdiction

- (a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and
- (b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

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(3) The remedies provided for in subsections (1) and (2) may be obtained only on application for judicial review made under section 18.1.

[emphasis added]

There is no doubt therefore that there is jurisdiction *per se*, an Indian Band Council being a "federal board, commission or other tribunal" within the meaning of sections 2 and 18 of the *Act*: see for example *Canatonquin v. Gabriel*, [1980] 2 F.C. 792 (C.A.). Accordingly, this Court has jurisdiction to address the issue but it can do so only in the context of a section 18 application, not in the context of an action initiated by way of statement of claim. The appellants' motion under Rule 419(1)(a) to strike the respondents' statement of claim, because in the context of an action the Court could not grant the relief sought, is well-founded. It is also well-founded in another

respect. There appears to be no possibility to convert an action into an application for judicial review in view of subsection 18.4(2) of the *Federal Court Act*, but even if the law were otherwise, the Court would be denied jurisdiction to entertain the application. The 30-day limitation period prescribed by subsection 18.1(2) of the *Act* is long past due.

For these reasons, the appeal must be allowed. The appellants are entitled to costs here and below.

(Sgd.) "J.T. Robertson"

J.A.

IN THE FEDERAL COURT OF APPEAL

COURT NO.: A-649-95

Between:

EMMA WILLIAMS et al.

Appellants  
(Defendants)

- and -

NANCY THOMAS et al.

Respondents  
(Plaintiffs)

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REASONS FOR JUDGMENT

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NAMES OF COUNSEL AND SOLICITORS OF RECORD

STYLE OF CAUSE: EMMA WILLIAMS et al.

- and -

NANCY THOMAS et al.

COURT NO.: A-649-95

APPEAL FROM AN ORDER OF THE TRIAL DIVISION DATED  
October 3, 1995, TRIAL DIVISION FILE NO. T-1126-95

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: February 5, 1996

REASONS FOR JUDGMENT OF THE COURT (MARCEAU,  
ROBERTSON, McDONALD, J.J.A.)

Delivered from the Bench on February 5, 1996, by: ROBERTSON, J.A.

APPEARANCES:

Ms. Jacqueline Ott for Appellants  
Ms. Maria Morellato (Defendants)

Mr. Dick Byl for Respondents  
(Plaintiffs)

SOLICITORS OF RECORD:

Blake, Cassels & Graydon for Appellants  
Vancouver, B.C. (Defendants)

Dick Byl Law Corporation for Respondents  
Prince George, B.C. (Plaintiffs)