

**Date: 20080206**

**Docket: A-414-06**

**Citation: 2008 FCA 46**

**CORAM: DÉCARY J.A.  
SHARLOW J.A.  
TRUDEL J.A.**

**BETWEEN:**

**CHIEF ROBERT SAM, COUNCILLOR NICK ALBANY,  
COUNCILLOR NORMAN GEORGE, COUNCILLOR FRANK E. GEORGE,  
COUNCILLOR JOHN R. RICE on their own behalf as  
COUNCIL OF THE SONGHEES INDIAN BAND and  
on behalf of the SONGHEES INDIAN BAND**

**Appellants**

**and**

**THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT,  
THE SUPERINTENDENT FOR THE SONGHEES INDIAN BAND,  
SYLVIA ANN JOSEPH, ALICE LARGE**

**and**

**ESTATE OF IRENE COOPER by her Administrators HARVEY GEORGE,  
CHARLOTTE THOMPSON AND WILLIAM GOSSE and  
HARVEY GEORGE, CHARLOTTE THOMPSON AND WILLIAM GOSSE**

**Respondents**

Heard at Vancouver, British Columbia, on February 6, 2008.

Judgment delivered from the Bench at Vancouver, British Columbia, on February 6, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**Respondents**

**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Vancouver, British Columbia, on February 6, 2008)**

**TRUDEL J.A.**

[1] This is an appeal from a decision of Justice Tremblay-Lamer (cited as 2006 FC 1009), who dismissed the appellants' application for judicial review of a decision of the Minister of Indian Affairs and Northern Development (the Minister) allowing the sale of nine lots located on the Songhees Indian Reserve.

[2] The factual bases of the Minister's decision may be summarized as follows:

- Certificates of Possession (CP) for those reserve lots were held by Irene Cooper until her death. In her will, she devised the CP lots to individuals who are not members of the Songhees Indian Band (the Band) and who, as a consequence, cannot reside on the Reserve.
- As a result, pursuant to section 50(2) of the *Indian Act*, R.S.C. 1985, c. 1-5 (the Act), the Superintendent for the Band planned a sale of the CP lots, the proceeds of which would go to the devisees. Once completed, the sale would require the Minister's approval.
- Between the sale and the ministerial approval, letters were exchanged between the Minister and the Band. The Band expressed its concerns over the alienation of land to individuals, and suggested "that the Minister authorise the use of the lands for general economic development of the [Band]" (AB, Vol. 2, Chief Robert Sam's affidavit, at paragraph 7).
- On June 15, 2004, the Minister approved the transfer of rights to possession of reserve land to the highest bidders.

[3] Hence, the application for judicial review and the decision under appeal.

[4] The application Judge dealt with four issues which raised questions about:

- (a) the Minister's duty to verify the validity of Ms. Cooper's CPs;
- (b) the Minister's duty to obtain a Band Council allotment prior to his approval of the transfer;
- (c) the Minister's fiduciary duty to the Band;
- (d) the Minister's duty of procedural fairness toward the Appellants.

[5] These issues are now in front of this Court with two additional ones brought forward by the appellants who argue, firstly, that the application Judge "misapprehended one of the essential arguments – that there was no evidence of (a) an allotment; (b) possession; or (c) a certificate of possession (appellants' memorandum, at paragraph 54); and secondly that the Minister was in breach of his duty of ordinary diligence. We will not address the latter, since it was not before the Judge and it was not raised in the Memorandum of Fact and Law.

[6] The former issue presumes that the Minister had a duty to verify the validity of Ms. Cooper's CPs. The appellants strongly disagree with the Judge who found that "at the end of the day, what the Minister had before him were CPs. What he did not have before him were any allegations that the CPs were invalid". They argue that this statement amounts to reverting the onus to prove or disprove the validity of the CPs on the Band.

[7] We disagree. The Judge correctly stated that in view of the “flaws” in the registration system, safeguard lay in “giving interested parties the opportunity to make submissions in addition to checking the last entry in the Register” (at paragraph 43 of the Reasons for Judgment).

[8] The Judge had some evidence that the land transaction staff had made a prior examination (AB, Vol. 2, p. 476, cross-examination of S. Evans), and that the Minister had not, in a timely fashion, received submissions or evidence from the Band regarding the validity of the CPs or even raising minimal doubt about it.

[9] The Judge correctly concluded that “there was not a scintilla of evidence before the Minister which would have given him reason to look beyond the CPs or which gave rise to a duty to do so (at paragraph 40 of the Reasons for Judgment).

[10] We are of the opinion that this appeal cannot succeed.

[11] We see no error in the Judge’s standard of review analysis. Applying the pragmatic and functional approach, she concluded that the proper standard of review for the legal questions raised in the application was correctness: a common ground between the parties.

[12] As for the procedural fairness issue, she applied the teachings of *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 25. C.R. 817, and further concluded that “only minimal procedural protections were required” (at paragraph 74 of the Reasons for Judgment).

[13] Applying those principles, the Judge then meticulously marshalled the evidence and the parties' submissions.

[14] Having considered the arguments of counsel for the appellants, we have not been persuaded that the judgment of Justice Tremblay-Lamer was based upon any error of law or any error in the application of the relevant legal principles.

[15] We agree with her judgment substantially for the reasons she gave. Accordingly, the appeal will be dismissed with costs in favour of both respondents.

"Johanne Trudel"

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-414-06

**STYLE OF CAUSE:** Chief Robert Sam et al. v.  
The Minister of IAND et al.

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** February 6, 2008

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SHARLOW J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**DATED:** February 6, 2008

**APPEARANCES:**

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Ms. Isabel Jackson (The Minister of IAND)

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