

Federal Court  
of Appeal



Cour d'appel  
fédérale

Date: 20120315

Dockets: A-146-11  
A-165-11

Citation: 2012 FCA 90

**CORAM: PELLETIER J.A.  
DAWSON J.A.  
STRATAS J.A.**

**A-146-11**

**BETWEEN:**

**CHIEF MARTIN OWENS**

**Appellant**

**and**

**NELSON KEEPER, and HER MAJESTY  
THE QUEEN IN RIGHT OF CANADA,  
as represented by THE MINISTER OF INDIAN  
AFFAIRS AND NORTHERN DEVELOPMENT**

**Respondents**

**and**

**A-165-11**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT**

**Appellant**

**and**

**NELSON KEEPER, CHIEF MARTIN OWENS,  
COUNCILLOR DEON LAM and DEPUTY  
ELECTORAL OFFICER IAN KEEPER**

**Respondents**

Heard at Winnipeg, Manitoba, on March 15, 2012.

Judgment delivered from the Bench at Winnipeg, Manitoba, on March 15, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120315**

**Dockets: A-146-11  
A-165-11**

**Citation: 2012 FCA 90**

**CORAM: PELLETIER J.A.  
DAWSON J.A.  
STRATAS J.A.**

**A-146-11**

**BETWEEN:**

**CHIEF MARTIN OWENS**

**Appellant**

**and**

**NELSON KEEPER, and HER MAJESTY  
THE QUEEN IN RIGHT OF CANADA,  
as represented by THE MINISTER OF INDIAN  
AFFAIRS AND NORTHERN DEVELOPMENT**

**Respondents**

**and**

**A-165-11**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT**

**Appellant**

**and**

**NELSON KEEPER, CHIEF MARTIN OWENS,  
COUNCILLOR DEON LAM and DEPUTY  
ELECTORAL OFFICER IAN KEEPER**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Winnipeg, Manitoba, on March 15, 2012)**

**PELLETIER J.A.**

[1] In the circumstances of these cases, we have decided not to exercise our discretion to hear these appeals relating to the conduct of Indian Band elections, notwithstanding their mootness.

[2] The Crown asks this Court to hear these matters on the basis that, given the 2 year term of office, the questions are elusive of review. We cannot agree. Where the parties pursue their remedies diligently, and where the Court's assistance is requested in expediting applications and appeals, there is no reason why these matters cannot be heard in a timely fashion.

[3] As the factors identified in *Borowski v. Canada* [1989] 1 S.C.R. 342, we are not satisfied that hearing these appeals is an appropriate use of judicial resources. In particular, we are of the view that failure of the parties to address the role of section 78 of the *Indian Act* in the interpretation of the regulations in issue in this appeal would impede our ability to reach a conclusion with confidence.

[4] In the result, we will dismiss these appeals with each party to bear its own costs. In doing so, we do not wish to be taken to be expressing an opinion as to the soundness of the decision under appeal, cited at 2011 FC 307.

"J.D. Denis Pelletier"

\_\_\_\_\_  
J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-146-11

**APPEAL FROM THE ORDER OF THE FEDERAL COURT DATED MARCH 14, 2011,  
DOCKET NO. T-1252-10**

**STYLE OF CAUSE:** A-146-11

CHIEF MARTIN OWENS v.  
NELSON KEEPER ET AL.

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** March 15, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** PELLETIER J.A.

**DELIVERED FROM THE BENCH BY:** PELLETIER, J.A.

**APPEARANCES:**

Martin U. Kramer

FOR THE APPELLANT  
CHIEF MARTIN OWENS

Martin S. Minuk and Melissa N. Burkett

FOR THE RESPONDENT  
NELSON KEEPER

Yvette Creft and Lisa Cholosky

FOR THE RESPONDENT  
HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA ET AL.

**SOLICITORS OF RECORD:**

Olschewski Feuer Davie  
Barristers & Solicitors  
Winnipeg, Manitoba

Aikins, MacAulay & Thorvaldson LLP  
Barristers & Solicitors  
Winnipeg, Manitoba

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE APPELLANT  
CHIEF MARTIN OWENS

FOR THE RESPONDENT  
NELSON KEEPER

FOR THE RESPONDENT  
HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA ET AL.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-165-11

**APPEAL FROM THE ORDER OF THE FEDERAL COURT DATED MARCH 14, 2011,  
DOCKET NO. T-1252-10**

**STYLE OF CAUSE:** A-165-11

HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA ET AL. v.  
NELSON KEEPER ET AL.

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** March 15, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** PELLETIER J.A.

**DELIVERED FROM THE BENCH BY:** PELLETIER, J.A.

**APPEARANCES:**

Yvette Creft and Lisa Cholosky

FOR THE APPELLANT  
HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA ET AL.

Martin S. Minuk and Melissa N. Burkett

FOR THE RESPONDENT  
NELSON KEEPER

Martin U. Kramer

FOR THE RESPONDENT  
CHIEF MARTIN OWENS

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE APPELLANT  
HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA ET AL.

Aikins, MacAulay & Thorvaldson LLP  
Barristers & Solicitors  
Winnipeg, Manitoba

FOR THE RESPONDENT  
NELSON KEEPER

Olschewski Feuer Davie  
Barristers & Solicitors  
Winnipeg, Manitoba

FOR THE RESPONDENT  
CHIEF MARTIN OWENS