

In the Court of Appeal of Alberta

Citation: Lameman v Alberta, 2013 ABCA 148

Date: 20130430

Docket: 1203-0169-AC

1203-0170-AC

Registry: Edmonton

Appeal No: 1203-0169-AC

Between:

**Alphonse Lameman on his own behalf and
on behalf of all other Beaver Lake Cree Nation beneficiaries
of Treaty No. 6, and Beaver Lake Cree Nation**

Respondents
(Plaintiffs)

- and -

Her Majesty the Queen in Right of the Province of Alberta

Appellant
(Defendant)

- and -

The Attorney General of Canada

Not a Party to the Appeal
(Defendant)

And Between:

**Alphonse Lameman on his own behalf and
on behalf of all other Beaver Lake Cree Nation beneficiaries
of Treaty No. 6, and Beaver Lake Cree Nation**

Respondents
(Plaintiffs)

- and -

Her Majesty the Queen in Right of the Province of Alberta

Respondent
(Defendant)

- and -

The Attorney General of Canada

Appellant
(Defendant)

The Court:

**The Honourable Mr. Justice Jack Watson
The Honourable Madam Justice Myra Bielby
The Honourable Madam Justice Barbara Lea Veldhuis**

Memorandum of Judgment

Appeal from the Order by
The Honourable Madam Justice B.A. Browne
Dated the 28th day of March, 2012
Filed on the 6th day of July, 2012
(2012 ABQB 195, Docket: 0803 06718)

b) to hear and determine any application or other proceedings 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.

[39] The short answer to this argument is that the respondents do not seek relief against any federal board, commission or other tribunal. Its action is against Canada itself. On its own express wording, s 18(1)(b) does not state that its application is triggered by the fact that the Attorney General of Canada is a named party; sole jurisdiction arises, rather, only where the plaintiff applies for relief against a federal board, commission or tribunal.

[40] Alberta argues the case management judge erred in refusing to strike out injunctive relief from the action given that s 17 of the *Proceedings Against the Crown Act*, RSA 2000, c P-25 precludes courts from issuing injunctions against the Crown. However, as that judge held, notwithstanding this statutory prohibition, there is authority for granting interlocutory injunctions against the Crown in constitutional cases: *Lord v Canada (Attorney General)*, [2000] 3 CNLR 69 at paras 7-15 (Que CA); *Bellegarde v Canada (Attorney General)*, 2002 FCT 1131 at paras 75-83, [2003] 1 CNLR 320, aff'd 2004 FCA 34, 235 DLR (4th) 763; *Snuneymuxw First Nation v Her Majesty the Queen in Right of British Columbia*, 2004 BCSC 205 at paras 58-69, 26 BCLR (4th) 360; *Douglas v Saskatchewan (Minister of Learning)*, 2005 SKQB 270 at para 5, [2006] 4 WWR 193; *Canada (Attorney General) v Saskatchewan Water Corp* (1993), 106 DLR (4th) 250 at 279, [1993] 7 WWR 1 (Sask CA); *Chief Allan Apsassin v Canada (Attorney General)*, 2007 BCSC 492 at paras 18-20; *Ke-Kin-Is-Uqs v Minister of Forests of the Province of British Columbia*, 2005 BCSC 345 at para 58, [2005] 2 CNLR 138.

[41] The respondents' claim arises under s 35 of the *Constitution Act, 1982*, not the *Canadian Charter of Rights and Freedoms*. As a result, s 24(2) of the *Charter* is not available to fashion customized forms of relief. However, contrary to arguments advanced by Alberta, this is not a barrier to injunctive relief. The granting of injunctions against the Crown in constitutional cases is not limited to situations where a breach of the *Charter* is advanced: see Hogg, Monahan & Wright, *Liability of the Crown*, 4th ed (Toronto: Carswell, 2011) at 51.

[42] There appears to be no situation in which a permanent injunction, such as is claimed in the current Statement of Claim, has issued against the Crown. This is so even in constitutional cases: see, for example, *Snuneymuxw* at paras 48, 69. That said, it would be premature to strike the claim's reference to a permanent injunction at this time. It is a novel claim in a rapidly evolving area of the law. In the context of an application to strike portions of a claim for failure to disclose a cause of action, an order should not issue which inhibits possible growth of the law in an unsettled area. While arguable policy considerations exist regarding the undesirability of hampering the ability to legislate, further exploration of this area of the law should not be precluded at this stage.