

Federal Court



Cour fédérale

Date: 20231101

Docket: T-1500-23

Citation: 2023 FC 1458

Vancouver, British Columbia, November 1, 2023

PRESENT: Madam Associate Judge Catherine A. Coughlan

BETWEEN:

LARRY PATENAUDE

Applicant

and

**SUCKER CREEK FIRST NATION #150A
SUCKER CREEK CHIEF AND COUNCIL
AND HIS MAJESTY THE KING**

Respondents

ORDER AND REASONS

[1] The Respondents, Sucker Creek First Nation #150A and Sucker Creek Chief and Council (“the Sucker Creek Respondents”) seek an Order pursuant to Rules 369(1) and 221 of the *Federal Courts Rules*, SOR 89-106, as amended [the “Rules”] striking the Notice of Application filed July 19, 2023. The Sucker Creek Respondents claim that this Court has no jurisdiction to hear the application. This, they say, makes it plain and obvious that the application discloses no reasonable cause of action and must be struck.

[2] Although the Applicant and the Respondent, His Majesty the King (“HMK”), were served with the motion record via email at the following addresses larry@protechworx.ca and l.protech@telus.net on September 26, 2023, and to counsel on behalf of HMK at Jacob.Marchel@justice.gc.ca and Michael.Roberts@justice.gc.ca on August 22, 2023, no responding submissions were received.

[3] The Sucker Creek Respondents argue that the sections 10 and 11 of the *First Nations Financial Transparency Act*, SC 2013, c 7 [“FTFNA”], under which the application is brought, expressly requires that applications must be brought to a superior court (emphasis in original). The Sucker Creek Respondents claim that the Federal Court is not a superior court.

[4] In support of their position, the Sucker Creek Respondents rely on the Supreme Court of Canada’s decision in *Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626 at para 70 [“*Canadian Liberty Net*”] for the proposition that the “Federal Court is a statutory court, not a superior court.”

[5] In my view, that argument has no merit.

[6] First, my reading of the *Canadian Liberty Net* decision does not support the Sucker Creek Respondents’ interpretation. In that case, the Court was concerned with the distinction between the Federal Court as a statutory court that does not have inherent jurisdiction as compared with provincial superior courts that possess inherent jurisdiction. At no point in the passages referred to by the Respondents does the Court suggest that the Federal Court is not a superior court.

[7] Second, in the absence of a definition of Court in the *FNFTA*, the Respondents' argument overlooks the definition of superior court set out in the *Interpretation Act*, RSC, 1985, c. I-21.

Section 35 of that Act provides a definition of superior court as follows:

superior court means

(a) in the Province of Newfoundland and Labrador, the Supreme Court,

(a.1) in the Province of Ontario, the Court of Appeal for Ontario and the Superior Court of Justice,

(b) in the Province of Quebec, the Court of Appeal and the Superior Court in and for the Province,

(c) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Appeal for the Province and the Court of Queen's Bench for the Province,

(d) in the Provinces of Nova Scotia, British Columbia and Prince Edward Island, the Court of Appeal and the Supreme Court of the Province, and

(e) the Supreme Court of Yukon, the Supreme Court of the Northwest Territories and the Nunavut Court of Justice,

and includes the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada; (*juridiction supérieure ou cour supérieure*)

[8] Further, section 3(1) of the *Interpretation Act* provides that every provision of the Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of the Act.

[9] In my view, the provisions of the *Interpretation Act* are dispositive of this motion. The *Interpretation Act* applies to the *FTFNA* and hence the definition of superior court applies to applications brought under paragraphs 10 and 11 of the *FTFNA*.

[10] While the Federal Court is a statutory court it is also a superior court and applications under the *FTFNA* may be brought to either the Federal Court or to a provincial superior court.

[11] The motion must be dismissed.

ORDER in T-1500-23

THIS COURT ORDERS that the motion is dismissed.

"Catherine A. Coughlan"

Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1500-23

STYLE OF CAUSE: LARRY PATENAUDE v SUCKER CREEK FIRST
NATION #150A, SUCKER CREEK CHIEF AND
COUNCIL AND HIS MAJESTY THE KING

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: COUGHLAN A.J.

DATED: NOVEMBER 1, 2023

WRITTEN REPRESENTATIONS BY:

K. Colleen Verville, K.C.

FOR THE RESPONDENTS
SUCKER CREEK FIRST NATION #150A
SUCKER CREEK CHIEF AND COUNCIL

SOLICITORS OF RECORD:

MLT AIKINS LLP
Edmonton, Alberta

FOR THE RESPONDENTS
SUCKER CREEK FIRST NATION #150A
SUCKER CREEK CHIEF AND COUNCIL