

**Date: 20100216**

**Docket: A-414-08**

**Citation: 2010 FCA 48**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
DAWSON J.A.**

**BETWEEN:**

**LUCKY MAN CREE NATION**

**Appellant**

**and**

**ROBERTA FAYE OKEMOW-CLARK, GRACE MARY OKEMOW, JOYCE OKEMOW,  
ALVIS HOWARD OKEMOW, EUGENE CALVIN OKEMOW, DWAYNE CLIFTON  
OKEMOW, CRYSTAL LYNNE OKEMOW, EUGENIA BERYL OKEMOW, EFFREM  
HOWARD OKEMOW, TERRENCE DAVID OKEMOW, BOBBY JAY OKEMOW,  
LANNY MICHAEL OKEMOW and ELAINE PELLETIER**

**Respondents**

Heard at Saskatoon, Saskatchewan, on February 16, 2010.

Judgment delivered from the Bench at Saskatoon, Saskatchewan, on February 16, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

**Date: 20100216**

**Docket: A-414-08**

**Citation: 2010 FCA 48**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
DAWSON J.A.**

**BETWEEN:**

**LUCKY MAN CREE NATION**

**Appellant**

**and**

**ROBERTA FAYE OKEMOW-CLARK, GRACE MARY OKEMOW, JOYCE OKEMOW,  
ALVIS HOWARD OKEMOW, EUGENE CALVIN OKEMOW, DWAYNE CLIFTON  
OKEMOW, CRYSTAL LYNNE OKEMOW, EUGENIA BERYL OKEMOW, EFFREM  
HOWARD OKEMOW, TERRENCE DAVID OKEMOW, BOBBY JAY OKEMOW,  
LANNY MICHAEL OKEMOW and ELAINE PELLETIER**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Saskatoon, Saskatchewan, on February 16, 2010)**

**LÉTOURNEAU J.A.**

**Issues on appeal**

[1] This appeal challenges the findings made by de Montigny J. (judge) of the Federal Court on an application for judicial review. In granting the application, he ordered that the decision to exclude

the respondents from the Lucky Man Cree Nation Band (Band) list be quashed. As a follow-up, he ordered that the issue of the respondents' membership in the Band be remitted to the Chief and Council of the Band to be dealt with in accordance with the Band's Membership Code (Code) and the *Indian Act*.

[2] The judge's decision was rendered on July 18, 2008 and the exclusion decision from the Band list goes back to the year 2004.

[3] The appellant raises five grounds of appeal. We reproduce them:

1. the judge erred in concluding that a final decision had been rendered by a Federal Board or tribunal which gave rise to judicial review proceedings in the Federal Court;
2. the judge erred in finding that the internal remedies provided by the Band under the Code and the *Band Election Act*, ratified on July 21, 2000 were inadequate;
3. the judge erred when he quoted from a wrong version of the Code;
4. the judge made an overreaching order when he ordered that the respondents and their descendants be reintegrated in the Band; and

5. the judge erred in awarding costs to the respondents when the judicial review application was allowed in part only.

**Analysis of the judge's decision and contentions of the appellant**

[4] We are of the view that this appeal cannot succeed on any of these grounds.

[5] There was ample evidence to support the judge's conclusion that a decision was taken to exclude the respondents from the Band list and deprive them of their voting rights at the 2004 election and the right to run for that election. That evidence also showed that that decision was "a decision, order, act or proceeding of a federal board, commission or other tribunal" which was properly the subject of judicial review.

[6] The appellant claims that the decision is not its decision, but rather the decision of former Chief King acting alone. We do not think that the distinction made by the appellant is relevant. The fact is that a decision was made which affected the rights of the respondents. It does not matter whether it was a decision of the Band acting on its own or a decision of the Band implementing the former Chief's decision.

[7] The appellant also submits that there has been no final decision since the dispute regarding the exclusion of the respondents from the Band list, or the deprivation of some of their rights, still continues today.

[8] The very fact that the dispute continues today, some six years after the events, in our view, confirms that a decision was taken and that that decision was final. Otherwise, the respondents would either at all times have been members of the Band list and enjoyed their rights as members or could have by now been reintegrated on the Band list and have their rights fully restored.

[9] We agree with the judge that the respondents had exhausted all adequate internal remedies. As the judge found, the remedies advanced by the appellant were either unavailable or inadequate.

[10] As for the third ground of appeal, even assuming that the judge referred to a wrong version of the Code, we are satisfied that the error, if any, was not material to his decision.

[11] The fifth ground of appeal relates to the costs of the proceedings in the Federal Court awarded to the respondents. The judge having found for the respondents on the main issue before him, i.e. whether they were properly excluded from the Band list, he allowed costs in their favour. We see no basis on which to disturb his discretionary determination.

[12] We are left with the allegation that the judge's decision was wrong in that he purported to reinstate all the respondents and their descendents in the Band while stating that he was merely maintaining the *status quo*.

[13] With respect, the appellant's submission cannot succeed. It is obvious from the evidence and the record that the *status quo* that the judge was maintaining was the *status quo ante*, that is to say that he was putting the respondents in the same position as they were before the impugned decision to exclude them from the Band list was taken.

[14] For the sake of clarity, what the judge's Order does in essence is to put the respondents in the position they were before the decisions of former Chief King and the Chief Electoral Officer were made in 2004, and send the issue of the respondents' membership in the Band back for a determination, something the appellant does not oppose.

### **Conclusion**

[15] For these reasons, this appeal will be dismissed with costs.

“Gilles Létourneau”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-414-08

**STYLE OF CAUSE:** LUCKY MAN CREE NATION v.  
ROBERTA FAYE OKEMOW-CLARK et al.

**PLACE OF HEARING:** Saskatoon, Saskatchewan

**DATE OF HEARING:** February 16, 2010

**REASONS FOR JUDGMENT  
OF THE COURT BY:** LÉTOURNEAU J.A.  
NADON J.A.  
DAWSON J.A.

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

**APPEARANCES:**

Richard W. Danyliuk FOR THE APPELLANT  
Steve Sieferling

John Kwok FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

McDougall Gauley LLP FOR THE APPELLANT  
Saskatoon, Saskatchewan

Semaganis Worme FOR THE RESPONDENTS  
Saskatoon, Saskatchewan