

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141103

Docket: A-75-14

Citation: 2014 FCA 256

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

Docket: A-75-14

BETWEEN:

**THE ENOCH CREE NATION as represented by
CHIEF RON VINCENT MORIN and LYLE
MORIN, NOLA WANUCH, JOHN THOMAS
JR., BILLY MORIN, LORNA MORIN, LORNE
MORIN, KELLY MORIN, WAYNE MORIN
and SHANE MORIN, BAND COUNCILLORS
acting on their own behalf and on behalf of ALL
OTHER MEMBERS OF THE ENOCH CREE
NATION**

Appellants

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA as represented by THE ATTORNEY
GENERAL OF CANADA, THE MINISTER OF
ABORIGINAL AFFAIRS AND NORTHERN
DEVELOPMENT, THE MINISTER OF
TRANSPORT, THE MINISTER OF
ENVIRONMENT, PARKLAND AIRPORT
DEVELOPMENT CORPORATION, CPL6
HOLDINGS LTD., ROBERT GILGEN, SILKE
GILGEN, AARON SOOS and THE ROYAL
BANK OF CANADA**

Respondents

Heard at Edmonton, Alberta, on November 3, 2014.
Judgment delivered from the Bench at Edmonton, Alberta, on November 3, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Federal Court of Appeal



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Respondents

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on November 3, 2014).

NADON J.A.

[1] This is an appeal from an order dated January 20, 2014 of Mr. Justice Phelan of the Federal Court (2014 FC 63) dismissing the appellants' motion. We dismissed the appellant's motion for an injunction against the respondents, other than Her Majesty the Queen, the Minister of Aboriginal Affairs and Northern Development, the Minister of Transport, the Minister of Environment and the Royal Bank of Canada, for carrying on any activities related to the development of an aerodrome or airport on lands situated next to the appellants' reserve.

[2] We have not been persuaded that there is any basis to interfere with the judge's decision. In our view, the judge made no error of law nor did he err in the exercise of his discretion.

[3] Although the appellants argue that the judge did not give proper weight to their evidence, we are satisfied, having regard to the standard of review, that on the evidence before him it was open to the judge to conclude, as he did, that the appellants had not shown that irreparable harm would ensue if the injunction was not granted. For example the evidence of harm adduced before the judge rose no higher than expressions of concern, albeit serious expressions, but not "a strong case of probability" that the harm will arise: see *Connaught Laboratories Ltd. v. Smithkline Beecham Pharma Inc.*, [1998] F.C.J. No. 1851, 86 C.P.R. (3d) 36 citing *Attorney General v. Corporation of Manchester* [1893] 2 Ch. D. 87.

[4] In concluding, it appears to us that many of the concerns raised by the appellants could be addressed by proceeding to trial as expeditiously as possible.

[5] The appeal shall therefore be dismissed with costs.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-75-14
STYLE OF CAUSE: THE ENOCH CREE NATION ET
AL v. HER MAJESTY THE
QUEEN ET AL

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: NOVEMBER 3, 2014

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

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

Will Willier FOR THE APPELLANTS

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Parkland Airport Development
Corporation, CPL6 Holdings,
Robert Gilgen, Silke Gilgen and
Aaron Soos

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