

Federal Court



Cour fédérale

Date: 20240729

Docket: T-1785-23

Citation: 2024 FC 1205

Ottawa, Ontario, July 29, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

LAURA BIRD and LLOYD YEW

Applicants

and

**CANOE LAKE CREE FIRST NATION and
CANADA (ATTORNEY GENERAL)**

Respondents

JUDGMENT AND REASONS

[1] The Applicants brought this application for judicial review of *The Canoe Lake Cree First Nation Citizenship Law* [the *Law*].

[2] The Applicants allege that the *Law* discriminates on the basis of sex and/or gender or other analogous grounds in violation of section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]* and is not justified by section 1 of the *Charter*. Further, they allege that the *Law* breaches section 28 of the *Charter* and subsection 35(4) of the *Constitution Act, 1982*, being

Schedule B to the *Canada Act 1982* (UK), 1982, c 11. They also assert that the *Law* is not shielded by section 25 of the *Charter*.

[3] The Applicants are seeking a number of declarations, orders, and costs on a solicitor-client basis.

[4] For the reasons that follow, this application is dismissed without prejudice to commence this matter as an action within ninety (90) days of this Order.

[5] Fundamentally, the issues raised in this application are serious and merit consideration; however, the matter is not appropriately framed as a judicial review, as there is no administrative decision being challenged to underpin the application.

[6] An application for judicial review is a process by which courts review decisions of administrative bodies to ensure that their decisions are fair, reasonable, and lawful (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 28).

[7] This Court has jurisdiction to review decisions, orders, and other administrative actions of most federal boards, commissions, and tribunals, including Indigenous Bands (*Felix Sr v Sturgeon Lake First Nation*, 2011 FC 1139 at para 15).

[8] In this matter, there is no administrative decision being challenged; consequently, this matter was not properly framed as a judicial review. Ms. Bird and Mr. Yew have not applied for citizenship under the *Law* and they are not challenging a decision from the Canoe Lake Cree First Nation in respect of their individual citizenship. Rather, they wish to challenge the constitutionality of the *Law* itself. An action opens up to parties discovery processes and *viva voce* evidence that would aid the Court in its deliberation of the issues raised, and permits a

broader range of remedies. Additionally, the administrative processes prescribed by the *Law* have not been exhausted by the Applicants.

[9] Subsection 18.4(2) of the *Federal Courts Act*, RSC 1985, c F-7 is not available because, while this opens up to the parties procedural elements of an action, it does not “convert” a judicial review into an action, therefore, the procedural deficiency remains (*Canada (Human Rights Commission) v Saddle Lake Cree Nation*, 2018 FCA 228 at paras 23–26).

[10] Accordingly, this Court must dismiss the application for judicial review, pursuant to Rule 168 of the *Federal Courts Rules*, SOR/98-106.

[11] However, as noted above, the issues raised by the Applicants are fundamental and of a serious nature and warrant determination. Therefore, pursuant to Rule 53(1), the dismissal of this judicial review is without prejudice to the ability of the parties to file an action.

[12] If an action is commenced, it shall be referred to the Office of the Chief Justice to assign a case management judge pursuant to Rule 383 and Part III–B(3) of the *Federal Court Practice Guidelines for Aboriginal Law Proceedings*, 4th Edition.

[13] If an action is commenced, pursuant to Rule 53(1), the parties may supplement the record with the affidavit and cross-examination evidence prepared for this judicial review application.

[14] The Respondent, the Attorney General of Canada noted that pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], they were incorrectly named in this Application.

[15] I agree that the style of cause ought to be amended in this case.

JUDGMENT in T-1785-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The dismissal of the application for judicial review is without prejudice to permit the parties to file an action within 90 days of this Order.
3. The proposed action, once commenced, shall be referred to the Office of the Chief Justice to assign a case management judge.
4. The proposed action, once commenced, shall be permitted to supplement the evidentiary record with the affidavit and cross-examination evidence prepared for this judicial review.
5. The style of cause is hereby amended, with immediate effect, to name Canada (Attorney General) as the correct Respondent in this matter, replacing Canada (Indigenous Services Canada).
6. No order as to costs.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1785-23

STYLE OF CAUSE: BIRD ET AL. v CANOE LAKE CREE FIRST NATION ET AL.

PLACE OF HEARING: SASKATOON, SASKATCHEWAN

DATE OF HEARING: JUNE 4, 2024

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: JULY 29, 2024

APPEARANCES:

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