

Federal Court



Cour fédérale

**Date: 20091015**

**Docket: T-246-09**

**Citation: 2009 FC 1051**

**Vancouver, British Columbia, October 15, 2009**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**JOHN LEVAR AND  
ANNE WYLIE**

**Applicants**

**and**

**HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA AS REPRESENTED BY  
THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*. The self-represented Applicants, John Levar and Anne Wylie, are lessees of a parcel of aboriginal land. They seek judicial review of a property value assessment, conducted by a third-party, on behalf of the Minister of Indian and Northern Affairs (the Minister), which was used to determine their annual rent. The Applicants complain that the property value assessment of the property was improperly conducted.

[2] Section 3.7 of the Lease states:

If the Lessee disagrees with the Minister's determination of the Fair Market Rent and provided that Lessee has paid all rent currently due including any increase thereof determined as aforesaid, the Lessee may at his expense, within sixty (60) days from the date of the Minister's notice of the Fair Market Rent, refer the matter to the Federal Court of Canada for a new determination of the Fair Market Rent pursuant to Section 17 of the Federal Courts Act, R.S.C. 1985, c. F-7 as amended or replaced from time to time.

[3] The Minister submits that this application is improperly brought and that it should be dismissed. The Minister would not hold the Applicants to the 60-day limitation period in the Lease for bringing an action. In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada held that where the relationship between the parties is contractual, it is a mistake to impose public law requirements over and above the contractual obligations. This is all the more so when, as here, the parties have agreed to have the matter determined by way of action.

[4] The Minister is correct. The issue the Applicants wish to bring before the Court for resolution is to be done by way of action pursuant to section 17 of the *Federal Courts Act*.

[5] I do not share the view taken by the Minister that this is not an appropriate case for the Court to convert the application into an action pursuant to section 18.4(2) of the *Federal Courts Act*. I order that it be so converted and that it continue as a simplified action as described in Rule 292 and following.

[6] The monetary difference between the parties is in the range of \$7,500 over a three-year period. Neither party is opposed to attempting to resolve their differences through mediation. It is the Court's view that such an attempt is warranted, especially as the Applicants have obtained a valuation to support their position that the rent being asked of them by the Minister may be excessive. There does not appear to be any further information required before the parties meet to attempt a resolution of this dispute.

[7] Counsel for the Minister agreed to contact the Court to canvass mutually agreeable dates for a mediation session. If that is unsuccessful, the Court will establish a timetable for the steps to be taken in the proceeding in order that this matter may be brought back for a hearing within a reasonable period of time.

**ORDER**

**THIS COURT ORDERS AND ADJUDGES** that pursuant to section 18.4(2) of the *Federal Courts Act* this application is to be treated and proceeded with as a simplified action and, on consent of the parties, they are to engage in a mediation session with an officer of the Court.

“Russel W. Zinn”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-246-09

**STYLE OF CAUSE:** JOHN LEVAR and ANNE WYLIE  
v. HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA AS REPRESENTED BY THE MINISTER  
OF INDIAN AFFAIRS AND NORTHERN  
DEVELOPMENT

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** October 15, 2009

**REASONS FOR ORDER  
AND ORDER:** ZINN J.

**DATED:** October 15, 2009

**APPEARANCES:**

John Levar  
Anne Wylie  
(self-represented) FOR THE APPLICANTS

Fred Wan FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

n/a FOR THE APPLICANTS

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Vancouver, BC FOR THE RESPONDENT