

Date: 20080421

Docket: A-510-07

Citation: 2008 FCA 149

**CORAM: NOËL J.A.
NADON J.A.
RYER J.A.**

BETWEEN:

LYLE RONALD CUNNINGHAM

Appellant

and

**THE KWIKWETLEM INDIAN BAND
and the CHIEF AND COUNCIL of the
KWIKWETLEM INDIAN BAND**

Respondents

Heard at Vancouver, British Columbia, on April 21, 2008.

Judgment delivered from the Bench at Vancouver, British Columbia, on April 21, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on April 21, 2008)

RYER J.A.

[1] This is an appeal from an order of Justice Beaudry of the Federal Court (Docket T-46-2007) dated October 16, 2007, dismissing an application for an order pursuant to subsection 18.1(2) of the *Federal Courts Act*, (the Act) to extend the time within which an application can be made for judicial review of an alleged decision of a federal board.

[2] Subsection 18.1(2) of the Act requires an application for judicial review to be made within 30 days after the time that the decision in question was first communicated to the affected party. However, that provision allows a judge of the Federal Court to extend the time within which the application can be made.

[3] In the circumstances under consideration, the decision of the respondent to evict Mr. Cunningham from the premises that he leased from the respondent was taken on May 14, 2007, and that decision was communicated to Mr. Cunningham by letter that was hand delivered to him on that date. The application to extend the time to challenge that decision was made on September 5, 2007.

[4] The Federal Court dismissed the application and stated in its order:

No reasonable explanation has been provided by the Applicant for the delay in serving and filing this application.

[5] The decision to grant an extension of time pursuant to subsection 18.1(2) of the Act is a discretionary decision. Our Court can overturn a discretionary decision, such as the one that was made by the Federal Court in the matter that is before us, only if we are satisfied that the Federal Court acted on a wrong principle or failed to give weight to relevant considerations (See: *Sark v. Abegweit Band Council*, [1996] F.C.J. No. 532 (FCA)).

[6] The appellant argues that the brief reasons of the Federal Court for denying its application are insufficient. While we agree that the reasons are brief, we are not persuaded that they are

insufficient. The Federal Court stated that an essential element in the determination of whether to grant the extension of time, namely, whether there was a reasonable explanation for the delay, was not established. This statement, when read against the background of the record, fully conveys the reasoning of the Federal Court for dismissing the application.

[7] We should add that even if we had agreed with the appellant that the reasons of the Federal Court were insufficient, which would have allowed us to exercise our own discretion, we would have dismissed the appellant's application for an extension of time.

[8] Accordingly, the appeal will be dismissed with costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-510-07

STYLE OF CAUSE: Lyle Ronald Cunningham v.
The Kwikwetlem Indian Band et al.

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 21, 2008

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RYER J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

DATED: April 21, 2008

APPEARANCES:

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