

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220329

Docket: A-321-20

Citation: 2022 FCA 52

**CORAM: STRATAS J.A.
DE MONTIGNY J.A.
LOCKE J.A.**

BETWEEN:

WITCHEKAN LAKE FIRST NATION

Applicant

and

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA**

Respondent

Heard at Calgary, Alberta, on March 29, 2022.

Judgment delivered from the Bench at Calgary, Alberta, on March 29, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

DE MONTIGNY J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Calgary, Alberta, on March 29, 2022).

DE MONTIGNY J.A.

[1] The applicant brings this application for judicial review from the decision of the Specific Claims Tribunal (the Tribunal) which stayed its claim for compensation stemming from the alleged unlawful alienation of over 16,500 acres from the Witchekan Lake Reserve in the early

twentieth century. The Tribunal came to that conclusion on the basis that the claim fell under the purview of two agreements between the Witchekan Lake First Nation (Witchekan) and the Crown, and that through those agreements the Federal Court had exclusive jurisdiction over the matter.

[2] The parties properly agree that the applicable standard of review of the Tribunal's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1; *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 S.C.R. 83 at para. 31. When applying that standard, the task of the reviewing court is not to second-guess the decision maker or to ask itself what decision it would have made, but to focus on the decision actually made (both in its reasoning and in its outcome) to ensure that it is not fatally flawed.

[3] In its Declaration of Claim (the Claim), Witchekan seeks compensation for asserted breaches of statutory and fiduciary duties by Canada in the reserve creation process, resulting in the loss of 16,577 acres of Reserve lands. More specifically, it alleges that Canada surveyed lands for the Reserve in 1913 totalling approximately 20,814 acres, but when it passed Order-in-Council P.C. 1919-790 in April 1919, the Reserve lands only totalled 4,237 acres.

[4] For its part, Canada moved to strike or stay the Claim, on the basis that the Saskatchewan Treaty Land Entitlement Framework Agreement signed in 1992, and the Witchekan Lake Treaty Land Entitlement Agreement signed in its wake in 1993 (the TLE Agreements), have compensated to a large extent the Claim filed by the applicant. Both of these agreements provide

that Canada will be fully released from all future claims that arise out of or are related to these agreements.

[5] The Tribunal found that the only issue in the application before it was to determine whether the Claim falls within an exception to the release clause relied upon by Witchekan, pursuant to which claims for unlawful alienation may proceed before the Tribunal. Since the parties were unable to agree on the interpretation and application of that clause, the Tribunal stayed the Claim until the Federal Court resolved the issue, relying on another provision of the TLE Agreements according to which disputes on their interpretation fall within the exclusive purview of the Federal Court.

[6] The main thrust of Witchekan's argument before us is that the Tribunal should have considered for itself whether the Claim was barred by paragraph 15(1)(e) of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22, which states that a First Nation may not file a claim with the Tribunal if it flows from "any agreement between the First Nation and the Crown that provides for another mechanism for the resolution of disputes arising from the agreement". Answering that question would have required, in turn, that the Tribunal consider whether the Claim fell within one of the exceptions to the release clause.

[7] The problem with this submission is that sections 20.20 and 20.18 of the respective TLE Agreements expressly state that, where the parties are "unable to agree on any matter, including a question of interpretation of any term, covenant, condition or provision", the "determination of any such disagreement, and the enforcement thereof" falls within the exclusive jurisdiction of the

Federal Court. On the basis of the clear language of that provision, the Tribunal found that it was without jurisdiction to resolve the issue raised by the application. In our view, the Tribunal could reasonably conclude that Witchekan's Claim ought to be stayed unless and until the Federal Court rules that the exception to the release clause applies.

[8] The onus was on Witchekan to demonstrate that the Tribunal's decision is unreasonable. In our view, it failed to discharge that burden. There was evidence before the Tribunal of an overlap between the Claim and the TLE Agreements, which tended to support Canada's position that the majority of the Claim had been compensated by those agreements. The interpretation of the exclusive jurisdiction clauses as being binding and enforceable is also consistent with the jurisprudence of this Court and of the Federal Court: *Saskatchewan (Attorney General) v. Pasqua First Nation*, 2016 FCA 133, 483 N.R. 63 at paras. 58, 60 (*Pasqua First Nation*); *Ochapowace Cree Nation v. Saskatchewan (Attorney General)*, 2019 FC 1288, at paras. 17-18. Moreover, it has been held that a similar clause is sufficient to confer upon the Federal Court exclusive jurisdiction under paragraph 17(3)(b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7: see *Pasqua First Nation*, at paras. 83-84. The reasoning of the Tribunal is internally coherent and logical, and the outcome is supported by the facts and the law, such that there is no ground to intervene.

[9] As a result, the application for judicial review will be dismissed with costs.

“Yves de Montigny”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-321-20

STYLE OF CAUSE: WITCHEKAN LAKE FIRST
NATION v. HER MAJESTY THE
QUEEN IN RIGHT OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 29, 2022

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BY:** STRATAS J.A.
DE MONTIGNY J.A.
LOCKE J.A.

DELIVERED FROM THE BENCH BY: DE MONTIGNY J.A.

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