NOVA SCOTIA COURT OF APPEAL

Citation: Annapolis Valley First Nation v. Copage, 2004 NSCA 147

Date: 20041209
Docket: CA 224799
Registry: Halifax

Between:

The Annapolis Valley Band

Appellant

v.

Murray Copage, Sr., Janette Peterson,
Lawrence Toney and Marilyn Toney

Respondents

Judge(s): Bateman, Saunders and Fichaud, JJ.A.

Appeal Heard: Nov. 12, 2004, in Halifax, Nova Scotia

Revised Decision: The text of the original judgement has been corrected incorporating the text of the erratum (released February 24, 2005).

Held: Leave to appeal granted, appeal allowed, stay set aside partially and a condition added, per reasons for judgment of Fichaud, J.A.; Bateman and Saunders, JJ.A concurring.

Counsel: Peter Nathanson, for the appellant
Donald Urquhart, for the respondent, Lawrence Toney

Reasons for judgment:

[1] The chambers justice stayed the trial based on issue estoppel arising from an adjudicator's decision under the *Canada Labour Code*. The appellant says that its counterclaim should not be subject to issue estoppel.

1. Background

[2] The appellant Annapolis Valley First Nation Band ("Band") occupies reserve lands at Cambridge, Nova Scotia. The Band is governed by a Band Council consisting of a chief and two councillors. The appellant, Lawrence Toney was elected as chief in 1999. Murray Copage and Marilyn Toney were elected as Band councillors.

[3] The Gaming Commission of the Band was established further to an agreement between the Band and the Province of Nova Scotia. This agreement provided that to have VLTs on the reserve, and to receive a share of gambling profits, the Band must establish a gaming commission. The Gaming Commission is managed by gaming commissioners.

[4] In August, 2001, the Band Council on behalf of the Band entered into separate five-year employment contracts with Lawrence Toney, Murray Copage and Marilyn Toney to act as commissioners of the Band's Gaming Commission. This occurred during the term of office of Lawrence Toney as Band chief and of Murray Copage and Marilyn Toney as Band councillors.

[5] When these contracts were being discussed at the Band Council, the individual who was being considered as a gaming commissioner would leave the room. Lawrence Toney left the room when his contract was discussed by Murray Copage and Marilyn Toney. Murray Copage left when his contract was discussed by Lawrence Toney and Marilyn Toney, as did Marilyn Toney when her contract was discussed by Murray Copage and Lawrence Toney.

[6] In December 2001, the Band elected a new Band Council. The new Council stopped the payments to the gaming commissioners, including Lawrence Toney, further to the employment contracts of August 2001.

[7] On March 1, 2002, Lawrence Toney and the other gaming commissioners sued the Band, alleging constructive dismissal and claiming damages and specific performance of the employment contracts. The Band's defence alleged that the contracts were void for various reasons, including conflict of interest. The Band counterclaimed that Lawrence Toney and the other commissioners had breached their fiduciary duties to the Band.

[8] In August 2002, Lawrence Toney and Murray Copage filed a complaint, under s. 240 of the *Canada Labour Code*, R.S.C. 1985 c. L-2, which claimed wrongful dismissal against the Band. The Minister appointed an adjudicator under s. 242 who heard the complaint in a quasi-judicial proceeding and, on April 19, 2003, filed a written decision. The adjudicator, a judge of the Provincial Court of Nova Scotia, rejected the Band's argument that the employment contracts were approved in breach of Lawrence Toney's fiduciary duty. The decision ruled that the employment contracts were valid and that Copage and Lawrence Toney had been wrongfully dismissed. At the request of the parties, the adjudicator left open the question of remedies for a subsequent hearing if necessary.

[9] Following the adjudicator's decision, the Band settled the outstanding remedies issues with the commissioners other than Lawrence Toney. The Band reinstated Lawrence Toney to the Gaming Commission but did not agree on compensation for the wrongful dismissal. In June 2003, the adjudicator conducted a further hearing into the financial remedy for Lawrence Toney and on June 24, 2003 ordered that the Band pay Lawrence Toney $26,800 for the wrongful dismissal.

[10] On October 20, 2003, the Band applied to the Federal Court of Canada under s. 18.1 of the *Federal Courts Act*, R.S.C. 1985 c. F-7 for judicial review of the adjudicator's two decisions, the wrongful dismissal ruling and the award of damages to Lawrence Toney. At the hearing of this appeal, the court was informed that the Federal Court of Canada was scheduled to hear the judicial review from the adjudicator in late November 2004.

[11] On October 15, 2003, the Band filed a notice of trial in the Nova Scotia lawsuit. At a date assignment conference on November 6, 2003, the trial was set for May 25-28, 2004.

[12] The Band and the parties other than Lawrence Toney filed consent orders dismissing the claims and counterclaims in the Nova Scotia lawsuit. As of February 2004, the only parties remaining in the Nova Scotia lawsuit were Lawrence Toney and the Band.

[13] On April 13, 2004, Lawrence Toney applied to the Nova Scotia Supreme Court for an order under *Rule* 25 setting aside the notice of trial. On April 22, 2004, Justice Warner, as chambers justice, granted the application and issued an order staying the trial which had been scheduled for May 2004. His reason was that the adjudicator's decision rendered the issues in the Nova Scotia lawsuit *res judicata* or subject to issue estoppel. The decision is silent on costs.

2. Issues

[14] The Band applied to this Court for leave to appeal and, if granted, appeals. The Band says its counterclaim was not barred by issue estoppel. Lawrence Toney cross appeals to request costs for his successful application to the chambers justice. As there were no disputed facts and my conclusions are unaffected by the procedure used, I need not comment on the applicability of *Rule* 25.

3. Adjudicator's Jurisdiction

[15] If an administrative decision is made without jurisdiction from the outset, that decision cannot be the basis of issue estoppel: *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, para. 51.

[16] Section 240(1)(a) of the *Canada Labour Code* permits a person "who has completed twelve consecutive months of continuous employment by an employer" to complain to the inspector which, under s. 242, may lead the Minister to refer the complaint to an adjudicator. Nothing in the decisions of the adjudicator or the chambers justice indicated that Lawrence Toney was employed for twelve consecutive months before his alleged constructive dismissal. The fixed-term employment contract of August, 2001 allegedly was breached by Mr. Toney's constructive dismissal in early 2002.

[17] At the hearing of this appeal, the court expressed concern whether the adjudicator had the jurisdiction to rule under s. 242 of the *Code*. Counsel for the Band stated that Lawrence Toney had been "appointed" as the Gaming Commissioner before the start of his fixed-term contract. Counsel for the Band stated that the Band had not raised the jurisdictional issue before the adjudicator nor in the application for judicial review to the Federal Court. The matter was not raised before the chambers justice. Counsel for both parties informed the court that the jurisdictional matter should not be an issue on this appeal.

[18] Section 167(3) of the *Canada Labour Code* says that Division XIV (which includes ss. 240 and 242 from which the adjudicator drew his jurisdiction) does not apply to "managers". No argument was addressed to this Court respecting whether Mr. Toney, the Band Chief, was "managerial" in his capacity as gaming commissioner.

[19] Accordingly, I will not consider the jurisdictional issue, but will deal with the other aspects of the tests for the application of issue estoppel.

4. The Chambers Justice's Reasons

[20] The chambers justice's reasoning was:

> Applying the pre-conditions to the operation of *issue estoppel*, as described by Binnie, J., in *Danyluk v. Ainsworth Technologies Inc*., [2001] 2 S.C.R. 460, I find that:
>
> (a) The issues with respect to the validity of the employment contract between Lawrence Toney and the Band and the issues with respect to the alleged breach of that contract, and the issue with respect to constructive dismissal are identical to the questions dealt with by Judge MacLellan and the proceedings under the Canada Labour Code.
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> (b) The judicial decision made by the Canada Labour Board is final in accordance with s. 243 of the Canada Labour Code, and
>
> (c) As of February 16, 2004, the parties to the judicial decision before the Canada Labour Board are the same parties as remain in the proceedings in the case at bar.
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> The principle upon which *res judicata* and *issue estoppel* is founded is that it is in the public interest to promote finality in legal proceedings. It requires litigants to put their best foot forward when first required to do so and that they only are entitled to "one bite at the cherry". Once decided the losing party should not have the benefit of further harassment of the winning party.
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> The Canada Labour Board in its decision has already awarded damages and through its execution process collected for the plaintiff the damages it ordered. I fail to see how a four day retrial of the same subject matter before the Supreme Court of Nova Scotia could result in any benefit to the defendant. This court could not over rule an execution order already effected under the authority of the Canada Labour Code through the Federal Court of Canada. Any decision the Supreme Court of Nova Scotia may make would be moot.
>
> I order that the trial of the within matter be stayed on the basis of the principle of *res judicata* and *issue estoppel.*

5. Did the Chambers Justice Err in Law?

[21] In *Danyluk*, under the heading "Issue Estoppel: A Two Step Analysis", Justice Binnie for the court stated the tests for issue estoppel:

> 33. The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. (There are corresponding private interests.) The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel set out by Dickson, J. in *Angle*, *supra*. If successful, the court must still determine whether, as a matter of discretion, issue estoppel *ought* to be applied ... [*Supreme Court*'s emphasis]

To the same effect, *Danyluk* para. 61.

[22] Justice Binnie had earlier set out the three pre-conditions in the first step:

> [25] The preconditions to the operation of issue estoppel were set out by Dickson, J. in *Angle, supra*, at p. 254:
>
> (1) that the same question has been decided;
>
> (2) that the judicial decision which is said to create the estoppel was final; and,
>
> (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[23] The chambers justice ruled that the adjudicator's decision satisfied the three pre-conditions, to which I make no comment. But the chambers justice did not then consider *Danyluk's* second step, whether to exercise the discretion. Instead he immediately concluded that "it is in the public interest to promote finality in legal proceedings". So issue estoppel applied.

[24] The chambers justice did not consider the "balance" of the two public interests, in finality of litigation and in ensuring that justice is done in a particular case, stated in *Danyluk*, para. 33. Justice Binnie dealt at length (paras. 62 ff) with the exercise of this discretion, and listed seven non-exclusive factors to be considered in the exercise of the discretion. The decision under appeal is silent on this.

[25] The chambers justice's decision states:

> [61] ... I fail to see how a four day retrial of the same subject matter before the Supreme Court of Nova Scotia could result in any benefit to the defendant. This court could not over rule an execution order already effected under the authority of the Canada Labour Code through the Federal Court of Canada. Any decision the Supreme Court of Nova Scotia may make would be moot.

The execution order resulted from the adjudicator's judgment on Lawrence Toney's wrongful dismissal claim. But Mr. Toney's claim was not the principal issue on this application. Mr. Toney could have ended his claim (subject to costs consequences) at any time by filing a notice of discontinuance, without an order; but the counterclaim would survive. It is inferable that the reason for Mr. Toney's court application was to extinguish the Band's counterclaim. The counterclaim is the focal point for the issue estoppel. Yet the chambers justice's reasoning does not consider the Band's counterclaim.

[26] In *Danyluk*, Justice Binnie stated:

> 34 The appellant was quite entitled, in the first instance, to invoke the jurisdiction of the Ontario superior court to deal with her various monetary claims. The respondent was not entitled as of right to the imposition of an estoppel. It was up to the court to decide whether, in the exercise of its discretion, it would decline to hear aspects of the claims that were previously the subject of ESA administrative proceedings.

[27] When the initial decision is from a court, it may be that the discretion to hear the second proceeding will rarely be exercised. But the attempted application of issue estoppel to an initial decision by an administrative tribunal magnifies the significance of the discretion. In *Danyluk*, Justice Binnie stated:

> 62 The appellant submitted that the Court should nevertheless refuse to apply estoppel as a matter of discretion. There is no doubt that such a discretion exists. In *General Motors of Canada Ltd. v. Naken*, [1983] 1 S.C.R. 72, Estey J. noted, at p. 101, that in the context of court proceedings "such a discretion must be very limited in application". In my view the discretion is necessarily broader in relation to the prior decisions of administrative tribunals because of the enormous range and diversity of the structures, mandates and procedures of administrative decision makers.

After considering similar authorities, Justice Binnie continued:

> 65. In the present case Rosenberg J.A. noted in passing at pp. 248-49 the possible existence of a potential discretion but, with respect, he gave it short shrift. There was no discussion or analysis of the merits of its exercise. He simply concluded, at p. 256:

> In summary, Ms. Burke did not accord this appellant natural justice. The appellant's recourse was to seek review of Ms. Burke's decision. She failed to do so. That decision is binding upon her and her employer.

66 In my view it was an error of principle not to address the factors for and against the exercise of the discretion which the court clearly possessed. This is not a situation where this Court is being asked by an appellant to substitute its opinion for that of the motions judge or the Court of Appeal. The appellant is entitled at some stage to appropriate consideration of the discretionary factors and to date this has not happened.

[28] In this case, the Band was entitled to have a court apply the second step of the *Danyluk* process. The Band was entitled to have a court analyze the public interest to ensure that justice is done, and balance that against the public interest in finality. By omitting step two, the chambers justice erred in law.

6. Exercise of Discretion

[29] I will consider the factors which govern the exercise of discretion. I will not apply the standard of deference which normally protects discretionary decisions of a chambers justice. As there was no exercise of discretion in the decision appealed from, there is nothing to which I could defer.

[30] Justice Binnie stated that the list of factors governing the exercise of discretion is open. The common denominator is to ensure an orderly administration of justice, without causing real injustice in a particular case (*Danyluk* at para. 67). The discretion is a case specific response to the reality of each situation. (*Danyluk* at para. 63).

[31] Justice Binnie (paras. 68-80) mentioned seven factors. I will discuss these in turn.

[32] **First: The wording of the Act from which the administrative decision derives.** In *Danyluk*, under the Ontario *Employment Standards Act*, the employee filed a claim for unpaid commissions. The employment standards officer denied that claim but held that the employee was entitled to two weeks pay in lieu of notice of termination. The employee did not appeal but, instead, sued in court for wages, commissions and wrongful dismissal damages. The question was whether the administrative decision estopped the litigation of similar issues in the lawsuit. Justice Binnie (para. 68) noted that the Ontario *Employment Standards Act* s. 6(1) stated:

> No civil remedy of an employee against his or her employer is suspended or affected by this *Act*.

[33] Justice Binnie (para. 69) referred to the decision of the Ontario Court of Appeal in *Rasanen v. Rosemount Instruments Ltd.* (1994), 112 D.L.R. (4th) 683, leave to appeal denied (1994), 115 D.L.R. (4th) viii (S.C.C.) . He then stated:

> 70 While it is generally reasonable for defendants to expect to be able to move on with their lives once one set of proceedings -- including any available appeals -- has ended in a rejection of liability, here, the appellant commenced her civil action against the respondents before the ESA officer reached a decision (as was clearly authorized by the statute at that time). Thus, the respondents were well aware, in law and in fact, that they were expected to respond to parallel and to some extent overlapping proceedings.

This factor assisted the Supreme Court to the conclusion that the court should refuse to apply issue estoppel.

[34] In the present case, s. 246(1) of the *Canada Labour Code* states:

> No civil remedy of an employee against his employer is suspended of affected by ss. 240 to 245.

This is materially identical to s. 6(1) of the *Employment Standards Act* considered in *Danyluk*.

[35] The Band's position is stronger than the employee's argument in *Danyluk*. In *Danyluk*, the employee sought both the administrative remedy and the remedy from the civil action. In the present case, the Band filed its only claim against Mr. Toney in the Nova Scotia Supreme Court. The Band filed no claim against Lawrence Toney before an adjudicator or any other administrative body. It was Mr. Toney who invoked the adjudication procedure under ss. 240 and 242 of the *Canada Labour Code* to which the Band merely responded with a defence. To paraphrase Justice Binnie, Lawrence Toney was well aware that he was expected to respond to the Band's counterclaim in court after the Band defended Mr. Toney's claim before the adjudicator.

[36] The respondent cites *Devereaux v. Royal Bank* (1996), 145 Nfld. & PEIR 334 (N.S.C.), which held (paras. 29-32) that s. 246(1) of the *Canada Labour Code* does not inhibit the application of issue estoppel. In *Devereaux* the Newfoundland Supreme Court relied exclusively on the decision of the

Ontario Court of Appeal in *Rasanen*, in particular the following comments by Justice Abella:

> The fact that an employee is not prevented from seeking a civil remedy does not, it seems to me, lead inexorably to the conclusion that he or she can do so as if no prior proceeding before the tribunal had taken place. If employees wish to pursue a more expeditious route yielding statutory benefits, they have access to the *Employment Standards Act* provisions and scheme. If, on the other hand, they wish to formulate their claim as a civil action seeking broader remedies, this option is equally open to them. Whichever forum is chosen first, issue estoppel is reciprocally available and parties may find, in any subsequent proceeding, that they are bound by a prior determination on the same issue, even if that determination was made by a tribunal.
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> ...
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> While it is certainly true, therefore, that the appellant was free to pursue his remedies in either a court or at the Employment Standards Branch, he was not free to presume that he was immune from being bound by a final decision of either forum on the same issue. There is no logical inconsistency between the right to select a remedial avenue, and the preclusive application of issue estoppel in a subsequent proceeding if its requirements have been met. The fact that s. 6 preserves the possibility of a civil remedy does not mean that it suspends the operation of issue estoppel in appropriate cases.

[37] I make two points with respect to *Devereaux* and the passages from *Rasanen* upon which it relied. First, Justice Binnie in *Danyluk* (para. 69) referred to *Rasanen*, and nonetheless cited s. 6(1) as pertinent to the exercise of discretion. Second, Justice Abella in *Rasanen* made it clear that the claimant was entitled to choose the single forum in which to pursue his claim. In the present case, the Band has chosen only one forum, Nova Scotia Supreme Court, to pursue its claim against Lawrence Toney.

[38] In my view, s. 246(1) of the *Canada Labour Code* supports the exercise of discretion that issue estoppel should not bar the Band's counterclaim.

[39] **Second: The purpose of the legislation which generated the administrative ruling.** Justice Binnie stated:

> 71 The focus of an earlier administrative proceeding might be entirely different from that of the subsequent litigation, even though one or more of the same issues might be implicated.

[40] He then referred to authority for the principle that a decision of an administrative tribunal, under a statute whose object is to dispose expeditiously of a claim, should not create issue estoppel against the more complex lawsuit which the administrative respondent brings in court. This, notwithstanding that one of the findings of the administrative tribunal was inconsistent with an essential element of the respondent's lawsuit. The purpose of the administrative statute was not to deal with the respondent's claim. To the contrary, the statute's purpose to permit an expeditious and inexpensive remedy would be thwarted if, from fear of issue estoppel, every respondent was impelled to litigate its own claim in the tribunal as fully as it would in court.

[41] In this case, the purpose of ss. 240 and 242 of the *Canada Labour Code* is to afford the employee a quick and inexpensive remedy to recover amounts owing by the employer after an unjust dismissal. They are within Division XIV ("Unjust Dismissal") in Part III ("Standard Hours, Wages, Vacations and Holidays") of the *Code.* Sections 240 to 242 are not designed to deal with damages claims by employers against employees for breaches of fiduciary duty. Nor are they suited to determine the legal features of the relationship between Band members and a Band Council exercising authority under the *Indian Act*, R.S.C. 1985 c. I-5.

[42] The Band's counterclaim requests:

> An accounting of any profit or payments made to the plaintiffs, and each of them, pursuant to Fixed-term employment contract or *otherwise* received by virtue of *any dealings* with the Annapolis Valley First Nations Band. [emphasis added]

The counter-claim extends beyond the payments received pursuant to the fixed-term employment contract which was the focus of the adjudicator's jurisdiction. The adjudicator would not have the jurisdiction under s. 242 to determine an employer's claim for breach of fiduciary duty. Yet the application of issue estoppel would permit the adjudicator tangentially to determine just that.

[43] In my view, this factor supports the exercise of discretion to deny the application of issue estoppel.

[44] **Third: Availability of an Appeal.** There was no right of appeal from the adjudicator. The Band applied for judicial review of the adjudicator's

decision. At the hearing of this appeal, the application to the Federal Court of Canada had not been heard.

[45] **Fourth: The safeguards available to the parties in the administrative procedure.** The adjudication was a quasi-judicial hearing with sworn testimony and cross-examination. But the procedural safeguards of a civil action in the Nova Scotia Supreme Court include the rights of discovery, formal trial procedures, strict rules of evidence and a right of appeal. In the administrative setting, there was no discovery or appeal, while the trial and evidentiary procedures were relaxed. The Band selected the more formal trial setting for its counterclaim. Its right to make that selection is worth some weight in this discretionary balance.

[46] **Fifth: The expertise of the administrative decision maker.** The adjudicator was a provincial court judge, well qualified to deal with legal issues.

[47] **Sixth: The circumstances giving rise to the prior administrative proceedings.** I will consider this along with the circumstances leading to the application to stay the notice of trial. The Band and Mr. Toney had proceeded through the pre-trial process, including discoveries. The Band filed a notice of trial. Mr. Toney made no objection to the notice of trial within the time limit in the *Civil Procedure Rules*. After the adjudicator's two decisions, the parties or their counsel attended a date assignment conference, when a judge set down the trial to begin May 25, 2004. There was no suggestion that issue estoppel should bar the trial. Then, on April 13, 2004 Mr. Toney filed this application to strike the notice of trial. Mr. Toney could have filed a notice of discontinuance, without court order, to withdraw his own suit for wrongful dismissal; that was the suit which tracked his claim to the adjudicator. Instead, Mr. Toney applied for an order which would target the Band's counterclaim.

[48] In *Danyluk*, (para. 67), Justice Binnie stated that the point of the discretion was to ensure that the administration of justice proceeds in an orderly manner, but without causing injustice in a particular case. Mr. Toney had traveled the road to the trial doorstep, without any indication that the Band's counterclaim was at risk of pre-emption. Mr. Toney's belated application to annul the counterclaim did not, in my view, promote the orderly administration of justice.

[49] **Seventh: the potential injustice:** Justice Binnie stated:

> 80 As a final and most important factor, the Court should stand back and, taking into account the entirety of the circumstances, consider whether application of issue estoppel in the particular case would work an injustice.

[50] Mr. Toney filed his claim twice, to a court and to the adjudicator. The Band defended in both forums, as was its right. The Band has claimed against Mr. Toney in only one forum, the court. It would be odd justice if Mr. Toney's bifurcation of claims could oust the Band's right to choose.

[51] **Summary:** The cumulation of these discretionary factors leads to the clear conclusion that issue estoppel should not apply to the Band's counterclaim. The Band should be entitled to take the counterclaim to trial before a judge of the Nova Scotia Supreme Court. This will mean that the Supreme Court judge will consider issues of fiduciary duty which, to some extent, overlap those already considered by the adjudicator.

[52] It remains to consider the chambers justice's stay of Mr. Toney's claim. Mr. Toney's duplicated claims are similar to the situation in *Rosanen* where Justice Abella applied issue estoppel. The discretionary factors which I have discussed support a denial of issue estoppel for the Band's counterclaim, but do not bear equivalent weight for Mr. Toney's claim. Mr. Toney applied to the chambers justice to set aside the notice of trial. He has not cross appealed or filed a notice of contention respecting the stay which resulted from his application. He has received damages from the adjudicator's decision. I am of the view that the discretion should not be exercised to permit Mr. Toney to claim wrongful dismissal again in the Nova Scotia law suit. I would, however, add a condition to the order that, if the adjudicator's award is set aside on judicial review, then the stay of Mr. Toney's claim be lifted: *Municipal Contracting Ltd. v. Nova Scotia (Attorney General*) (2003), 212 N.S.R. (2d) 36 (CA) at paras. 13, 40; Lange, *The Doctrine of Res Judicata in Canada* (Butterworths, 2000) at p. 143.

7. Cross-appeal - Costs

[53] As I am of the view that the appellant should succeed, it is unnecessary to discuss whether the chambers justice should have awarded costs to the respondent Lawrence Toney. There should be no costs to either party for the chambers application.

8. Conclusion

[54] I would grant leave to appeal, allow the appeal and set aside the stay of the Band's counterclaim. The Band is entitled to take its counterclaim to trial. I would add a condition to the stay of Mr. Toney's claim, that the stay be lifted if the adjudicator's decision is set aside on judicial review. I would dismiss the cross-appeal respecting costs in the Supreme Court, and order that the respondent Lawrence Toney forthwith pay to the Band $1,500 all inclusive as costs of this appeal.

Fichaud, J.A.

Concurred in:

Bateman, J.A.

Saunders, J.A.