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FEDERAL COURT OF CANADA

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

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JUL 11 1997

COUR FEDERALE DU CANADA
EDMONTON, ALBERTA

Court Number T-1785-96

NOV 11 1997

BETWEEN:

THERESE DOCHUCK ET AL

Plaintiffs
(Applicants)

- and -

CHIEF FRANCIS SCANIE ET AL

Defendants
(Respondents)

D E C I S I O N

June 20, 1997
Held at the Federal Court of Canada
Edmonton, Alberta
Pages 1 to 7

TAKEN BEFORE:

The Honourable Associate Chief Justice Jerome

APPEARANCES

TAKEN BEFORE:

The Honourable Associate Chief Justice Jerome

T. P. Glancy, Esq.	For the Applicants
B. Crane, Esq.	For the Respondents
K. N. Lambrecht, Esq.	For Her Majesty the Queen as represented by the Minister of Indian Affairs

O. Splane	Court Registrar
C. R. Enders	Court Reporter

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1 THE COURT: Thank you, Mr. Glancy. I do not
2 have any questions, and I do not propose to allow the
3 application. My reasons are as follows:

4 It is entirely inappropriate for me
5 to deal with this matter by way of motion. It is, in
6 fact, one of if not the main issue in the litigation, and
7 for me to do it today would be, I think, extraordinary.
8 The Court may intervene in cases where there is a genuine
9 risk of injustice being done by not intervening, but this
10 is certainly not one of those.

11 I also have regard for the very
12 limited scope of mandamus, that I can direct the Minister
13 to fulfill a statutory duty by mandamus. I cannot direct
14 the specific terms, and here the Notice of Motion seeks
15 terms which are not specific in any event. ~~That is to~~
16 ~~say that it should be someplace where it can be paid~~
17 ~~without discrimination.~~ ^{It} That leaves much to be filled in
18 in terms of certainty and details; therefore, the relief
19 sought in paragraph 1 of the Notice of Motion would not
20 comply with mandamus, and neither does the application,
21 because it does not base itself in a specific public duty
22 by the Minister.

23 The third reason is that I think it
24 is inappropriate for Courts to try to rewrite the law by
25 way of an emergency motion. I have expressed that on a
26 number of occasions in the past with respect to electoral
27 disputes before the Court, and, indeed, what has happened

1 is -- well, for example, one of the highest-profile
2 election disputes was not so much with the prisoners but
3 with judges. Two of the judges of our court brought an
4 application to the court, and I had to ask a retired
5 judge to come back and hear it.

6 Let me continue the thought about
7 the judges. The Crown did not defend the policy that the
8 judges should not be allowed to vote, and the judge
9 presiding over that issue was quite concerned that we
10 were making very important constitutional law here and no
11 submission from the Crown. Therefore, the judge
12 reluctantly had to venture into territory where the
13 Courts should not go, and, indeed, if the Minister is
14 taking the position, as it was there, that electoral
15 reform should include the right of judges to vote, that
16 that should be done by Parliament.

17 When we move, for example, into the
18 area of prisoners voting, you have a much clearer picture
19 of what happens. For example, when cases like Ascovin in
20 the Supreme Court, the Supreme Court of Canada says a
21 certain amount of delay should result in dismissal of
22 criminal charges. The Court then somehow has to sort out
23 the chaos that follows when the public outcry that is
24 raised and the organizational nightmare that comes with
25 it. In our case, one of our judges granted from the
26 bench a motion to allow prisoners to vote, and in turn
27 there was without any regard, for example, whether there

1 were electoral boxes in the prisons, whether there should
2 be enumeration in the prisons. That had to follow by way
3 of another application to the Court, sometimes regarding
4 provincial prisoners voting federally and the other way
5 around.

6 So it is very complex for the
7 Minister to deal with this. I think it is chaotic for
8 the Courts to do it, and I think it is almost
9 incomprehensible for the Courts to venture into that
10 territory by way of motion.

11 Now, finally, I should tell you
12 that as a discretionary matter, if I accept the motion
13 today, both Defendants are deprived of their day in
14 court, and they certainly intend to defend on every
15 aspect of the case. Furthermore, it would seem that
16 there is a -- not only would they be deprived if I were
17 to grant the motion today of the major part of the
18 defence, but I have no indication that the relief sought
19 would in any way shorten or eliminate the litigation
20 itself.

21 Much of this action has to go to
22 trial, and, therefore, as a discretionary matter, I do
23 not propose to grant the motion. Therefore, the
24 application for mandamus is dismissed, and the
25 endorsement that I will make today is that I am
26 dismissing it for reasons given orally from the bench and
27 that brief reasons will be filed when I have read, edited

1 the transcript of my own reasons today. When I have
2 edited it, then I can file it pursuant to
3 Section 50 of the Federal Court Act. Costs will be in
4 accordance.

5 MR. GLANCY: Thank you.

6 THE COURT: ~~I will take another 25 minutes~~

7 ~~before we do the last one.~~

8 (PROCEEDINGS CONCLUDED)

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FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-1785-96

STYLE OF CAUSE: THERESE DOCHUK et al v. CHIEF FRANCIS SCANIE et al

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: 20 June 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE JEROME A.C.J.

DATED: October 9, 1997

APPEARANCES:

Mr. T.P. Glancy	FOR PLAINTIFF
Mr. K. Lambrecht	FOR DEFENDANT
Mr. B. Crane & Ms. W. Jacknife	FOR DEFENDANT

SOLICITORS OF RECORD:

ROYAL, McCRUM, DUCKETT & GLANCY Edmonton, Alberta	FOR PLAINTIFF
George Thomson Deputy Attorney General of Canada	FOR DEFENDANT
GOWLING, STRATHY & HENDERSON Ottawa, Ontario	FOR DEFENDANT

Federal Court of Canada
Trial Division



Section de première instance de
la Cour fédérale du Canada

Court No. T-1785-96

BETWEEN:

THERESE DOCHUCK, ALBERTINE FINNEY, MARIE ROSE FOOTE,
AGNES GENDRON, DAVID GENDRON, BARBARA JENNINGS,
DOREEN LARSON, DANNY McLAUGHLIN, MARY McLAUGHLIN,
LYNDA MINOOSE, IRENE PERRY, CELINA RITTER,
DAVID RITTER, DAWN RITTER,
JULIE ROUGH and CINDY WILDER,

Plaintiffs

- and -

CHIEF FRANCIS SCANIE and the COUNCIL OF COLD LAKE
FIRST NATIONS and HER MAJESTY THE QUEEN IN
RIGHT OF CANADA AS REPRESENTED BY
THE MINISTER OF INDIAN AFFAIRS

Defendants

Let the attached certified transcript of my Reasons for Order delivered orally
from the Bench at Edmonton, Alberta, on June 20, 1997, be filed to comply
with S. 51 of the *Federal Court Act*.

James A. Jerome

A.C.J.

A large, stylized handwritten signature in black ink, appearing to be 'JP' or similar initials.