

CANADA / JUDGMENT

Mathias v. Squamish Nation

2021 BCSC 1884

COURT

Supreme Court of British Columbia

DECIDED

28 September 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 1884 Mathias v. Squamish Nation

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mathias v. Squamish Nation,

2021 BCSC 1884

Date: 20210928

Docket: S215000

Registry: Vancouver

Between:

Chief Donald Mathias acting on his own behalf and on behalf of all members of the Capilano Indian Nation and Band

Petitioner

And

Squamish Nation, Her Majesty the Queen in right of Canada, the Minister of Indigenous Services and the Minister of Finance

Respondents

Before: The Honourable Madam Justice Ahmad

Reasons for Judgment

Counsel for Chief Donald Mathias, via teleconference:

A. Rogerson

Counsel for Squamish Nation, via teleconference:

R. Janes, Q.C.

J. Harman

Counsel for the Crown, Minister of Indigenous Services and Minister of Finance, via
teleconference:

D. Ramachandran

Place and Date of Hearing:

Vancouver, B.C.

August 25, 2021

Place and Date of Judgment:

Vancouver, B.C.

September 28, 2021

Table of Contents

Introduction. 3

Discussion and Analysis. 4

Rule 21-8(1): Should the application be struck for lack of jurisdiction?. 4

Legal Framework. 4

Analysis. 6

Rule 9-5(1)(a): Should the application be struck as having disclosed no reasonable claim?. 8

Legal Framework. 8

Analysis. 9

Extension of time to file response materials. 9

Costs. 10

Introduction

- [1] On July 23, 1923, the Chiefs of several bands that now comprise the Squamish Nation petitioned the Department of Indian Affairs and Canada (the "Department") to ratify their desire to be amalgamated as a single band (the "Amalgamation").
- [2] By letter dated July 30, 1923, the Department formally approved the petition for Amalgamation, thereby uniting several Indigenous bands into the Squamish Nation and consolidating their finances and governments.

- [3] As set out in the petition filed in this Court on May 21, 2021, Chief Mathias, on his own behalf and on behalf of the members of the Capilano Indian Nation and Band (the "Capilano Nation"), seeks the following relief in respect of the Amalgamation:
- a) an order of the court for the cancellation of the Amalgamation;
 - b) a declaration that the Capilano Nation is a nation separate and apart from Squamish Nation; and,
 - c) an order by way of mandamus directing Her Majesty the Queen (or more appropriately, the Minister of Indigenous Services) to cancel the Amalgamation and to establish the original relationship of the petitioner with Her Majesty the Queen on the basis that existed as of July 22, 1923.
- [4] In addition, Chief Mathias also seeks relief against the Squamish Nation, including:
- a) an accounting by Squamish Nation of funds mandated by the Amalgamation; and,
 - b) the appointment of a Receiver to supervise the accounts of the Squamish Nation.
- [5] On this application, the Squamish Nation argues that the Federal Court has the exclusive original jurisdiction to hear and determine the issues raised in the petition. On July 7, 2021, it filed a jurisdictional response in Form 108 which it "dispute[d] that that this court has jurisdiction over this defendant".
- [6] Relying on Rules 21-8(1)(a) and 9-5(1)(a), it seeks an order to strike the petition on the basis that this Court lacks jurisdiction over the respondents in respect of the claim.
- [7] Alternatively, if the petition is not struck, the Squamish Nation seeks an extension of time to file and serve affidavit material in support of its response to the petition.
- [8] The remaining respondents (collectively, the "Crown") support the application of the Squamish Nation. However, the Crown did not file a jurisdictional response nor did it file an application to strike the petition in respect of the claims made against it.
- [9] I will first address the issue of jurisdiction under Rule 21-8(1) and then turn to the issue of whether the petition discloses a reasonable claim because this Court lacks jurisdiction under Rule 9-5(1)(a).

Discussion and Analysis

Rule 21-8(1): Should the application be struck for lack of jurisdiction?

Legal Framework

- [10] Rule 21-8(1)(a) provides that after filing a jurisdictional response in Form 108, a party who has been served with a petition may apply to strike out the petition on the basis that the petition "does not allege facts that, if true, would establish that the court has jurisdiction over that party in respect of the claim made against that party in the proceeding."

[11] Sections 17 to 26 of the Federal Courts Act, R.S.C. 1895, c. F-7 (the "FCA") set out the scope and the limits of the jurisdiction of the Federal Court.

[12] Section 17 establishes the broad scope of the concurrent jurisdiction of the Federal Court. It provides:

17 (1) Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.

[Added emphasis.]

[13] Section 18 of the FCA provides otherwise. That section sets out those matters for which the Federal Court has exclusive original jurisdiction.

[14] Section 18(1) provides:

18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

[15] Section 2 of the FCA, in turn, defines "federal board, commission or other tribunal" to include:

any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown.

[16] A body empowered under federal legislation, or by an order made pursuant to a prerogative power of the federal Crown, falls within that definition: *Anisman v. Canada* (Border Services Agency), 2010 FCA 52 at para. 30.

[17] Section 17(1) of the Indian Act (the "Act") confers on the Minister of Indigenous Services the power to create new bands by amalgamating existing bands.

[18] Collectively, sections 17(2) and 61 to 69 of the Act provide the Governor in Council or the Minister of Indigenous Services, as applicable, with the authority to manage funds to the benefit of bands under the Act.

Analysis

- [19] The Squamish Nation's argument focuses on the nature of the relief sought by the Petitioner against the Crown which, although framed in three different ways, seeks the cancellation of the Amalgamation. The third order sought in the petition expressly seeks "an order by way of mandamus" directing that cancellation.
- [20] On the face of the petition, the Petitioner is seeking declaratory and prerogative relief (the requested writ of mandamus to cancel the Amalgamation) against a federal decision maker (the Governor in Council or Minister of Indigenous Services) who has powers conferred on it by an Act of Parliament (s. 17(1) of the Act).
- [21] The relief sought against the Crown falls squarely within the matters of exclusive jurisdiction of the Federal Court as expressly contemplated by section 18 of the FCA. As noted, however, the Crown has not filed a jurisdictional response nor has it filed an application to strike out the petition on the basis of Rule 21-8(1), or otherwise.
- [22] Nonetheless, the Squamish Nation argues that the relief sought against it, specifically, an accounting of funds distributed to it by the Crown and the appointment of receiver, flows from, or is consequential to, the Department's decision to approve the Amalgamation. It argues that because that latter decision is within the jurisdiction of the Federal Court, so too should any relief flowing from it.
- [23] The Petitioner disagrees. He argues that whether this Court has the jurisdiction to hear the Petition against the Squamish Nation cannot be determined solely on the basis of the relief sought against the Crown. He argues that, regardless of the jurisdiction with respect to the relief sought against the Crown, the relief sought against the Squamish Nation is within the jurisdiction of this Court.
- [24] I accept the Petitioner's position.
- [25] As noted, Rule 21-8(1)(a) allows a court to strike a petition when the facts alleged, if true, do not establish that the court has jurisdiction over the applicant party.
- [26] The facts that inform the relief sought against the Squamish Nation are set out at paragraphs six and eight of "Part 2: Factual Basis" of the petition. Those paragraphs allege as follows:
6. The Respondents Squamish Nation has misappropriated funds that should have been allocated to the Petitioners and the federal government has abdicated its fiduciary responsibility to monitor such allocations.
 8. At present the Respondents Squamish Nation continues to develop significant business opportunities generating revenue that is not being shared with the Petitioner pursuant to the intention of the 1923 agreement.

[Added emphasis.]

- [27] As the Squamish Nation notes, those facts are alleged in respect of monies that the Crown distributed to it as the result of the Amalgamation and pursuant to the powers conferred on it by the Act. However, the allegations in those paragraphs are not made in respect of the Amalgamation or the Crown's distribution of the funds. Rather, the allegations relate to the alleged conduct of the Squamish Nation and, in particular, the manner in which it allegedly distributed, or did not distribute, funds to the Petitioner.
- [28] There is nothing before me to suggest that the Court does not have the jurisdiction to determine either an allegation of misappropriation or breach of an agreement, whether made against an Indigenous nation or not. If the facts set out in paragraphs six and eight of the petition are true--that is, if the Squamish Nation misappropriated funds or failed to share funds with the Petitioner as it was required to do by agreement--the court has the jurisdiction to determine that matter.
- [29] The distinction is also highlighted by the relief sought against the Squamish Nation, set out in paragraphs four and five in "Part 1: Order Sought" of the petition. Those paragraphs seek:
4. an Order for an accounting by the Respondent Squamish Nation of the funds mandated by the Amalgamation of July 23, 1923 from that date to the date of this order that were not held in trust by [the Crown] or [its] predecessors that were not equitably distributed as contemplated to the Petitioner on a yearly basis.
 5. the appointment of a Receiver to supervise the accounts of the Respondents Squamish Nation and reconcile the non-distribution of the mandated pro rata [funds] misappropriated by the Respondents Squamish Nation deprived to the Petition since amalgamation and acquiesced in by the Respondents Government of Canada contrary to the fiduciary obligation undertaken by the Respondents Government of Canada as of the date of amalgamation.
- [Added emphasis.]
- [30] Like the allegations of fact, the relief sought against the Squamish Nation is based solely on its alleged conduct in relation to funds that it holds. The fact that the Squamish Nation obtained those funds after, or as the result of, the Amalgamation does not alter the nature of the claim against it.
- [31] Having been provided with no authority to the contrary, I am satisfied that, regardless of relief claimed against the Crown, the facts alleged in the petition, if true, would establish that the court has jurisdiction over the Squamish Nation in respect of the claim made against it.
- [32] The Squamish Nation's application to strike the petition pursuant to Rule 21-8(1) is dismissed.

Rule 9-5(1)(a): Should the application be struck as having disclosed no reasonable claim?

Legal Framework

[33] Rule 9-5(1)(a) provides:

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

(a) it discloses no reasonable claim or defence, as the case may be.

[34] In a case in which a proceeding has been brought by way of notice of civil claim, a claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17.

[35] However, because a petition need not disclose a "cause of action", where the application to strike is made in respect of a petition, the test is modified such that the correct inquiry under Rule 9-5(1)(a) is whether the petition disclosed the type of claim that may be brought by petition: *E.B. v. Director of Child, Family and Community Services*, 2016 BCCA 66.

Analysis

[36] In advancing its application to strike under Rule 9-5(1)(a), the Squamish Nation does not argue that the facts set out in the petition, if true, do not disclose a cause of action. Nor does it argue that the claim against it is not the type of claim that is properly brought by petition.

[37] Rather, the application to strike under Rule 9-5(1)(a) is made on the sole basis that, as the Squamish Nation argues, this court lacks jurisdiction in respect of the claim.

[38] Having found that the Court does have the jurisdiction to determine the petition in respect of the claims against the Squamish Nation, that argument cannot succeed. The application to dismiss the petition on that ground is dismissed.

[39] It may well be that there other bases that are not before me on which the petition ought to be struck. If that is the case, I do not preclude the Squamish Nation from bringing another application under Rule 9-5 for that relief.

Extension of time to file response materials

[40] In the event that the petition is not struck, both the Squamish Nation and the Crown have asked for an extension of time to file their response materials.

[41] Given the historical nature of the claim dating back to 1923, I am satisfied that the respondents will require a considerable amount of time to review their positions and prepare the affidavit material that is required to respond to the allegations made in the petition. I am also satisfied that, having filed its response to petition, jurisdictional response, and this application in a timely manner, the Squamish Nation has not unduly delayed or sought to prevent the Petitioner from proceeding with his petition.

[42] In the circumstances, I will extend the date by which each of the Squamish Nation and the Crown must file responsive materials by 120 days from the date of these reasons, with liberty to apply for a further extension if so required.

Costs

[43] The Petitioner is awarded costs of this application against the Squamish Nation.

"Ahmad J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/18/2021BCSC1884.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mathias-v-squamish-nation-2021>

Prepared on 26 October 2026 · Esheria