

CHISHOLM v. THE KING

[1948] 3 D.L.R. 797 (also reported: [1948] Ex.C.R. 370)

Exchequer Court of Canada, O'Connor J., 21 May 1948

Crown II A--Indians--Legal services rendered to band of Indians at their request--Liability of Crown (Dom.)--Indian Act (Can.)--

Although by virtue of the *Indian Act*, R.S.C. 1927, c. 98, as amended, a Minister of the Crown is trustee of the Indians and has the direction and management of their trust funds, the Crown is under no liability for legal services rendered to a band of Indians at their request in connection with a claim by them against the Crown. Where the Minister did not instruct the solicitor to act, no liability rests on the Crown nor has the Exchequer Court any jurisdiction to review the Minister's decision to pay or not to pay such an account. Even if the Indians agreed to pay the solicitor out of their trust funds or purported to assign a portion thereof to him, no effect can be given to any such agreement or assignment unless there has been approval by the Minister (as Superintendent-General) as provided by s. 90 (2) of the *Indian Act*.

Statutes Considered: *Indian Act*, R.S.C. 1927, c. 98.

DETERMINATION of question of law in a petition of right against the Crown (Dom.).

Auguste Lemieux, K.C., for suppliant.

W. R. Jackett and *D. H. W. Henry*, for respondent.

O'CONNOR J.:--This is a petition of Constance Chisholm, sole devisee and executrix of the late Andrew Gordon Chisholm, K.C., who died at London, Ontario, on January 11, 1943.

In these proceedings the following question of law was set down for hearing: "Assuming the allegations of fact contained in the petition of right to be true, does a petition of right lie against the respondent for any of the relief sought by the suppliant in the said petition?"

The facts alleged in the petition of right are:

The late Mr. Chisholm, between the years 1915 and 1942, both inclusive, rendered legal services to the Six Nations Indians, particulars of which are set out in the account of \$5,034.70, annexed to and forming part of the petition of right. The services rendered were in connection with the preparation and prosecution of a claim by the Six Nations Indians against the Crown.

The Six Nations Indians are wards of the respondent and under the *Indian Act*, R.S.C. 1927, c. 98, as amended, the Minister of Mines and Resources is and has been at all times material the trustee of the Indians, and as Superintendent-General of Indian Affairs has the control, direction and management of the Indians in Canada, including their trust funds.

The professional services were rendered to the Six Nations Indians at their own request, and for their benefit and advantage and protection and promotion of their welfare as such band.

The charge for such services is most modest and reasonable. That Mr. Chisholm applied to the respondent as trustee for the Six Nations Indians for payment of the account, but failed to obtain any settlement. The Six Nations Indians have always viewed with favour and approved the account, and have been willing that Mr. Chisholm be paid an adequate remuneration and by a resolution of the Six Nations, dated February 8, 1943, they duly approved and recommended that the sum of \$1,500 be paid to the suppliant on account of the bill for such legal services, but no payment has been made.

For these reasons the respondent is indebted to the suppliant in the said sum of \$5,034.70.

The facts alleged do not show that there is any liability on the respondent for the account. It is not suggested that the respondent ever instructed Mr. Chisholm to act. Because the respondent holds money in trust for the Indians does not impose a liability on the respondent to pay this account out of the trust funds or otherwise. The decision of the Minister either to pay or not to pay the account is not subject to review by the Court. The Court has no jurisdiction to do so.

Nor is there any liability if the claim is on the basis that:

(a) the Six Nations engaged Mr. Chisholm and agreed to pay him out of the trust funds in the possession of the respondent

or

(b) the resolution approving and recommending payment is an assignment of the trust funds or an order to pay \$1,500 out of such funds;

because s. 90 (2) of the *Indian Act* provides: "No contract or agreement binding or purporting to bind, or in any way dealing with the moneys or securities referred to in this section, or with any moneys appropriated by Parliament for the benefit of Indians, made either by the chiefs or councilors of any band of Indians or by the members of the said band, other than and except as authorized by and for the purposes of this part shall be valid or of any force or effect unless and until it has been approved in writing by the Superintendent General."

It is not alleged that there was such approval.

The question of law will, therefore, be answered in the negative.

The costs will be costs in the cause.

Question of law answered in negative.