

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

TA'AN KWÄCH'ÄN COUNCIL BY ITS BOARD MEMBERS
HAROLD CHAMBERS, DIANE GRAHAM, LINDA HARVEY, AND
EDYTHE MALONEY AND ITS ELDERS' COUNCIL MEMBERS
CAROL ELOFSON AND PHYLLIS LETOURNEAU

PLAINTIFF

AND:

JOHN BURDEK

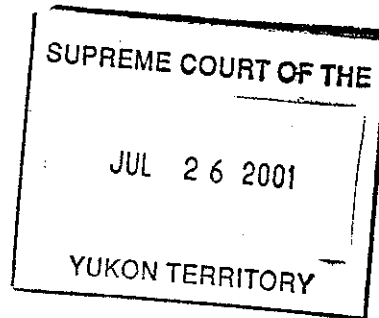
DEFENDANT

DANIEL SHIER

For the Plaintiff

STEPHEN WALSH

For the Defendant



**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] MARCEAU J. (Oral): In this matter, Exhibit 1 will be the draft minutes of June 1, 2001; Exhibit 2 will be the draft minutes of June 12, 2001; Exhibit 3 will be the letter, July 16, 2001.

[2] Before this Court can grant an injunction it must be satisfied, firstly, that there is a serious issue to be tried; secondly, that irreparable harm will occur to

the applicants if interim relief is not granted; and thirdly, that the balance of convenience favours the granting of interim relief to the applicants.

[3] The initial problem with this action is that it purports to have been taken by the council of the Indian band, and that entity, it is conceded, has not authorized the commencement of this action, and, therefore, the undertaking to abide by any award of the Court as to damages cannot be given on behalf of the council. The undertaking is not exhibited by the persons personally, nor do they purport to have commenced the action personally, and it may very well be that in another place, at another day, and certainly in another action, they could commence that action with the board as the defendant.

[4] There are so many other problems with the application that I will not list them all. The application is dismissed.

[5] Costs?

[6] MR. WALSH: I submit, My Lord, that since this resolves the matter, the costs should be awarded to the defendant in this action, and given that there's no basis to bring the action, I submit that higher than scale 3.

[7] THE COURT: I am going to leave the matter of costs up to the ultimate arbitrator or judge in this matter, basically because I certainly cannot

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grant costs against a party upon whose behalf an action was commenced without authority, nor against those who authorized the commencing of the action, nor against the solicitor personally; so I am going to leave that decision to the Court who eventually deals with this action, but I might as well state that if the application before this Court was to dismiss the action, which is not before me, I would dismiss it. This court is adjourned.


MARCEAL J.