

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Reid v. Kwanlin Dun First Nation, et al.*,
2003 YKSC 43

Date: 20030822
Docket No.: S.C. No. 03-A0040
Registry: Whitehorse

Between:

JENNIFER M. REID

Plaintiff

And:

**KWANLIN DUN FIRST NATION by the
CHIEF RICK O'BRIEN and
COUNCILLORS LEONARD GORDON SR.,
ALLAN TAYLOR, DARWIN O'BRIEN, EDITH BAKER
LESLEY SMITH, and JESSIE DAWSON**

Defendants

Appearances:
Mr. Daniel Shier
Mr. Gary Whittle

Counsel for the Plaintiff
Counsel for the Defendants

Before: Mr. Justice R.S. Veale

REASONS FOR JUDGMENT (On validity of service)

INTRODUCTION

[1] Kwanlin Dun First Nation (KDFN) applies under Rule 14(6)(b) for a declaration that the purported service of a writ of summons and statement of claim, notice of motion and affidavit was invalid. These reasons consider the issue of how Indian Bands under the *Indian Act*, R.S.C. 1985, c.I-5, are served with documents in court actions. I made an oral ruling at the time of the application that service was effected on the facts of this case.

THE FACTS

[2] The facts are as follows:

1. The plaintiff filed a writ of summons and statement of claim on June 25, 2003, as well as a motion and affidavit on July 2, 2003, (the court documents). She was suing KDFN for wrongful dismissal.
2. KDFN is an Indian Band under the *Indian Act*. It is located in the City of Whitehorse where it has an office building called the Kwanlin Dun Administration Building.
3. The lawyer for the plaintiff had a telephone conversation with the Chief of KDFN about this case on June 9, 2003. The Chief informed the lawyer to speak to Ray Santa, the Director of Administration.
4. The lawyer for the plaintiff spoke to Ray Santa on the telephone on June 10, 2003 about the case. Ray Santa, as Director of Administration, signed the letter of termination delivered to the plaintiff on May 22, 2003.
5. On July 3, 2003, an articled student of the law firm of the plaintiff attended at the Kwanlin Dun Administration Building and asked the receptionist if she could speak to the Chief. The receptionist advised that the Chief was away.
6. The articled student then informed the receptionist that she had court documents to serve and inquired if there was anyone else to whom she could speak.
7. The receptionist replied, "Ray could help you". She led the articled student outside to the deck or veranda on the front of the Kwanlin Dun Administration Building to a man who identified himself as Ray Santa.

8. On being advised that the articted student had court documents to serve on KDFN, Ray Santa asked her to follow him to his office.
9. The articted student gave the court documents to Ray Santa who looked at them. Ray Santa then signed a Service Requisition Form used by the law firm. Ray Santa made a photocopy of this Service Requisition Form. It is this purported service that is at issue.
10. A further affidavit was served on the KDFN Director of Finance at the Kwanlin Dun Administration Building on July 10, 2003, who indicated she would leave it on "Ray's desk". The Director of Finance signed the Service Requisition Form.
11. Two further affidavits were served on Ray Santa on July 11, 2003 at the Kwanlin Dun Administration Building. He signed the Service Requisition Form and made a photocopy of the form.
12. Both the Band Administrator and the Director of Finance filed affidavits under oath that they had never been authorized to accept and acknowledge service of any court process on behalf of KDFN.

DECISION

[3] This court has adopted the British Columbia Rules of Practice. Counsel for KDFN relies upon the annotated rules entitled *British Columbia Practice* (2nd edition), Butterworths, Issue 49 (Jan/03), for the following proposition at p. 11 – 12:

Service on Indian Bands

An Indian Band is, like a trade union, a juridical person which does not find its genesis through an act of incorporation, and must therefore be served in accordance with R 11(2)(c) because it is an unincorporated association. In order to effect valid service of a writ of summons on an Indian Band, a copy of the writ must be left, in accordance

with R 11(2)(c), with the Chief Councillor or one of the Band Councillors having the responsibility to direct the affairs of the Band. An Indian Band cannot be served with a writ of summons by sending it by registered mail to the office of the Indian Band because that mode of service is available, under R 11(2)(b), only in respect to corporation: *William v. Lake Babine Indian Band* (1999), 30 C.P.C. (4th) 156 (B.C.S.C.).

[4] Rule 11(2)(c) provides that service of a document is effected on:

an unincorporated association, including a trade union, by leaving a copy of the document with any officer of the association, or in the case of a trade union, with a business agent.

[5] A band is defined under s. 2(1) of the *Indian Act* as:

“band” means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act;

[6] *William v. Lake Babine Indian Band*, [1999] B.C.J. No. 842 (B.C.S.C.) is the leading case on the service of Indian Bands. In that case, counsel for the plaintiff purported to serve the band by mailing a copy of the writ of summons and statement of claim by double registered mail to the band’s address. The receptionist at the band office received the writ of summons and statement of claim and filed them in the plaintiff’s personnel file. The Chief Councillor and Councillors were not aware of the existence of the litigation and the purported service was ruled to be improper. Taylor J. concluded:

1. proper and valid service is fundamental to the litigation process;

2. neither the Chief Councillor nor any of the Band Councillors were aware of the litigation;
3. an Indian Band is an unincorporated association and must be served pursuant to Rule 11(2)(c) to ensure proper notice of proceedings is brought to the attention of those directing the affairs of the band;
4. the Lake Babine Indian Band, on the facts of that case, was not served in accordance to Rule 11(2)(c) as an unincorporated association.

[7] The court went on to set aside the default judgment and assessment of damages that had taken place.

[8] I do not read the decision of Taylor J. as stating that Indian Bands can only be served by personally serving a Chief or Councillor. Taylor J. did state that neither the writ of summons nor the statement of claim were brought to the attention of the Chief and Councillors.

[9] The Lake Babine Indian Band case is quite different than the case at bar where service of the court documents was effected at the Kwanlin Dun Administration Building on Ray Santa, the Director of Administration, who signed the termination letter. He was also the person to whom the lawyer for the plaintiff had been informed to communicate with. There is no evidence or allegation suggesting that those responsible for the administration of KDFN were not aware of the litigation.

[10] The purpose of Rule 11(2)(c) is to ensure unincorporated associations are properly informed of litigation so that they can make the appropriate response. As set out in Rule 1(5), the Rules of Court are to be interpreted "to ensure the just, speedy and inexpensive determination of every proceeding on its merits." In my view, it would be contrary to the principle in Rule 1(5) to narrowly interpret Rule 11(2)(c) so that only the

Chief and Councillors can be personally served so as to have effective service on an Indian Band. Support for a liberal interpretation of the word “officer” can be found in case law for the examination of discovery of officers or former officers of a company. (See *Shou Yin Mar v. Royal Bank*, [1940] 3 D.L.R. 331 (B.C.C.A.)).

[11] Rule 11(2)(c) refers to leaving a copy of the document “with any officer of the association.” In my view, leaving a copy with the KDFN Director of Administration meets both the letter and the spirit of Rule 11(2)(c). This is particularly so when the Chief has designated the Director of Administration as the person to be contacted by the plaintiff’s lawyer. It is clear that Ray Santa was not simply an employee who might misplace court documents. He had the apparent authority to terminate employees of the First Nation.

[12] Indian Bands are not merely unincorporated associations. They have legislative roles, administrative offices, managers, directors and organizational structures. It would be bizarre indeed to allow corporations to be served by leaving documents with the “manager, cashier, superintendent, treasurer, secretary, clerk or agent of the corporation” as in Rule 11(2)(b) while insisting that Indian Bands can only be served by leaving it with their elected officers. That would be a great inconvenience to both the elected officers and those wishing to effect service upon them.

[13] I conclude that the service of KDFN was validly effected pursuant to Rule 11(2)(c) by leaving the court documents with the KDFN Director of Administration.