

Date: 2000/05/25

**IN THE COURT OF APPEAL OF ALBERTA REASONS FOR DECISION OF THE  
HONOURABLE MADAM JUSTICE RUSSELL BETWEEN: 0003-0201AC LA  
SOCIÉTÉ CULTURELLE MAMOWAPIK - and - LA SOCIÉTÉ ACADIENNE DE  
L'ALBERTA Appellants (Applicants) - and - ALBERTA GAMING AND LIQUOR  
COMMISSION Respondent AND BETWEEN: 0003-0200AC LA SOCIÉTÉ  
EDUCATIVE DU PROJET CONJOINT DE L'ALBERTA Appellant - and -  
ALBERTA GAMING AND LIQUOR COMMISSION Respondent**

[Note: An erratum was filed on June 2, 2000; the corrections have been made to the text and the erratum is appended to this judgment.]

COUNSEL:

D. F. HOLT For the Appellants

D. W. KINLOCH For the Respondent

REASONS FOR DECISION OF THE HONOURABLE MADAM JUSTICE RUSSELL

RUSSELL, J.A. (for the Court):

[1] There are two related applications before me, both seeking a reversal of a chamber judge's orders of April 20, 2000, wherein he refused to grant a stay of the Notices of Board Decision, dated March 29, 2000.

[2] The applicants, La Société Culturelle Mamowapik, La Société Acadienne de L'Alberta, and La Société Educative du Projet Conjoint de L'Alberta (the Asocieties") are non-profit corporations which promote French language and culture in Alberta. Their objectives are funded, in part, through bingo events, which are licensed by the respondent Alberta Gaming and Liquor Commission (the AAGLC").

[3] As a result of an extensive audit by the AGLC, all three applicants effectively lost their licenses. Those decisions were made by the Board of the AGLC and upheld by the Hearing Panel. The applicants sought a stay of the decisions pending the hearing of the judicial review applications, which were filed on April 13, 2000. The chambers judge denied the stay, having found that the test had not been met. The societies brought these applications to reverse the chamber judge's orders.

[4] At the outset of the hearing, I invited counsel to address the issue of my jurisdiction to hear this matter sitting as a single judge, where my jurisdiction is limited to matters "incidental to the appeal". I conclude that I do not have jurisdiction to hear these applications.

[5] The applicants rely on Rule 753.15(1) of the *Alberta Rules of Court* in seeking relief. Unless otherwise provided by statute, that Rule permits the court hearing the application for judicial review, to stay the operation of the decision sought to be set aside pending final determination of the review. That Rule does not permit a further application *de novo* before a single judge of this court. This court does not have jurisdiction to stay the Board's decision in judicial review proceedings.

[6] Counsel for the applicants properly interpreted paragraph F (5) of the Consolidated Court of Appeal Practice Directions, to permit applications for a stay to be heard by a single judge. But a stay of an order refusing a stay is a hollow remedy. What the applicants really seek is a reversal of the refusal of the stays, which are tantamount to an appeal of those decisions. Although the refusal of the stay, may be the subject of an appeal to this court, those appeals must be heard by a panel consisting of a quorum of judges.

[7] Kerans J.A. encountered a similar situation in *Triple Five Corp. v. United Western Communications Ltd.* (1994), 19 Alta.L.R. (3d) 153 (C.A.), where he refused to grant a stay of the vacation of an injunction. He comments at p.155:

. . . but the difficulty in this case is that it in effect puts me in a position of either rehearing the interim injunction application or sitting on an appeal of it, neither of which is satisfactory. The *Court of Appeal Act* says that a quorum of this court for the purposes of hearing and deciding an appeal is three judges and that one judge can only hear and decide matters incidental to an appeal. Therefore, in my view, I do not have authority today to make a decision that is tantamount to hearing and deciding an appeal.

[7] The present applications for a stay of a refusal of a stay are similar in that they amount to a rehearing of the interlocutory stay applications or sitting on an appeal of them, neither of which I have jurisdiction to preside over, sitting as a single judge of this Court.

[8] An application for a stay pending appeal is very different from this application. There, a judge of this court is asked to stay the trial judges' decision pending appeal to this court. Here the pending judicial review is still before the Queen's Bench.

[9] For these reasons, the applications are dismissed.

APPEAL HEARD on MAY 11, 2000

DECISION DATED at EDMONTON, Alberta, this 25<sup>th</sup> day of MAY, 2000

RUSSELL, J.A.

ERRATUM OF THE REASONS FOR DECISION

On p. 1, in the Style of Cause, the word "APROJECT" has been changed to "APROJET" (French translation).