

**COURT OF APPEAL FOR BRITISH COLUMBIA**

**ORAL REASONS FOR JUDGMENT**

BEFORE THE HONOURABLE  
Madam Justice Saunders

IN CHAMBERS

BETWEEN:

**FERGUSON GIFFORD**

PLAINTIFF  
(APPELLANT)

AND:

**LAX KW'ALAAMS INDIAN BAND and  
LAX KW'ALAAMS INDIAN BAND COUNCIL**

DEFENDANTS  
(RESPONDENTS)

Date and Place: April 11, 2000    Vancouver, B.C.

M.J. Braidwood  
F.M. Kirchner

appearing for the Appellant  
appearing for the Respondents

(Application for Leave to Appeal)

[1] **SAUNDERS, J.A.:** This is an application for leave to appeal a Chambers decision striking out a garnishing order after judgment and ordering the funds which had been paid into Court on the garnishing order paid out. The circumstances can be described briefly.

[2] The plaintiff in this action, a law firm, obtained judgment against the Indian Band for \$19,557.39, representing unpaid legal fees. This judgment debt was assigned to Mr. Helin, a status Indian living on the Band's reserve, who issued a garnishing order to a Toronto-Dominion Bank located on a reserve. The Band had monies on deposit at the Bank, and the Bank paid the amount of the garnishing order into Court.

[3] The attachment was successfully challenged in the Supreme Court of British Columbia by the Band on the basis that Mr. Helin took by assignment subject to the equities between the law firm and the Band. The Chambers Judge held that one of those equities was s.89 of the *Indian Act*, R.S.C. c.I-5, which prohibited execution in favour of any person except an Indian or a band.

[4] The first question is whether leave is required. The second is whether leave should be granted if it is required.

[5] Section 7.1 of the *Court of Appeal Act* provides that leave is required to appeal an interlocutory order.

[6] I assume for the purposes of this decision, but without deciding, that leave is required. In that case then, I must go on to consider whether I would grant leave. I have concluded that I would do so, and as I would grant leave prudence would have me say little on the criteria, especially as to the merits of the issue which will be heard by this Court. Suffice it to say that in my view the criteria described in *Chavez v. Sundance Cruise Corp.* (1993), 77 B.C.L.R. (2d) 328 (C.A.) are met in this case.

[7] For these reasons then, I would give leave to appeal

**"The Honourable Madam Justice Saunders"**