

Buckshee Leases and Land Back: Recent Caselaw on Reserve Land Management

Presented by Catherine Fagan & Hayley Gendron
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Roadmap of Presentation

- Introduction
- Caselaw Review:
 - Formality and Process
 - Estates and Valuation
 - Possession and Protection
 - Boundaries and Reclamation
- Lessons Learned
- Q&A



Cases at a Glance

Formality and Process

- *Ziprick v. Simpson Estate* 2020 BCSC 401
- *Matachewan First Nation v. Reeb*, 2021 ONSC 7166
- *Hiawatha First Nation v Cowie*, 2023 ONCA 524

Estates and Valuation

- *Louie v. Canada (Indigenous Services)*, 2021 FC 650
- *Mitchell v. Canada (Indigenous Services)*, 2024 FC 1248

Possession and Protection

- *Bogue v. Miracle*, 2022 ONCA 672
- *Paul v. St. Mary's First Nation*, 2022 NBCA 2

Boundaries and Reclamation

- *Chippewas of Saugeen First Nation v. Town of South Bruce Peninsula*, 2023 ONSC 2056 (& ONCA Appeal)
- *Couchiching First Nation et al. v. AG Canada et al.*, 2025 ONSC 3602
- *Southwind v. Canada* 2021 SCC 28

Formality and Process



Buckshee Leases and Trespass

Ziprick v. Simpson Estate 2020 BCSC 401

- Mobile home park developers operated on OKIB land with only informal “buckshee leases”
- Plaintiffs, who held valid **Certificates of Possession (CPs)** under s. 20(1) of the *Indian Act*, sued for trespass
- **Issues:**
 - Does the companies’ occupation and development of the land without a registered head lease amounted to trespass?
 - Do “buckshee leases” or informal agreements with band members created enforceable rights?



Buckshee Leases and Trespass

Ziprick v. Simpson Estate 2020 BCSC 401

- **Ruling:** Trespass!

- Companies had no legal right to occupy or profit from the reserve lands
- plaintiffs awarded **\$250,000 in damages**
- court confirmed that only the federal Crown can grant valid leasehold interests in reserve lands under the *Indian Act*.

- **Takeaways:**

- Buckshee leases are void
- CP holders' rights to occupy and exclude are legally protected
- cautionary tale for developers and investors who attempt to bypass statutory requirements



Housing and Tenancy on Reserve



Matachewan First Nation v. Reeb, **2021 ONSC 7166**

MFN sought to evict tenants from housing on reserve land

The Landlord and Tenant Board said it had no jurisdiction on reserve

MFN went to Superior Court to enforce eviction



Issues:

Do provincial residential tenancy laws apply to reserve lands?

What legal foundation is required for a tenancy agreement on reserve land to be valid and enforceable?

Does the Superior Court have jurisdiction to enforce eviction orders?

Housing and Tenancy on Reserve

Matachewan First Nation v. Reeb, 2021 ONSC 7166

- **Ruling:**

- No provincial jurisdiction — the *Residential Tenancies Act* doesn't apply on reserve lands.
- Superior Court has jurisdiction — it can hear the case under general contract law.

- **Takeaways:**

- Provincial landlord-tenant laws don't apply on reserves, but court can still enforce tenancy agreements under general contract principles.
- exposes a **legal gap** — without clear First Nation housing/tenancy rules, disputes default to provincial courts
- Highlights importance of First Nations adopting clear housing and tenancy policies



By-Laws vs. Resolutions

Hiawatha First Nation v Cowie, 2023 ONCA 524

- Council passed resolution imposing moratorium on creation of new businesses without approval until land code and CCP complete
 - Resolution not published as by-law
 - Member with CP began building gas station
 - Council obtained court injunction to stop construction; member appealed.
- **Issue:**
 - Did the resolution have the force of law as a by-law under *Indian Act*?

By-Laws vs. Resolutions

Hiawatha First Nation v Cowie, 2023 ONCA 524

- **Ruling:**

- ONCA held the resolution was **not a valid by-law**, so it had **no legal force**. The injunction was overturned.
- court indicated the need for stricter compliance with the form requirements in the *Indian Act*, which include the requirement that a by-law be published in the First Nations Gazette, the band's website, or a newspaper with circulation on the reserve.

- **Takeaways:**

- affirms the importance of formality in the exercise of a band council's powers.
- important reminder that form sometimes will trump substance



Estates, Custom & Land Value



Custom vs. Federal Control

Louie v. Canada (Indigenous Services), 2021 FC 650

- Okanagan Indian Band member challenged will made by his late brother
- Argued the will was invalid based on OKIB custom, which he claimed prohibited transferring reserve land to a non-family member
- Appealed to Federal Court
- **Issue:**
 - Was will invalid based on Okanagan custom?



Custom vs. Federal Control

Louie v. Canada (Indigenous Services), 2021 FC 650

- **Ruling:**

- Appeal dismissed on the grounds of insufficient evidence that the will was contrary to the interests of the Okanagan Indian Band
- Court emphasized that customary law must be proven with clear evidence, especially when used to challenge formal legal instruments like wills.

- **Takeaways:**

- High evidentiary standard required to invoke Indigenous customs in legal proceedings under the Indian Act.
- Decision may influence future challenges to wills involving reserve lands and Indigenous customs.



Valuing Reserve Land in Estates

Mitchell v. Canada (Indigenous Services), 2024 FC 1248

- A beneficiary of an estate that included parcels of Okanagan Indian Band land challenged Indigenous Services Canada's valuation of on-reserve property
- ISC often assessed CPs at negligible value when no formal lease existed
- **Issues:**
 - Must ISC provide a full accounting of estate property and fair valuation of on-reserve lands?
 - Can on-reserve lands without registered leases still hold market value?



Valuing Reserve Land in Estates

Mitchell v. Canada (Indigenous Services), 2024 FC 1248

- **Ruling:**

- Federal Court held that ISC must reassess the valuation and provide a complete accounting.
- Court rejected ISC's presumption that non-leased reserve land lacks value.

- **Takeaways:**

- Land managers can push back: CP land isn't worth zero.
- Keep local market data and advocate for proper valuations.



Possession & Economic Protection



Credit and Protection

Bogue v. Miracle, 2022 ONCA 672

- A non-Indigenous lawyer sought to enforce a contingency fee against a Mohawk businessman by appointing a receiver over his on-reserve businesses
- **Issue:**
 - Can a receiver be appointed to seize profits from on-reserve businesses to satisfy a debt owed to a non-Indigenous creditor, despite s. 89 protections?

Credit & Protection

Bogue v. Miracle, 2022 ONCA 672

- Ruling:
 - No, receiver cannot be appointed.
 - s. 89 protections apply regardless of whether a business operates in the “commercial mainstream”; no “commercial exception” to s. 89
- Takeaways:
 - highlights the strength of *Indian Act* s. 89 protections over reserve land and businesses
 - protects from outside creditors but also creates challenges for economic development and land management



Possession & Improvements

Paul v. St. Mary's First Nation, 2022 NBCA 2

- Member of St. Mary's First Nation erected structures on "Ceremonial Land" under permission in 2004
- Over time, he expanded with a shed, trailer, etc.
- Council passed resolution directing removal of structures/requiring written approval for new structures, member refused
- Summary judgement ordered member to vacate land, remove structures, surrender possession; member appealed
- **Issues:**
 - Did member have lawful possession of land?
 - Did member make permanent improvements?

Possession & Improvements

Paul v. St. Mary's First Nation, 2022 NBCA 2

- **Ruling:**

- Appeal dismissed. Member was never “lawfully in possession” of land; never got CP
- No permanent improvements, no compensation

- **Takeaways:**

- For legal rights over reserve land, must have formal legal possession
- Even long-standing structures or income-producing improvements aren't enough; must meet the criteria under the Act.
- Important to establish clear processes for allotment, certificates, approvals for structures



Boundaries and Reclamation



Restoring Reserve Boundaries

Chippewas of Saugeen First Nation v. Town of South Bruce Peninsula (2023 ONSC 2056/ 2024 ONCA 884)

- Chippewas of Saugeen First Nation brought an action declaring that a stretch of lakeshore (Sauble Beach / Chi-Gmiinh) should be included in their reserve (IR 29) under Treaty 72.
- survey made in 1856 by Rankin positioned the northern boundary of IR 29 2.2 km south of where Treaty text intended, excluding strip of coastline now occupied by private landowners.



Issues:

- Is disputed shoreline properly part of the Saugeen reserve?
- Should private landowner interests (e.g. via Crown patents) / defences such as bona fide purchaser prevail over Saugeen's claim?
- Can Ontario's Limitations Act bar a claim for recovery of reserve land under treaty rights?

Restoring Reserve Boundaries

Chippewas of Saugeen First Nation v. Town of South Bruce Peninsula (2023 ONSC 2056/ 2024 ONCA 884)

Ruling:

- Court declared that the “Disputed Beach” lands are part of IR 29 and that they were never validly surrendered.
- Crown patents to private owners did not extinguish Saugeen’s treaty rights because they did not demonstrate a clear, plain intention to do so.
- Ontario Limitations Act did not bar Saugeen’s claim: ten-year limitation period for recovery of land claims did not apply to claims for reserve lands or treaty breaches, so as not to extinguish constitutionally protected rights.
- Court of Appeal dismissed appeal; upheld ONSC decision



Takeaways:

- Strengthens legal footing for First Nations seeking boundary corrections or land recovery
- Confirms that Indigenous or treaty-based rights in reserve lands can, in rare but appropriate circumstances, displace private fee simple title, even where that title was obtained via Crown patents.

Municipal Leases and Land Back

Couchiching First Nation et al. v. AG Canada et al., 2025 ONSC 3602

- Agency One First Nations asserted that lands known as “Point Park” at the mouth of the Rainy River, and portions of their former jointly held reserve, were wrongly held by Town of Fort Frances.
- Lands were originally surrendered in 1908, but never sold, and instead leased to the Town for 99 years as a municipal park. Town claimed fee simple title.
- Issues:
 - Were the lands validly surrendered/did surrender extinguish First Nations’ rights?/Was Town’s claim to fee simple title legally valid?
 - Did Town’s ‘improvements’ or use of land over years give rights or compensation claims or justification to assert title/beneficial interest?
 - Did 1908 OIC or other instrument transfer ownership, dedicate the land publicly, or otherwise extinguish First Nations’ residual interest?

Municipal Leases and Land Back

Couchiching First Nation et al. v. AG Canada et al., 2025 ONSC 3602

- Ruling:
 - court held that the Town **has no legal or beneficial interest** in the former reserve lands. First Nations' interest survives, and the Town's claim to fee simple title is not accepted.
 - 1908 Order in Council did **not transfer ownership** or extinguish First Nations' residual rights. Rather, it resolved jurisdictional issues.
 - Town's claim for damages (for the work it did, improvements, maintenance) was dismissed
- Takeaways:
 - Confirms the importance of scrutinizing historical leases, orders in council, and municipal claims, and highlights that residual reserve interests may persist even in land long treated as "public."



Crown Duties & Compensation

Southwind v. Canada 2021 SCC 28

- Supreme Court of Canada considered how to calculate equitable compensation for Lac Seul First Nation after reserve lands were flooded for a hydroelectric dam without lawful authorization under the Indian Act in the 1920s
- **Issues:**
 - What is the correct approach to calculating equitable compensation when the Crown breaches its fiduciary duty in relation to reserve lands?
 - Should compensation reflect the market value of the land at the time or the value to the project that benefited from the taking?



Crown Duties & Compensation

Southwind v. Canada 2021 SCC 28

- **Ruling:**

- In an 8-1 decision, SCC confirmed that equitable compensation must reflect the highest value of the lands taken
- compensation must reflect what the First Nation would have received had the Crown fulfilled its fiduciary duty (the value of the land to the project, not just the historic market price)
- Crown must consider best interest of First Nation

- **Takeaways:**

- Clarity on the principles of equitable compensation,
- Modernizes fiduciary principles relating to reserve lands

Lessons Learned

- Strong governance protects communities
- Oral law and documentation can work together
- The Crown's obligations are alive
- Historic wrongs are still legally fixable
- Land offices are on the front line of self-determination

Q&A



NOGALA
— LAW GROUP LLP

wela'lioq, miigwetch, thank you

Catherine Fagan, Founding Partner: catherine@nogala.ca

Hayley Gendron, Articling Student: hayley@nogala.ca

