# Papachase Land Claim Resolved

On April 3, 2008 in *Canada (Attorney General) v. Lameman*, the Supreme Court of Canada (S.C.C.) ruled on whether the descendants of the Papaschase Indian Band could continue to pursue a land claim that would have covered a significant portion of the south side of the City of Edmonton. [1] The S.C.C. decided that the descendants could not pursue the land claim.

In 2004 chambers judge Slatter J., of Alberta's Court of Queen's Bench, struck down the land claims portion of the lawsuit, but did allow the descendants of the band to pursue another matter arising out of the claim.[2]Here the Government of Canada argued that the whole lawsuit was invalid because it was filed after the limitations deadline had expired.[3] The chambers judge agreed, in part. The descendants had missed a deadline to start the lawsuit and so could not proceed on the main part of their claim.

Between 1886 and 1889 the band had sold its reserve lands and surrendered their treaty rights, and rights connected to the reserve. In 1894 the surviving members of the band reached an agreement with the government whereby it paid monies from the sale of the Papaschase reserve to the members of the Enoch Band. It appeared that the surviving members of the Papaschase band had joined the Enoch Band, by then. In the 1970s alawyer representing a group of native persons wrote the federal government advising it that descendants of the Papaschase would pursue a land claim in the near future. That lawsuit was never started. Both the federal and provincial governments did not hear from other interested natives between the 1970s and 2001. The judge ruled that too many years had passed between the time the Papaschase descendants had first indicated their position that there was a legal problem in the 1970s, and the filing of the lawsuit in 2001. Accordingly, he dismissed the land claim.[4] He did, however, rule that the descendants could pursue a claim to see if the government had properly spent and accounted for the proceeds of the sale of the land pursuant to the 1894 agreement. The descendants then appealed the decision.

In 2006 the Alberta Court of Appeal ruled in favour of the descendants.[5] It disagreed with the chambers judge, stating that there were issues before the courts which might be proved at trial, and that the descendants should have the ability to conduct a full trial of the matter. Justice Côté disagreed. He thought that the claims for malice, fraud, and bad faith should be dismissed as the descendants had not established any evidence of the same.[6] Justice Paperny agreed with the majority, but would also have agreed to Justice Côté's exception.

The S.C.C. overturned the Court of Appeal, stating: "We agree with the chambers

judge that [the claim] must be struck out, except for the claim for an accounting of the proceeds of sale, which is a continuing claim and not caught by the *Limitation of Actions Act*."[7] The S.C.C. noted that it had previously ruled that limitation periods apply to Aboriginal claims in *Wewaykum Indian Band v. Canada*.[8] It also noted that while the Alberta government had produced evidence that the descendants should have filed the lawsuit in the 1970's, the descendants did not produce any evidence to contradict that claim.[9] Finally the S.C.C. chastised the majority of the Alberta Court of Appeal for allowing the appeal on the basis of what might be proved at trial. A chambers judge can only base his/her decision on the evidence that is before them, and cannot speculate on evidence that might be produced in the future.[10]

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[1] *Canada (Attorney General) v. Lameman*, 2008 SCC 14; < http://scc.lexum.umontreal.ca/en/2008/2008scc14/2008scc14.html>.
[2] *Papaschase Indian Band (Descendants of) v. Canada (Attorney General)*, 2004 ABQB 655 (CanLII); <http://www.canlii.ca/en/ab/abqb/doc/2004/2004abqb655/2004abqb655.html>. A judge sitting in chambers rules on preliminary motions made before the trial is even scheduled
[3] *Limitation of Actions Act*, R.S.A. 1980, c. L-15
[4] *Supra*, *Papaschase Indian Band*, paras. 5-7 and 11-16.
[5] *Lameman v. Canada (Attorney General)*, 2006 ABCA 392 (CanLII); <http://www.canlii.ca/en/ab/abca/doc/2006/2006abca392/2006abca392.html>.
[6] *Ibid*, para. 166.
[7] Canada (Attorney General) v. Lameman, 2008 SCC 14; < http://scc.lexum.umontreal.ca/en/2008/2008scc14/2008scc14.html>, at para. 12.
[8] *Wewaykum Indian Band v. Canada*, 2002 SCC 79 (CanLII), [2002] 4 S.C.R. 245; (2002), 220 D.L.R. (4th) 1; (2002), [2003] 1 C.N.L.R. 34; (2002), 236 F.T.R. 147; <http://www.canlii.org/en/ca/scc/doc/2002/2002scc79/2002scc79.html>.
[9] *Ibid*, para. 18.
[10] *Ibid*, para. 19.