

NOVA SCOTIA COURT OF APPEAL

Cite as: Chapel Island First Nation v. Busch, 1997 NSCA 73

Clarke, C.J.N.S.; Hart and Hallett, JJ.A.

BETWEEN:

THE CHAPEL ISLAND FIRST NATION
BAND COUNCIL

Appellant

- and -

HANS AND MARY THERESA BUSCH
and THE ATTORNEY GENERAL OF N.S.

Respondents

) Gerald A. MacDonald
) for the Appellant

) Arthur W. D. Pickup, Q.C.
) for the Respondents

) Appeal Heard:
) March 18, 1997

) Judgment Delivered:
) March 18, 1997

THE COURT: Appeal dismissed, per oral reasons for judgment of Clarke,
C.J.N.S.; Hart and Hallett, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by

CLARKE, C.J.N.S.:

The issue in this appeal, as stated by the appellant, is whether the Chapel Island Band Council can be considered a person for purposes of being added as a party to a Quieting Titles Application, pursuant to s. 10(1) of the **Quieting Titles Act**, R.S.N.S. 1989, c. 382.

In an application made to the Supreme Court, the appellant sought to intervene as a defendant in an action brought by the respondents Busch to quiet the title to land known as McNamara's Island which they acquired by deed in 1975. The appellant filed the affidavit of Mr. Beal asserting a land claim to the Island as an Indian reservation.

Justice Edwards dismissed the application concluding for the reasons he gave that the appellant Band Council did not fall within the definition of "person" as provided by the **Act**. He also relied on the decision of Jones, J. (then of the Trial Division) in **Afton Band of Indians and Perro v. Province of Nova Scotia** (1979), 29 N.S.R. (2d) 226.

After reviewing the record and considering the written and oral submissions of both counsel, we have concluded Justice Edwards did not err in his result. Therefore, the appeal is dismissed without costs.

C.J.N.S.

Concurred in:

Hart, J.A.

Hallett, J.A.

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REASONS FOR
JUDGMENT BY:

Clarke, C.J.N.S.
(Orally)