

BC Court Confirms It Has No Authority to Grant Rights to Occupy Reserve Land

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On May 2, 2024, the British Columbia Supreme Court denied an injunction motion brought by Actton Super-Save Gas Stations Ltd. (Super-Save) to continue occupying a gas station on *Indian Act* reserve lands, finding that the Court did not have jurisdiction to grant an order that would circumvent the strict rules for land occupation set out in the *Indian Act*.¹

The decision is an important reminder that many legal principles, such as principles of common law, equity, and some provincial laws do not apply to activities on reserve lands to the extent that they conflict with the *Indian Act*.

[Jordanna Cytrynbaum](#) (Advocacy) and [Arend J.A. Hoekstra](#) (Aboriginal Law) of Cassels successfully represented the defendants, a member of the Penticton Indian Band and his spouse, relying on the fundamental principles established under the *Indian Act* and the *Constitution Act, 1867*.

Background

For nearly 30 years, Super-Save had operated a gas station that had been built by the defendants on lands the defendants held by way of a certificate of possession (CP)² – a possessory interest in specific reserve lands that can be granted to a band member.

In 1995, the defendants met with Super Save and arrived at a “handshake deal” allowing Super Save to occupy and operate the gas station in return for financial payments.³ Super Save subsequently provided the defendants with a standard form 10-year lease agreement with conditions for renewal.⁴ Under this arrangement, the relationship continued until 2024, with subsequent agreements purporting to extend the relationship until 2035.⁵

The original agreement and the subsequent agreements were between Super-Save and the defendants. They were not compliant with the *Indian Act* requirement that any use by a non-member of reserve lands must be approved by the federal Minister of Crown-Indigenous Relations (as that position is now called).

Under Section 28(1) of the *Indian Act*, any agreement by a band or a band member which purports to permit a non-member from using or occupying reserve lands without Ministerial approval is “void.” A “Buckshee

lease” refers to a lease between CP holders and a third party that does not comply with the *Indian Act* requirement for Ministerial approval. While commonplace, these agreements are legally invalid and unenforceable.⁶

In early 2024, the defendants provided Super-Save notice that the defendants required them to vacate the gas station as they intended to take back control of the operation.⁷ Super-Save rejected the notice on the basis that the lease created enforceable obligations and stated that they would not leave unless directed by a court.⁸ Promptly thereafter, Super-Save went to court on a without-notice application and received a 60-day interim injunction preventing the defendant or anyone else from interfering with their business operations.⁹ The effect of the order was to grant Super Save continued occupation of the gas station for 60 days.

After the order expired, Super Save applied to have the Court issue a further injunction until a full trial on Super Save’s claims could be held. The effect of such an order “would amount to an order that [Super-Save] continue in possession or occupation of reserve land until trial.”¹⁰ The defendants opposed the application on the basis that the Court lacked jurisdiction to grant Super Save rights to occupy reserve land contrary to the provisions of the *Indian Act*.

No Basis for Equitable Remedy to Occupy Reserve Land

In rejecting Super-Save’s application for an interlocutory injunction, the Court stated that an order providing Super Save with occupation and possession of reserve lands contradicts the *Indian Act*.¹¹ While there is no question that courts have inherent jurisdiction to grant equitable relief, this relief is limited by constitutionally-valid statutes.¹²

Sections 28 and 29 of the *Indian Act* override **any equitable jurisdiction** of a superior court to issue an injunction that has the effect of providing possession or occupation of un-surrendered reserve land to a non-member of a band for any duration.¹³ The Court found that the order sought by Super-Save clearly concerned the possession of reserve lands and was therefore not within the jurisdiction of the Court to grant.¹⁴

The Court noted that Super-Save may have a claim for damages if, for instance, there was an enforceable obligation that wasn’t performed or if there was a misrepresentation that Super-Save reasonably relied on to their detriment.¹⁵ However, such monetary claims do not provide a legal basis for Super-Save to obtain an order for possession or occupation, on either a permanent or interim basis.¹⁶

Implications

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The decision highlights the differences in law, as well as available remedies, when dealing with reserve lands and the *Indian Act*. While Buckshee leases are commonplace and may serve a practical purpose for some, they are invalid and unenforceable at law (and may give rise to trespass and other liabilities). When engaging in transactions involving First Nation bands under the *Indian Act* or reserve lands, it is important to obtain legal advice.

¹ *Actton Super-Save Gas Stations Ltd v Eneas*, 2024 BCSC 743 [*Actton Super-Save*]; [Indian Act](#), RSC 1985, c I-5 [*Indian Act*].

² *Actton Super-Save*, at para 2.

³ *Actton Super-Save*, at para 22.

⁴ *Actton Super-Save*, at paras 28-30.

⁵ *Actton Super-Save*, at paras 31-33.

⁶ *Actton Super-Save*, at para 3.

⁷ *Actton Super-Save*, at para 34.

⁸ *Actton Super-Save*, at para 35.

⁹ *Actton Super-Save*, at paras 35, 37.

¹⁰ *Actton Super-Save*, at para 5.

¹¹ *Actton Super-Save*, at paras 8.

¹² *Actton Super-Save*, at para 40.

¹³ *Actton Super-Save*, at para 41.

¹⁴ *Actton Super-Save*, at para 42.

¹⁵ *Actton Super-Save*, at para 7.

¹⁶ *Actton Super-Save*, at para 8.

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