

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: ***Reglin v. Creston (Town)***  
2004 BCSC 791

Date: 20040610  
Docket: 14393  
Registry: Cranbrook

Between:

**Jerome A. Reglin**

Petitioner

And

**Town of Creston**

Respondent

Before: The Honourable Mr. Justice Melnick

**Reasons for Judgment**

Counsel for petitioner

J.C. Zimmer

Counsel for respondent

S.H. Haakonson

Date and Place of Hearing:

April 7, 2004  
Cranbrook, B.C.

[1] On March 11, 2002, the Town of Creston ("Creston") terminated the employment of Jerome A. Reglin ("Mr. Reglin") without cause. Mr. Reglin filed this petition on March 9, 2004 (amended April 2, 2004) asking for relief pursuant to s. 2 of the **Judicial Review Procedure Act**, R.S.B.C. 1996, c. 241, in the nature of *certiorari*. He seeks to quash council's decision because he claims he was entitled to a hearing before termination, which he did not receive.

[2] Creston opposes the petition, primarily on the basis that it was filed too late.

[3] The following sections of the **Judicial Review Procedure Act** are of importance:

2 (1) An application for judicial review is an originating application and must be brought by petition.

. . . .

11 An application for judicial review is not barred by passage of time unless

- (a) an enactment otherwise provides, and
- (b) the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay.

[4] Section 285 of the **Local Government Act**, R.S.B.C. 1996, c. 323, provides:

All actions against a municipality for the unlawful doing of anything that

(a) is purported to have been done by the municipality under the powers conferred by an Act, and

(b) might have been lawfully done by the municipality if acting in the manner established by law,

must be commenced within 6 months after the cause of action first arose, or within a further period designated by the council in a particular case, but not afterwards.

[5] I note, as well, that Rule 2(3) of the *Rules of Court* provides:

The court shall not wholly set aside a proceeding on the ground that it was required to be commenced by an originating process other than the one employed.

[6] Following his termination, Mr. Reglin commenced action no. 12447 against Creston, its former mayor Mr. Donald Leben ("Mr. Leben"), and its administrator Mr. William F. Hutchinson ("Mr. Hutchinson"). He commenced that action on July 31, 2002, well within the six-month time limit mandated by the *Local Government Act*. In the statement of claim accompanying that writ of summons, Mr. Reglin asked for some of the same relief outlined in this petition based on the same grounds. That is, he asked to be reinstated as treasurer of Creston (an unusual request since he had last occupied the position of treasurer on May 14, 2001, after which he had been promoted to Director of Financial Services, the position he held when his

employment was terminated). However, in that action, Mr. Reglin did not specifically request that the decision to terminate his employment be quashed because of a failure to provide him with a hearing, nor did he ask for a hearing.

[7] I understand that Mr. Reglin filed this petition after his counsel received notice of Creston's application to have action no. 12447 dismissed by way of summary trial under Rule 18A. It strikes me that if counsel for Mr. Reglin was alerted at that time that Mr. Reglin should properly have cast his request for reinstatement by way of petition under the **Judicial Review Procedure Act**, then the proper course of action would have been to apply to cure the technical defect in the writ of summons and statement of claim. This could have been done either by having it stand as a petition in its entirety or, given that Mr. Reglin advanced other claims as well, more probably by having only that portion of the claim essentially seeking judicial review stand as a petition.

[8] Of course, on such an application, it would have been open to Creston to dispute that the relief Mr. Reglin sought in the statement of claim was, in fact, in the nature of the relief sought in this petition, namely that of judicial review.

[9] However, that application did not occur. Neither counsel provided me with authority indicating a power to go behind a limitation provision in a statute and retroactively validate an action started after the expiry of the limitation period. Of course, as I have noted above, to order that an action commenced within a limitation period proceed in proper form so as to avoid the defendant capitalizing on a mere technicality is quite another matter.

[10] In these circumstances, therefore, I dismiss the petition on the basis that it was not commenced within the limitation period contained in s. 285 of the **Local Government Act**.

Creston is entitled to its costs on Scale 3.

"T.J. Melnick, J."  
The Honourable Mr. Justice T.J. Melnick