

Trudi TONASKET, Appellant/Appellee

vs.

CCT ENROLLMENT DEPARTMENT, Appellee/Appellant.

Case Nos. AP05-011/012, 4 CTCR 36

**8 CCAR 118**

*(See 8 CCAR 109)*

[R. John Sloan Jr. for Appellant.

Juliana Repp for Appellee.

Trial Court Case No. CV-CT-2001-21174]

Oral Argument held October 20, 2006. Decided December 18, 2006. Concurring opinion 12/28/06.

*En Banc* Before: Presiding Justice David Bonga, Justice Dennis Nelson, Justice Howard Stewart, Justice Earl McGeoghegan, Justice Edythe Chenois, Justice Conrad Pascal, and Justice Gary Bass.

Nelson, J.

I concur. I agree the Colville Business Council has authority to determine all questions of the Tribes' membership. I would add once membership or a justifiable expectation of membership exists, either cannot be taken away without due process.

The Business Council was the sole authority determining membership at the time of the first enrollment application. The Bureau of Indian Affairs did not participate in the enrollment procedure nor did it determine who was or was not Indian. Approval by the Superintendent was to insure due process was followed during the enrollment process.

Consequently, the first and second resolutions effectively established Louis Provo as a full blooded Indian. Once this occurred, his qualified descendants were eligible for enrollment. In my opinion, the expectancy of enrollment should be considered a property right that cannot be taken away without due process.

Due process was ignored when subsequent resolutions were enacted negating the first two without the qualified descendants receiving notice of the proposed action by the Business Council

and without having an opportunity to be heard.

Should the Council wish to change its position regarding Louis Provo's blood quantum, it should follow the disenrollment procedures set out in the Enrollment Code or use a procedure that guarantees Provo's qualified descendant's due process.