Federal Court  Cour fédérale

Date: 20141205

Docket: T-1435-12

Citation: 2014 FC 1173

Ottawa, Ontario, December 5, 2014

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

BUFFALO POINT COTTAGERS ASSOCIATION INC.

Applicant

and

BUFFALO POINT FIRST NATION and BUFFALO POINT DEVELOPMENT CORP. LTD.

Respondents

and

FIRST NATIONS TAX COMMISSION

Intervener

ORDER AND REASONS

I. Determination Overview

[1] The Reserve Lands of the Buffalo Point First Nation are located in the southeast corner of the Province of Manitoba along the shores of the Lake of the Woods. It is the home of the First

Nation's members, and is also the home of full-time and recreational non-Aboriginal cottagers who reside on reserve lands available to the First Nation for lease purposes. For many years, together, both shared a positive and productive relationship.

[2] The Buffalo Point First Nation, acting for legal purposes via its wholly owned corporate entity, the Buffalo Point Development Corp. LTD., is the lessor of the leased lands (both together referred to as "Buffalo Point" in these reasons), and the Applicant, as an authorized representative of cottage owners, are lessees of the lands ("Cottagers"). The relationship between Buffalo Point and the Cottagers was developed to meet a mutual need to establish a reliable lessor and lessee financial agreement.

[3] Based on good will and trust on both sides, beginning in 1999, agreements were reached to share annual operating costs. The latest agreement was reached in 2008 in which the Cottagers were responsible for 55% of costs on the understanding that no future system of property tax would be imposed ("2008 Agreement"). The 2008 Agreement established a process whereby the Cottagers would pay an annual fee based on the cost of the routine services such as road maintenance, ploughing, and recreational facility maintenance. Of importance to the present Application is the fact that there was no school cost imposed because Buffalo Point did not operate a school.

[4] In 2005, the *First Nations Fiscal and Statistical Management Act*, S.C. 2005, c.9 ("*Act*"), was passed which made it possible for Buffalo Point to replace the agreed cost-sharing regime with a statutory land tax regime, and it signalled an intention to do so. The First Nations Tax Commission (Commission) administers the *Act*, and as early as 2010 the Cottagers began to

consult with the Commission on what impact they might expect to their leasehold rights from the implementation of a tax regime by Buffalo Point. At that time the Cottagers advised the Commission's staff that, under the 2008 Agreement, an agreement had just been reached respecting their annual fees to be paid for the ensuing two years and requested that their concerns about the disruptive effect of the imposition of a tax be considered. The Cottagers received assurances from the Commission's staff that the transition to a tax regime would be successful and that the Commission would work with Buffalo Point to resolve any concerns.

[5] Nevertheless, after a high degree of consultation, on June 25, 2012, in a single decision the Commission approved six Tax Laws proposed by Buffalo Point: *Buffalo Point First Nation Property Assessment Law, 2011*; *Buffalo Point First Nation Property Assessment Amendment Law, 2012*; *Buffalo Point First Nation Property Taxation Law, 2011*; *Buffalo Point First Nation Property Taxation Amendment Law, 2012*; *Buffalo Point First Nation Annual Rates Law, 2012*; and *Buffalo Point First Nation Expenditure Law, 2012*.

[6] The forced change from the cost-sharing regime to the land tax regime was not well accepted by the Cottagers because, in their view, they have unjustly lost the financial control over their lease rates and the financial stability that they enjoyed in the cost-sharing regime. As a result, in an attempt to regain that control, the Cottagers have sought access to justice by engaging two parallel avenues of legal redress.

[7] The first avenue engaged is a Manitoba Court of Queen's Bench action in which the Cottagers seek to enforce an arbitration clause in the 2008 Agreement. And the second is the

present Application that challenges the Commission's decision-making implementing the tax regime with respect to the Cottagers' leased lands.

A. *The Content of the Cottagers' Challenge*

[8] By the present Application the Cottagers directly attack the Commission's approval of the entire tax regime proposed by Buffalo Point and which engages a detailed set of substantive and procedural issues with respect to the Commission's application of the *Act*. The present Notice of Application provides a clear précis of the grounds advanced by the Cottagers for setting aside the Commission's decision:

> a. BPFN [Buffalo Point First Nation] took the necessary steps, beginning in 1976, to place itself in the position of lessor of the Cottage Lots to the Cottagers, most of whom have since built cottages and other improvements on the Cottage Lots.
>
> b. The Cottagers were induced to enter into their leases based in part on explicit representations made by either or both of BPFN and BPDC [Buffalo Point Development Corp.] that the annual payments would remain less than the property taxies in other jurisdictions because BPFN does not operate a school or school system.
>
> c. The Applicant negotiated a series of agreements with BPFN and/or BPDC in respect of the annual payments which were consistent with the representations of BPFN and BPDC.
>
> d. The Impugned Laws approved by FNTC [First Nations Tax Commission] purport to ignore and/or override the legal rights of the Applicant and the Cottagers by denying them the benefit of the obligations owed to them by BPFN and BPDC which rights and benefits were agreed to by all parties following formal negotiations and for which valuable consideration was given.
>
> e. It was expressly represented by BPFN and/or BPDC to the Applicant over a period of many years that no system of property tax would be implemented by BPFN. Further, when BPFN began the process to implement the Impugned Laws it explicitly and

publicly stated to the Applicant that no payments in relation to schools would be required of the Cottagers. FNTC was well aware at the time of its decision to approve the Impugned Laws of these statements.

f. Despite the assurances made BPFN submitted to FNTC for its approval the Rates Law which set a mill rate of 30.97. This rate is the same as the neighbouring jurisdiction of the Rural Municipality of Piney, which rate is the sum total of two distinct categories of tax: first, the mill rate set by the Rural Municipality of Piney which is 13.12 and which taxes are levied to pay for services provided by the municipality; secondly, the school tax mill rate levied by the local school board to pay for schools and a school system which is 17.85. This results in a total combined mill rate of 30.97.

g. FNTC approved the Rates Law despite its awareness that BPFN had stated to the Applicant it would not include costs in relation to schools and with the knowledge that the Applicant was relying on that statement. FNTC did nothing to dispel that reliance.

h. FNTC approved the Rates Law with the knowledge that BPFN does not operate a school system or even a school. By doing so FNTC disregarded its own standards designed to ensure that the tax rate set by a first nation is commensurate with that of comparable jurisdictions that offer similar services. FNTC permitted BPFN to impose a tax rate that is not reflective of the services that it provides the taxpayers.

i. Along with the Impugned Laws, BPFN submitted to FNTC a proposed 'Taxpayer Representation to Council Law, 2012" which, had it been approved, would have given the Applicant and the Cottagers a method of participation in the taxation regime. FNTC did not approve this law, or any similar taxpayer representation law, in breach of its mandate to balance the rights of BPFN, the Applicant and the Cottagers. The result is that the Applicant and the Cottagers are denied the right to participate in the taxation regime. Cottagers are the subject of taxation without any representation or even participation.

j. FNTC failed to ensure that BPFN acted in compliance with the requirements of the First Nations Fiscal and Statistical Management Act (the "Act") and in particular Section 6 thereof, in approving amendments to the Assessment Law and the Taxation Law. The Applicant was unaware of these amendments until after they had been approved by FNTC.

> k. The Impugned Laws purport to impose a tax on improvements to the Cottage Lots. This was approved by FNTC despite the lack of a legal basis for doing so. The Act does not grant authority for a tax on other than an interest in land.

As can be seen in paragraph "d" of the grounds, the Cottagers argue that, because the tax regime overrides the legal rights of the Cottagers' arising from the 2008 Agreement negotiated with Buffalo Point, the Commission was required to, but failed to, take this reality into consideration and to give it effect in deciding whether to approve the tax regime.

[9] In addition, the Cottagers advance fairness arguments that misrepresentations and evidentiary mistakes made by Commission staff in the course of implementing the tax regime require the decision under review to be set aside.

[10] As might be expected, the Cottagers' main concern about the implementation of the tax regime is the resulting increased annual lease costs imposed. With respect to this concern, the primary focus of the Application is on one specific aspect to the tax regime placed before the Commission for approval: the approval of the *Buffalo Point First Nation Annual Rates Law, 2012* ("Rates Law").

B. ***The Legislative Purpose and Resulting Scheme of the Act***

[11] The context engaged by the Cottagers' challenge is one of fundamental change explained in the Preamble to the *Act* quoted in **APPENDIX A** to these reasons, and in a submission by Counsel for the Commission appearing on behalf of the Commission as Intervener in the present Application adapted as follows:

1. This application is brought by taxpayers on reserve lands who are challenging decisions to approve a First Nation's real property taxation laws. As the decision-maker, this Intervener will not address the merits of the decisions under review but will explain the legislative scheme at issue and the role of the tribunal in that scheme, and will address the appropriate standard of review.

2. Taxation is an inherently governmental power. First Nation governments exercise this inherent power. Property tax systems based on assessment of property value are implemented by taxing jurisdictions (First Nations and local governments) to raise revenues needed to provide services for communities and community members. Adequate revenues are essential for the operation of government, the delivery of services, and the development of infrastructure.

3. Federal legislation recognizes and enables First Nations' taxation powers. Section 83 of the *Indian Act*, R.S.C., 1985, c. 1-5 and more comprehensively, the *First Nations Fiscal and Statistical Management Act*, S.C. 2005, c. 9 ("FSMA" or the "Act"), create a framework under which First Nations exercise their existing jurisdiction.

4. First Nation governments are not exactly the same as local governments - their powers have different sources. While local governments possess only those powers that provincial legislatures delegate to them, First Nations' rights of self-government invoke rights and responsibilities that predate and are not dependent on federal legislation.

5. Courts have consistently recognized the importance of taxation powers to First Nations' self-governance [and] acknowledged that taxation powers are one of the most important bylaw powers Bands need to defray their costs as the governments of their land.

6. Parliament's intention in enabling First Nation taxation jurisdiction was to further the aims of self-government.

7. The First Nation government holds law-making authority; and it is the Council of the First Nation that makes and passes laws relating to property taxation. The approval of a property taxation law by the First Nations Tax Commission ("FNTC" or "Commission") gives the First Nation's law legal force. It is only after the Commission's approval that the law comes into force.

8. The FNTC is an independent statutory body that plays a unique role in the world of First Nation property taxation -'it is charged

with a number of responsibilities, including building capacity of First Nation governments, facilitating dispute resolution, replacing the Minister of Indian Affairs ("Minister") in the approval of First Nations' laws, promoting credible taxation systems that are transparent and attract investment on reserve lands, reviewing complaints about First Nations' laws, and making remedial orders where appropriate.

9. The FNTC must approve a law submitted to it by the Council of a First Nation that complies with all statutory and regulatory requirements. The assessment of whether a First Nation's law meets these requirements is a question of mixed fact and law, and is an evaluation that falls squarely within the FNTC's core function and expertise. Accordingly, the FNTC submits that the Court should apply a standard of reasonableness to its review of the FNTC's law approval-decisions at issue in this application.

[…]

58. The FSMA assigns to the Commission the authority to approve and thereby bring into force First Nations' local revenue laws. This authority includes approval of amendments to First Nations' laws and the repeal of their laws. The Commission has the jurisdiction to make determinations respecting compliance with the Act, standards and regulations. This kind of determination falls squarely within the Commission's specialized expertise.

59. At the time that the FNTC was created, its predecessor […] had nearly 20 years' experience with First Nations' real property taxation policy and law-making. That body of knowledge and experience, in conjunction with the knowledge and experience required of each appointed commissioner, gives the FNTC institutional and experiential expertise in matters pertaining to First Nations' real property taxation.

60. The standards established by the Commission under subsection 35(1) of the FSMA form an integral part of the regulatory framework and are reflective of both the commissioners' expertise and the Commission's jurisdiction. Determining whether local revenue laws submitted by First Nations comply with the standards, both in form and content, is one of the assessments the Commission must make in carrying out its law review and approval function.

61. The standards are established by the Commission to further the objectives of the Act, including to ensure the integrity of the First Nations' property taxation system and to assist First Nations in

achieving economic growth through the generation of stable local revenues. These standards are made pursuant to express legislative authority and are to guide First Nation law makers to make laws consistent with the requirements and the objectives of the Act. As the standards established by the Commission are regulatory requirements to a law having legal force they are distinguishable from guidelines or policies such as for example Information Circulars issued under the *Income Tax Act*.

62. It is submitted that the substantive provisions contained in the standards evidence the specialized expertise of the Commission in real property taxation matters and in meeting its core functions under the FSMA. These provisions embody the FSMA's objectives consistent with a property tax regime that is transparent, provides certainty to taxpayers, and is harmonized with the relevant provincial property tax and assessment regime.

63. While the FNTC has the authority under the FSMA to review and approve laws, the FNTC does not itself have the authority to make a law, or compel a First Nation to make a law. The FNTC assumes jurisdiction to review and approve First Nations' local revenue laws only when a First Nation opts into the FSMA's legislative scheme, is added to the FSMA Schedule, and then submits a local revenue to the FNTC for review and approval.

64. Subsection 31(3) of the FSMA directs that where there is compliance with the legislative framework the Commission "shall approve" the law. This reinforces the Act's support for First Nations' taxation jurisdiction. The Commission does not have the authority to withhold approval for any reason if the law submitted complies with all statutory requirements. Any consideration other than the provisions of the Act, the regulations, and the standards would be extraneous and outside of the Commission's law approval function. The Commission is available to assist in building understanding between taxpayers and First Nation governments as it relates to property taxation on reserve lands, but is not able to refuse law approval in circumstances where that understanding may still be lacking.

65. Although the Commission must consider any representations it receives pursuant to paragraph 7(b) of the FSMA, the Act does not specify that the Commission must adopt any particular process for receiving these representations. For example, Parliament did not see fit to require the Commission, as part of its law review and approval process, to hold a hearing to receive taxpayer representations. Parliament's choice is procedurally sound as the Commission's task is to assess whether the law complies and if it

> does, to approve the law. By way of contrast, in the context of a review pursuant to section 33 of the FSMA (where the issue is whether a First Nation has failed to comply with the FSMA or its regulations, or whether a First Nation has improperly or unfairly applied its law) regulations establish the procedures, including for the hearing by the Commission of such a complaint.
>
> 66. Where there is an application to exempt proposed amendments to a law from the statutory requirements, the Commission has the authority to exempt a proposed amendment from the notice requirements of subsection 6(1) and information requirements of subsection 8(1) of the Act "if the Commission considers that the amendment is not significant" (subsections 6(2) and 8(2)). The Act does not define what types of amendments would be "significant" and this determination too has been assigned to the Commission and falls within the Commission's distinctive sphere of knowledge. To this end, the Commission's Law Approval Procedures establish the process and identify criteria for such exemptions (see Law Approval Procedures, sections 7 and 8).
>
> (Memorandum of Fact and Law of the Intervener First Nations Tax Commission)

[12] Specifically, the present Application engages three important features of the *Act*: s. 29; s. 31; and s.35(1) and (2), which are quoted in **APPENDIX B**.

C. ***The Cottagers' Expectations***

[13] With respect to the Tax Laws proposed for approval by Buffalo Point, the Commission's purpose was to ensure that its standards were met and, if so, to pass the Tax Laws presented pursuant to s. 31(3) of the *Act*. The provision makes it clear that the Commission has real authority over the approval process by setting the standards that must be met. However, pursuant to s. 31(2), the Commission is required to consider objections to compliance with the standards, but if the standards are met, the Commission has no authority to accommodate those objections.

[14] Diametrically opposed to the purposes of the Commission, in the process of consultation leading to the Commission's decision, the Cottagers presented a very different and incompatible purpose: to ensure that Buffalo Point's Tax Laws would not be approved, or if approved, they would meet their expectations. Indeed, the Cottagers' purpose in launching the present Application to set aside the Commission's decision is based on the same purpose.

[15] Arising from the exposed conflict of purpose, in my opinion, the present Application is based on unreasonable expectations with respect to the Commission's conduct in approving Buffalo Point's Tax Laws.

D. ***Outcome***

[16] In approving the land tax regime, the Commission interpreted the *Act* as its home statute. As a result, I find that the standard of review of the Commission's substantive decision-making is reasonableness (see: *Canadian Artists' Representation v. National Gallery of Canada*, 2014 SCC 42, para. 13).

[17] For the reasons that follow, I find that the Commission's substantive decision-making meets this standard, and there is no breach of the duty of fairness owed to the Cottagers. Therefore, the present Application must be dismissed.

II. **Issues Determined**

A. *The Commission's Consideration of the 2008 Agreement*

[18] There is ample evidence on the record, as addressed in the analysis that follows, that the Commission's staff knew of the Cottagers' concerns about moving from the agreement regime to the tax regime and worked hard to fulfill the reconciliation and dispute resolution purposes for both the Cottagers and Buffalo Point under ss. 29 (b) and (c) of the *Act* through a constant three-way dialogue.

[19] The Cottagers argue that, nevertheless, there is no evidence on the record, apart from the contents of the decision itself, to establish that the Commissioners themselves knew of their concerns and took them into consideration in rendering the decisions under review. I reject this argument for two reasons. First, the record is incomplete because the Cottagers did not make a request under Rule 317 of the *Federal Courts Rules*, SOR/98-106, for material relevant to the Application that was in the exclusive possession of the Commission to support their argument with evidence rather than speculation. And second, in my opinion, given that the Commission is a specialized tribunal charged with very serious decision-making responsibilities, a presumption exists that knowledge possessed by the Commission's staff is attributable to the Commissioners, unless evidence can be found to rebut that presumption. There is no such evidence.

[20] By virtue of the operation of s. 31(3) of the *Act*, the Cottagers' expectation as described above simply could not be met. The only issue before the Commission for determination was whether the Tax Laws proposed by Buffalo Point met the Commission's standards. It is clear that

the Commission had no authority to place a condition on the approval, nor could it deny the approval if the standards were met.

[21] As a result, given the constraints imposed by the *Act*, I find that the Commission's consideration of the 2008 Agreement was reasonable. The Manitoba Court of Queen's Bench has engaged the issue of the legal impact of the 2008 Agreement on the tax regime imposed by the *Act*, and, thus, the Cottagers can look to that Court to determine the issue of primary concern to them.

B. ***The Commission's Consideration of Buffalo Point's Rates Law: Substance***

[22] Throughout the process leading to the imposition of the tax regime, understandably, the Cottagers adamantly argued for the imposition of a tax rate that would result in taxes comparable to those paid under the cost sharing arrangement of the 2008 Agreement. Indeed, they held a firm expectation that this result could be implemented and advanced this proposition at every available opportunity. Proceeding on the expectation that the tax rate selected would be that of the Rural Municipality of Piney ("RM Piney"), which is adjacent to the leased lands, but includes a school tax, the Cottagers were consistent in their argument and expectation that, because Buffalo Point does not provide a school service, an adjustment to the RM Piney rate was required. During the process of consultation between the Cottagers, Buffalo Point, and the Commission, the Commission staff and Buffalo Point expressed support for this outcome.

[23] However, this expectation could not be put into effect by operation of the following process.

[24] Pursuant to s. 35(1)(a) of the *Act*, the Commission established the *Standards for First Nation Tax Rates Laws, 2011* (Rates Law Standards). Section 5 of the Rates Law Standards makes a stipulation for "Rate Setting in the First Taxation Year". Since the Cottagers were not subject to a former taxation authority, Buffalo Point was required to apply the same tax rate as a "reference jurisdiction" defined as "the taxing jurisdiction that a First Nation specifies to the Commission for the purpose of setting tax rates and comparing local service standards". Thus, the selection by Buffalo Point of RM Piney as the reference jurisdiction did not allow for the adaptation of its mill rate, for example, by excluding the school tax portion.

[25] The result of Buffalo Point selecting RM Piney as the reference jurisdiction and the Commission approving the Tax Rate Law is that the RM Piney mill rate of 30.97 was applied to the Cottagers' leased lands. Given their "no school tax" expectation, the Cottagers have taken strong objection to this result. However, I find that the selection of the geographically adjacent RM Piney was reasonable and the Commission's approval of it was reasonable because, while the definition of "reference jurisdiction" requires a comparison of local service standards in selecting the tax rate, there is no requirement that a jurisdiction must be selected that provides the exact same services, if that might even be possible.

[26] From the outset, the Cottagers objected to the tax regime because they will be required to pay much more on their leases than the shared cost amount they were used to paying under the 2008 Agreement. As a matter of uncontested fact, militating against the Cottagers' consternation about the increased costs they would be required to pay under the tax regime, in the approved Rates Law, Buffalo Point made a strong effort to mitigate these costs, much to the Cottagers' benefit.

[27] While the mill rate proposed by Buffalo Point and approved by the Commission was that for RM Piney at 30.97, the Buffalo Point mitigation arises from the actual tax that the Cottagers were required to pay in the first year of the tax regime. By operation of s. 6 of the Rates Law Standards, the amount paid in the first year is required to be the amount paid in the second year and all subsequent years, and in the normal course, the tax bill cannot increase in a given year by more than the annual rate of national inflation. Thus, in the first year of 2012, because the Cottagers received a substantial credit on their tax bill and only paid 48% of what would otherwise be required, that credit resulted in an effective tax rate of 16.4 mills, and resulted in an effective rate being paid in 2013 of 17 mills because of an increase in the rate of inflation, and 18.4 for 2014.

[28] The impact of this matter of fact is to significantly reduce the weight that can be placed on the Cottagers' argument that significant prejudice to them arose from the imposition of the tax regime.

C. *The Commission's Consideration of Buffalo Point's Rates Law: Process*

[29] In the present Application, the Cottagers argue that the erroneous statements made by the Commission's staff misled the Cottagers, and, as a result, the decision under review should be set aside because of a breach of the duty of fairness the Commission owed to the Cottagers to give correct advice.

[30] The following is a description of a sequence of events which establishes two facts: there was extensive contact between the Cottagers, Buffalo Point, and the Commission's staff pursuant

to, and compliant with, the Commission's purposes under s. 29 of the *Act*; and the Commission's staff and Buffalo Point made misleading representations. There is no evidence on the record to establish that the representations were made in anything but good faith.

[31] In November 2010, Mr. Robert Beaudry, a Commission staff member, expressed his opinion to Mr. Lee Delorme, the President of the Applicant organization, that the 2008 Agreement would be preserved in any future tax regime.

[32] As of March 31, 2011**,** the Commission was fully engaged with the Cottagers' concern regarding the implementation of the Rates Law, including the element of the school tax. On this date, Mr. Delorme met with two Commission staff members, Mr. Beaudry and Mr. Jerome Pillon, who explained that they had completed a tax assessment for Buffalo Point that found over $700,000.00 could be generated if the proposed property tax included a school tax. Mr. Delorme found this statement surprising because none of the information provided by the Cottagers to the Commission said anything about the services including a school. As a result, Mr. Delorme made it clear that the Cottagers opposed any school tax component (Affidavit of Lee Delorme at paragraph 21 [Delorme Affidavit]; Exhibit 14 to the Delorme Affidavit).

[33] On June 9, 2011, the Cottagers received an assurance from Mr. Beaudry and Mr. Pillon that there was no possibility of the Commission including a school tax in their tax assessments. As a result of this representation, amongst others, the Cottagers officially decided to support the new tax regime (Delorme Affidavit at paras 24 – 25; Exhibit 16 to the Delorme Affidavit).

[34] The Commission then requested a meeting with the Cottagers to explain the proposed taxation system. Representatives from Buffalo Point and the Commission spoke at a town hall meeting attended by approximately 140 cottage owners on June 10, 2011, where the following statements were made about the proposed taxation laws:

> a. That they would impose mill rates comparable to the adjacent [Rural Municipality] of Piney, and that the cottagers would have no responsibility for school taxes whatsoever;
>
> b. That under the new laws the rights of the cottagers would be comparable, if not superior, to what was provided for in their existing lease agreements,
>
> c. That the proposed tax would apply in a non-discriminatory fashion to all interests in Buffalo Point, including the cottagers, all lands held by First Nations persons (again, said to be a first in Canada), all vacant lots for sale, as well as any lots to be developed in the future;
>
> d. That the taxpayers would be protected with a 'taxpayer representation law' ('TRL'), which was said to be mandatory when implementing the proposed tax laws.
>
> (Delorme Affidavit at para 26; Exhibit 17 to the Delorme Affidavit).

At a further meeting between representatives from the Cottagers and Buffalo Point on September 7, 2011**,** the Cottagers were clearly told that the proposed laws would adopt RM Piney`s mill rate, which was 12.4, exclusive of the school tax (Delorme Affidavit at para. 32; Exhibit 21 to the Delorme Affidavit). And in an exchange between Mr. Pillon and Counsel for the Cottagers on October 31, 2011, it was confirmed that Buffalo Point was still taking the position that their proposed taxation laws would set the mill rate comparable to that of RM Piney, exclusive of the school tax (Delorme Affidavit at para. 37; Exhibit 25 to the Delorme Affidavit).

[35] However, on May 8, 2012, in direct contradiction to statements previously made, Mr. Pillon told Mr. Delorme that Buffalo Point could impose a school tax. (Delorme Affidavit at para 48, Exhibit 35 to the Delorme Affidavit). As mentioned, on June 25, 2011, the Commission approved six taxation laws submitted by Buffalo Point, including the Rates Law, which adopted a mill rate of 30.97.

[36] Further, as a matter of process, as mentioned in the grounds supporting the present Application, a Taxation Representation Law ("TRL") was expected, but was not put into effect. The Cottagers considered the TRL to be vitally important because it would provide a measure of representation in the operation of the tax regime.

[37] The Cottagers were misinformed that a TRL is mandatory under the *Act*. Section 5(1)(c) of the *Act* makes it clear that a First Nation may make laws "respecting procedures by which the interests of taxpayers may be represented to the council" Therefore, there is no requirement in the *Act* that a First Nation must create a TRL, but rather, the implementation of such a law is purely optional.

[38] With respect to the misleading representations clearly made in an effort to reconcile the Cottagers' 2008 Agreement and mill rate interests with Buffalo Point's responsibilities, in my opinion, the Cottagers' breach of a duty of fairness argument cannot succeed. While the Commission, through its staff, failed to meet the duty owed to the Cottagers to give correct advice, in my opinion, apart from very understandable deflated expectations, there is no evidence that the Cottagers relied upon the representations to their detriment. Therefore, because there is no detriment, I find there is no available remedy.

D. ***Commission Decision-Making Error***

[39] The June 25, 2012 decision under review was delivered as what one might expect to occur in collaborative decision-making between seven Commissioners on five Tax Laws resulting in a single decision. Each Tax Law was advanced for approval, the material in support of passage was tabled, a motion was made for approval, and on a recorded vote, the motion was passed without a narrative explaining the reasons. With respect to each Tax Law, the Commission's obligation was to determine whether the relevant standard was met. In my opinion, the passage of each Tax Law constitutes a finding that the relevant standard was met, and, in accordance with s. 31(3) of the *Act*, the required approval was given.

[40] The Cottagers argue that this form of decision-making is deficient because the decision does not include reasons, and it is impossible to know what factors were considered in reaching a decision. It appears that the Cottagers expected a form of decision that would normally be delivered as a result of contested litigation. That is, on the basis of conflicting evidence received, findings of fact would be made, the facts would be considered against the law to be applied, and a reasoned decision would be provided. In my opinion, this is an unreasonable expectation of the decision-making pursuant to s. 31(3) of the *Act*. As stated, in applying the provision, the only determination that is required to be made is whether a given tax law complies with the Commission's standards. Given the Commission's decision-making obligation required by law, and the procedures for approval established by the Commission, in my opinion the Cottagers' objections are misplaced.

[41] The process in place, which was followed in the present case, with respect to each law approved is as follows: following a Commission staff member's examination of documentation with respect to a proposed Law, a "Technical Review Form" is completed in which an opinion is expressed as to whether or not a proposed Law meets the requirements of the *Act* and the Commission's standards; and the Form is placed before the Commission for consideration. If it is established to the Commission's satisfaction that the standards have been met, there is no impediment to the Commission giving its approval.

[42] The Cottagers argue that irregularities arose in the course of this approval process, which affect the approvals given.

[43] First, the Cottagers raise an issue about the sequencing of the approval process. In the present case, the technical analysis of Buffalo Point's proposed Laws was conducted and signed off before the Commissioners met to reach a decision. It is clear that the technical analysis provided advice to the Commissioners, upon which they were entitled to act in reaching a decision.

[44] Second, with respect to both the Assessment and Taxation Laws in the present case, the Technical Review found that they did not meet the Commission's standards. This required Buffalo Point to rectify the problems found, and to resubmit the Laws for approval. The Amended Laws were approved upon the Commission granting exemptions from the usual notice provisions as it is empowered to do pursuant to s. 6(2) of the *Act* on a finding that the amendments are not significant. In the result, the problems were rectified and the Amended Laws were passed.

[45] Nevertheless, understandably, the process leading to the approval of the Amended Laws caused delay, which caused a disruption in the usual timing cycle of the issuance of the tax notices to the Cottagers. The Cottagers argue that they were prejudiced as a result because they were required to pay their taxes before they had a chance to challenge their assessments. I find that this argument has no weight because there was never a question that the Cottagers could challenge their assessments in any event.

[46] In my opinion, neither of the expressed concerns, considered individually or together, support a finding of reviewable error.

[47] In my opinion, the passage of each Tax Law constitutes a finding that the relevant standard was met, and, as required by s. 31(3) of the *Act*, the required approval was appropriately given. Accordingly, I find that the Commission's decision-making was reasonable.

E. *The Commission's Consideration of the Cottagers' Final Representations*

[48] On May 14, 2012, Mr. Delorme received notice that Buffalo Point had passed the Tax Laws on October 25, 2011 and that they had been sent to the Commission for approval. As a result, Counsel for the Cottagers sent a letter to the Commission, dated May 24, 2012, quoted in full in **APPENDIX C** to these reasons, in which financial concerns were stated with respect to the proposed laws. In particular, the school tax point was raised, and two requests were made:

> From the preliminary analysis of the proposed property tax system, the net effect of the proposal appears to be a zero sum game for [Buffalo Point]. […] Since the 2008 legal agreement compares favourably with the RM tax rates and then all that is being accomplished is effectively to lower the taxes on older and less

> valuable cottages and transferring a larger tax burden to the newer and more expensive cottages resulting in a zero sum gain. These above noted calculations are exclusive of a school tax component because the [Commission] representatives have reassured the association that there is no school tax component in the proposed property tax system being considered for the Buffalo Point First Nation.
>
> […]
>
> As a result of the above noted comments, on behalf of our client we recommend the following actions for consideration.
>
> 1. The two year agreed to freeze on the annual maintenance fee be respected and honoured for the 2012/2013 fiscal year.
>
> 2. The proposed property tax law and the proposed property assessment law be held in abeyance pending a meeting, or series of meetings, that would be administered by a professional facilitator or mediator, so that there is a clear understanding of all of the positives and negatives of a proposed property tax system as compared to the 2008 legal agreement. This meeting, or series of meetings, should be inclusive of all stakeholders, i.e. representatives from the BPCOA, the chief and council, representatives from the First Nations residents and representatives from the FNTC.
>
> [Emphasis added]

[49] There is no doubt that the Commission considered the letter because it is contained in documentation supplied by the Commission in the present Application (Certified Copy of Tribunal Record, p. 107b - 110). In addition, the letter is specifically referred to in the decision under review, and the recommendations advanced are specifically quoted. Nevertheless, the Cottagers argue that a breach of fairness arose from the fact that in the decision, the Commission did not provide a full narrative addressing the school tax issue or the recommendations advanced for consideration.

[50] In my opinion, given the mandatory nature of the purpose and scheme of the *Act* as described above, I find that the Commission's duty of fairness to the Cottagers existed at the lower end of the spectrum.

[51] With respect to the school tax issue, the decision cites Mr. Beaudry's submission to the Commission that the Cottagers received a 48% reduction in the tax burden imposed for the first year of taxation, and that "this, in effect, meets the First Nation's policy intention to moderate the impact on taxpayers from the transition to real property taxation from a fee for service regime" (Decision, p. 14). And with respect to the recommendation, given the high level of consultation and engagement between the Cottagers, Buffalo Point, and the Commission beginning well prior to the decision-making phase by the Commission under the *Act*, I do not consider it unreasonable or a breach of the duty of fairness for the Commission not to accede to the Cottagers' requests. At that point, all of the Cottagers' arguments were already submitted, and a mediation process could not have impacted on the Commission's statutory obligation to proceed to consider Buffalo Point's Tax Laws for approval.

III. **Conclusion**

[52] In summary, I find that the Cottagers' expectations are inconsequential when considered against realistic and reasonable expectations arising from the *Act*.

[53] Specifically, with respect to the Cottagers' concerns about perceived loss of control following the imposition of the tax regime, under the tax regime the Cottagers can look to the Commission to exercise its control over Buffalo Point's taxation conduct pursuant to s. 33(3) of the *Act*. This provision allows the Commission to take mandatory action in the event that a First

Nation does not comply with its obligations under the *Act*. Into the future, this is the Cottagers' access to control.

[54] In my opinion, the decision under review is reasonable in all respects.

ORDER

THIS COURT ORDERS that:

1. The present Application is dismissed.

2. I award the Respondents' costs to be payable by the Applicant.

"Douglas R. Campbell"
Judge

APPENDIX A

First Nations Fiscal Management Act, SC 2005, c 9

Preamble

Whereas the Government of Canada has adopted a policy recognizing the inherent right of self-government as an aboriginal right and providing for the negotiation of self-government;

Whereas this Act is not intended to define the nature and scope of any right of self-government or to prejudge the outcome of any self-government negotiation;

Whereas the creation of national aboriginal institutions will assist first nations that choose to exercise real property taxation jurisdiction on reserve lands;

Whereas economic development through the application of real property tax revenues and other local revenues to support borrowing on capital markets for the development of public infrastructure is available to other governments in Canada;

Whereas real property taxation regimes on reserves should recognize both the interests of on-reserve taxpayers and the rights of members of first nations communities;

Whereas first nations led an initiative that resulted in 1988 in an amendment to the Indian

Loi sur la gestion financière des premières nations, LC 2005, ch 9

Préambule

Attendu :

que le gouvernement du Canada a adopté une politique aux termes de laquelle il est reconnu que le droit inhérent à l'autonomie gouvernementale constitue un droit ancestral et que cette politique prévoit des négociations portant sur l'autonomie gouvernementale;

que la présente loi n'a pas pour but de définir la nature et l'étendue de tout droit à l'autonomie gouvernementale ou d'anticiper l'issue des négociations portant sur celle-ci;

que l'établissement d'institutions autochtones nationales bénéficiera aux premières nations qui choisissent d'exercer une compétence relative à l'imposition foncière sur les terres de réserve;

que d'autres gouvernements au Canada bénéficient de ce levier de développement économique que représentent les recettes fiscales foncières et d'autres recettes locales utilisées pour contracter des emprunts sur les marchés financiers en vue de l'établissement d'infrastructures publiques;

que les régimes d'impôts fonciers des réserves devraient

Act so that their jurisdiction over real property taxation on reserve could be exercised and the Indian Taxation Advisory Board was created to assist in the exercise of that jurisdiction;

Whereas, in 1995, the First Nations Finance Authority Inc. was incorporated for the purposes of issuing debentures using real property tax revenues and providing investment opportunities;

Whereas, by 1999, first nations and the Government of Canada recognized the benefits of establishing statutory institutions as part of a comprehensive fiscal management system;

And whereas first nations have led an initiative culminating in the introduction of this Act;

tenir compte à la fois des intérêts des contribuables qui vivent dans une réserve et des droits des membres des collectivités des premières nations;

que les premières nations ont entrepris une initiative par suite de laquelle la Loi sur les

Indiens a été modifiée en 1988 de façon qu'elles puissent exercer leur compétence relative aux impôts fonciers dans les réserves et que la Commission consultative de la fiscalité indienne a été créée pour les aider à exercer cette compétence;

qu'en 1995, la First Nations Finance Authority Inc. a été constituée en personne morale afin d'émettre des débentures au moyen des recettes fiscales foncières et d'offrir des possibilités d'investissement;

qu'en 1999, les premières nations et le gouvernement du Canada ont reconnu les avantages de l'établissement d'institutions par voie législative dans le cadre de systèmes globaux de gestion financière;

que les premières nations ont entrepris une initiative qui a mené à l'élaboration de la présente loi,

APPENDIX B

29. The purposes of the Commission are to

(a) ensure the integrity of the system of first nations real property taxation and promote a common approach to first nations real property taxation nationwide, having regard to variations in provincial real property taxation systems;

(b) ensure that the real property taxation systems of first nations reconcile the interests of taxpayers with the responsibilities of chiefs and councils to govern the affairs of first nations;

(c) prevent, or provide for the timely resolution of, disputes in relation to the application of local revenue laws;

(d) assist first nations in the exercise of their jurisdiction over real property taxation on reserve lands and build capacity in first nations to administer their taxation systems;

(e) develop training programs for first nation real property tax administrators;

(f) assist first nations to achieve sustainable economic development through the generation of stable local revenues;

(g) promote a transparent first nations real property taxation regime that provides certainty to taxpayers;

(h) promote understanding of

29. La Commission a pour mission:

a) de protéger l'intégrité du régime d'imposition foncière des premières nations et de promouvoir une vision commune de ce régime à travers le Canada, compte tenu des différences entre les régimes provinciaux en la matière;

b) de veiller à ce que le régime d'imposition foncière des premières nations fonctionne de manière à concilier les intérêts des contribuables avec les responsabilités assumées par les chefs et les conseils dans la gestion des affaires des premières nations;

c) de prévenir ou de résoudre promptement les différends portant sur l'application des textes législatifs sur les recettes locales;

d) d'aider les premières nations à exercer

leur compétence en matière d'imposition foncière sur les terres de réserve et à développer leur capacité à gérer leurs régimes fiscaux;

e) d'offrir de la formation aux administrateurs fiscaux des premières nations;

f) d'aider les premières nations à atteindre un développement économique durable par la perception de recettes locales stables;

g) d'encourager la

the real property taxation systems of first nations; and

(i) provide advice to the Minister regarding future development of the framework within which local revenue laws are made.

[. . .]

31. (1) The Commission shall review every local revenue law.

Written submissions

(2) Before approving a local revenue law, the Commission shall consider, in accordance with any regulations made under paragraph 36(1)(b), any representations made to it under paragraph 7(b) in respect of the law by members of the first nation or others who have interests in the reserve lands of the first nation or rights to occupy, possess or use those lands.

Local revenue law approval

(3) Subject to section 32, the Commission shall approve a local revenue law that complies with this Act and with any standards and regulations made under this Act.

Registry

(4) The Commission shall maintain a registry of every law approved by it under this section and every financial administration law made under section 9.

[. . .]

transparence du régime d'imposition foncière des premières nations de façon à garantir la prévisibilité aux contribuables;

h) de favoriser la compréhension des régimes d'imposition foncière des premières nations;

i) de conseiller le ministre quant au développement du cadre dans lequel les textes législatifs sur les recettes locales sont pris.

[. . .]

31. (1) La Commission examine tous les textes législatifs sur les recettes locales.

Observations écrites

(2) Avant d'agréer un texte législatif sur les recettes locales, la Commission prend en compte, en conformité avec les règlements éventuellement pris en vertu de l'alinéa 36(1)b), les observations qui lui sont présentées par les membres de la première nation dans le cadre de l'alinéa 7b) ainsi que par les autres personnes qui ont des intérêts ou des droits d'occupation, de possession ou d'usage sur les terres de réserve de la première nation.

Agrément

(3) Sous réserve de l'article 32, la Commission agrée les textes législatifs sur les recettes locales qui sont conformes à la présente loi et aux règlements éventuellement pris en vertu de

35. (1) The Commission may establish standards, not inconsistent with the regulations, respecting

(a) the form and content of local revenue laws;

(b) enforcement procedures to be included in those laws;

(c) criteria for the approval of laws made under paragraph 5(1)(d); and

(d) the form in which information required under section 8 is to be provided to the Commission.

Procedures

(2) The Commission may establish procedures respecting

(a) submission for approval of local revenue laws;

(b) approval of those laws;

(c) representation of taxpayers' interests in the decisions of the Commission; and

(d) resolution of disputes with first nations concerning the taxation of rights and interests on reserve lands.

celle-ci, ainsi qu'aux normes établies en vertu de la présente loi.

Registre

(4) La Commission tient un registre de tous les textes législatifs qu'elle agrée en vertu du présent article et de tous les textes législatifs pris en vertu de l'article 9.

[. . .]

35. (1) La Commission peut établir des normes, dans la mesure où elles ne sont pas incompatibles avec les règlements, en ce qui concerne

a) la forme et le contenu des textes législatifs sur les recettes locales;

b) les mesures de contrôle d'application à inclure dans ces textes législatifs;

c) les critères applicables à l'agrément des textes législatifs pris en vertu de l'alinéa 5(1)d);

d) la forme dans laquelle les renseignements visés à l'article 8 doivent lui être fournis.

Procédure

(2) La Commission peut établir la procédure applicable dans les domaines suivants :

a) la présentation pour agrément des textes législatifs sur les recettes locales;

b) l'agrément de ces textes législatifs;

c) la prise en compte des intérêts des contribuables dans ses décisions;

d) le règlement des différends avec les premières nations quant à l'imposition des intérêts et des droits sur les terres de réserve.

APPENDIX C

Duboff Edwards Haight & Schachter
Law Corporation

May 24, 2012

FIRST NATIONS TAX COMMISSION
321-345 Yellowhead Highway
Kamloops, B.C. V2H IH1

Dear Sirs:

RE: Rebuttal to the Buffalo Point First Nation Property Tax Law

This office acts on behalf of the Buffalo Point Cottage Owners Association ("BPCOA").

On behalf of our client we are writing in response to the proposed Buffalo Point First Nation Property Tax Law (PTL). While the association has developed some appreciation for the merits of having a formalized property tax system from its vantage point, there are more negatives than positives and on behalf of our client we are now expressing our client's formal opposition to the PTL as it was passed by the Chief and Council of the Buffalo Point First Nation ('BPFN").

The main points of opposition will be highlighted in the following paragraphs.

1. Adherence to the two year freeze.

As BPFN are well aware, BPFN and BPCOA agreed to a two year freeze in the annual maintenance fees for the 2011/2012 and 2012/2013 fiscal years and BPCOA takes strong exception to any attempts by the First Nation to nullify this negotiated settlement. The PTL must respect the agreements in effect which relate to the same subject matter and not be used as a means to renege on the commitments of the BPFN. As a result of forcing BPCOA into a public discussion on aboriginal property tax, the discussions regarding this proposes [sic] law are now becoming a matter of public record and no party stands to gain anything in this process.

2. Adherence to the 2008 Rules & By-laws.

In the last 11 years, BPCOA had to negotiate two legal agreements with BPFN in order to maintain some form of a democratic process within the Buffalo Point community. The first occasion was with the negotiation of the 2000 Co-Management Agreement and the second occasion was with the 2008 Rules & By-laws. In response to the disagreements over the lagoon upgrade and the commercial sewer system in 2007, the association spent approximately $12,000 in drafting the 2008 agreement as a means of strengthening the democratic process in Buffalo Point. When drafting this 2008 legal agreement, the BPCOA agreed to pay 55% of all maintenance costs (up from the original 50% share) with the understanding that BPFN would not bring in an aboriginal property tax system at some future date. At this time the members of BPCOA are extremely displeased that BPFN is also proposing to undermine and ignore this agreement as well. The budgeting process as outlined in the 2008 Rules & Bylaws has served the

First Nation and the BPFN well over the years and, in the last set of negotiations, it was a well-known fact that the association only disagreed on about $50,000 to $100,000 in annual expenditures. The former Chief Operating Officer, Wyman Sangster, for BPFN had confirmed this fact on a number of occasions, the last being in a town hall session with cottagers and representatives from the FNTC, on June 10, 2011. When the association and the first nation concluded its set of budget negotiations, it was collectively agreed that the total maintenance costs approximated just over $370,000 of which the BPCOA paid approximately $205,000. When it is considered that the annual allotments that Aboriginal Affairs contributes to the BPFN for roads, sewer and water maintenance (approximately $237,000 in the 2010 fiscal year), then it is apparent that financial pressures confronting the Buffalo Point Development Corporation are not related to the annual maintenance fees.

The attempt by BPFN to renege on the two year freeze and the 2008 legal agreement merely reduces what is left of the goodwill that exists with the cottagers and reduces the incentive of the members of the association to patronize the Buffalo Point businesses.

3. Financial considerations regarding a proposed property tax system.

From the preliminary analysis of the proposed property tax system, the net effect of the proposal appears to be a zero sum gain for the BPDC. The overall, net effect, or net contribution, from cottage owners appears to be negligible. From discussions with the FNTC representatives it is apparent that any proposed property tax has to be comparable to the neighboring municipality. In this circumstance the Rural Municipality of Piney. The 2008 legal agreement compares favourably to the RM of Piney tax rates. For example, in the 2011 fiscal year, the RM's residential mill rate was 14.89. All RM's in province of Manitoba are compelled to use 45% of assessed housing values in the determination of the annual tax bill. Therefore, a residential property assessed at $100,000 would be taxed at an annual rate of $670. Correspondingly, a residential property assessed at $150,000 would be taxed at an annual rate of $1005. A residential property assessed at $200,000 would be taxed at an annual rate of $1340. Based on the discussions with Mr. Sangster, our clients guesstimate is that the average cottage value will be in the $150,000 to $175,000 range. Since the 2008 legal agreement compares favourably with the RM tax rates, and then all that is being accomplished is effectively to lower the taxes on older and less valuable cottages and transferring a larger tax burden to the newer and more expensive cottages resulting in a zero sum gain. These above noted calculations are exclusive of a school tax component because the FNTC representatives have reassured the association that there is no school tax component in the proposed property tax system being considered for the Buffalo Point First Nation.

It is also important to bear in mind that the annual budgets are the determining factor of any proposed tax rate. The dynamics of running a rural municipality with 12 separate and distinct communities with 250 miles of gravel roads and several waste dump sites is significantly more demanding and much more expensive than running one resort site with a half dozen to 10 miles of roads and one waste dump site. Any future budget for the BPFN could conceivably end up with a lower mill rate.

The FNTC also requires that annual property tax increases cannot exceed the annual rate of inflation or Consumer Price Index which was 2.4% for the 2011 year. The 2008 legal agreement

also compares favourably with this policy as well, i.e. the BPCOA were arbitrarily assessed 5% for each of the 2009/2010 and 2010/2011 years and zero percent for the following two years which equates to 2.5% per year.

Furthermore, the proposed property tax is non-discriminatory which subjects all residents and businesses in the Buffalo Point community to a property tax. How does the inclusion of approximately 200 unsold lots, all First Nations people and all BP businesses add anything to the amount cottage owners pay now?

4. Recommendations for consideration.

It is apparent that BPFN have this desire to renege on the two year agreed to property tax freeze and the 2008 legal agreement by proposing this property tax system. BPFN understanding is that the property tax system will allow BPFN to arbitrarily increase the annual assessment up to triple to what it is today which clearly is not the case from the discussions by BPCOA with representatives from the FNTC. I am advised that representatives of the association were specifically told that the proposed property tax would not be a "cash cow" for the BPDC. I am also advised that representatives of the association were also advised by Mr. Sangster that the FNTC has given BPFN some form of revenue assessment potential which thus far has not been disclosed to the BPCOA. In discussions with the FNTC representatives, BPCOA were assured that the proposed BP property tax would be comparable to the RM of Piney and that the annual increases in property taxes would be governed by the annual CPI guidelines limits. Clearly the relationship has been challenged over the last year with these arguments on finances but successful solutions are never found when dialogue is curtailed and hard line positions are taken. When the two year freeze was agreed to there was a clear understanding that the parties would revisit the Schedule A budget items in the coming year to re-evaluate the areas of disagreement which only approximated $50,000 to $100,000.

As a result of the above noted comments, on behalf of our client we recommend the following actions for consideration.

1. The two year agreed to freeze on the annual maintenance fee be respected and honoured for the 2012/2013 fiscal year.

2. The proposed property tax law and the proposed property assessment law be held in abeyance pending a meeting, or series of meetings, that would be administered by a professional facilitator or mediator, so that there is a clear understanding of all of the positives and negatives of a proposed property tax system as compared to the 2008 legal agreement. This meeting, or series of meetings, should be inclusive of all stakeholders, i.e. representatives from the BPCOA, the chief and council, representatives from the First Nations residents and representatives from the FNTC.

The BPCOA has played an integral role in the formation and development of the BP resort and the cottage owners are very proud and appreciative of the efforts of those who have walked before us. In their tradition, I am advised that the association has offered its willingness to be partners in endeavouring to find workable solutions for the BP resort. If BPFN are in agreement with the association's proposed recommendations and a facilitated session(s) take place, then at

the very least, there has been an attempt at preserving the rights and interests of all stakeholders. At that point, if no consensus can be reached, then the parties can withdraw to their respective positions and proceed accordingly.

I would ask that any response to this letter be mailed as well as emailed to myself, L. Delorme, President, BPCOA Ed Rampl and Gloria Jackson.

Yours truly,

DUBOFF EDWARDS & SCHACHTER LAW CORPORATION

Per:

NEIL J. DUBOFF

NJD:wg

Cc: Jeremy Pillon - Via E-mail to: jpillon@incue.ne

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1435-12
STYLE OF CAUSE:	BUFFALO POINT COTTAGERS ASSOCIATION INC. v BUFFALO POINT FIRST NATION AND BUFFALO POINT DEVELOPMENT CORP. LTD. and FIRST NATIONS TAX COMMISSION (Intervener)
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	NOVEMBER 17, 2014
ORDER AND REASONS:	CAMPBELL J.
DATED:	DECEMBER 5, 2014

APPEARANCES:

Paul Edwards Kara Bjornson	FOR THE APPLICANT
Grant Stefanson Bradley Regehr Uzma Saeed	FOR THE RESPONDENTS
Clarine Ostrove Leah Pence	FOR THE INTERVENER

SOLICITORS OF RECORD:

Duboff Edwards Haight & Schachter Law Corporation Winnipeg, MB	FOR THE APPLICANT
D'Arcy & Deacon LLP Barristers and Solicitors Winnipeg, MB	FOR THE RESPONDENTS
Mandell Pinder LLP Barristers & Solicitors Vancouver, BC	FOR THE INTERVENER