Federal Court  Cour fédérale

Date: 20150331

Docket: T-1979-14

Citation: 2015 FC 411

Ottawa, Ontario, March 31, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

HORNEPAYNE FIRST NATION AS REPRESENTED BY CHIEF & COUNCIL, CHIEF RON B. KOCSIS, COUNCILLOR JUDY MAYHEW, COUNCILLOR ISOBEL PEEVER, AND 18 Elders ELDER SINCLAIR TAYLOR, ELDER ROSABELL GOULET, ELDER ALFRED MARTIN, ELDER DONNA MARTIN, ELDER JOHN MAYHEW, ELDER HARRY MAYHEW, ELDER DOROTHY RENDELL, ELDER SHIRLEY TARDIFF, ELDER MINNIE TAYLOR, ELDER EVA WESLEY, ELDER ALICE SUMMERS, ELDER GEORGE BEDWASH, ELDER MARIA GIONET, ELDER IDA BEDWASH, ELDER CAROLINE EDNA CHARLEBOIS, ELDER ELI TAYLOR, ELDER LINDA ESQUAT SR., ELDER ANGUS SHAGANASH, AND 55 Band Members, RHODA BAXTER, ALICEA BOERE, NATALIE ARENOVICH, JUSTIN DUBE, SHELDON DUBE, NAPOLEON GOULET, ROBERT GOULET, MARGIE GOULET, JIM KOCSIS, RENEE MARTIN, MITCHELL MARTIN, PAUL MARTIN, KEVIN MAYHEW, ROBERT MAYHEW, BRENDA ROMAN, BRIAN TAYLOR, CHAD TAYLOR, JOYCE TAYLOR, ROBERT TAYLOR, DONNA WESLEY, CHELSY MCGOWAN, CHARLES SPARLING, GEORGE SPARLING, STEWART BEDWASH, MARLENE TOWGESHIC, NORA TAYLOR, WILFRED MAYHEW, CRYSTAL SUMMERS,

SHYLO ELMAYAN, JOHN SUTHERLAND, MARILYN TAYLOR, JENNIFER WRIGHT, AMANDA WRIGHT, ASHLEY WRIGHT, VIVIAN LACOUCIERE, CANDICE MARTIN, PAUL JAMES MARTIN, RICHARD ZACHARIE, SHANNON BUCKNELL, DAKOTA BUCKNELL, FRAN TAYLOR, BRENDA DAMPER , LAWRENCE TAYLOR, JOHN TAYLOR, CHAD KOCSIS, JUSTIN OLSON, DOROTHY TAYLOR, SAMUAL JAY SPENCE, SIMEON RALPH TAYLOR, GEROME TAYLOR, MARIO GIONET, PAMELA TAYLOR, PRISCILLA SHAGANASH, KRISTA-LEE TAYLOR, CLARA PAUL

Applicants

and

LAURA MEDEIROS, GORDON SHAGANASH, JEAN OLIVIER, ALFREDO RAYMOND MEDEIROS

Respondents

ORDER AND REASONS

FURTHER to the Court's Order dated January 26, 2015 (the January 26 Order) granting the Respondents' preliminary objection to this Court's jurisdiction at entertaining the Applicants' motion for an interlocutory injunction by a writ of *Quo Warranto*, as well as the Applicants' judicial review application, insofar as it seeks remedy against the Respondents (the Preliminary Motion);

AND UPON considering that the Preliminary Motion was granted without costs on the incorrect assumption that the Respondents had not sought their costs;

AND FURTHER to the letter dated February 5, 2015, from Mr. Randall V. Johns, who was, at that time, acting as counsel for the Respondents, seeking reconsideration of the January 26 Order's conclusion as to costs, and to the Court's Direction dated February 12, 2015, in which the Court accepted to reconsider this issue;

AND UPON considering the written submissions of the parties;

AND UPON determining that it is not appropriate in the situation at hand that the January 26 Order's conclusion as to costs be varied:

[1] According to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, costs, in any proceedings, are at the complete discretion of the Court. In the exercise of its discretion, the Court may consider the factors listed at Rule 400(3). However, this list of factors is not exhaustive and the Court may take into account "any other matter that it considers relevant" (Rule 400(3)(o)). In particular, the Court is entitled to refuse costs in respect of a particular issue or step in the proceeding (Rule 400(6)(a)) and it may even award costs against a successful party (Rule 400(6)(d)).

[2] Here, the Respondents are seeking costs on the basis of the results of the Preliminary Motion, which was favourable to them. In addition, they claim that by insisting in bringing their motion for an interlocutory injunction by a writ of *Quo Warranto* despite being aware of the

Federal Court of Appeal's ruling in *Pokue v Innu Nation*, 2014 FCA 271 (*Pokue*), the Applicants should carry the burden of the costs as their conduct was reckless and unnecessarily lengthened the duration of the proceeding.

[3] The Applicants claim that the Respondents had an equal interest in the jurisdictional issue raised before the Court and that they were also asserting jurisdiction of the Court, at the early stage of the proceedings, on the same underlying issues surrounding the results of the July 2014 purported elections for Chief and Council. As a result, the Applicants contend that each party should bear its costs on the Preliminary Motion.

[4] There are two main reasons why it is not appropriate, in my view, to award costs to the Respondents in the situation at hand. First, it was not plain and obvious that *Pokue* did or did not apply to the situation of the Hornepayne First Nation community. Both parties have filed a substantial amount of evidence in support and against the Preliminary Motion and the issue to be determined did not lack either in importance for the community or in complexity from a purely legal standpoint. Therefore, I do not agree with the Respondents that the Applicants, by bringing their motion for an interlocutory injunction by a writ of *Quo Warranto*, were reckless and unnecessarily lengthened the duration of the proceeding.

[5] Second, the January 26 Order did not put an end to the Applicants' underlying judicial review application. These proceedings are still ongoing, although narrower in scope, and they remain important for the Hornepayne First Nation community who has not been receiving its mail for the last 8 months or so. Since the January 26 Order was issued, the leadership crisis

which has prompted these proceedings to be undertaken, has escalated. The Respondents are now representing themselves with the result that things are just getting more convoluted from a procedural standpoint. The Applicants have been trying for sometime now to have some of the Respondents cross-examined on their affidavits. They had to bring a motion to compel the Respondents to comply with their request for cross-examination. This motion is still not ready for disposition as the Respondents have yet to respond to it. In fact, instead of responding to that motion, the Respondents have brought a motion of their own, a "Counter Motion", which amounts to a collateral attempt to re-litigate issues that were found, on the Respondents' own motion – the Preliminary motion - not to be within this Court's jurisdiction as per the January 26 Order. This, to say the least, is a highly questionable move.

[6] Pursuant to the Rules, the Court is entitled to consider "any other matter that it considers relevant" and to refuse costs in respect of a particular issue or step in the proceeding. Given the situation at hand, particularly considering the way it has evolved since the January 26 Order, and the need for a speedy resolution of the Applicants' underlying judicial review application, as it stands since the said Order, I find that it is not in the interest of justice and of the Hornepayne First Nation community as a whole, that costs on the Preliminary Motion, despite being granted, be awarded to the Respondents.

[7] Therefore, after having reconsidered the issue of costs on the Preliminary Motion, the January 26 Order remains unchanged in this respect.

ORDER

THIS COURT ORDERS that the Preliminary Motion is granted, without costs.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1979-14
STYLE OF CAUSE:	HORNEPAYNE FIRST NATION ET AL v LAURA MEDEIROS ET AL

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES

ORDER AND REASONS:	LEBLANC J.
DATED:	MARCH 31, 2015

WRITTEN REPRESENTATIONS BY:

Chief Ron B. Kocsis	FOR THE APPLICANTS
Laura Medeiros	FOR THE RESPONDENTS