

Federal Court



Cour fédérale

Date: 20160614

Docket: T-790-16

Citation: 2016 FC 658

Ottawa, Ontario, June 14, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

MICHAEL ARNOLD CACHAGEE

Applicant

and

**MARILYNE DOYLE (NEE GAGNON), IN
HER CAPACITY AS ELECTORAL OFFICER;
PATRICIA TANGIE, IN HER CAPACITY AS
DEPUTY ELECTORAL OFFICER;
STEPHANIE SCOTT, IN HER ROLE AS
RETURNING OFFICER FOR CHAPLEAU
CREE FIRST NATION, JOHN DOE, IN HIS
ROLE AS MEMBER OF THE APPEAL
BOARD; AND JOHN DOE, IN HIS ROLE AS
MEMBER OF THE APPEAL BOARD FOR
CHAPLEAU CREE FIRST NATION;
CHIEF KEITH CORSTON, CHIEF OF
CHAPLEAU CREE FIRST NATION;
CHAPLEAU CREE FIRST NATION (CCFN)**

Respondents

ORDER AND REASONS

[1] Michael Arnold Cachagee [Mr. Cachagee] brings a motion for an interlocutory injunction setting aside the nomination process and corresponding election of the Chapleau Cree First Nation to be held on June 10, 2016, until the underlying application for judicial review can be heard. My only authority on this matter extends to deciding whether to grant the interlocutory injunction.

[2] Mr. Cachagee contends he was appropriately nominated to run as a candidate in the planned elections for the Chapleau Cree First Nation. He claims that he was duly nominated as a candidate for one of two “on-reserve counsellor [sic]” positions on April 9, 2016, at a duly-called nominating meeting. At that meeting, the Electoral Officer and the Returning Officer expressed concerns about whether Mr. Cachagee met the residency requirements. However, no negative decision was made regarding his eligibility. He claims that any challenges to his nomination should have been made and resolved at that meeting. However, events did not unfold in that manner.

[3] On April 13, 2016, Mr. Cachagee received notice that his nomination had been rejected because he did not meet the residency requirement of the Chapleau Cree First Nation People’s Election Code. He filed an appeal on April 18, 2016. The appeal was rejected on April 25. Mr. Cachagee claims that he sought, but did not receive, the names of the members of the appeal panel. He also claims the appeal panel received material regarding his residency which was not made available to him. To adopt the language of his lawyer, Mr. Cachagee considers the appeal process to have been tantamount to proceedings before a “Star Chamber”.

[4] Without Mr. Cachagee's name on the ballot, ballots were sent out on April 27 to the voting members of the Chapleau Cree First Nation People. Those members include 372 off-reserve voters and 49 on-reserve voters. Advance polling occurred on June 4, 2016.

[5] Since the nomination process has already taken place, I have no jurisdiction to grant any interlocutory injunction with respect to that procedure. The only remedy I can provide to Mr. Cachagee at this time is to respond positively to his request for an interlocutory injunction halting the election. I do note, however, that issues surrounding the nomination process are appropriately considered by me in considering this application for an injunction.

[6] Mr. Cachagee must meet the requirements of the three-part test as set out in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, and other cases which constitute relatively trite law in our common and aboriginal law environment in Canada today. Essentially, that three-part test requires Mr. Cachagee to establish a serious issue to be tried, that he will suffer irreparable harm if the injunction is not granted, and that the balance of convenience favours the granting of the injunction.

[7] In this case, I am satisfied that Mr. Cachagee raises a serious issue to be tried. If nothing else, setting aside for the moment the reason for his rejection as a candidate, the issue of whether one can leave a nomination meeting nominated as a candidate only to find out approximately four or five days later that one's candidacy has been rejected raises a serious question to be tried. Similarly, in this case, whether one is entitled to the identity of the appeal panel and information

concerning when it is deliberating, who is deliberating, and whether or not it is receiving additional information not available to Mr. Cachagee raises a serious issue to be tried.

[8] With respect to the issue of irreparable harm, the harm must be irreparable to Mr. Cachagee. Although the law may be divergent on what remedies, if any, are available to Mr. Cachagee in these circumstances, I am not satisfied that the harm is irreparable to him at this stage or in the future. In this regard, I take would cite and adopt the approach set out in *Gopher v Saulteaux First Nation*, 2005 FC 481, [2005] FCJ No 599, cited by counsel for the respondents.

[9] I am of the view that Mr. Cachagee's right to challenge this election continues. I am of the view that a Court fully informed of all of the factors would have the jurisdiction to determine the legality of this election and craft an appropriate remedy should it conclude the electoral process to have been unlawful at any stage, including the nomination process. Because of that view, I fail to see the irreparable harm to Mr. Cachagee.

[10] Given that the three-part test is conjunctive, I need not deal with the issue of balance of convenience and normally would not do so where I have concluded one of the conditions has not been met. However, in these circumstances, I consider it appropriate that Mr. Cachagee and the respondents understand one of my concerns with respect to the balance of convenience. Simply stated, as one says in the vernacular, "the horse is out of the barn". The ballots were issued on April 27, and some have been returned. Similarly, the advance polling has already occurred. The election is well underway, with the election to be held on June 10 simply being the third and final stage of the balloting process. To grant an injunction at this stage would, in my view, be

misguided. The balance of convenience favours the concluding of the balloting scheduled for June 10 in order that the business of the Chapleau Cree First Nation can be conducted. Whatever remedy Mr. Cachagee wishes to seek with respect to the results of that election are not altered in any manner by my conclusion here today.

[11] In summary, while I consider there to be a serious issue to be tried, in fact several serious issues to be tried, I am not satisfied that Mr. Cachagee has established irreparable harm or that the balance of convenience favours the granting of the injunction.

[12] I turn now to costs. While the matter will be more fully examined by the Court on judicial review, I have had the benefit of hearing counsel for Mr. Cachagee and the Chapleau Cree First Nation, and I have read the affidavit evidence. While that evidence may be subject to cross-examination on a future hearing, I am left with a perception of how events unfolded at the nominating process and subsequent thereto. The respondents contend that costs should be awarded against Mr. Cachagee, not only because he is the losing party, but also because of the multitude of defendants he has named in his pleading. Mr. Cachagee resists the claims for costs, in part, contending that he had to bring action against a number of parties because he could not even determine the identity of the members of the appeal panel. In the circumstances, I am not of the view that the motion should not have been brought, nor am I of the view that it is frivolous and vexatious. I therefore make no award of costs.

ORDER

THIS COURT ORDERS that this motion for an interlocutory injunction in docket number T-790-16 be dismissed without costs.

“B. Richard Bell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-790-16

STYLE OF CAUSE: MICHAEL ARNOLD CACHAGEE v MARILYNE DOYLE (NEE GAGNON), IN HER CAPACITY AS ELECTORAL OFFICER; PATRICIA TANGIE, IN HER CAPACITY AS DEPUTY ELECTORAL OFFICER; STEPHANIE SCOTT, IN HER ROLE AS RETURNING OFFICER FOR CHAPLEAU CREE FIRST NATION, JOHN DOE, IN HIS ROLE AS MEMBER OF THE APPEAL BOARD; AND JOHN DOE, IN HIS ROLE AS MEMBER OF THE APPEAL BOARD FOR CHAPLEAU CREE FIRST NATION; CHIEF KEITH CORSTON, CHIEF OF CHAPLEAU CREE FIRST NATION; CHAPLEAU CREE FIRST NATION (CCFN)

**PLACE OF HEARING
(HELD BY WAY OF
TELECONFERENCE):** OTTAWA, ONTARIO

DATE OF HEARING: JUNE 7, 2016

ORDER AND REASONS: BELL J.

DATED: JUNE 14, 2016

APPEARANCES:

Eric Hovius FOR THE APPLICANT

Cathy Guirguis FOR THE RESPONDENTS

SOLICITORS OF RECORD:

AB Law Professional Corporation FOR THE APPLICANT
Cambridge, Ontario

Olthuis Kleer Townshend LLP FOR THE RESPONDENTS
Toronto, Ontario