

Federal Court



Cour fédérale

Date: 20200319

Docket: T-1710-18

Citation: 2020 FC 394

Ottawa, Ontario, March 19, 2020

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**BRANDON LEE ENGSTROM AND
AMBER RACHEL RAGAN**

Applicants

and

**PETERS FIRST NATION BAND COUNCIL,
NORMA WEBB IN HER CAPACITY AS
CHIEF OF PETERS FIRST NATION,
DAVID PETERS IN HIS CAPACITY AS
COUNCILLOR OF PETERS FIRST NATION
AND VICTORIA PETERS
IN HER CAPACITY AS
COUNCILLOR OF PETERS FIRST NATION**

Respondents

SUPPLEMENTARY JUDGMENT AND REASONS

[1] In my Judgment and Reasons issued on February 21, 2020 allowing this application, I left on reserve the issue of costs. I invited the parties to submit their arguments in writing and they have done so.

[2] The Applicants were successful and they are entitled to costs. This was their second successful application brought against the Respondents challenging a denial of their applications for membership in the Peters First Nation. On the first application, Justice Simon Fothergill awarded costs under the Federal Courts Tariff at the high end of Column III.

[3] I agree with counsel for the Applicants that a higher award of costs is justified in this proceeding. The Respondents acted in bad faith in denying memberships to the Applicants on spurious grounds. To make matter worse, after Justice Fothergill found the first decision to be a nullity, the Respondents refused to submit the second decision to an appeal before the members of the Band as stipulated in the Membership Code.

[4] The Applicants seek costs at a solicitor-client level in the asserted amount of \$125,661.90 plus disbursements of \$4,969.94. This is in addition to the solicitor-client fees of more than \$100,000 that were incurred in the first application before Justice Fothergill (see affidavit #2 of Amber Ragan at para 18).

[5] I have examined the Bill of Costs submitted on behalf of the Applicants. Inasmuch as this was a one-day application dealing with substantially the same issues that were raised before Justice Fothergill, legal fees well in excess of \$100,000 are grossly disproportionate. Neither the evidence nor the legal issues raised were complex. Furthermore, much of the work is claimed at the senior counsel rate of \$465 per hour. The task of preparing originating documents should not have taken 34 hours nor should that work have been performed by senior counsel. This same is true for the affidavits that were prepared, supposedly taking 43 hours for senior counsel and 8.2

hours for associate counsel. All of this work should have been done either by associate counsel or at the associate counsel rate.

[6] I have similar reservations about the amount of time that was incurred in the preparations for cross-examinations and for the hearing by senior counsel at 94 hours (plus another 26 hours by associate counsel). When the Court is asked to assess costs, the principle of proportionality applies. Counsel is free to spend as much time as they want in the prosecution of a client's cause but not necessarily at the expense of the client or the opposing party. This matter cannot reasonably bear fees in the amount advanced on behalf of the Applicants or any amount close to that figure.

[7] In these circumstances, a lump sum award of \$35,000 plus \$4,000 for disbursements is all that can be justified.

JUDGMENT in T-1710-18

THIS COURT'S JUDGMENT is that the Respondents shall pay costs to the Applicants in the total amount of \$39,000.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1710-18

STYLE OF CAUSE: BRANDON LEE ENGSTROM AND AMBER RACHEL
RAGAN v PETERS FIRST NATION BAND COUNCIL
AND OTHERS

**SUBMISSIONS IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT
TO RULE 369 OF THE *FEDERAL COURTS RULES***

SUPPLEMENTARY JUDGMENT AND REASONS: BARNES J.

DATED: MARCH 19, 2020

WRITTEN REPRESENTATIONS BY:

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FOR THE APPLICANTS

Stan H. Ashcroft

FOR THE RESPONDENTS

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FOR THE RESPONDENTS