

Federal Court



Cour fédérale

Date: 20201218

Docket: T-648-20

Citation: 2020 FC 1168

Ottawa, Ontario, December 18, 2020

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

**MARVIN YAHEY, WAYNE YAHEY AND
SHERRY DOMINIC**

Applicants

and

**ROBIN EWASKOW, TROY WOLF AND
SHELLEY GAUTHIER**

Respondents

ORDER AND REASONS

[1] The Respondents bring this motion pursuant to Rule 467 of the *Federal Courts Rules*,

SOR/98-106 for an order requiring the Applicant, Chief Marvin Yahey, to:

- a. appear before a judge of this Court, at a time and place to be stipulated; and,
- b. be prepared to hear proof of the act with which the person is charged, specifically that he is in contempt of the June 29, 2020, Order of the Court, as amended by the July 27, 2020 Order of the Court;

[2] In its June 29, 2020 Order, the Court found that the Band Council Resolutions #2020-012 and #2020-013 had not been properly adopted at a special meeting of the Band Council duly convened by the Chief. As a result, they were stayed until the final resolution of this Application on its merits.

[3] In addition, the Court ordered Chief Marvin Yahey to convene a meeting of the Band Council, to be held within 30 days, and to put on its agenda the Band members' petition and Section 188 Report to be duly dealt with in accordance with the *Blueberry River Custom Election By-law, 2017*.

[4] At the request of the parties, the Court issued a second order dated July 27, 2020, whereby it extended until September 28, 2020 the delay granted to Chief Marvin Yahey to convene a meeting of the Band Council to assess the Band members' petition and Section 188 Report. As the Band Council had a duty to hold regular general meetings of the council to deal with the affairs of the band, as found within the above referenced *By-law*⁷, the Court added that its order extending the delay to hold a special meeting to process the Section 188 Report was not to be interpreted as preventing the Band Council to convene such regular general meetings.

[5] Since that time however, the Applicants have failed to take any further procedural steps to perfect this application for judicial review and the Respondents chose to withdraw the Section 188 Report that was the object of the Court's June 29 and July 27 Orders. The Respondents rather chose to file a separate application for judicial review in file T-1013-20 to force Chief Yahey and the council members, Wayne Yahey and Sherry Dominic, to hold regular general

meetings, as they had failed to do so since April 2020. They sought interim interlocutory injunctive relief requiring that Band Council meetings be scheduled and held. Although the respondents on the injunction motion substantially consented to the relief sought on the injunction motion, Justice Richard Bell exercised his discretion not to grant it. He first stated:

[5] The challenge facing the Court is that the Applicants in this case (T-1013-20) are the exact same parties who are the Respondents in Court file T-648-20. In T-648-20, the three (3) individual Applicants constitute three (3) of the four (4) individually named Respondents in the within Application (T-1013-20). Also, the Chief Operating Officer of the Band, who is referred to in the Order of Associate Chief Justice Gagné in Court file T-648-20 is the other individual Respondent in the within Application. While the Respondents in T-648-20 have withdrawn part of their allegations against the Applicants in that case, they have never abandoned their request that a meeting of the Band Council be held.

[6] He then noted that there had been “no enforcement proceedings, by way of contempt pursuant Rule 466 of the *Federal Courts Rules* or otherwise” and he went on to dismiss the injunction for the following reasons:

[9] First, judicial comity encourages judges to show respect and deference to the decisions and orders of other justices of the same Court. Although not directly on point, see, in this regard *Almrei v Canada (Minister of Citizenship & Immigration)*, 2007 FC 1025 at para 61; and *Canada Steamship Lines Ltd. v Minister of National Revenue*, [1966] Ex. CR 972 at para 10). In the present case, no party has sought an amendment to Associate Chief Justice Gagné’s Order. The underlying Application in T-648-20 involves virtually the same parties and at least one issue which is identical, namely, the failure to hold a Band Council meeting and the request for injunctive relief flowing from that failure. I am of the view that as long as Associate Chief Justice Gagné’s Order remains in place and no challenge is made to that Order, judicial comity requires me to show deference and respect. I should not be seen as interfering with her Order, which involves virtually the same parties and squarely addresses the principal relief sought by the Applicants on this motion. I say “squarely addresses the principal relief sought” because Associate Chief Justice Gagné, speaks to the requirement

to hold Band Council meetings twice per month and orders the holding of a meeting.

[10] Second, *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 (SCC) establishes a three (3) part conjunctive test for the determination of whether an interlocutory or interim injunction should issue. The Applicants must establish that there is a serious issue to be determined, that they will suffer irreparable harm if the injunction is not granted, and that the balance of convenience favours the granting of the injunction. For purposes of my analysis, I will presume the Applicants have demonstrated that there exists a serious issue to be determined. However, the motion falls short on the issues of irreparable harm and balance of convenience. I am satisfied that if the Applicants truly believed they were suffering from irreparable harm or that irreparable harm would be visited upon them, they would not have sat on their rights as granted by Associate Chief Justice Gagné since July 30, 2020, that being the date by which a meeting of the Band Council was to have been held. The failure of the Respondents in that case (the Applicants herein) to enforce the Order favourable to them, which clearly grants them, in large measure, what they are seeking before me, militates against the granting of the Order sought. In addition, the balance of convenience does not favour the granting of the injunction. The Applicants already benefit from an Order that grants them part of what they are seeking. Neither they, nor the Respondents, would be served by another Order of the same Court, which might be subject to a difference of opinion as to interpretation and/or timing as measured against the current outstanding Order. Judicial economy and efficiency do not require another Order whose primary purpose is to direct the holding of a meeting of the Band Council. The balance of convenience favours the status quo, which, of course, includes the enforceable Order of Associate Chief Justice Gagné.

[11] In closing, I would note that I am cognizant of the differences between the present Order sought and that issued by Associate Chief Justice Gagné. I am also cognizant that the Chief can direct the holding of a special meeting of the Band Council while other meetings are regularly scheduled. However, Associate Chief Justice Gagné's Order, if enforced, would result in the holding of a meeting of the Band Council. Whether that meeting is a special meeting called by the Chief or a regularly scheduled meeting is, in my view, of no moment.

[7] Unfortunately, the applicants in T-1013-20 had asked for their motion for injunctive relief to be disposed of in writing. Had there been a hearing, the parties would have had the chance to emphasise the fact that the applicants had withdrawn the Section 188 Report and that, therefore, the June 29 and July 29 Orders were moot. They could also have emphasised the fact that the issue in the present application (the holding of a special meeting to assess the petition and Section 188 Report) was different from the issue raised in file T-1013-20 (the holding of regular general meeting to deal with the affairs of the Band). Chief Yahey was ordered to convene a special meeting of the Band to review the petition and Section 188 Report, not to hold general meetings of the Band council to deal with the regular affairs of the band (although the Court did note that none had been held since April 2020).

[8] The June 29 and July 27 Orders now being moot, there is no reason to order Chief Yahey to appear before the Court to face contempt charges.

[9] Finally, the Court will exercise its discretion to dismiss this motion without costs.

ORDER in T-648-20

THIS COURT ORDERS that:

1. The Respondents' motion is dismissed;
2. No costs are granted.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-648-20

STYLE OF CAUSE: MARVIN YAHEY, WAYNE YAHEY AND, SHERRY DOMINIC v ROBIN EWASKOW, TROY WOLF AND, SHELLEY GAUTHIER

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN VANCOUVER, BRITISH COLUMBIA AND OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 27, 2020

ORDER AND REASONS: GAGNÉ A.C.J.

DATED: DECEMBER 18, 2020

APPEARANCES:

Georges Rivard	FOR THE APPLICANTS
Mark Underhill	FOR THE RESPONDENTS
Caroline North	

SOLICITORS OF RECORD:

Arvay Finlay LLP Vancouver, British Columbia	FOR THE APPLICANTS
Rivard Law Fort St. John, British Columbia	FOR THE RESPONDENTS