Date: 20071123

Docket: T-1082-06

Citation: 2007 FC 1218

Ottawa, Ontario, the 23rd day of November 2007

Present: the Honourable Mr. Justice Blais

BETWEEN:

MARC AWASHISH DENIS WEIZINEAU NOËLLA CHACHAI NATHALIE AWASHISH CLÉMENT CLARY

Applicants

and

ATIKAMEKW OF OPITCIWAN BAND COUNCIL JEAN-PIERRE MATTAWA FERNAND DENIS-DAMÉE RÉGINA CHACHAI MARTINE AWASHISH BONIFACE AWASHISH CHARLES JEAN-PIERRE ANNIE CHACHAI

Respondents

and

SIMON AWASHISH

Intervener

REASONS FOR ORDER AND ORDER

[1] This is a motion pursuant to Rules 359, 369 and 397 of the *Federal Court Rules*.

[2] The provisions of Rule 397 read as follows:

Motion to reconsider

397. (1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that

(a) the order does not accord with any reasons given for it; or

(b) a matter that should have been dealt with has been overlooked or accidentally omitted.

Mistakes

(2) Clerical mistakes, errors or omissions in an order may at any time be corrected by the Court.

<u>Réexamen</u>

397. (1) Dans les 10 jours après qu'une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l'ordonnance, telle qu'elle était constituée à ce moment, d'en examiner de nouveau les termes, mais seulement pour l'une ou l'autre des raisons suivantes :

> a) l'ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;

b) une question qui aurait dû être traitée a été oubliée ou omise involontairement.

Erreurs

(2) Les fautes de transcription, les erreurs et les omissions contenues dans les ordonnances peuvent être corrigées à tout moment par la Cour.

[3] It is apparent from Rule 397 that a motion pursuant to that rule must be made within ten days after an order has been made.

[4] It is quite clear that the ten-day deadline has been considerably exceeded for several months.

[5] However, I have considered the motion, the written submissions of all parties and the

circumstances leading up to the hearing held in June, which followed the order made by me in July,

and all the discussions between the parties that have occurred to date.

[6] It seems clear that all parties acted in good faith and pursued a common objective of trying to find a solution to the apparent impasse which they faced.

[7] I have no hesitation in concluding from the outset that the ten-day deadline for filing such a motion will be extended, and that accordingly the Court agrees to consider the motion at bar on the merits.

[8] The reasons in support of the judgment dated July 20, 2007 are clear and speak for themselves: it will not be necessary to go over them again, at least as to substance.

[9] It appears from the applicant's arguments that a question should have been dealt with at the time the judgment was rendered. That question was accidentally omitted and this error, appearing in the order made on July 20, 2007, may be corrected by the Court at any time.

[10] The Court is accordingly satisfied that Rule 397 of the *Federal Court Rules*, SOR/98-106, applies here.

[11] To resolve the imbroglio faced by the Band in July 2007, the Court by its judgment of July 20, 2007 quashed the elections which had been held a year before, on May 30 and 31 and on June 1, 2006, and removed from office the Band members elected at that time. [12] This part of the decision had immediate effects and it will not be necessary to clarify it further.

[13] The judgment further ordered that new elections be held pursuant to the Band Council *Electoral Code*, which had been the subject of an objection and was now held by the Court to be valid.

[14] However, on account of the lapse of time between the point at which the various court proceedings were initiated and the disruption that followed – the details of which are discussed at length in the written submissions filed by the parties – the mandates of the Band Council reinstated *de facto* by the Court's order had expired.

[15] As the Court is unable to hear cases that come before it quickly, this situation unfortunately is quite frequent.

[16] However, the parties are partly responsible for the situation since they have to prepare their cases, proceed with examinations and wait their turn for hearing dates.

[17] In the case at bar, I consider that the delays were quite usual and that no objection can be made on this basis.

[18] As the *Electoral Code* has been declared valid by the Court, the provisions of Rule 397 should be applied.

Page 5

[19] The applicant properly noted that the speedy organization of new elections necessarily implies the existence of a Band Council in place to put the Code into effect. The *Electoral Code* states in clause 4.3 that it is the Council which sets the date of an election by resolution, and under clauses 15 and 16 of the Code the returning officer and the election board are appointed by the general assembly of members of the community and such appointments must be approved by the Council.

[20] The members of the Band Council scrupulously observed these provisions, and it appears to date that the general assembly of members proceeded with the appointment of a returning officer and the election board. However, these appointments could not be ratified by resolution of the Council, as provided in the *Electoral Code*.

[21] As the decision of July 20, 2007 quashed the election held on May 30 and 31 and June 1, 2006, it consequently removed from office the members elected in that election.

[22] It may be assumed that as the election was quashed and the individuals elected in that election were removed from office, the last Band Council legally able to sit since 2005 was the one which was commonly known as the Simon Awashish team, in office when the 2005 elections began and provisionally reinstated first by the appeal board, and secondly by Danièle Tremblay-Lamer J., following an application for an interlocutory injunction in a related case which was finally consolidated here. It is that Council which sat until the elections held in May and June 2006 began.

[23] Although the mandate of that Band Council has expired, it is clear that it was the last Band Council legitimately elected by members of the community and that the general practice in electoral matters, by which the Band Council remains in office until it is replaced, should be applied in this situation.

[24] After analyzing both the facts and arguments on either side, but especially the written consent of all parties in question, I have no hesitation in concluding that this legitimate request by the applicant must be accepted since it corresponds precisely to the provisions of the *Federal Court Rules*, and in particular of Rule 397.

[25] The order sought by the applicant does not in any case alter the judgment rendered on July 20, 2007. It only makes possible its legitimate application. From this it may be concluded that it is a question which should have been dealt with and was accidentally overlooked or omitted.

[26] Another argument which is also especially persuasive is the fact that reinstatement of the Council prior to the election that was quashed by this judgment is only provisional, since it only makes it possible to approve decisions taken by the general assembly of members of the Band, to proceed with a democratic election in the weeks that follow and to restore a legally democratic process for the Atikamekw of Opitciwan community, which seems to the Court to have been cruelly absent for several years.

<u>O R D E R</u>

Consequently, THE COURT:

ADDS the following conclusions to the order made in the judgment of July 20, 2007:

DECLARES that Simon Awashish, Maria Chachai, Fernand Denis-Damée, Marc Awashish, Hubert Clary, Pete Chachai, Louis-Michel Dubé, Johnny Chachai, Charles Jean-Pierre, Mario Chachai and Denis Clary constitute the provisional Atikamekw of Opitciwan Band Council empowered to organize new elections held in accordance with and within the deadlines set by the *Electoral Code* and be responsible for directing the affairs of the Band in the meantime;

APPROVES the Band Council's undertaking to hold a session, within 48 working hours of the judgment to be rendered, during which the following matters will be disposed of:

- 1. ratification of the appointment of a returning officer pursuant to clause 15.1 of *Electoral Code*;
- 2. ratification of the appointment of members of the election board pursuant to clause 16.2 of *Electoral Code*;
- 3. determining the date of forthcoming elections pursuant to clauses 4.3 and 6.3 of *Electoral Code;*

APPROVES the undertaking by the provisional Band Council to set the date of forthcoming elections no later than 62 days after the judgment to be rendered.

NO COSTS.

"Pierre Blais" Judge

Certified true translation

Brian McCordick, Translator

<u>FEDERAL COURT</u> SOLICITORS OF RECORD

DOCKET: STYLE OF CAUSE: T-1082-06

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PLACE OF HEARING:	Written motion
DATE OF HEARING:	November 6, 2007
REASONS FOR ORDER AND ORDER BY:	the Honourable Mr. Justice Blais
DATED:	November 23, 2007
APPEARANCES: Lina Beaulieu	FOR THE APPLICANTS
Nicole Bérubé	FOR THE RESPONDENTS
Martin Dallaire	INTERVENER
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