

Date: 20080415

Docket: T-201-08

Citation: 2008 FC 480

Ottawa, Ontario, April 15, 2008

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

ALBERT DEAN LAFOND

Applicant

and

**MUSKEG LAKE CREE NATION
and GILBERT LEDOUX**

Respondents

REASONS FOR ORDER AND ORDER

[1] The applicant, Albert Dean Lafond, brings this motion for an interlocutory injunction against a decision dated January 8, 2008, wherein the respondent Gilbert Ledoux purported to suspend the applicant from his position as a Headman (or Councillor) of the Muskeg Lake Cree Nation. The applicant also wishes to be reinstated as Headman until a final decision is rendered in this matter.

[2] The respondents bring a cross-motion for an adjournment of the applicant's motion until Monday, May 5, 2008 in Edmonton, Alberta. The applicant strongly opposes the adjournment. However, since the respondents have been properly served with this motion for an interlocutory injunction, there is no basis in law to grant the adjournment except on terms protecting the applicant.

FACTS

[3] The applicant is a member of the Muskeg Lake Cree Nation (the respondent Band). He was elected as a Headman of the respondent Band Council on February 13, 2006 for a term of three years.

[4] The respondent Band is a First Nations Band located in the Province of Saskatchewan. The Band has reserve land near the town of Marcelin, Saskatchewan, and an urban reserve in the city of Saskatoon. The individual respondent, Gilbert Ledoux, is the Chief of the respondent Band and occupies a position on Council along with the applicant.

[5] On October 26, 2007, the applicant received a letter from Chief Ledoux outlining the existence of "many complaints" filed against the applicant "in regard to bullying, verbal abuse and threatening gestures toward Band members, Staff and fellow Councillors." The applicant was informed that the complaints were "very serious," and that the applicant should "consider this letter as an official warning" regarding his conduct.

[6] On January 8, 2008, the applicant received a second letter from Chief Ledoux alerting him to the fact that he had been suspended from the Council effective immediately. The letter stated, in part:

In November of 2007 [you] were advised with an initial letter that if you continued to harass, threaten or intimidate Band Members and Band Staff that your tenure as an elected Headman / Councilor would be suspended.

As the elected Leader of Muskeg Lake Cree Nation, it appears that you continue to demonstrate inappropriate behavior to the membership and staff.

As a consequence of this decision and your abusive use of power and your actions continue to jeopardize the good will, community wellness and operational requirements.

[7] In his submissions, the applicant alleges that he has not been provided with a copy of any of the complaints filed against him, nor was he given an opportunity to address those complaints prior to the suspension decision being rendered. Further, the applicant alleges that the Band's regulations, as set out in *An Act Respecting the Government Elections and Related Regulations of the Muskeg Lake Cree Nation* (Band Regulations), were not followed in reaching the suspension decision, nor do those Regulations contain provisions providing for the suspension of Councillors.

[8] In his affidavit evidence, the respondent, Chief Ledoux, cites many examples of abusive behaviour by the applicant and complaints about this abusive behaviour. The Chief is a former RCMP officer and served a full career with the force before retiring. Chief Ledoux has been elected as Chief of the respondent Band three times.

ISSUE

[9] The issue is whether to adjourn the motion for an interlocutory injunction against the decision to suspend the applicant from his position as a Band Councillor and, if so, on what terms.

Serious issue to be tried

[10] To decide this issue, I must consider whether the applicant has raised a serious issue and, if so, whether, and on what terms, the adjournment should be granted. Of course, my analysis of the serious issue is not conclusive or binding on the judge hearing the motion for an interlocutory injunction.

[11] This Court is seized with this motion and underlying application for judicial review on account of the fact that the respondent Band Council falls within the meaning of a “federal board, commission or other tribunal” as defined in section 2 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. As I held in *Roseau River Anishinabe First Nation v. Atkinson*, 2003 FCT 168, 228 F.T.R. 167 at paragraph 19:

¶ 19 In past cases the Federal Court has assumed jurisdiction over Indian band councils, regardless of whether the election of the band council was pursuant to band custom or the *Indian Act*, see *Canatonquin v. Gabriel*, [1980] 2 F.C. 792 (F.C.A.) and *Lameman et al. v. Gladue et al.* (1995), 90 F.T.R. 319 (T.D.). As Mr. Justice Rothstein stated in *Sparvier v. Cowessess Indian Band No. 73*, [1994] 1 C.N.L.R. 182; 63 F.T.R. 242 (T.D.), at p. 4:

It is well settled that for purposes of judicial review, an Indian band council and persons purporting to exercise authority over members of Indian bands who act pursuant to the provisions of the Indian Act constitute a “federal board, commission or other tribunal” as defined in section 2 of the *Federal*

Court Act [...] an Indian band council came within the jurisdiction of the Federal Court where the election of the band council was pursuant to band custom and not the *Indian Act*.

[12] In the case at bar, the elections and procedures of the Band Council are governed by the provisions of the Band Regulations. Accordingly, whether there exists a serious issue depends largely on whether those Regulations were followed in reaching the decision to indefinitely suspend or remove the applicant as an elected Councillor in the middle of his term of office.

[13] In reviewing the Band Regulations at issue, the Court notes that nowhere therein do the Regulations contain procedures or provisions allowing for the suspension of members of the Band Council. However, the Regulations do provide for a “Standard of Conduct for the Chief and Headmen,” which states:

The elected Chief and Headmen, as trustees of the sacred obligations granted by the Creator and as elected representatives of all members of the Muskeg Lake Cree Nation are expected to uphold and abide by the laws of the Muskeg Lake Cree Nation and the “OATH OF OFFICE” which appears as “Schedule A” to this Act.

[14] Further, the Band Regulations contain thorough and detailed disciplinary procedures that are to be followed should a member of the respondent Band file a complaint against one or more members of the Band Council. Those procedures, which have been attached to the end of this Order as Appendix “A,” state that upon the proper filing of a complaint, the Chief Executive Officer shall establish a “Discipline Committee” or “Family Representative Committee” in accordance with the provisions in the Regulations. That Committee shall then appoint a Discipline Tribunal, which is

tasked with holding a hearing into the complaint, during which time the subject of the complaint must be provided with written notice of the complaint and be given an opportunity to present evidence and argument in support of their position. Explicit in the Regulations is that the individual or individuals against whom the complaint is brought shall be afforded a reasonable opportunity to know and respond to the allegations made against them.

[15] Upon completion of the “Discipline Hearing,” if the complaint has been proven on the balance of probabilities, the Tribunal must determine whether the subject of the complaint should be: 1) dismissed from office and a by-election called to fill the vacancy; or 2) allowed to continue in office with or without conditions attached to that decision. Further, it must be reiterated that the Band Regulations do not stipulate that a Chief or Councillor subject to a complaint shall be suspended from office during the investigation and hearing period.

[16] In the case at bar, the applicant was suspended from his position by what appears to be a unilateral declaration made by the respondent, Chief Ledoux. Nowhere in the applicant’s submissions is there any mention of a Council resolution in support of the Chief’s decision. Further, in the suspension letter, Chief Ledoux states that the applicant may “appeal this decision by following the governing Acts.” However, a plain reading of the Band Regulations does not place the onus on the applicant to initiate the disciplinary process; rather, that process must be initiated by the Chief Executive Officer, and the applicant, who is the subject of the alleged complaints, must be provided with the allegations against him, as well as be given an opportunity to respond to those allegations.

[17] Chief Ledoux's Affidavit, sworn March 27, 2008, deposes that the applicant attended a meeting of elders in late January 2008 "to try to give his side of the story." The elders decided to do nothing after the meeting. Whether this meeting provides the applicant with an opportunity to know, and respond to, the allegations leading to his suspension is a serious issue. Moreover, the question of whether the Chief has the inherent power to suspend a councillor without regard to the Band Regulations is another serious issue.

[18] Accordingly, without conducting a prolonged examination into the merits of the case, I am satisfied, on the basis of the evidence before me, that the applicant has demonstrated a *prima facie* case and the existence of a serious issue.

Whether to grant the adjournment and, if so, on what terms

[19] Since the applicant's motion for an interlocutory injunction was made in proper form and in a timely manner under the Federal Courts Rules, S.O.R./98-106, the Court is obliged to consider it.

[20] The respondents' request for an adjournment, which is understandably opposed by the applicant, cannot be reasonably granted by the Court except on the following terms. The Court refers the parties to my Reasons for Order and Order in *Prince v. Sucker Creek First Nation #150A*, 2008 FC 479, which discusses the elements of irreparable harm and the balance of convenience, elements that pertain on a *prima facie* basis to the material before the Court today in the case at bar.

Reasonable terms

[21] The reasonable terms for the Order granting the adjournment are that an interim injunction is granted preventing the respondents from suspending the applicant until the motion for the interlocutory injunction is heard, and an interim Order is granted wherein that the applicant is immediately reinstated as a Councillor with pay from the date of this Order until the motion for the interlocutory injunction is heard.

ORDER

THIS COURT ORDERS that:

1. This motion for an interlocutory injunction is adjourned until May 5, 2008 in Edmonton;
2. An interim injunction is granted preventing the respondents from suspending the applicant until the motion is heard;
3. An interim order is granted that the respondents immediately reinstate the applicant as a councillor with pay from the date of this Order until the motion is heard; and
4. Costs of this motion to the applicant in the cause.

“Michael A. Kelen”

Judge

Appendix “A”

An Act Respecting the Government Elections and Related Regulations of the Muskeg Lake Cree Nation

STANDARD OF CONDUCT FOR THE CHIEF AND HEADMEN

3. The elected Chief and Headmen, as trustees of the sacred obligations granted by the Creator and as elected representatives of all members of the Muskeg Lake Cree Nation are expected to uphold and abide by the laws of the Muskeg Lake Cree Nation and the “OATH OF OFFICE” which appears as “Schedule A” to this Act.

REMOVAL FROM OFFICE

4. Once duly elected by members of the Muskeg Lake Cree Nation, the Chief and Headmen are politically and financially accountable to all members of the Muskeg Lake Cree Nation and as such they may be removed from office if they:
 - i. Consistently ignore or abuse the “OATH OF OFFICE”;
 - ii. Are absent from three (3) consecutive Muskeg Lake Cree nation assemblies or duly convened council meetings without justified cause;
 - iii. Are convicted under the Criminal Code of Canada for an indictable offence or a dual offence on which the Crown has elected to proceed by way of indictment, unless such a conviction relates to the exercise of an aboriginal or treaty right which is a matter of legal dispute.

DISCIPLINE PROCEDURES

5. Any member of the Muskeg Lake Cree Nation, 18 years of age or older, either individually or as part of a group, may submit a complaint in writing concerning an alleged violation of section 13 by one or more members of Council. The complaint(s) shall specifically allege the grounds of the complainant(s), in order to identify the circumstances relating thereto. The complaint shall be accompanied by a petition signed by Thirty-five (35) electors of the Muskeg Lake Cree Nation;
6. The written complaint shall be submitted to the Chief Executive Officer of the Muskeg Lake Cree Nation who shall thereupon forthwith establish a “Discipline Committee” in the same manner as an Appeal committee is established under this Act, or, if established, the Family Representatives Committee, and notify this body of the complaint;

7. Upon receiving notice of the complaint, the Discipline Committee or Family Representatives Committee shall appoint a three person Discipline Tribunal. No members of the Council shall be appointed to the Discipline Tribunal who is a lineal relation or a sibling of any of the candidates or Council members who are the subject of the complaint;
8. Upon their appointment, the Discipline Tribunal shall hold a discipline hearing into the complaint in which the complainants and all Council members who are the subject of the complaint are provided written notice of and given an opportunity to present evidence and argument in support of their complaint or defence thereto as the case may be. The individual(s), against whom the complaint is brought, shall be afforded a reasonable opportunity to know and respond to the allegations made against him or them as the case may be;
9. Subject to the foregoing, the Discipline Tribunal for a given hearing may establish its own rules of evidence and procedure. Nothing herein shall require evidence adduced or procedure adopted to conform to rules of evidence or procedure, which may be adopted in any other appeal, or by any other Discipline Tribunal, tribunal or court whatsoever. The Discipline tribunal, shall at their discretion, have access to technical, translation and administrative assistance and advisory services. The actual and reasonable costs for such services shall be borne by the Muskeg Lake Cree Nation
10. Upon conclusion of the Discipline Hearing for the purpose of receiving evidence and argument the Discipline Tribunal shall endeavor to reach a decision on the complaint within five (5) working days of the conclusion of the hearing and in its decision shall:

Determine whether the complaint has been proven on a balance of probabilities;
 1. where the complaint is found to be proven, decide whether the subject of the complaint should be:
 - i. Dismissed from office and a by-election called to fill the vacancy; or
 - ii. Allowed to continue in office with or without conditions attached to that decision
 2. Where the complaint is found not to be proven, dismiss the complaint.

[...]

REMOVAL FROM OFFICE

12. Except as provided for in this Act, no Chief or Headman may be removed from office before the expiration of his or her term.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-201-08

STYLE OF CAUSE: ALBERT DEAN LAFOND

v.

MUSKEG LAKE CREE NATION ET AL.

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: April 7, 2008

**REASONS FOR ORDER
AND ORDER:** **KELEN J.**

DATED: April 15, 2008

APPEARANCES:

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FOR THE APPLICANT

Catherine Sloan
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FOR THE RESPONDENTS