

Date: 20090417

Docket: T-1910-08

Citation: 2009 FC 385

Toronto, Ontario, April 17, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

**GARNET WOODHOUSE, JOHN SANDERSON,
NORMAN WOODHOUSE and TED WOODHOUSE,
and THE PINAYMOOTANG FIRST NATION**

Applicants

and

**THE MINISTER OF INDIAN AFFAIRS
and NORTHERN DEVELOPMENT and the
ATTORNEY GENERAL OF CANADA**

Respondents

REASONS FOR ORDER AND ORDER

[1] This is a motion by the applicants for:

1. An interim injunction prohibiting the Minister of Indian Affairs and Northern Development (hereinafter the Minister) from making a declaration pursuant to paragraph 78(2)(b) of the *Indian Act*, R.S. 1985, c. I-5 (the Act) or a report to the Governor in Council pursuant to section 14 of the *Indian Band Election Regulations*, C.R.C. c. 952 (the Regulations). It is requested that the injunction be granted pending final determination of the applicants' application for judicial review;

2. An order that this motion be dealt with on an expedited basis pursuant to Rule 385(1) of the *Federal Court Rules, 1998*;

3. Costs on a solicitor and client scale; and

4. Such further and other relief as counsel may advise and this Honourable Court deems just.

[2] The applicant, Garnet Woodhouse was elected as chief of Pinaymootang First Nation (PFN) and John Sanderson, Norman Woodhouse and Ted Woodhouse were elected as band councillors at an election held on October 17, 2007.

[3] The applicants noted above are currently acting in their positions.

[4] In December 2007, the applicants were notified of an appeal of their election.

[5] An investigation was conducted and the investigator provided a copy of his report to the Minister of Indian Affairs and Northern Development. A summarized version of the report was provided to the applicants for their response.

[6] The applicants stated that they needed further information in order to file their response.

[7] The applicants submitted that the respondents have refused to supply the requested information.

[8] As a result, the applicants filed a notice of application seeking judicial review by way of prohibition against the respondents.

[9] As noted, the applicants are seeking an interim injunction prohibiting the Minister from taking any steps under section 78 of the Act or section 14 of the Regulations pending determination of the prohibition application.

[10] The applicants stated the issues as follows:

1. Does this Honourable Court have the jurisdiction to grant an interlocutory injunction, pending the hearing of the application for judicial review, to prevent the Minister of the Department of Indian Affairs and Northern Development from declaring an office of Chief and/or Council of the PFN to be vacant?

2. If so, should an interlocutory injunction be granted in this case?

[11] The respondents raise as a preliminary point that the motion for an injunction is premature as the process is still ongoing. No decision has been made on the appeal.

[12] The respondents further submit that in any event, the statutory process should be allowed to run its course. The respondents state in paragraphs 30 and 31 of their memorandum of fact and law:

30. However, even if it is determined that Minister was acting as a “federal board, commission or tribunal”, the statutory process should be allowed to run its course. This principle was enunciated in the Supreme Court decision in *Canadian Pacific Ltd. v. Matsqui Indian Band*, and summarized in *Turnbull et al. v. Canadian Institute of Actuaries et al.*, [1995] M.J. No. 424 (C.A.) where the court stated

that, save for exceptional circumstances, the administrative process should be allowed to run its course. This is to avoid bifurcated proceedings with the attendant further delay, proceedings that may be redundant or unnecessary, and to give the tribunal an opportunity to correct its own error.

Canadian Pacific Ltd. v. Matsqui Indian Band, [1995] 1 S.C.R. 3

Turnbull et al. v. Canadian Institute of Actuaries et al., [1995] M.J. No. 424 C.A.

See also: *Sczycznecka v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 934

31. The court in *Ontario College of Art et al. v. Human Rights Commission* (Ontario) also took this approach. It held that an application for judicial review involving allegations of bias and delay was premature since the administrative proceedings had not been concluded.

[13] The applicants submitted for my consideration the decisions in *Gull Bay First Nation v. Canada (Attorney General)*, [2005] F.C.J. No. 1332 and *Ross v. Canada (Indian and Northern Affairs)*, [2007] F.C.J. No. 675. A review of these cases discloses that an actual decision had been made in these cases. In the present case, the process is still ongoing as the Minister has not made a decision.

[14] I have reviewed the decisions cited by the respondents and I am of the view that the motion for an interim injunction is premature as the statutory process is still ongoing. To grant an interim injunction at this stage of the process would result in bifurcating the proceedings. The ruling also gives the tribunal an opportunity to correct any errors it may have made.

[15] However, having concluded that the motion for an interim injunction is premature, I would direct the parties to the words of Mr. Justice Lemieux in *Gull Bay First Nation* above, at paragraphs 25, 26 and 27:

25. This Court has already held in *Morin v. Canada (Minsiter of Indian and Northern Affairs)*, [1998] F.C.J. No. 82 that the non-disclosure of an investigator's report leading to the setting aside of a Band election violates the principles of fairness.

26. For other examples of the requirements of fairness in terms of ineligibility findings to stand to the office of a councillor to a Band election see *Sound v. Swan River First Nation*, [2002] F.C.J. No. 790, 2002 FCT 602; *Duncan v. Behdzi Ahda First Nation Band (Council)*, [2002] F.C.J. No. 764, 2002 FCT 581; *Samson Indian Band v. Bruno*, 2005 FC 1140 and *Frank v. Bottle*, [1993] F.C.J. No. 670.

27. In the human rights context it has been held fairness requires an investigator's report be disclosed before the Canadian Human Rights Commission decides a complain. See *Radulesco v. Canada (Human Rights Commission)*, [1984] 2 S.C.R. 407 and an investigation of a complaint must be thorough see, *Slattery v. Canada (Human Rights Commission)*, [1994] 2 F.C. 574.

[16] The motion for an interim injunction is dismissed with costs to the respondents.

[17] Because of my finding, I need not deal with the other issues.

[18] At the hearing of this motion, the parties agreed that the applicants would have seven days from the receipt of this order to file their responses to the investigation report and the recommendation to the Minister would not be made until after this period of time.

ORDER

IT IS ORDERED that:

1. The applicants' motion for an interim injunction is dismissed with costs to the respondents.
2. The applicants shall have seven days from the date of receipt of this order to file their responses to the investigation report and the recommendation to the Minister would not be made until after this period of time.
3. If paragraph 2 of the order does not state the agreement of the parties, I retain jurisdiction to amend the order.

"John A. O'Keefe"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1910-08

STYLE OF CAUSE: GARNET WOODHOUSE, JOHN SANDERSON,
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MINISTER OF INDIAN AFFAIRS and NORTHERN
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CANADA

**MOTION IN WRITING HEARD BY TELECONFERENCE CALL AT OTTAWA,
ONTARIO PURSUANT TO RULE 369**

DATE OF HEARING: March 4, 2009

**REASONS FOR ORDER
AND ORDER BY:** O'KEEFE J.

DATED: APRIL 17, 2009

WRITTEN REPRESENTATIONS BY:

John B. Harvie FOR THE APPLICANTS

Yvette Creft FOR THE RESPONDENTS

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