

Federal Court



Cour fédérale

Date: 20091015

Docket: T-1531-09

Citation: 2009 FC 1039

Ottawa, Ontario, October 15, 2009

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**COUNCILLOR YVONNE BASIL,
FORMER COUNCILLOR MARY JUNE COUTLEE,
FORMER COUNCILLOR STUART JACKSON,
FORMER COUNCILLOR SHANNON KILROY,
FORMER COUNCILLOR LORNE SAHARA,
COUNCILLOR AARON SAM and
FORMER COUNCILLOR CLYDE SAM**

Applicants

and

**THE COUNCIL OF THE LOWER
NICOLA INDIAN BAND**

Respondent

REASONS FOR ORDER AND ORDER

[1] This motion came before me in Vancouver on Tuesday, October 6, 2009. The Applicants are seeking an interim injunction to prevent the holding of a by-election to fill Band Council vacancies that arose from the deemed resignations of several councillors.

a. Background

[2] The background to this dispute can be found in the decision of my colleague Justice Danièle Tremblay-Lamer in *Basil v. Lower Nicola Indian Band*, 2009 FC 741, [2009] F.C.J. No. 902 (QL), and need not be repeated here. It is enough to point out that the conduct of several members of the previous Band Council including three who wish to run for re-election has been found to constitute a breach of fiduciary duty by a specially constituted council of Elders. Those findings were upheld as reasonable by Justice Tremblay-Lamer in the decision cited above.

II. Issue

[3] What is at issue in the underlying application for judicial review is whether a subsequent Band Council Resolution dated August 13, 2009 signed by the present Chief and two Band Councillors is *ultra vires* their authority insofar as it purports to declare the ineligibility of several past members of the Band Council from offering in the pending by-election. That decision was subsequently endorsed by the Electoral Officer and, as things presently stand, those persons will not be candidates for election on October 24, 2009.

III. Analysis

[4] I accept that the Applicants have met the threshold for raising a serious issue. I am not satisfied, however, that they have established irreparable harm or that the balance of convenience favours their interests.

[5] The only evidence before me of irreparable harm and balance of convenience is that some of the Applicants will lose the opportunity to stand for election and the others will lose the right to vote for them. This evidence must be weighed in the context of a full Band election to be held in 2010 and a right of appeal from the impugned decision to a council of Elders. In *Sweetgrass First Nation v. Gollan*, 2006 FC 778, 294 F.T.R. 119, I made the point that the Court should be cautious about treading unduly into the political affairs of a First Nations band. These Applicants have not exhausted their internal rights to challenge this decision through the council of Elders. While there may be some inconvenience associated with a process of appeal that takes place after the election, it is, nevertheless, a process that should not be usurped collaterally by seeking an interim injunction through the Court. If an appeal is successful the by-election can be re-held. It seems to me that the circumstances of this case are far less compelling than those addressed by Justice Edmond Blanchard in *Gopher v. Saulteaux First Nation*, 2005 FC 481, 138 A.C.W.S. (3d) 989, and where an interim injunction was similarly refused.

IV. Conclusion

[6] In the result, this motion is dismissed with costs payable in the cause.

JUDGMENT

THIS COURT ORDERS that this motion is dismissed with costs payable in the cause.

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1531-09

STYLE OF CAUSE: Basil, et al.
v.
The Council of the Lower Nicola Indian Band

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: October 6, 2009

**REASONS FOR ORDER
AND ORDER BY:** Justice Barnes

DATED: October 15, 2009

APPEARANCES:

John M. Drayton
250-374-3737

FOR THE APPLICANTS

Joseph C. McArthur and
Jeffrey Langlois
604-631-3300

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gibraltar Law Group
Barristers and Solicitors
Kamloops, BC

FOR THE APPLICANTS

Blake, Cassels & Graydon LLP
Barristers and Solicitors
Vancouver, BC

FOR THE RESPONDENT