

Federal Court of Appeal



Cour d'appel fédérale

Date: 20221012

Docket: A-285-18

Citation: 2022 FCA 171

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.
RIVOALEN J.A.
ROUSSEL J.A.**

BETWEEN:

**RENÉ SIMON, ÉRIC CANAPÉ, GÉRALD
HERVIEUX, DIANE RIVERIN, JEAN-NOËL
RIVERIN, RAYMOND ROUSSELOT,
MARIELLE VACHON and THE CONSEIL
DES INNUS DE PESSAMIT**

Appellants

and

JÉROME BACON ST-ONGE

Respondent

Heard at Ottawa, Ontario, on October 12, 2022.

Judgment delivered from the bench at Ottawa, Ontario, on October 12, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Ottawa, Ontario, on October 12, 2022.)

GAUTHIER J.A.

[1] The appellants were members of the Conseil des Innus de Pessamit (the Council) following an election held on August 17, 2016, and cancelled by the Federal Court on December 21, 2017. The Court also kept the Council in place until the next election, which was

to be held on August 17, 2018, unless the 1994 Electoral Code, which it had kept in force, were duly amended by the Nation des Innus de Pessamit.

[2] On August 10, 2018, the appellants (except the Council) were found in contempt of court because they refused to hold an election on August 17, 2018, and had not taken any steps to hold said election in accordance with the Electoral Code in force. On August 13, 2018, the Council passed a resolution scheduling the election for September 17, 2018. On the same day, their counsel requested an adjournment of the hearing scheduled to hear submissions on appropriate sentences. The next day, the respondent also wrote to the Court to challenge the validity of the resolution, which was adopted without considering the provisions of the 1994 Electoral Code. According to the respondent, the parties and the Court had to discuss the vacuum left in the governance of the Innu of Pessamit since the Court had not intervened.

[3] Following a conference call with the parties, held on August 14, 2018, the Federal Court issued an order providing that:

- i. The Pessamit band council elections be held on September 17, 2018;
- ii. A transition council made up of the current members of the Pessamit band council be put in place until the September 17, 2018 elections;
- iii. The transition council's powers be limited to the day-to-day management of the affairs of the Innu of Pessamit band;
- iv. Transition council members have no access to the funds or finances of the Innu of Pessamit council or band for the purposes of the legal proceedings related to this case, which is currently in progress before the Federal Court of Appeal and the Supreme Court of Canada;
- v. Transition council members receive no compensation during the transition period, unless otherwise granted by the new council; and

- vi. In order to be valid and enforceable, all transition council decisions must be approved by the Innu of Pessamit council elected on September 17, 2018.

[4] Following a direction from this Court dated October 5, 2022, the parties confirmed that:

- i. Elections for a new council were indeed held on September 17, 2018;
- ii. The new council resolved to compensate the members of the former council for the period between August 15, 2018, and September 17, 2018;
- iii. The new council also resolved to pay for the costs incurred and the steps taken by Mr. Gauthier in the case in progress before the Federal Court of Appeal and the Supreme Court of Canada; and
- iv. All transition council decisions were duly approved or ratified by the Conseil des Innus de Pessamit elected on September 17, 2018.

[5] Considering the foregoing, the appellants should have seriously questioned whether this issue had become moot. They did so only after receiving the direction from this Court. It is clear that, in this matter, a decision as to whether the August 15, 2018 order should be set aside cannot have any practical or concrete effect on the parties' rights in this case (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342). The parties agree on this point. The appellants were prepared to discontinue on a without-costs basis, but the respondent insisted on costs on a solicitor-client basis.

[6] The validity of the former council's resolution dated August 13, 2018, is not at issue in any legal dispute, and the fact that the Federal Court endorsed the date of September 17, 2018,

ensures that the September 17 election cannot be challenged on the basis that this resolution is not valid.

[7] Whether the Federal Court invalidated or quashed the August 13, 2018 resolution is also moot because the election took place on the date stated in the resolution. The last issue raised—whether the Federal Court failed in its duty to hear the parties during the August 14, 2018 conference call—is not one of sufficient public interest to warrant a decision in this appeal.

[8] With respect to costs, given the circumstances and the fact that both parties knew or ought to have known that this case was moot even before they filed their respective memoranda on July 22, 2019, and September 3, 2019, this Court deems it appropriate to award costs in the amount of \$1,000, all inclusive. The appeal will therefore be dismissed.

“Johanne Gauthier”

J.A.

Certified true translation
Margarita Gorbounova, Reviser

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE LAFRENIÈRE
DATED AUGUST 15, 2018, FILE NO. T-2135-16**

DOCKET: A-285-18

STYLE OF CAUSE: RENÉ SIMON, ÉRIC CANAPÉ,
GÉRALD HERVIEUX, DIANE
RIVERIN, JEAN-NOËL RIVERIN,
RAYMOND ROUSSELOT,
MARIELLE VACHON and THE
CONSEIL DES INNUS DE
PESSAMIT v. JÉRÔME BACON
ST-ONGE

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 12, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** GAUTHIER J.A.
RIVOALEN J.A.
ROUSSEL J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Kenneth Gauthier FOR THE APPELLANTS

Jean-Yves Groleau FOR THE APPELLANT
DIANE RIVERIN

François Boulianne FOR THE RESPONDENT

SOLICITORS OF RECORD:

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DIANE RIVERIN

FOR THE RESPONDENT