

Federal Court



Cour fédérale

Date: 20151214

Docket: T-2521-14

Citation: 2015 FC 1388

Ottawa, Ontario, December 14, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ROSE JONES, DORIS EDWARDS, AND
BOBBY HALF BY HIS LITIGATION
GUARDIAN ROSE JONES**

Applicants

and

**SADDLE LAKE CREE NATION AND
SADDLE LAKE CHIEF AND COUNCIL OF
THE SADDLE LAKE CREE NATION**

Respondents

JUDGMENT AND REASONS

[1] In June 2014, the Chief and Council of the Saddle Lake Cree Nation (SLCN) decided to reassign a house, then occupied by the applicants – sisters Rose Jones and Doris Edwards, and Rose’s disabled son, Bobby Half. Until his death in April 2014, Rose and Doris’s brother, Jonas Half, had also lived in the house. Before he died, he wrote a will in which he expressed his wish

that Rose, Doris and Bobby remain in the home, where they had been living for 23, 15 and 51 years respectively.

[2] At a meeting attended by four of Rose and Doris's siblings (but not Rose and Doris), the Chief and Council of the SLCN reassigned the house to their brother Raymond and sister Wendy. In a letter to the applicants in which the SLCN informed them of the assignment, the Chief and Council stated that the house had been reassigned pursuant to a motion made on June 3, 2014 and that Raymond and Wendy "will have full access to the house immediately and the door will be open for all the family members".

[3] While the letter seemed to indicate that all family members would have access to the house, it was obviously not interpreted that way by Raymond and Wendy, or by the Alberta Court of Queen's Bench, which ordered the applicants to vacate the home in September 2014. (The enforcement of that order was later stayed.)

[4] The applicants now seek to set aside the SLCN's decision regarding the house. SLCN's decision relates to a public matter and is reviewable in this Court.

[5] When the matter came before Justice Shore earlier this year, he encouraged the parties to attempt to mediate their differences. Mediation did not succeed. Therefore, the matter now comes before me for a determination of the applicants' application for judicial review.

[6] The applicants' principal claim is that the SLCN arrived at its decision without notifying them that an issue regarding the occupancy of the home was before it. Therefore, the applicants did not have an opportunity to appear before the Chief and Council or to make any submissions on their own behalf. In fact, the applicants have not received any explanation for the decision; nor have they been provided minutes of the SLCN's meeting or a copy of the underlying band resolution.

[7] SLCN has not filed any evidence on this application relating to how the matter came before it or why the decision was made. However, SLCN Councillor Shannon Houle did appear before me on behalf of the SLCN Chief and Council. She read to me a letter dated September 16, 2015, signed by the Chief and Council, responding to a human rights complaint filed by Rose. The letter explains that the SLCN Chief and Council reassigned the house to Raymond and Wendy because, at the time, Raymond was in need of accommodation due to a terminal illness, and he relied on Wendy for care. It also confirms that SLCN's intention was to make the house available to all family members. In addition, Ms Houle explained to the Court that the SLCN is doing its best to bear the onerous responsibility for administering an extremely scarce resource – housing.

[8] In the circumstances, SLCN had a duty to inform the applicants that the issue of occupancy was coming before the Chief and Council, and to provide them with sufficient information to enable them to prepare a response. Further, they were entitled to an opportunity to make representations before the Chief and Council. These are the basic requirements of the duty of fairness: *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165 at para 80. In

addition, given the importance of the issue to the applicants, they were entitled to receive reasons.

[9] Fairness is not a technical legal concept. Fairness helps ensure that public decision-makers have before them the information that is required to arrive at a just conclusion. Further, it assures those who are affected by a decision that their point of view was heard. By contrast, they will naturally be less inclined to accept the result if denied an opportunity to participate in the process leading up to it. In this way, fairness fosters respect for the rule of law.

[10] For these reasons, I find that the SLCN's decision must be set aside. I have no jurisdiction to grant the other remedies the applicants are seeking – an order allowing them to move back into the house, monetary compensation for their alternative housing expenses, and costs in the amount of \$25,000.00.

[11] I can only order the SLCN Chief and Council to reconsider its decision and, in doing so, to honour the duty of fairness. However, I will direct the Chief and Council to convene a meeting to address this issue on an expedited basis, and grant the applicants a portion of their costs. Ms Houle informed me that the SLCN's financial resources are limited but, again, I have no actual evidence before me on the point. I would grant the applicants costs in the amount of \$1,000.00.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed with costs in the amount of \$1,000.00.
2. The matter is returned to the Chief and Council of the Saddle Lake Cree Nation for reconsideration on an expedited basis, in accordance with these reasons.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2521-14

STYLE OF CAUSE: ROSE JONES, DORIS EDWARDS, AND BOBBY HALF
BY HIS LITIGATION GUARDIAN ROSE JONES v
SADDLE LAKE CREE NATION AND SADDLE LAKE
CHIEF AND COUNCIL OF THE SADDLE LAKE CREE
NATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: DECEMBER 7, 2015

JUDGMENT AND REASONS: O'REILLY J.

DATED: DECEMBER 14, 2015

APPEARANCES:

James Dixon FOR THE APPLICANTS

Shannon Houle FOR THE RESPONDENTS – SELF-REPRESENTED

SOLICITORS OF RECORD:

Dixon & Associates FOR THE APPLICANTS
Barristers & Solicitors
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