

Federal Court



Cour fédérale

Date: 20160921

Docket: T-1401-16

Citation: 2016 FC 1081

Victoria, British Columbia, September 21, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MORGAN PERRY

Applicant

and

**COLD LAKE FIRST NATIONS,
CHIEF AND COUNCIL, AND ALLAN ADAM,
ELECTORAL OFFICER FOR COLD LAKE
FIRST NATIONS**

Respondents

ORDER AND REASONS

UPON THE MOTION dated September 16, 2016 brought on behalf of the Respondent Cold Lake First Nations, Chief and Council [CLFN Chief and Council] for:

- (a) an order adding Mr. Allan Adam, Electoral Officer for Cold Lake First Nations, as a Respondent; and

- (b) an interim and/or interlocutory injunction preventing Mr. Adam from holding a new election for the CLFN Council pending final determination by this Court of the application for judicial review;

AND UPON reading the materials filed and hearing counsel for the CLFN Chief and Council, counsel for Mr. Perry, and Mr. Adam on his own behalf, by teleconference on September 21, 2016;

AND CONSIDERING that Mr. Perry takes no position on the motion brought on behalf of the CLFN Chief and Council, and endorses the legal analysis advanced on behalf of the CLFN Chief and Council in support of the relief sought;

AND CONSIDERING the following:

[1] On June 22, 2016, an election was held for Chief of the CLFN. On June 29, 2016, an election was held for Council of the CLFN. Mr. Perry contested his removal from the list of candidates for election to the CLFN Council on the ground that he had been improperly excluded based on his residency.

[2] On August 11, 2016, the CLFN Appeal Committee, constituted under the CLFN Election Law, released a report of its decisions regarding several complaints it had received. The Appeal Committee upheld Mr. Perry's complaint. Despite finding no irregularity in the conduct of the election, the Appeal Committee concluded that the CLFN Election Law was deficient insofar as it excludes certain candidates and voters based on their residency, descendency, and age.

[3] The Appeal Committee directed the Electoral Officer, Mr. Adam, to hold a new accelerated election for Council, adding Mr. Perry as a candidate. Mr. Adam subsequently informed the CLFN Chief and Council that he intended to carry out the Appeal Committee's direction and hold a new election for Council on August 25, 2016.

[4] On August 18, 2016, the CLFN Chief and Council adopted a Band Council Resolution rejecting the Appeal Committee's direction that a new election be held. Mr. Adam was advised by the CLFN Chief and Council that his duties as Electoral Officer had been fulfilled and his services were no longer required.

[5] On August 22, 2016, Mr. Perry filed an application for judicial review of the decision of CLFN Chief and Council to issue the Band Council Resolution rejecting the Appeal Committee's direction that a new election for Council be held.

A. *Whether Mr. Adam Should be added as a Respondent*

[6] Rule 104(1)(b) of the *Federal Court Rules*, SOR/98-106 provides that the Court may, at any time, order that a person be added as a party who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined. The Court's discretion is guided by one test alone: necessity (*Air Canada v Thibodeau*, 2012 FCA 14 at para 11).

[7] I am satisfied that Mr. Adam's participation in Mr. Perry's application for judicial review is necessary to ensure the effective and complete resolution of the dispute. The central question

raised by the application for judicial review is whether the Appeal Committee acted within its jurisdiction when it directed Mr. Adam to hold a new election for Council. Mr. Adam relies on the direction of the Appeals Committee as his authority to call a new election. It is, therefore, imperative that Mr. Adam be bound by the result of the application for judicial review.

B. *Whether the Motion for Injunctive Relief should be Granted*

[8] The granting of interlocutory injunctive relief is governed by the tri-partite test in *RJR – MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334 [*RJR – MacDonald*].

The test requires the moving party to demonstrate that there is a serious issue to be tried, that irreparable harm not compensable by damages will result if the injunction is not granted, and that the balance of convenience, taking into account the public interest, favours the *status quo*.

[9] The parties agree that there is a serious issue to be tried. The threshold is low: the issue must be neither frivolous nor vexatious. Whether the Appeal Committee has authority to direct the Electoral Officer to conduct a new election, or whether its role is only to advise the CLFN Chief and Council of its decisions on complaints, raises a serious issue (*Grandbois v Cold Lake First Nation*, 2013 FC 1039; *Jacko v Cold Lake First Nation*, 2014 FC 1108).

[10] The parties also agree that irreparable harm not compensable by damages will occur unless the injunction is granted. A new election for Council would have the effect of creating uncertainty within the CLFN regarding the legitimacy and authority of the current Council. As Justice Blanchard observed in *Buffalo v Bruno*, 2006 FC 1220 at paragraph 15, this would “serve to further undermine the election process, the very corner stone of democratic institutions. In this

sense, the harm could not be remedied and is consequently irreparable” (see also *Prince v Sucker Creek First Nation No 150A*, 2008 FC 479 at para 32).

[11] Finally, I am satisfied that the balance of convenience favours preserving the *status quo*. The interests of the CLFN community are best served by granting the injunction sought until Mr. Perry’s application for judicial review is decided on its merits (*Buffalo v Rabbit*, 2011 FC 420 at para 37). In addition, the Applicant, Mr. Perry, takes no position on the motion for injunctive relief, and endorses the legal analysis advanced by the CLFN Chief and Council.

ORDER

THIS COURT ORDERS that:

1. Allan Adam, Electoral Officer for Cold Lake First Nations, is added as a Respondent to the application for judicial review, and the style of cause is amended accordingly. Mr. Adam may, within 10 days of the date of this Order, file a notice of appearance in accordance with Rule 305 of the *Federal Courts Rules*.
2. Allan Adam, Electoral Officer for Cold Lake First Nations, is enjoined from organizing, preparing for, holding, or taking any steps to hold any election for the Cold Lake First Nations pending final determination by this Court of the application for judicial review.
3. No costs are awarded to any party.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1401-16

STYLE OF CAUSE: MORGAN PERRY v COLD LAKE FIRST NATIONS,
CHIEF AND COUNCIL, AND ALLAN ADAM,
ELECTORAL OFFICER FOR COLD LAKE FIRST
NATIONS

PLACE OF HEARING: TELECONFERENCE

DATE OF HEARING: SEPTEMBER 21, 2016

ORDER AND REASONS: FOTHERGILL J.

DATED: SEPTEMBER 21, 2016

APPEARANCES:

Priscilla Kennedy	FOR THE APPLICANT
Maxime Faille	FOR THE RESPONDENTS
Graham Ragan	COLD LAKE FIRST NATIONS, CHIEF AND
Paul Seaman	COUNCIL
Self Represented	FOR THE RESPONDENT
	ALLAN ADAM, ELECTORAL OFFICER FOR COLD LAKE FIRST NATIONS

SOLICITORS OF RECORD:

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Barristers and Solicitors	COLD LAKE FIRST NATIONS, CHIEF AND
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