

Federal Court



Cour fédérale

Date: 20171031

Docket: T-1608-17

Citation: 2017 FC 974

Vancouver, British Columbia, October 31, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

BRENDA JOLY, WILLIAM JOHN AND TREVOR JOHN

Applicants

and

**GORDON GADWA, BENJAMIN BADGER,
JASON MOUNTAIN AND VERNON WATCHMAKER**

Respondents

ORDER AND REASONS

[1] This is a motion for an interlocutory injunction pending judgment in the within application for declaratory relief preserving the status quo as of October 4, 2017, when the Federal Court of Appeal issued its Judgment in *Joly v Gadwa*, 2017 FCA 203, and for other relief. The injunction sought will affect each of the individual Respondents.

[2] The Applicants make this motion “either *ex parte* and in writing under Rules 374 and 369 of the *Federal Courts Rules* or *ex parte* under Rule 374, at a time and place to be fixed by the

Case Management Judge, or *inter partes* under Rule 373, at a time and on a date to be fixed by the Case Management Judge.”

[3] The Applicants filed this motion on October 30, 2017 and were advised by the Court that the Case Management Judge was unavailable to consider the motion this week. The Applicants agreed that it be considered by the Vancouver duty judge.

[4] While this matter was before the Court, a further affidavit was filed by the Applicants attaching thereto several purported Band Council Resolutions apparently passed by the four Respondents. These actions convince me that this is a matter of urgency as defined in Rule 374(1) justifying that this motion be dealt with on an interim basis *ex parte*. In light of the facts before the Court I am satisfied that there is at least three serious issues to be tried in the underlying application, namely whether the three Respondent Councillors (Benjamin Badger, Jason Mountain and Vernon Watchmaker) can withdraw their support from Council’s unanimous July 7, 2016, decision removing the Respondent Gordon Gadwa from office as a Councillor, as mandated by Section X (9) of the *Kehewin Cree Nation Custom Election Act*; whether Gordon Gadwa may now legally act as a Councillor; and whether any decisions of Council made with his involvement are valid and binding on the Kehewin Cree Nation.

[5] I am also satisfied that irreparable harm will result if the interim *ex parte* injunction is not granted, namely the continued passing of Band Resolutions which may not be legal. The balance of convenience rests with the Applicants.

[6] Given the nature of the Order sought, I am also prepared to issue an Order that this Order and the motion materials may be served electronically on the Responding parties who were served with the Notice of Application on October 23, 2017, but have not yet filed a Notice of Appearance. In particular they may be served by email addressed to them at the email addresses used by the Kehewin Cree Nation Council, namely ben@kehewin.ca; powwowgig@yahoo.com; willie.john96@yahoo.com; Brenda@kehewin.ca; jason.mountain65@gmail.com; and vernonw@ualberta.ca.

[7] Lastly, it is ordered that a copy of this Order is to be posted in a prominent location in the Band Council Offices.

ORDER

THIS COURT ORDERS that:

1. The Respondent Gordon Gadwa is hereby enjoined and prohibited from:
 - (a) holding himself out to the public as if he were a Councillor of the Kehewin Cree Nation;
 - (b) acting as if he were a Councillor of the Kehewin Cree Nation; and
 - (c) interfering with the administration of the financial and other affairs of the Kehewin Cree Nation;

2. The Respondent Vernon Watchmaker is hereby enjoined and prohibited from:
 - (a) holding himself out to the public as if he were the Interim or Acting Chief of the Kehewin Cree Nation; and
 - (b) acting as if he were the Interim or Acting Chief of the Kehewin Cree Nation;

3. “Public” in paragraphs 1 and 2 includes all members of the Kehewin Cree Nation; all employees and staff of the Kehewin Cree Nation; indigenous, federal, provincial, territorial and municipal governments, their departments, employees and staff; individuals and corporations doing business with the Kehewin Cree Nation;, and the media; and

4. The Respondents Benjamin Badger, Jason Mountain, and Vernon Watchmaker are enjoined and prohibited from:
 - (a) calling Council Meetings;
 - (b) attending any Council Meeting that is not the regular Tuesday 9:00 a.m. Council Meeting in the Administration Building on Kehewin Cree Nation Reserve, unless:
 - (i) a Special Council Meeting has been called by or on the direction of Brenda Joly, and at least 48 hours' notice has been given to all of Benjamin Badger, Brenda Joly, Trevor John, William John, Jason Mountain and Vernon Watchmaker by e-mails sent to ben@kehewin.ca; powwowgig@yahoo.com; willie.john96@yahoo.com; Brenda@kehewin.ca; jason.mountain65@gmail.com; and vernonw@ualberta.ca; or
 - (ii) an emergency Council Meeting has been called by or on the direction of either:
 - A. two (2) of either Benjamin Badger, Jason Mountain, and Vernon Watchmaker and one (1) of Brenda Joly, Trevor John, and William John, or
 - B. two of Brenda Joly, Trevor John, and William John and one (1) of Benjamin Badger, Jason Mountain, and Vernon Watchmaker,

and at least 24 hours' notice has been given by emails sent to ben@kehewin.ca; powwowgig@yahoo.com; willie.john96@yahoo.com; Brenda@kehewin.ca; jason.mountain65@gmail.com; and vernonw@ualberta.ca;

5. This Order and the Applicants' Notice of Motion, the Affidavits of Brenda Joly and Lavonna M. Trenchie in support and the Memorandum of Fact and Law may be served on the Respondent Gordon Gadwa by sending it by e-mail addressed to Gordon/gadwa@live.ca; on the Respondent Benjamin Badger by sending it by email addressed to ben@kehewin.ca; on the Respondent Jason Mountain by sending it by email addressed to jason.mountain65@gmail.com; and on the Respondent Vernon Watchmaker by sending it by email addressed to vernonw@ualberta.ca;
6. A copy of this Order is to be posted in a prominent location in the Band Council offices;
7. This Order shall expire on November 14, 2017; and
8. Unless an earlier date is set by the Case Management Judge and notice thereof provided to all parties by email or telephone, this Court shall hear the Applicants' *inter partes* motion under Rule 373 for the re-issuance of this Order pending final judgment in this application, at 10:00 a.m. EST on November 14, 2017, via teleconference.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1608-17

STYLE OF CAUSE: BRENDA JOLY, WILLIAM JOHN
ANDTREVOR JOHN v GORDON GADWA,
BENJAMIN BADGER, JASON MOUNTAIN
AND VERNON WATCHMAKER

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA,
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: ZINN, J.

DATED: OCTOBER 31, 2017

WRITTEN REPRESENTATIONS BY:

David C. Rolf, Q.C.

FOR THE APPLICANTS

SOLICITORS OF RECORD:

MLT Aikins LLP
Edmonton, Alberta

FOR THE APPLICANTS