

Federal Court



Cour fédérale

Date: 20180829

Docket: T-31-18

Citation: 2018 FC 868

Ottawa, Ontario, August 29, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

DARLENE LONGNECK

Applicant

and

**MUSKEG LAKE CREE NATION AS
REPRESENTED BY CHIEF AND COUNCIL**

Respondent

JUDGMENT AND REASONS

[1] The Applicant in this proceeding, Darlene Longneck, is a member of the Muskeg Lake Cree Nation [Muskeg]. Muskeg is a Band under the *Indian Act*, RSC, 1985, c I-5, and it enjoys the use and benefit of two Saskatchewan reserves. The Muskeg home reserve is situated 134 kilometres northwest of Saskatoon. Muskeg's urban reserve is located in an industrial sector within the City of Saskatoon.

[2] This application challenges the validity of a Band decision purporting to amend the Muskeg Lake Cree Nation Land Code [Land Code] following a community ratification vote conducted between June 16, 2017 and July 7, 2017 on the home reserve and in Prince Albert, Saskatoon, and Edmonton.

[3] Ms. Longneck contends that the Land Code amendments were not validly enacted because a necessary quorum of voters did not participate. The Band, on the other hand, maintains that no minimum quorum was required to approve the Land Code amendments. According to this view, all that was required was a favourable vote by a majority of eligible, registered voters – a standard that, it says, was met.

[4] The details of the Band ratification vote are not in dispute but only the issue of what was necessary for a lawful approval of the proposed amendments. If there was a minimum quorum requirement in place, the vote did not achieve it. If there was no quorum requirement but only approval by a simple majority of eligible voters, the ratification vote was legally effective.

[5] The record discloses that, when the ratification vote was held, 1539 Band members were eligible to vote. According to Article 2.1 of the Land Code an “eligible voter” was a Band member who had attained the age of 18. Article 14 of the Land Code set the terms for the approval of amendments and added a requirement of voter registration. This is clear from the language of Article 14.5:

A matter shall be considered approved at a ratification vote if a majority of the Eligible, Registered Voters cast a vote in favour of the matter. [Emphasis added.]

[6] Voter registration could be obtained by seeking to be added to the list of Registered Voters by returning a valid Voter Registration Document on or before the close of polling: see Articles 3.4, 3.5 and 3.6 of the Muskeg Lake Cree Nation Community Ratification Process and Article 7.3(b) of the Framework Agreement on First Nations Land Management [Framework Agreement].

[7] The list of Registered Voters for the ratification vote that is the subject of this application contained the names of 354 eligible voters. Of the 346 votes cast, 1 ballot was cancelled, 5 were rejected, 282 were in favour, and 66 were opposed. A clear majority of those who voted therefore approved the Land Code amendments.

[8] Ms. Longneck argues that the total of votes cast failed to meet the minimum percentage required for approval as stipulated in the *First Nations Land Management Act*, SC 1999, c 24 [FNLMA], and Article 7.4 of the Framework Agreement. She is correct that, for their own purposes, those references do impose a quorum requirement of 25% plus one of all eligible voters voting in favour of a matter requiring community approval. Accordingly, for the approval of an initial Land Code under the FNLMA, the following conditions are imposed:

Approval by members

12 (1) A proposed land code and an individual agreement that have been submitted for community approval are approved if

(a) a majority of eligible voters participated in the vote and a majority of those voters voted to approve

Approbation

12 (1) Le projet de code foncier et l'accord spécifique sont tenus pour approuvés lorsqu'ils reçoivent l'appui :

a) soit de la majorité des voix exprimées, dans les cas où la majorité des électeurs participent effectivement au scrutin;

them;

(b) all those eligible voters who signified, in a manner determined by the First Nation, their intention to vote have been registered and a majority of the registered voters voted to approve them; or

(c) they are approved by the community in any other manner agreed on by the First Nation and the Minister.

b) soit de la majorité des électeurs enregistrés, dans les cas où tous les électeurs ayant fait connaître, selon les modalités fixées par la première nation, leur intention de voter ont été enregistrés;

c) soit donné suivant les autres modalités dont conviennent la première nation et le ministre.

Minimum participation

(2) Notwithstanding subsection (1), a proposed land code and an individual agreement are not approved unless more than twenty-five per cent of the eligible voters voted to approve them.

Increased percentage

(3) A council may, by resolution, increase the percentage of votes required under subsection (2).

Approbation minimale

(2) Dans tous les cas, cependant, l'approbation n'est valide que si plus de vingt-cinq pour cent des électeurs se sont exprimés en sa faveur.

Pourcentage supérieur

(3) Le conseil peut cependant, par résolution, fixer pour l'approbation un pourcentage supérieur à celui prévu au paragraphe (2).

[9] If the above quorum provision did apply to the Muskeg Land Code amendment vote, the minimum number of votes cast in favour to effect approval would have been 386. The actual votes cast in favour would then have fallen short by 104 votes.

[10] Ms. Longneck's interpretation of the relevant provisions is somewhat supported by the initial Certification Report prepared by the appointed ratification officer. On the face of that document, it was attested that the minimum number of favourable votes required was 386. According to Ms. Longneck, this statement supports her position that a quorum of 25% plus one was required to amend the Muskeg Land Code.

[11] The fundamental weakness in Ms. Longneck's position is that the Muskeg Land Code clearly stipulates that, upon its taking effect, subsequent amendments may be made where a majority of Eligible Registered Votes cast a vote in favour. The Muskeg Land Code took effect in 2005 after a community vote that did include a minimum quorum requirement. That initial vote was held under the authority of section 12 of the FNLMA and Article 7.4 of the Framework Agreement. However, the quorum requirement for the initial approval of the Muskeg Land Code was not carried forward into the Land Code itself. Instead, a majority vote of eligible registered voters was adopted by the Band. The removal of the quorum requirement for the approval of amendments to the Muskeg Land Code was in conformity with subsection 6(1)(m) of the FNLMA which stipulates only that a land code must contain a procedure for amendment. The FNLMA does not impose a minimum quorum for the community approval of land code amendments.

[12] It was thus open to Muskeg (with the implicit approval of the Minister) to adopt the majority approval standard described in Article 14.5 of the Land Code and not to incorporate the legislative quorum standard that applied to the initial approval of its land code.

[13] Ms. Longneck's reliance on the ratification officer's Form 10 certification reference to the statutory quorum set by subsection 12(2) of the FNLMA is also misplaced. Whether or not the ratification officer may have thought a quorum was required is irrelevant. The only question is whether Muskeg's Land Code mandated a quorum and it did not. I would add that the ratification officer was using Form 10 as a template and completed all of the open sections. That form had been used to certify the results of the 2005 approval of Muskeg's Land Code where a quorum was a requirement. It is therefore not surprising that the ratification officer included a reference to the number of votes that would have constituted a minimum quorum for a vote conducted under the FNLMA.

[14] In this case, however, the vote was conducted under Article 14 of the Land Code where a favourable majority was the applicable approval standard – a standard that was clearly met.

[15] There is also no credible evidence in the record presented to support an assertion that the approval process followed by Muskeg was procedurally unfair or that the results obtained do not reflect the true wishes of the community. A sizeable and clear majority of Band members supported the Land Code amendments and there is no legal basis to set aside that democratic outcome.

[16] For the above reasons, I find that the 2017 amendments to Muskeg's Land Code were lawfully approved by the community vote completed on July 7, 2017. Ms. Longneck's application is accordingly dismissed with costs payable to the Muskeg Lake Cree Nation in the amount of \$2,500.00.

JUDGMENT IN T-31-18

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and
2. Costs in the amount of \$2,500.00 all-inclusive are to be paid by the Applicant to Muskeg Lake Cree Nation.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-31-18

STYLE OF CAUSE: DARLENE LONGNECK v MUSKEG LAKE CREE
NATION AS REPRESENTED BY CHIEF AND
COUNCIL

PLACE OF HEARING: SASKATOON, SASKATCHEWAN

DATE OF HEARING: JUNE 18, 2018

JUDGMENT AND REASONS: BARNES J.

DATED: AUGUST 29, 2018

APPEARANCES:

DARLENE LONGNECK FOR THE APPLICANT
(ON HER OWN BEHALF)

MEAGHAN M. CONROY FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT

MLT AIKINS LLP FOR THE RESPONDENT
Edmonton, AB