

Federal Court



Cour fédérale

Date: 20201007

Docket: T-1013-20

Citation: 2020 FC 956

Vancouver, British Columbia, October 7, 2020

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

**SHELLEY GAUTHIER, ROBIN EWASKOW
AND TROY WOLF**

Applicants

and

**MERLITA DE GUZMAN (IN HER
CAPACITY AS DIRECTOR OF
OPERATIONS/CHIEF OPERATING
OFFICER OF THE BLUEBERRY RIVER
FIRST NATIONS BAND), AND THE BAND
COUNCIL OF THE BLUEBERRY RIVER
FIRST NATIONS BAND, MARVIN YAHEY,
SHERRY DOMINC AND WAYNE YAHEY**

Respondents

ORDER AND REASONS

[1] On September 13, 2020 the Applicants brought a motion pursuant to Rule 369 and Rule 373 of the *Federal Courts Rules*, SOR/98-106 for:

- (a) An interlocutory injunction mandating that Merlita De Guzman, in her capacity as the Chief Operating Officer of the Blueberry River First Nations Band (“the COO”) and the Band Council of the Blueberry River First Nations Band (the “Band Council”) schedule, provide due notice of, and hold a Band Council meeting within ten days of this Court’s order;
- (b) An interim injunction mandating that the COO and the Band Council schedule, provide due notice of, and hold Band Council meetings at least twice per month until a decision on the underlying application for judicial review is made; and
- (c) Costs of the motion;

[2] This motion for an interlocutory injunction and an interim injunction arises from a protracted dispute which places three (3) members of the Band Council, the Applicants in this case, against three (3) other members of the Band Council, the individual respondents, Marvin Yahey, Sherry Dominic and Wayne Yahey. Marvin Yahey is the elected chief of the Band Council.

[3] The underlying Application which forms the basis of the within motion was filed on August 28, 2020. The Applicants seek an Order “mandating” the COO of the Band Council to hold a Band Council meeting within 10 days of this Court’s order and, thereafter, at least twice per month, until “a decision on the underlying application for judicial review is made”. The Applicants rely in part upon the fact that no Council meeting has been held since April 2020, up to and including the present time, and s. 142 of the *Blueberry River Custom Election By-Law, 2017*, which requires that the Band Council meet at least twice per month.

[4] On June 29, 2020, Associate Chief Justice Gagné made, in part, the following Order in Court file T-648-20:

AND UPON considering that the Court was informed that since April 2020, the Band Council has failed to conform to its Custom Code by holding two regular meetings a month;

AND UPON finding that in these circumstances, it is imperative that a regular meeting of the Band Council be held within 30 days of the present order; that all 6 members of the Band Council be ordered to attend, and that the petition and Section 188 Report be properly put on this meeting's agenda:

THIS COURT ORDERS that:

4. Chief Marvin Yahey is ordered to convene a meeting of the Band Council, or to instruct the Chief Operating Officer to convene a meeting, to be held within 30 days of the present order, and to put on the agenda of that meeting the band members' petition and Section 188 Report to be duly dealt with in accordance with the Blueberry River Custom Election By-law;

6. The undersigned remains seized of the matter until the next meeting of the Band Council is held and/or until this case is settled through mediation or otherwise, whichever comes first;

[5] The challenge facing the Court is that the Applicants in this case (T-1013-20) are the exact same parties who are the Respondents in Court file T-648-20. In T-648-20, the three (3) individual Applicants constitute three (3) of the four (4) individually named Respondents in the within Application (T-1013-20). Also, the Chief Operating Officer of the Band, who is referred to in the Order of Associate Chief Justice Gagné in Court file T-648-20 is the other individual Respondent in the within Application. While the Respondents in T-648-20 have withdrawn part of their allegations against the Applicants in that case, they have never abandoned their request that a meeting of the Band Council be held.

[6] It is undisputed that no meeting of the Council has been held since Associate Chief Justice Gagné's Order. It is also undisputed that the Applicants in the within Application (T-1013-20) were the direct beneficiaries of the Order made by Associate Chief Justice Gagné in Court file T-648-20 as it relates to the holding of a Band Council meeting within 30 days of her Order. It is also undisputed that no enforcement proceedings, by way of contempt pursuant Rule 466 of the *Federal Court Rules* or otherwise, have been commenced by the Respondents in Court file T-648-20. I would further note that no part of Associate Chief Justice Gagné's order of June 29, 2020 has been appealed, nor has any party asked for a stay of that Order, in whole or in part, pursuant to Rule 398 of the *Federal Court Rules*. Furthermore, Court files T-648-20 and T-1013-20 have not been consolidated pursuant to Rule 105 of the *Federal Courts Rule*, nor, according to a search of the Registry, has any effort been made to consolidate them. Finally, there has been no consent to judgment filed by the Respondents in T-648-20. It follows from all of the foregoing that Court file T-648-20 has not been discontinued, settled or otherwise concluded.

[7] I point out here that the Respondents in the within motion consent to a part of the Order sought, subject to a number of conditions. Given my disposition of this matter, I need not address the conditions the Respondents seek to impose in exchange for their consent.

[8] I exercise my discretion not to grant either the interlocutory injunction or the interim injunction sought by the Applicants on the within motion. I reach that conclusion for two (2) reasons.

[9] First, judicial comity encourages judges to show respect and deference to the decisions and orders of other justices of the same Court. Although not directly on point, see, in this regard *Almrei v Canada (Minister of Citizenship & Immigration)*, 2007 FC 1025 at para 61; and *Canada Steamship Lines Ltd. v Minister of National Revenue*, [1966] Ex. CR 972 at para 10). In the present case, no party has sought an amendment to Associate Chief Justice Gagné's Order. The underlying Application in T-648-20 involves virtually the same parties and at least one issue which is identical, namely, the failure to hold a Band Council meeting and the request for injunctive relief flowing from that failure. I am of the view that as long as Associate Chief Justice Gagné's Order remains in place and no challenge is made to that Order, judicial comity requires me to show deference and respect. I should not be seen as interfering with her Order, which involves virtually the same parties and squarely addresses the principal relief sought by the Applicants on this motion. I say "squarely addresses the principal relief sought" because Associate Chief Justice Gagné, speaks to the requirement to hold Band Council meetings twice per month and orders the holding of a meeting.

[10] Second, *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 (SCC) establishes a three (3) part conjunctive test for the determination of whether an interlocutory or interim injunction should issue. The Applicants must establish that there is a serious issue to be determined, that they will suffer irreparable harm if the injunction is not granted, and that the balance of convenience favours the granting of the injunction. For purposes of my analysis, I will presume the Applicants have demonstrated that there exists a serious issue to be determined. However, the motion falls short on the issues of irreparable harm and balance of convenience. I am satisfied that if the Applicants truly believed they were suffering from irreparable harm or

that irreparable harm would be visited upon them, they would not have sat on their rights as granted by Associate Chief Justice Gagné since July 30, 2020, that being the date by which a meeting of the Band Council was to have been held. The failure of the Respondents in that case (the Applicants herein) to enforce the Order favourable to them, which clearly grants them, in large measure, what they are seeking before me, militates against the granting of the Order sought. In addition, the balance of convenience does not favour the granting of the injunction. The Applicants already benefit from an Order that grants them part of what they are seeking. Neither they, nor the Respondents, would be served by another Order of the same Court, which might be subject to a difference of opinion as to interpretation and/or timing as measured against the current outstanding Order. Judicial economy and efficiency do not require another Order whose primary purpose is to direct the holding of a meeting of the Band Council. The balance of convenience favours the *status quo*, which, of course, includes the enforceable Order of Associate Chief Justice Gagné.

[11] In closing, I would note that I am cognizant of the differences between the present Order sought and that issued by Associate Chief Justice Gagné. I am also cognizant that the Chief can direct the holding of a special meeting of the Band Council while other meetings are regularly scheduled. However, Associate Chief Justice Gagné's Order, if enforced, would result in the holding of a meeting of the Band Council. Whether that meeting is a special meeting called by the Chief or a regularly scheduled meeting is, in my view, of no moment.

[12] For the foregoing reasons I exercise my discretion and dismiss the motion for an interlocutory injunction and an interim injunction, all without costs.

ORDER

THIS COURT ORDERS that the motion for an interlocutory injunction and an interim injunction is hereby dismissed, without costs.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1013-20

STYLE OF CAUSE: SHELLEY GAUTHIER, ROBIN EWASKOW AND TROY WOLF v MERLITA DE GUZMAN (IN HER CAPACITY AS DIRECTOR OF OPERATIONS/CHIEF OPERATING OFFICER OF THE BLUEBERRY RIVER FIRST NATIONS BAND), AND THE BAND COUNCIL OF THE BLUEBERRY RIVER FIRST NATIONS BAND, MARVIN YAHEY, SHERRY DOMINC AND WAYNE YAHEY

DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

ORDER WITH REASONS: BELL J.

DATED: OCTOBER 7, 2020

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Merlita de Guzman

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