

Federal Court



Cour fédérale

Date: 20201126

Docket: T-739-20

Citation: 2020 FC 1092

Ottawa, Ontario, November 26, 2020

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

COUNCILLOR BLAIR OWEN

Applicant

and

**LITTLE GRAND RAPIDS FIRST NATION
AS REPRESENTED BY CHIEF RAYMOND
KEEPER, COUNCILLOR DIANE KEEPER,
COUNCILLOR CLINTON KEEPER,
COUNCILLOR ROY DUSNFORD,
COUNCILLOR HILDA CROW AND
COUNCILLOR WENDY LEVEQUE**

Respondents

JUDGMENT AND REASONS

(Delivered from the Bench at Ottawa, Ontario, on November 26, 2020)

[1] Mr. Owen seeks judicial review of the decision of the Little Grand Rapids First Nation to remove him as councillor. The First Nation and the individual respondents did not appear or

otherwise participate in these proceedings, although having been duly served. Mr. Owen has brought evidence that his removal was unlawful. As a result, I am granting his application for judicial review.

[2] The Little Grand Rapids First Nation is governed by the *Indian Act*, RSC 1985, c I-5, and has not adopted its own election code. Thus, its elections are governed by sections 74-79 of the *Indian Act*.

[3] In particular, section 78 of the *Indian Act* deals with the removal of councillors in the following terms:

<p>78. [...]</p> <p>(2) The office of chief or councillor of a band becomes vacant when</p> <p>[...]</p> <p>(b) the Minister declares that in his opinion the person who holds that office</p> <p>[...]</p> <p>(ii) has been absent from three consecutive meetings of the council without being authorized to do so [...]</p>	<p>78. [...]</p> <p>(2) Le poste de chef ou de conseiller d'une bande devient vacant dans les cas suivants :</p> <p>[...]</p> <p>b) le ministre déclare qu'à son avis le titulaire, selon le cas :</p> <p>[...]</p> <p>(ii) a, sans autorisation, manqué les réunions du conseil trois fois consécutives [...]</p>
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[4] On November 22, 2019, a resolution removing Mr. Owen from council on the basis of three consecutive absences was adopted at a community meeting. This resolution is embodied in a letter to Mr. Owen dated January 13, 2020 and signed by the chief and four councillors, being a

quorum of council. On April 20, 2020, the chief and five councillors wrote to the Minister of Indigenous Services to request confirmation of the decision to remove Mr. Owen from council. The record does not disclose what response, if any, the Minister gave to this request.

[5] Mr. Owen states that he received copies of these documents only on June 24, 2020, after making numerous inquiries with the First Nation to understand why his salary had not been paid since December 2019. He also states that he never received any notice of the November 22, 2019 meeting or any indication that his status as councillor was in jeopardy.

[6] The First Nation does not have the power to remove a councillor. Pursuant to section 78(2)b) of the *Indian Act*, this power is conferred upon the Minister. Thus, the resolution adopted in November 2019 could at most be considered as a request to the Minister to exercise his power. Yet, the First Nation treated it as a legally effective decision and stopped paying Mr. Owen's salary. This was contrary to the provisions of the Indian Act. The decision to remove Mr. Owen from council must thus be quashed.

[7] Mr. Owen asks for his costs on a solicitor-client basis. I analyzed the issue of costs awards in First Nations governance cases in *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119. I noted that proof of reprehensible conduct is usually required to justify an award of costs on a solicitor-client basis. I have no information whatsoever explaining why the respondents failed to appear nor any context allowing me to conclude that their conduct was reprehensible. Given the circumstances of this case, I will award costs in a lump sum of \$5,000.

JUDGMENT in T-739-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision to remove the applicant from his position as councillor of Little Grand Rapids First Nation is quashed.
3. Costs are awarded to the applicant in a lump sum of \$5,000, inclusive of taxes and disbursements.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-739-20

STYLE OF CAUSE: COUNCILLOR BLAIR OWEN v LITTLE GRAND
RAPIDS FIRST NATION AS REPRESENTED BY
CHIEF RAYMOND KEEPER, COUNCILLOR DIANE
KEEPER, COUNCILLOR CLINTON KEEPER,
COUNCILLOR ROY DUSNFORD, COUNCILLOR
HILDA CROW AND COUNCILLOR WENDY
LEVEQUE

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO, AND WINNIPEG, MANITOBA

DATE OF HEARING: NOVEMBER 26, 2020

JUDGMENT AND REASONS: GRAMMOND J.

DATED: NOVEMBER 26, 2020

APPEARANCES:

Jared Wheeler

FOR THE APPLICANT

SOLICITORS OF RECORD:

Jerch Law
Barristers and Solicitors
Winnipeg, Manitoba

FOR THE APPLICANT