

Federal Court



Cour fédérale

Date: 20091126

Docket: T-927-09

Citation: 2009 FC 1212

Ottawa, Ontario, November 26, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHIEF BEVERLY BELLEGARDE

Applicant

and

**ALMA POITRAS, LEO DESNOMIE,
LAMBERT STONECHILD, INEZ DEITER,
GLORIA DEITER, ELAINE PINAY,
ELWOOD OSCAR PINAY, DELMA POITRAS,
FREDA EVELYN DESNOMIE, GREGORY BRASS,
AVEN ROSS, EVELYN POITRAS,
MARTINE DESNOMIE, HOWARD DESNOMIE,
ENOCH POITRAS AND GERALD DESNOMIE**

Respondents

REASONS FOR ORDER AND ORDER

[1] In my Reasons for Judgment in this matter dated September 30, 2009 I granted the Applicant's application and set aside the decision of a Council of Elders removing her from office and prohibiting her from holding office for 10 years. I indicated that the Applicant was entitled to her costs and had hoped that the parties would be able to agree on the quantum of those costs. In

light of the division among some of the Peepeekisis First Nation, as is evidence from the facts recited in my Reasons for Judgment, it was very optimistic of me to think that any agreement could be reached. Again, I must observe that there are individuals within the First Nation whose positions and actions continue to be adverse, both financially and otherwise, to the interests of the First Nation. In the absence of agreement, I remained seized with respect to the issue of costs. The parties have provided their submissions and the following sets out my reasons for the Order that follows with respect to costs.

[2] The Applicant seeks her full solicitor and client costs payable by the Peepeekisis First Nation, as well as her costs related to the submissions she made respecting costs.

[3] Upon receipt of the Applicant's costs submissions and correspondence indicating that the Respondents had retained other counsel, the Court issued a Direction that the First Nation governing council be served with the Applicant's request that the First Nation be responsible for the costs of this application. It was further indicated that the First Nation was entitled to file submissions as to its position. No submissions have been received from the First Nation.

[4] The Applicant has filed a solicitor-client Bill of Costs that reflects fees of \$106,780.00 and disbursements of \$7,750.62 for a total of \$114,530.62. There has been no objection or challenge from the Respondents to the amount or detail contained in this Bill of Costs. Their objection is to the submission that costs be on a solicitor-client basis and that they should be paid by the First Nation.

[5] The Respondents have filed affidavits from Howard Mark Desnomie, Enoch Joseph Poitras and Evelyn Rose Poitras, three of the named Respondents. They are in substantially the same form. In these affidavits they raise allegations as to the Applicant's conduct, allegations which, in part, were previously alleged to form the basis for the decision to seek the Applicant's removal from office. The Applicant's conduct while in office is not now and has never been germane to the application. These allegations are inappropriate and are given no weight or consideration.

[6] The Respondents' affiants each attest that "a Band Meeting was held at Peepeekisis School on September 26th, 2009, and a motion was passed by the Band Meeting, with retrospective application, that no legal fees incurred by the Respondents in Federal Court Action T-929-09 would be paid by the band [*sic*]." That such a motion would be necessary implies that the Respondents' legal fees had been or were to be reimbursed by the First Nation.

[7] The Applicant filed an affidavit in which she attests that the General Ledgers of the First Nation reflect three payments made to the law firm that represented the Respondents in this application made on June 6, 2009, July 13, 2009 and August 20, 2009 totalling \$37,916.04. She further attests that a payment was made on September 15, 2009 to the Respondent Evelyn Poitras in the amount of \$9,500.00 and attests that there was no valid business reason why such a payment would have been made to her from the fund from which it was taken. She further attests that she has been informed that the Respondents' law firm is to be paid the remainder of the balance owing on the Respondents' legal fees after the election of a Headman in December 2009. She does not indicate the source of that information and it is given no weight.

[8] It is clear to the Court that the First Nation has paid for at least some of the Respondents' legal fees in this application. The enforceability of the retroactive motion raised by the Respondents is questionable. It would have been very easy for one or more of the Respondents to swear an affidavit that they are or will be personally responsible for their legal expenses. None was filed and an adverse inference is drawn from that failure. In short, the Court is satisfied that the First Nation has paid and in all likelihood will continue to pay for the Respondents' legal costs, on a solicitor-client basis. There is no principled reason why the Applicant's costs should not also be paid on that same basis by the First Nation.

[9] Contrary to the submissions of the Respondent, the Court has jurisdiction under Rule 400(1) of the *Federal Courts Rules* to award costs against a non-party: See *Lower Similkameen Indian Band v. Allison* (1995), 99 F.T.R. 305; *Re Bodnarchuk*, [1995] 3 F.C. 300; and *Barbosa v. Canada (Minister of Employment and Immigration)* (1987), 4 Imm. L.R. (2d) 81 (Fed. C.A.).

[10] The decisions under review in this application were decisions of a group who purported to act as the Council of Elders in the best interests of the First Nation. In such circumstances, the First Nation is the appropriate party to be liable for costs when those decisions are set aside by this Court. Further, the Respondents sought their costs if they were successful. Knowing now that their costs were paid by the First Nation, presumably the First Nation would have been the beneficiary of any such order and not the personal Respondents. This provides further support that the First Nation is the appropriate payee.

[11] Should the costs ordered herein not be paid to the Applicant by the First Nation, she shall have recourse, should she choose, against all or some of the personal Respondents.

ORDER

THIS COURT ORDERS that:

1. The Applicant shall have her costs on a solicitor-client basis for the application and for matters relating to this Order as to costs, fixed at a total of \$116,000.00;
2. The Applicant's costs are Ordered payable by the Peepeekisis First Nation and the members of its governing council are hereby Ordered to take all actions and steps as are necessary to ensure that payment is made forthwith; and
3. In the event that any or all of the costs Ordered to be paid by the Peepeekisis First Nation are not so paid, the Respondents, jointly and severally are liable for any amount that remains unpaid.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-927-09

STYLE OF CAUSE: CHIEF BEVERLY BELLEGARDE v.
ALMA POITRAS ET AL

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: August 20, 2009

**REASONS FOR ORDER
AND ORDER:** ZINN J.

DATED: November 26, 2009

APPEARANCES:

Jeffrey R.W. Rath
L. Nathalie Whyte

FOR THE APPLICANT

Christopher N. H. Butz

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

RATH & COMPANY
Barristers & Solicitors
Priddis, Alberta

FOR THE APPLICANT

MERCHANT LAW GROUP LLP
Barristers & Solicitors
Regina, Saskatchewan

FOR THE RESPONDENTS