Federal Court Cour fédérale

Date: 20191120

Docket: T-1464-18

Citation: 2019 FC 1467

Ottawa, Ontario, November 20, 2019

PRESENT: Madam Justice Walker

BETWEEN:

THE KEY FIRST NATION

Applicant

and

STEPHANIE C. LAVALLEE
DONALD WORME
RODNEY BRASS
ANGELA DESJARLAIS
SIDNEY KESHANE and
GLEN O'SOUP

Respondents

JUDGMENT AND REASONS

[1] The Key First Nation (the Band) has filed this application for judicial review of (1) a Band Council Resolution dated November 10, 2016 (BCR) authorizing the Chief and Band Council to retain Semaganis Worme Legal (SWL) as legal counsel in respect of an election appeal; and (2) a series of retainer agreements and payments made to SWL by the Band between

2016 and 2018. The Band alleges that the BCR contravenes the requirements of paragraph 2(3)(b) of the *Indian Act*, RSC 1985, c I-5 (Indian Act).

[2] The application for judicial review is made pursuant to sections 18 and 18.1 of the *Federal Courts Act,* RSC 1985, c F-7 (Act).

[3] For ease of reference, I have organized the Respondents in this application into two groups: (1) Rodney Brass, Angela Desjarlais, Sidney Keshane and Glen O'Soup were, at the relevant time, Band Councillors and I refer to them in this judgment as the Band Council Respondents; and (2) Stephanie Lavallee and Donald Worme were (and remain) lawyers at SWL and Ms. Lavallee had carriage of the election appeal. I refer to Ms. Lavallee and Mr. Worme as the Legal Counsel Respondents in this judgment.

[4] The Band Council Respondents made no appearance and filed no submissions in response to this application. The Legal Counsel Respondents filed written submissions and a respondent's record pursuant to Rule 310 of the *Federal Courts Rules*, SOR/98-106 (Rules). They also made oral submissions via their counsel at the hearing of the application on June 24, 2019.

[5] The Legal Counsel Respondents raise issues of standing and timeliness in their submissions. Although the two issues may be characterized as preliminary as they fall to be addressed prior to any consideration of the merits of the application, combined they are

nonetheless serious issues and are determinative of the application. For the reasons that follow, I find that the application is untimely and must be dismissed.

I. Background

[6] The Band is a band within the meaning of the Indian Act.

[7] On October 1, 2016, Mr. Brass was elected Chief of the Band and the remaining Band Council Respondents, Ms. Desjarlais, Mr. Keshane and Mr. O'Soup, were elected Band Councillors. Two additional Band members, Mr. Clinton Key and Mr. Clarence Papequash, were also elected Band Councillors.

[8] Mr. Key, Mr. Papequash and Mr. Glenn Papequash brought an application (the Election Application) to this Court to set aside the 2016 election. The Band and the Band Council Respondents, and other individuals, were respondents in the Election Application.

[9] On November 10, 2016, SWL were retained by the Band Council on behalf of the Band to act in the Election Application. The retainer is reflected in the BCR and two retainer agreements executed by Mr. Brass and Ms. Lavallee on November 10, 2016 and February 3, 2017. A third retainer agreement was signed on November 15, 2017 in respect of an anticipated appeal to the Federal Court of Appeal.

[10] Between November 2016 and March 2018, a series of payments totalling $231,134.20 were made by the Band to SWL.

[11] In his March 21, 2018 judgment setting aside the 2016 election and finding “clear evidence of widespread and openly conducted vote buying activity” by the Band Council Respondents, my colleague Justice Barnes described the situation before him as “an extremely acrimonious dispute” among Band members (*Papequash v Brass,* 2018 FC 325 at paras 2 and 39 (*Papequash FC*); aff’d *Brass v Papequash*, 2019 FCA 245). Justice Barnes also awarded costs in favour of Messrs. Clarence and Glenn Papequash and Clinton Key in the amount of $86,170.00 (*Papequash v Brass*, 2018 FC 977 (*Papequash Costs Decision*).

[12] The Band Council Respondents were removed as Band Councillors on March 21, 2018 following Justice Barnes’ decision in *Papequash FC* and, on June 12, 2018, a Band election was conducted. Mr. Clarence Papequash was elected Chief and Mr. Key, Marcella Pelletier, David Cote, Gilda Dokuchie and Chris Gareau were elected Band Councillors.

[13] On June 18, 2018, the new Band Council passed a Band Council Resolution removing SWL as legal counsel to the Band and authorizing an investigation into the legal services the firm had previously provided to the Band.

[14] The Band filed its notice of this application for judicial review on July 27, 2018 (Notice of Application), requesting that the Court quash (1) the BCR and (2) the decisions to retain SWL as counsel in the Election Application and to make the SWL payments. The Band alleges that the BCR, retainer agreements and subsequent payments to SWL were undertaken by the Band Council without notice to two of its sitting councillors, Councillors Key and Papequash.

[15] On July 30, 2018, the Band filed a Statement of Claim in the Court of Queen's Bench for Saskatchewan (Saskatchewan Action) naming SWL, the Legal Counsel Respondents and Loretta Lambert, a third SWL lawyer, as defendants. In the Saskatchewan Action, the Band seeks, among other relief, the repayment of $231,134.20 from the defendants on the basis of unjust enrichment. In paragraph 7 of the Statement of Claim, the Band states that it "seeks to rely upon the relief sought if and when granted by the Federal Court" in the present application for judicial review.

II. Decision under review

[16] The Band's Notice of Application lists the following decisions and payments as the decisions under review:

Date	**Event (Decision/Payment)**
November 10, 2016	Band Council Resolution (BCR) to retain SWL.
November 10, 2016	Retainer agreement and transfer of $10,000 to SWL/Legal Counsel Respondents.
February 3, 2017	Retainer agreement with SWL [Note: Updates hourly billing rates]
March 27, 2017	Transfer of $8,130.94 to SWL/Legal Counsel Respondents.
April 26, 2017	Transfer of $40,000 to SWL/Legal Counsel Respondents.
July 7, 2017	Transfer of $10,000 to SWL/Legal Counsel Respondents.
July 17, 2017	Transfer of $25,000 to SWL/Legal Counsel Respondents.
September 19, 2017	Transfer of $25,000 to SWL/Legal Counsel Respondents.
November 16, 2017	Transfer of $24,766.79 to SWL/Legal Counsel Respondents.
January 2, 2018	Transfer of $48,236.47 to SWL/Legal Counsel Respondents.
March 21, 2018	Retention of SWL in respect of an anticipated appeal to the Federal Court of Appeal [Note: the retainer agreement in the record pertaining to an appeal is dated November 15, 2017]
March 21, 2018	Transfer of $40,000 to SWL/Legal Counsel Respondents.

[17] This application centres on the BCR. The retainer agreements and subsequent payments during the election litigation follow from the initial decision to retain SWL set forth in the BCR.

[18] The BCR is brief and reads as follows:

> **Band Council Resolution**
>
> DO HEREBY RESOLVE THAT: A Quorum of THE KEY FIRST NATIOIN (sic) First Nation met on the 10th day of NOVEMBER, 2016.
>
> AND WHEREAS: Pursuant to the Indian Act and their inherent powers of self-government, the Council is empowered to act on behalf of THE KEY First Nation.
>
> AND WHEREAS: The Chief and Council hereby unanimously support the payment of $10,000.00 as the initial retainer for the Election Appeal. The Semaganis Worme Legal is appointed as legal counsel for the Appeal Matter.
>
> THEREFORE BE IT RESOLVED THAT the Chief and Council designate $10,000.00 from the legal fee budget for the anticipated work.
>
> (Emphasis in the original BCR)

[19] The BCR was moved by Mr. Keshane, seconded by Mr. O'Soup, and signed by Chief Brass, Mr. Keshane, Mr. O'Soup and Ms. Desjarlais. At the bottom of the BCR is the statement, "A Quorum Exists of 4". There are no lines on the BCR for signature by Councillors Papequash and Key.

III. Summary of the Band's submissions

[20] My analysis of the preliminary and determinative issues in this application follows in the next sections of this judgment. I will first summarize the Band's substantive submissions to provide context for that analysis.

[21] The Band submits that the BCR was adopted on November 10, 2016 without jurisdiction because no Band Council meeting was convened to discuss and approve the BCR or the retaining of SWL in accordance with paragraph 2(3)(b) of the Indian Act. As a result, the three retainer agreements were signed by Chief Brass and the disputed payments made by the Band to SWL without authority.

[22] The Band emphasizes that the BCR does not indicate whether it was passed during the course of a regular or special meeting of the Band Council. Further, there is no evidence in the record that notice of any meeting was given to all councillors. The Band states that the rule of law and procedural fairness were not observed in adopting the BCR as a clear attempt was made to exclude Councillors Key and Papequash from discussion of a matter that benefitted the Band Council Respondents personally.

IV. Standing of the Band to bring the application

[23] The Legal Counsel Respondents submit that the Band is not an applicant within the meaning of subsection 18.1(1) of the Act and has no standing to bring this application. They argue that the Band is effectively challenging itself by claiming that it is no longer bound by the BCR and resulting decisions. In other words, the Court is being asked by the Band to impugn its own decisions. The Legal Counsel Respondents state that the application should have been brought by Mr. Key and/or Mr. Papequash in their own names.

[24] Subsection 18.1(1) of the Act provides as follows:

Application for judicial review	**Demande de contrôle judiciaire**

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	**18.1 (1)** Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[25] The Band submits that it is a proper applicant and argues that the Court must distinguish between the Band and its Band Council. In support of its position, the Band points to the distinction in paragraphs 2(3)(a) and (b) of the Indian Act between the exercise of power by a band and the exercise of power by a band council. The Band states that it is not seeking to quash its own decisions but those of its Band Council.

[26] The Legal Counsel Respondents raised the Band's standing in their written submissions and counsel to the Band responded briefly in oral submissions. Neither party reviewed in detail the scope of subsection 18.1(1) of the Act, the legal relationship of a First Nations band and its band council, or the relevant jurisprudence. In the absence of substantive argument from both parties, I am not prepared to dismiss the application on the issue of standing alone. However, the Band's standing and role in this application impacts my analysis of the issue of timeliness and, therefore, I will respond to the parties' arguments.

[27] This application for judicial review was commenced by the new Band Council in the Band's name in July 2018 following the *Papequash FC* decision and the *Papequash Costs Decision*. The Band's purpose in pursuing the application is inextricably linked to those decisions and to the Saskatchewan Action.

[28] In the Saskatchewan Action, the Band is seeking to recoup the legal fees it paid to SWL during the course of the acrimonious and expensive election dispute. In this application, the Band seeks to quash the BCR and resulting decisions to assist in its claim for damages against SWL and the Legal Counsel Respondents. This application serves no other practical purpose as the actions contemplated by the BCR have been fully executed, the disputed legal services rendered and the payments made. In addition, the Band Council Respondents are no longer members of the Band Council and no recourse has been sought against them personally.

[29] Justice Barnes reserved his decision on costs in the *Papequash FC* decision and requested further submissions from the parties. The Band then terminated the services of SWL and retained new counsel. The Band filed cost submissions with Justice Barnes seeking to recover its costs from the other "at fault" respondents. Justice Barnes refused the Band's request and described the Band's participation in the Election Application as follows (*Papequash Costs Decision* at para 3):

> [3] I do not accept that this is a case where Key First Nation should recover its costs from the other Respondents. All of the Respondents acted in concert with a single counsel presumably in accordance with the direction and approval of the Band throughout the proceeding. A recognition that a party should be permitted to turn against co-litigants whose interests were throughout wholly aligned at the end of a jointly represented unsuccessful proceeding would create serious mischief. *Sanderson* and *Bullock* orders are appropriate in cases where co-defendants have distinct and separately advanced interests and where those interests do not coincide. <u>The Key First Nation is the author of its own predicament. It had the means to appreciate the conflict it was in vis-à-vis the members of the Band and it elected to pursue a joint legal strategy that ignored that broader interest</u>. It must now accept the financial consequences of so acting. If the Band is now unhappy with the legal representation it received or with the amount of its legal fees it has the means to seek independent recourse.

(My emphasis)

[30] The Band has sought independent recourse against SWL and the Legal Counsel Respondents in Saskatchewan and clearly has standing as plaintiff in the Saskatchewan Action to claim damages for alleged misconduct by SWL in representing the Band. The same is not true in this application as, in my view, the Band is not the appropriate initiating party. Here, the Band is impugning the BCR which it acknowledges was passed on its behalf. The Band states in its Memorandum of Fact and Law:

> 26. The Decisions only benefited the Band Council Respondents as the Election Application sought to remove the Band Council Respondents from Band Council. However, in considering the Decisions at issue, it must be remembered that the Decisions were being made not by the individual members personally but on behalf of the First Nation.

[31] The Band argues that a distinction must be made between the Band and the Band Council but the BCR is a Band resolution, adopted by elected representatives on behalf of the Band. The BCR binds the Band itself and not merely the Band Council. Any actions taken to implement a Band resolution are actions of the Band (including, for present purposes, the retainer agreements and payments to SWL). Any liability resulting from those actions vis-à-vis third parties lies with the Band. The distinction drawn in paragraphs 2(3)(a) and (b) of the Indian Act regarding the manner in which a band and a band council are each required to exercise their respective powers does not change this analysis.

[32] The Band relies on the recent decision of this Court in *Cowessess First Nation no. 73 v Pelletier*, 2017 FC 692 (*Cowessess*), to argue that there is no prohibition against a band launching an application for judicial review. I agree. In *Cowessess*, the decision in issue was a

decision of the Cowessess First Nation Election Appeal Tribunal (Tribunal) and not a decision of the Cowessess First Nation. Justice Diner concluded that the First Nation band was directly affected by the Tribunal's decision within the meaning of subsection 18.1(1) of the Act because the Cowessess Band Council was required to enforce the decision and carry out its terms (*Cowessess* at para 22). At the risk of repetition, in this application, the Band is challenging its own decisions.

[33] I will conclude this section by noting that there is a further issue with the named parties in this application. The Legal Counsel Respondents submit that they should not have been named in the application. The Band acknowledges that the Legal Counsel Respondents are not necessary parties but argues that they are not inappropriately named. The Band states that it knew the Band Council Respondents would make no response to the application and, by naming the Legal Counsel Respondents, has ensured that legal arguments opposing the application have been placed before the Court.

[34] The application for judicial review centres on the Band's decisions and whether they should be quashed. The Band makes no argument in its submissions implicating the Legal Counsel Respondents in any wrongdoing in the adoption of the BCR. The Band's arguments focus on the conduct of the Band Council Respondents. There is no issue in the application to which the Legal Counsel Respondents can respond based on their own knowledge or information.

[35] Although I find that the Band’s reason for naming the Legal Counsel Respondents in this application is not persuasive, I agree with its submission that the Legal Counsel Respondents should have brought a motion early in the proceedings to be removed as named parties. As a result, I will not order them removed as respondents but would caution against such a course of action in the future, recognizing that there may be situations in which a third party has an indirect interest in an application and is properly named as a respondent.

V. Timeliness of the Application

[36] The Legal Counsel Respondents argue that the application is not timely and must be dismissed. The Band’s Notice of Application was filed with the Court on July 27, 2018 and the contested decisions are as follows: the BCR, the focal point of the application, dated November 10, 2016; three retainer agreements dated November 10, 2016, February 3, 2017 and November 15, 2017; and, a series of payments from the Band to SWL made between November 2016 and March 2018.

[37] At first blush, the application was filed well outside the 30-day period set out in subsection 18.1(2) of the Act:

Time limitation	**Délai de présentation**
(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.	**(2)** Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

[38] However, the Band argues that Councillors Key and Papequash had no knowledge of the decisions until Ms. Lavallee, one of the Legal Counsel Respondents, forwarded documentation to their counsel on June 28 and 29, 2018. In oral argument, the Band also argued that, even if its application was filed beyond the 30-day limitation period, the Court should exercise its discretion to extend the subsection 18.1(2) time limit.

[39] For the following reasons, I do not find the Band's arguments persuasive and conclude that the application is untimely.

[40] As discussed above and as emphasized by its counsel, the Band is the applicant in this application. Councillors Key and Papequash are not. The Band cannot credibly assert lack of knowledge of the BCR, the retainer agreements or the payments to SWL, as of their respective dates. Indeed, at no point in its submissions has the Band argued that it was not aware of the impugned decisions until June 2018.

[41] The Band was a named respondent in the Election Application brought by Councillors Key and Papequash. The Election Application was filed on October 31, 2016. Although the notice of application states that the Band was named for the limited purpose of an award of costs, it is clear that the Band was an active participant in the Election Application, pursuing a joint legal strategy with the other respondents. The Band Council, on behalf of the Band, adopted the BCR on November 10, 2016. The BCR, whether properly adopted or not, was a resolution of the Band made "not by the individual members personally but on behalf of the First Nation", as described by the Band in its submissions.

[42] As a participant in the Election Application, the Band knew that legal services were being provided by SWL on its behalf and that it was incurring substantial legal fees. Each SWL account was sent to the Band and the Band made the payments in issue to SWL. The Band is free to question the propriety of the payments in the Saskatchewan Action but it cannot question its knowledge of them for purposes of this application. As Justice Barnes stated (*Papequash Costs Decision* at para 3)

> [3] …The Key First Nation is the author of its own predicament. It had the means to appreciate the conflict it was in vis-à-vis the members of the Band and it elected to pursue a joint legal strategy that ignored that broader interest. It must now accept

> the financial consequences of so acting. If the Band is now unhappy with the legal representation it received or with the amount of its legal fees it has the means to seek independent recourse.

[43] I find that the Band had knowledge of the BCR as of November 10, 2016 when it passed the BCR and was fully aware of each subsequent decision as and when it was made.

[44] I do not agree with the Band's argument that the timeliness of the application rests on the state of knowledge of Councillors Key and Papequash. The Band is engaging in inconsistent legal reasoning in stating that it is the proper applicant in the application within the meaning of subsection 18.1(1) of the Act but that the relevant "knowledge" of the decisions for purposes of subsection 18.1(2) is the personal knowledge of Councillors Key and Papequash.

[45] In any event, I find that Councillors Key and Papequash had sufficient knowledge of the decisions in August 2017, at the latest, when they retained counsel who raised the lawfulness of the SWL retainer by the Band. In a letter dated August 23, 2017 to Ms. Lavallee, their counsel wrote:

> I represent Councillor Clinton Key, former Councillor Clarence Papequash, and concerned Members of the Key First Nation. Since assuming office in October, 2016, your clients Rodney Brass, Angela Desjarlais, Sidney Keshane and Glen O'Soup have unlawfully conducted the affairs of the Key First Nation. Despite repeated demands that they cease, Rodney Brass, Angela Desjarlais, Sidney Keshane and Glen O'Soup have asserted that they can conduct the affairs of the Key First Nation as a "quorum". They have failed to invite Councillors Clinton Key and Councillor Clarence Papequash to purported meetings of Band Council.
>
> The execution of your "retainer" and receipt of "instructions" from Rodney Brass, Angela Desjarlais, Sidney Keshane and Glen O'Soup on behalf of the Key First Nation, to the exclusion of Councillors Clinton Key and Clarence Papequash, is unlawful and

> unenforceable. Any funds that your firm received from the Key First Nation must be subject to accounting.

[46] Mr. Phillips demanded an accounting from SWL of all invoices rendered to the Band and funds received from the Band from October 1, 2016.

[47] Mr. Phillips' letter characterizes the SWL retainer as unlawful but Councillors Key and Papequash took no action against the Band at that time. Their focus was SWL and Ms. Lavallee. I accept that the two Councillors did not know the precise amounts being paid by the Band to SWL during this period. However, they knew that SWL had been retained by the Band and that Ms. Lavallee was providing substantial legal services to the Band and the other respondents in contesting the Election Application. Councillors Key and Papequash also knew that they had not signed a Band Council resolution authorizing the Band to retain SWL or to make the impugned payments.

[48] Counsel to the Band submits that Councillors Key and Papequash knew SWL had been retained in the Election Application but argues that they did not know SWL had been retained and was being paid by the Band. This argument ignores the August 23, 2017 letter to Ms. Lavallee and the allegation that her firm's retainer by the Band Council Respondents on behalf of the Band was unlawful. If Councillors Key and Papequash had no knowledge that SWL was acting for the Band, they would have had no reason to raise their alleged exclusion from Band Council business, state that the retainer was unlawful, and require an accounting of all funds received from the Band since October 2016.

[49] The Band also argues that, if the application was filed beyond the 30-day time limit set out in subsection 18.1(2) of the Act, the Court should exercise its discretion to extend the time limit in the interests of justice as the Band brought this application as soon as it could reasonably do so and the application has merit. The Band relies on Justice Pentney's analysis of the circumstances in which an extension of the time limit is warranted in *Crowchild v Tsuu T'ina Nation*, 2017 FC 861 at paragraph 19:

> [19] [The subsection 18.1(2)] time limit can be extended, however, and the overarching consideration is whether it is in the interests of justice to do so. This Court has ruled that the applicant must demonstrate: (i) a continuing intention to pursue the matter; (ii) that the application has some merit; (iii) that the respondent will not be prejudiced by the delay; and (iv) that there is a reasonable explanation for the delay: *Virdi v Canada (Minister of National Revenue)*, 2005 FC 529 at para 7; *James Richardson International Ltd v Canada*, 2004 FC 1577 at para 29; *Tsetta v Band Council of the Yellowknives Dene First Nation*, 2014 FC 396 at para 21. Many of the relevant precedents refer to a continuing intention to pursue an application for judicial review, but in my view it is sufficient that the Applicant demonstrated a continuing intention to pursue her legal remedies in regard to the decision: *Apv Canada Inc v Canada (Minister of National Revenue)*, 2001 FCT 737 at para 13.

[50] I have carefully considered the Band's arguments in favour of an extension of the subsection 18.1(2) time limit but decline to extend the period for the following reasons.

[51] First, the deadline set out in subsection 18.1(2) of the Act serves an important public interest. It provides certainty and finality for both administrative decision-makers and those bound by their decisions, and allows the implementation of decisions without delay (*Canada v Berhad*, 2005 FCA 267 at para 60). The duration of the Band's delay seriously undermines that public interest. The delay permitted a new Band Council, acting in the Band's name, to mount a challenge to an existing Band resolution. Although the Band submits that these circumstances,

involving allegations of serious misfeasance, are unique, an extension of time to permit a Band to challenge its prior decisions is of concern.

[52] There is no doubt that the Band and its Members were embroiled in a series of legal challenges and leadership upheaval from late 2016 through mid-2018 but, equally, it was evident during that period that the Band was expending considerable funds in resisting the Election Application. The Band Council continued to operate and meet through 2016-2018 as demonstrated by a number of resolutions in the record signed by all Councillors, including Councillors Key and Papequash.

[53] Second, I do not agree that Councillors Key and Papequash acted as soon as they reasonably could. On the basis of their own evidence, they had reason to believe in August 2017 that they were being excluded from Band Council business. They were also aware that SWL had been retained in the Election Application by the Band. Councillors Key and Papequash took no action against the Band in their own names or in a representative capacity on behalf of the Band, a course of action that was open to them. Their decision to await the outcome of the Election Application and file this application in the Band's name does not warrant an extension of time.

[54] Third, the Band's purpose in commencing this application and contesting its prior decisions is ancillary to the Saskatchewan Action and the Band's desire to recoup costs incurred in the Election Application. It is not in the public interest to permit an untimely application for judicial review to proceed in order to buttress arguments made in a separate action. The Band argues that it is most appropriate to bifurcate the two court proceedings and to argue the validity

of the BCR in this Court. The difficulty with this argument is that the Band is relying on the Legal Counsel Respondents to formulate arguments in respect of a series of allegations of Band Council misconduct of which they have no personal knowledge. It is in neither party's interest that I issue an order based on incomplete evidence and argument when that order will then be used as evidence of a definitive assessment by this Court of certain of the matters in issue in the Saskatchewan Action.

[55] In refusing to extend the subsection 18.1(2) time limit, I make no assessment of the merits of the application. The Band's arguments regarding the adoption of the BCR, and the conduct of the Band Council Respondents and the Legal Counsel Respondents, form part of its case in the Saskatchewan Action. They are best assessed in full in the Saskatchewan Action as they are intertwined and relate directly to the Band's claims for damages against SWL and the Legal Counsel Respondents.

VI. Conclusion

[56] The structure and timing of this application are both flawed. The Band requests that I quash a decision taken in its name and on behalf of all Band Members because a newly elected Band Council believes there were serious improprieties in the manner of adoption of the initial BCR. In my opinion, the Band cannot itself attack its November 10, 2016 BCR by way of an application for judicial review filed on July 27, 2018 for the purpose of assisting its arguments in a civil case. The BCR is fully executed. The same is true of the other decisions. The attempt to now "quash" those decisions is not timely. The application is dismissed because the Band failed to file the application within the time limit set out in subsection 18.1(2) of the Act.

VII. Costs

[57] The Legal Counsel Respondents request in their Memorandum of Fact and Law that costs be awarded in their favour as they were improperly joined in this application. They also argue that the application is an abuse of process as the Band is requesting the same relief in the Saskatchewan Action. At the hearing of this matter, counsel for the Legal Counsel Respondents requested costs in the amount of $15,000.00.

[58] I have considered the Legal Counsel Respondents' request for a lump sum award of costs against the factors set out in Rule 400(3). I would first state that I do not view the Band's filing of this application as an abuse of process. The Band has pursued a litigation strategy which has not been successful for the reasons given but this does not mean that the strategy was abusive. There is no evidence before me that the Band joined the Legal Counsel Respondents for any reason other than the fact that it wished to ensure opposing legal arguments were placed before the Court. I also note that, despite the difficult history among the individuals impacted by this application, there is no evidence that any of the Band, the Legal Counsel Respondents or their counsel acted improperly or took unnecessary steps to complicate these proceedings.

[59] Taking into account the outcome of the application and complexity of the issues raised, I will award a lump sum of $7,000.00 to the Legal Counsel Respondents.

[60] I will make no award of costs in favour of the Band Council Respondents.

JUDGMENT IN T-1464-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs are awarded to the Legal Counsel Respondents, payable by the Band, in the amount of $7,000.00, inclusive of disbursements and taxes.

"Elizabeth Walker"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1464-18
STYLE OF CAUSE:	THE KEY FIRST NATION v STEPHANIE LAVALLEE ET AL.
PLACE OF HEARING:	REGINA, SASKATCHEWAN
DATE OF HEARING:	JUNE 24, 2019
JUDGMENT AND REASONS:	WALKER J.
DATED:	NOVEMBER 20, 2019

APPEARANCES:

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Karen Prisciak	FOR THE RESPONDENTS STEPHANIE LAVALLEE AND DONALD WORME
No one appearing	FOR THE RESPONDENTS RODNEY BRASS, ANGELA DESJARLAIS, SIDNEY KESHANE AND GLEN O'SOUP

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