Federal Court  Cour fédérale

Date: 20090601

Docket: T-1267-07

Citation: 2009 FC 562

Ottawa, Ontario, June 1, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ALBERT ANGUS and WALTER JANVIER

Applicants

and

CHIPEWYAN PRAIRIE FIRST NATION TRIBAL COUNCIL

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

THE MOTION

[1] This is a motion by the Applicants, Albert Angus and Walter Janvier, seeking the following relief:

a. An Order pursuant to Rule 467(1) of the *Federal Courts Rules*, requiring the Respondent, alleged to be in contempt:

i. to appear before the Court at a time and place stipulated in the Order;

ii. to be prepared to hear proof of the act of contempt with which the Respondent is charged; and

iii. to be prepared to present any defence that the Respondent might have;

b. An Order of Certiorari quashing:

i. the motion ostensibly passed at a meeting called by the Respondent, including only select members of the Chipewyan Prairie First Nation, held September 3, 2008, (Meeting) removing Albert Angus as Electoral Officer;

ii. the motion ostensibly passed at the Meeting, appointing Shirley Janvier as Electoral Officer;

iii. the decision made at the Meeting appointing Jim Carbury, Don Reimer, and Bernice Cree as members of the Appeal Committee, and appointing Randy Chernipesky as an alternate Appeal Committee member;

c. An Order for Mandamus directing the Respondent to properly hold a Band Meeting pursuant to my Judgment in this matter, dated August 1, 2008, to appoint an Appeal Committee;

d. An Order pursuant to Rule 384 of the *Federal Courts Rules*, to have the proceeding managed as a specially managed proceeding;

e. An Order pursuant to Rule 302 of the *Federal Courts Rules*, to allow more than one Order; and

f. An Order for the costs of this application on a solicitor and his own client basis, or such other elevated measure as this Court deems just having regard for the conduct of the Respondent, payable forthwith as penalty.

BACKGROUND

[2] An election of one third of the Chipewyan Prairie First Nation Chief and Council was held on February 21 and 28, 2007 (Election). At the time of the Election, no other regulations or by-laws were passed pursuant to the Election Code.

[3] The Election Code allows an appeal of an election result if made by any five eligible voters and if made in writing and delivered to the Electoral Officer within 14 days of the election.

[4] Subsequent to the Election, two notices of appeal were filed contesting the Election results (Notices of Appeal).

[5] Once an appeal is filed with the Electoral Officer, the Election Code directs the Electoral Officer to call a Band meeting of eligible voters to select an Appeal Committee of three from a list of names of people who are willing to serve on an Appeal Committee.

[6] The Electoral Officer prepared an election appeal budget for the Respondent to move forward with the Notices of Appeal in accordance with the Election Code; however, the Respondent refused the necessary funding to allow the appeal to be heard.

[7] A Band Council Resolution was passed by the Respondent dated June 11, 2007 which purported to dismiss the Electoral Officer for the Election and uphold the result of the Election (BCR).

[8] On July 10, 2007 a Notice of Application was filed on behalf of the Applicants in this Court.

[9] A hearing was held in Vancouver, BC in June 19, 2008 (Hearing) where the Respondents conceded that the appeals should be heard, leaving the only remaining issue, other than costs, to be whether Albert Angus, as Electoral Officer, should play a role in the appeals.

[10] The Reasons for Judgment were issued by me on August 1, 2008 (Judgment). The Court ordered that Albert Angus had not been effectively removed as Electoral Officer.

[11] The Judgment states that within 14 days of August 1, 2008, the Respondent take all necessary steps to hold a Band Meeting of eligible voters for the purposes of selecting an Appeal Committee pursuant to the Election Code.

[12] On August 5, 2008, Mr. Dhir, counsel for the Applicants, faxed a letter to Respondent counsel, Mr. Jeffrey Rath, inquiring as to the proposed date for the Band Meeting.

[13] On August 8, 2008, Mr. Dhir faxed a letter to Mr. Rath, noting no reply had been received to the August 5, 2008 correspondence and confirming that a Band Meeting needed to be held no later than August 15, 2008 for the purposes of selecting an Appeal Committee, pursuant to the Judgment.

[14] On August 13, 2008, Mr. Dhir received a faxed letter from Ms. Nathalie Whyte, student-at-law with Mr. Rath's office, advising that the Respondent was taking all necessary steps to hold a Band Meeting in accordance with the Judgment.

[15] On August 13, 2008, Mr. Dhir had a telephone conversation with Ms. Whyte wherein Ms. Whyte advised that a Band Meeting to select the Appeal Committee members was to be held in the first week of September, 2008, and Mr. Dhir advised Ms. Whyte that if the Respondent did not proceed according to the Judgment, he would be seeking to hold the Respondent in contempt of Court.

[16] On August 15, 2008, Mr. Dhir faxed a letter to Mr. Rath and Ms. Whyte, advising that a Band Meeting to select the Appeal Committee had to be held on August 15, 2008 according to the Judgment but that he would grant an extension of time to August 18, 2008, or else an application would be brought to hold the Respondent in contempt of Court.

[17] On August 15, 2008, Ms. Whyte faxed a letter to Mr. Dhir, advising that a Band Meeting would be held on August 18 and 19, 2008 for information purposes and a second Band Meeting was

scheduled for September 3, 2008 wherein voting and selection of an Appeal Committee would be made.

[18] On August 18, 2008, Mr. Dhir faxed a letter to the Federal Court to my attention, advising the Court that the Respondent had failed to take all necessary steps to hold a Band Meeting to select an Appeal Committee and requesting an appearance before the Court to address the delay.

[19] On September 4, 2008, Mr. Rath faxed a letter to the Federal Court to my attention with a carbon copy faxed to Mr. Dhir, advising as follows:

a. On August 14, 2008 a Notice of Band General Meeting was posted at numerous conspicuous places on the Chipewyan Prairie Dene First Nation;
b. A Band Meeting was convened at 1:20 p.m. on September 3, 2008 in order to appoint the members of the Appeal Committee;
c. At the Band meeting a motion was passed with 35 votes in favor and with no members voting against out of 52 members in attendance, seeking the removal of Albert Angus as Electoral Officer on the basis of a lack of confidence of the community membership at large in his ability to carry out his duties as Electoral Officer;
d. At the Band meeting a further motion was passed with 35 votes in favor and with no members voting against out of 52 members in attendance, seeking to appoint Shirley Janvier as Electoral Officer for the Election;
e. Ms. Janvier put forward a list of names of individuals who agreed to serve as members of the Appeal Committee;

f. The members in attendance at the Band Meeting participated in a vote to elect an Appeal Committee;

g. An Appeal Committee consisting of Mr. Jim Carbury (with 49 votes), Mr. Don Reimer (with 39 votes), and Ms. Bernice Cree (with 36 votes) was selected.

[20] On September 5, 2008, Mr. Dhir faxed a letter to the Federal Court to my attention with a carbon copy faxed to Mr. Rath, advising that the Band Meeting held on September 3, 2008 (Meeting) was improperly held as it contravened the Judgment for several reasons as set out in the correspondence.

[21] On September 11, 2008, a teleconference was held between me and counsel for each of the Applicants and the Respondent to discuss the issues moving forward.

[22] On October 7, 2008, the Applicants filed their motion record (Motion Record) for this motion.

[23] The Motion Record contained affidavits sworn by nine Affiants. Save for Mr. Angus who does not live on the Reserve, each of the remaining eight Affiants swore the following evidence:

a. Notices of Band Meetings held on the Reserve are normally posted in three separate locations: the health centre, the Band office, and the general store;

b. Even though they were regularly checking, they never saw any notice advising of a Band Meeting on September 3, 2008, posted at the locations;

c. They would have attended the Meeting had they had notice of it.

[24] On October 17, 2008, the Respondent filed the Respondent's Motion Record in this matter, which included an affidavit sworn by Jules Nokohoo.

[25] On October 24, 2008, pursuant to requests made by counsel for both parties, this Court granted an extension of time (to November 24) to allow cross-examinations on affidavits to be conducted.

[26] On November 19, 2008, this Court issued an Order in accordance with Rule 369(4) directing that the motion be heard orally at Vancouver, BC on December 1, 2008 at 9:30 a.m..

[27] On November 24, 2008, cross-examinations on affidavits were conducted of Mr. Angus and Mr. Nokohoo.

[28] On November 24, 2008, counsel for the Respondent, sent a letter to this Court suggesting that the hearing set for December 1, 2008 be a case management conference as opposed to a hearing on the merits.

[29] On November 25, 2008, this Court issued a Direction, communicated through the Federal Court Clerks, that the December 1, 2008 hearing would be converted into a telephone conference to discuss any anticipated problems and to identify an appropriate time and location for the hearing.

[30] On November 25, 2008, counsel for the Respondent sent a letter to counsel for the Applicants attaching an additional affidavit sworn by Lester Cardinal ostensibly "clarifying the affidavit he swore on September 23, 2008."

[31] On December 1, 2008, a teleconference was held with me, where counsel for both parties were present.

[32] Further to the teleconference on December 1, 2008, this Court issued a Direction as follows:

a. No later than ten business days from the date of the Direction, the Respondent will produce Mr. Cardinal for cross-examination by the Applicants' counsel in either Edmonton or Fort McMurray, failing which the said Affidavit will not be part of the record for the hearing and will be struck;

b. No later than five business days following the cross-examination of Mr. Cardinal, the Applicants will serve and file their supplementary motion record containing the portions of any transcripts upon which they intend to rely and revised written representations;

c. No later than five business days from the date of service of the Applicants' supplementary motion record, the Respondent shall serve and file their supplementary motion record;

d. No later than four business days from the date of service of the Respondent's supplementary motion record, the Applicants shall serve and file written representations in reply, if any; and

e. The hearing of this matter will take place in Calgary on January 15 and 16, 2009, unless the Court, on the advice of counsel, should otherwise order a different date.

[33] The motion was eventually heard in Edmonton on April 15, 2009, due to family circumstances that prevented Mr. Rath from appearing at the originally scheduled time.

ANALYSIS

Rule 467

[34] The jurisprudence is clear that to satisfy the Court there is a *prima facie* case of contempt, the alleging party must show willful and continuous conduct on the part of the contemnor. See *Chaudry v. Canada*, 2008 CarswellNat 1339, 2008 FCA 173.

[35] A show cause motion requires proof of a Court order, proof of the respondent's knowledge of the order, and proof of deliberate flouting of the order. See *Mennes v. Canada (Correctional Services)*, 2001 CarswellNat 1230, 2001 FCT 571.

[36] It is also clear that the Court retains a discretion not to issue a contempt citation, even where a *prima facie* case of contempt is evident (see *Volkswagen Can. Inc. v. Access Int. Automotive Ltd. (2004)*, 2004 CarswellNat 944, 2004 FC 508) and that a show cause order may be refused, for example, where the alleged failure to comply was beyond the power and control of the alleged

contemnor. See *Kun Shoulder Rest Inc. v. Josheph Kun Violin & Bow Maker Inc. (1997)*, 74 C.P.R. (3d) 487 (Fed. T.D.).

[37] The Applicants say that the Respondent has defied and deliberately flouted my Judgment of August 1, 2008 and has done precisely what that Judgment said the Respondent could not do.

[38] The Respondent says that all of their actions subsequent to my Judgment of August 1, 2008 have been nothing more than an attempt to comply with the terms of that Judgment as regards the holding of a band meeting and the selection of an Appeal Committee to further the appeals process that both sides agreed should go forward.

[39] Paragraph 2 of my Judgment reads as follows:

> The Appeals will proceed in the following manner as agreed by the parties and mandated by the Court:
>
> > Within 14 days of the date of this Order, the Respondent, Chipewyan Prairie First Nation Tribal Council shall take all necessary steps to hold a Band Meeting of eligible voters for the purposes of selecting an Appeal Committee (the "Band Meeting"), pursuant to the Chipewyan Prairie First Nation Election Code enforced at the time of the election of February 28, 2007 (the "Election"), and as attached at Exhibit "B" to the Affidavit of Albert Angus is this matter. Within 14 days of the Band Meeting the newly elected Appeal Committee shall meet for the first time and thereafter establish the process which it will follow in hearing the appeal of the election. The Appeal Committee shall be comprised of 3 members as selected at the above referred Band Meeting by eligible votes pursuant to the order of this Honourable Court.

[40] In this motion, the Court is dealing with an allegation of contempt under Rule 466(b) to the effect that the Respondent has disobeyed an order of the Court. Rule 466 is subject to Rule 467 which requires the Applicants to satisfy the Court that there is a *prima facie* case of contempt before an order to appear is issued.

[41] As the Applicants agreed at the hearing of this motion in Edmonton on April 15, 2009, it is not the few weeks delay in holding the band meeting to select an Appeal Committee that is the principal concern. Strictly speaking, the Respondent did not hold a band meeting of eligible voters within the 14-day period as stipulated in my Judgment and as agreed to by the Respondent. However, I can see that there might well have been practical difficulties that prevented strict compliance and I am not prepared to issue a show cause order on that basis alone. A few weeks delay in holding the meeting did not really prejudice the Applicants and does not suggest to me that the Respondent did not do their best to comply with my Judgment. The real issue is whether the September 3, 2008 meeting was a genuine meeting of the band membership that addressed the issues in my Judgment, or whether it was a sham meeting orchestrated by the Respondent to flout my Judgment and proceed as they wished.

[42] The fact that Mr. Angus was relieved of his duties as Electoral officer at the September 3, 2008 meeting is not a breach of my Judgment and is not evidence of bad faith on the part of the Respondent. The Judgment specifically provides for the Respondent to raise any concerns about Mr. Angus before the band membership and to let the members decide whether Mr. Angus should be

replaced as Electoral Officer for the appeals process. All that was required was procedural fairness and due process.

[43] On the facts of this case, it is obvious from my August 1, 2008 Judgment that, although Mr. Angus had not been removed by the band council, he certainly could be removed by the band members. In addition, Mr. Angus has been made well aware, as a result of these proceedings, what the complaints against him were, and he had been made fully aware that he might have to answer those complaints before a duly convened meeting of band members. He was also aware that he could be removed.

[44] Mr. Angus made a decision not to attend the meeting of September 3, 2008 at which he knew he might have to answer to complaints before the band membership, and at which he might be removed as Electoral Officer for the appeal process.

[45] Mr. Angus was given notice of the September 3, 2008 band meeting and its purpose through his lawyer, Mr. Dhir, who has represented him in these proceedings; yet he chose not to attend.

[46] When he was cross-examined on his affidavit, Mr. Angus says that he did not attend the meeting because he was not invited and was not informed by the CPFN administration that the meeting was going to take place. In fact, he seems to have been guided by Mr. Walter Janvier on this issue:

> I was constantly in contact with Walter Janvier in pretty much daily and more with respect to this purported September 3rd meeting which

> was to take place in satisfaction of the order. However, I was advised by Walter Janvier who had – there were no notices posted that there was not likely to be a meeting on that date.

[47] Mr. Angus' solicitor, Mr. Dhir, was informed by a letter of August 15, 2008 from the Respondent's lawyers that a band meeting was scheduled "for September 3, 2008 where, at that time, voting and selection of an Appeal Committee will be made."

[48] Admittedly, this is not a direct invitation to Mr. Angus form the CPFN administration but, bearing in mind the way this dispute has proceeded and the fact that Mr. Angus was represented by Mr. Dhir, I do not think Mr. Angus can say he did not know that a meeting had been called to deal with the selection of an Appeal Committee. And he must be taken to have known that, in accordance with my Judgment and reasons of August 1, 2008, he was still the Electoral Officer who was to handle the process unless and until he was legitimately replaced. My Judgment directs what was to happen and there was no reason for the Respondent's lawyer to spell this out in his letter of August 15, 2008.

[49] Whether or not the September 3, 2008 meeting had been appropriately called was not known at the time. Any doubts about Mr. Angus' role and the expectations of the Respondent and the band could easily have been clarified by, or through, Mr. Dhir. Everyone knew what needed to be done because of my Judgment.

[50] Mr. Angus' reliance upon advice from Mr. Janvier was his choice, but it was at this point that the interests of Mr. Janvier and the duties of Mr. Angus diverge. Mr. Angus' obligations as

Electoral Officer were owed to the CPFN band members, and not specifically to Mr. Janvier. Mr. Janvier may well have had good reason why he did not want to recognize the September 3, 2008 meeting as legitimate, but Mr. Angus' duty was not to throw his lot in with Mr. Janvier but to ensure that the appeals process went ahead in accordance with my Judgment and the Election Code. As Electoral Officer his duty was to attend the meeting and deal with the appeals process. He had full knowledge from my Judgment of August 1, 2008 that he was still running the appeals process until replaced. It was not his job to support or be guided by Mr. Janvier. As my Judgment points out, Mr. Angus as Electoral Officer answered to the band members of CPFN whose interests he had been appointed to protect.

[51] Mr. Janvier may well have not wanted Mr. Angus to show up at the September 3, 2008 meeting because his presence would have legitimized that meeting, and that may well have been contrary to Mr. Janvier's interests. I do not say this was the case; I am simply suggesting that Mr. Angus' role was not to act in concert with Mr. Janvier's interests or views on what was appropriate. Mr. Angus was required to be independent in these matters.

[52] Having decided not to show up at the September 3, 2008 meeting but, rather, to follow Mr. Janvier's advice about the legitimacy of the meeting, I can see why the CPFN members would seek to remove Mr. Angus as Electoral Officer. They were under a Court-ordered obligation to select an Appeal Committee and get the appeals process underway. Mr. Angus had been given notice of the meeting through his lawyer and my Judgment laid out what role Mr. Angus should play. Mr. Angus' decision not to attend the meeting thwarted the appeals process and, quite apart from any

other complaints that might have been brought against him before the membership, it would be reasonable for the CPFN membership to lose faith in someone who did not show up and who had the appearance of having thrown his lot in with Mr. Janvier.

[53] Nor do I think there was any procedural unfairness or lack of due process in his removal. Mr. Angus had full notice of the meeting and what was to take place there. Because of the application he has brought in this Court and my Judgment of August 1, 2008, he also had full notice that complaints could be raised against him and that he could be removed as Electoral Officer by the band membership. Instead of facing this process he chose not to attend. He cannot say, however, that he did not have full knowledge of the complaints or what might happen at the band meeting. In addition, his failure to attend and his apparent support for Mr. Janvier slowed the whole process down and placed the Respondents in a difficult position as regards timely compliance with my Judgment.

[54] On the facts of this case then, I cannot say that Mr. Angus was removed in breach of my Judgment or that there was any procedural unfairness in his removal. In the end, everything depends upon whether the September 3, 2008 meeting was a legitimate band meeting.

[55] The Applicants make much of what they see as discrepancies in the affidavit of Mr. Jules Nokohoo and, in particular, what they characterize as a formal and pre-meditated plan by the Respondent to have Mr. Angus removed as Electoral Officer; a plan they feel was set in motion weeks before the meeting and which shows the Respondent deliberately flouting my Judgment.

[56] Mr. Nokohoo reveals in his affidavit that the Chief in Council instructed Ms. Shirley Janvier to prepare a list of candidates for the Appeal Committee "probably three weeks" in advance of the meeting.

[57] What this shows, however, is that well in advance of the September 3, 2008 band meeting the Respondent was preparing to put their complaints about Mr. Angus before the meeting of band members, and that the Respondent was preparing an alternative list of candidates for the Appeal Committee.

[58] This was not a breach of my Judgment and it was not indicative of a pre-meditated plan to flout my Judgment. My Judgment specifically contemplates a process whereby any complaints about Mr. Angus as Electoral Officer could be brought before the band members when they consider the Appeal Committee. The Chief and Council prepared themselves to deal with this and there is no reason at all why Ms. Shirley Janvier should not prepare a list of alternative candidates to place before the membership in the event that the membership either decides to remove Mr. Angus as Electoral Officer or, for whatever other reason, the candidates he puts forward are not acceptable. There was nothing inappropriate about this and Mr. Angus must have known as a result of these proceedings that his position as Electoral Officer was in the hands of the band membership, and that the Respondents would be making strong representations to the membership that he be removed and that an alternative list of candidates for the Appeal Committee be considered. Mr. Angus could have attended the meeting, answered the complaints, and placed his recommendations before the membership. He chose not to do that. I do not think he can now complain that there was some pre-

meditated and underhand conspiracy to remove him and breach my Judgment. My Judgment contemplates that he might be removed by the band membership.

[59] In the end, then, this motion comes down to the issue of whether the September 3, 2008 meeting was a real meeting of the CPFN membership that legitimately went about the business of removing Mr. Angus and selecting an Appeal Committee.

[60] To begin with, I do not think the Applicants can complain that they did not have full notice of the meeting and that it would deal with the selection of Appeal Committee members. They were specifically advised of this fact through their lawyer and they chose not to attend on September 3, 2008.

[61] Having made that choice, they have tried to find ways to question the legitimacy of the meeting. But the Court is faced with the stark fact that the Applicants and their lawyer were advised that the meeting was going to take place. They could have attended and they could have observed. They also knew, because of my August 1, 2008 Judgment, that Mr. Angus was still the Electoral Officer fixed with the responsibility of handling the appeals process unless and until he was removed. Yet they still chose not to attend.

[62] Instead of going to the meeting to make sure that it was conducted appropriately, they chose to stay away and attack the results after the fact.

[63] It has to be born in mind that the principal purpose of my Judgment was to ensure that the appeals process went ahead in a timely manner and that the membership of CPFN be given the opportunity to assess the fairness of the election process. It was not to shield Mr. Angus form complaints that the Chief and Council might wish to bring before the CPFN membership, even though I found that Mr. Angus had not been removed at the time of my Judgment.

[64] But the Applicants now say that adequate notice of the September 3, 2008 meeting was not given, even though they knew about it, and they also knew what would take place there.

[65] The Court is left to assess evidence by Mr. Jules Nokohoo, who says that he personally posted notices of the meeting in the usual places and in the usual way, and by witnesses for the Applicants who say they were looking for notices of the meeting but did not see any.

[66] The Applicants say there are several reasons why the Court should reject Mr. Nokohoo's evidence on the notice issue.

[67] First of all, they say that Mr. Nokohoo was unable to provide clear evidence as to the location, time, and content of a band meeting allegedly held on August 18 and 19, 2008 for the purpose of informing band members about the election appeal. There may well be confusion about such a meeting but no such meeting was required by my Judgment and Mr. Nokohoo is quite clear about the location, time and content of the notices he posted for the September 3, 2008 meeting of which the Applicants were fully aware.

[68] The attendance of RCMP officers at the September 3, 2008 meeting has been relied upon by the Respondent for the adequacy of notice and community awareness of the meeting. In his affidavit, Mr. Nokohoo swears that neither he nor any other member of Chief and Council had requested the presence of the RCMP at the meeting. During cross-examination, Mr. Nokohoo conceded that he did not really know if this was the case and that a council member "probably could have" made the request.

[69] Reading Mr. Nokohoo' affidavit, I do not see this as an admission that a council member did make such a call. He is just conceding that they could have. In any event, if a council member asked the RCMP to attend I do not see this as evidence of lack of notice or of any other kind of illegitimacy regarding the calling of the meeting or conduct at the meeting.

[70] There are no formal minutes of the Chief and Council deciding to hold the meeting but, under the circumstances and in view of my Judgment, there really was not much choice and it seems clear that the Applicants were informed through legal counsel that a decision had been made to hold a meeting on September 3, 2008 to deal with the Appeal Committee meeting. As long as band members were given notice of the meeting, I do not see much relevance in whether or not the Respondent passed formal minutes. At that point in the proceedings, matters were very much in the hands of the lawyers on both sides because of the need to follow my Judgment.

[71] The Applicants also refer to the cross-examination of Mr. Lester Cardinal and ask the Court to draw the following conclusions:

> 46. It is submitted that the conduct of Jules Nokohoo (assumedly on behalf of the Respondent) in obtaining Cardinal Affidavit 11, an Affidavit which can generously be characterized as "inaccurate" raises grave concerns about the commitment of the Respondent to provide this Court with truthful and honest evidence.
>
> 47. Further, the conduct of Mr. Nokohoo in obtaining Cardinal Affidavit 11 leads to the conclusion that all of the evidence of the Respondent should be viewed with skepticism by this Court.

[72] I have reviewed Mr. Cardinal's cross-examination and I think the following points are clear:

a. It was Mr. Cardinal who approached Mr. Nokohoo and told him "I made a big mistake" and that "You guys might have had something in between then that I've never seen";

b. It was only after being approached by Mr. Cardinal that Mr. Nokohoo said Mr. Cardinal would have to do another affidavit;

c. The money that was provided to Mr. Cardinal by Mr. Nokohoo was a loan. Mr. Cardinal didn't even have enough money for groceries, let alone to get to Fort McMurray to sign another affidavit;

d. The $200 was a loan to Mr. Cardinal in the circumstances in which he found himself. He paid Mr. Nokohoo back $100 the same day. This can hardly be described as some kind of bribe;

e. Mr. Cardinal had to borrow $235 to attend the cross-examination, which confirms that there isn't much he can do without borrowing money because he doesn't really have the resources.

[73] Mr. Cardinal's second affidavit turned out to be as inaccurate as the first one he executed, and Mr. Nokohoo may well have been overzealous in ensuring that the corrections were made and

that aspersions were cast on Mr. Dhir (which I find entirely reprehensible), but I cannot say that his entirely undermines the Respondent's evidence.

[74] I have various reasons for this conclusion:

a. Mr. Dhir and the Applicants were told in writing that there would be a band meeting to deal with the appeals committee on September 3, 2008;

b. Because of my Judgment of August 1, 2008, both sides knew that Mr. Angus was still the Electoral Officer and could be expected to attend that meeting to deal with the establishment of an Appeal Committee and/or face complaints and possible removal;

c. It does not seem likely to me that the Respondent would have given Mr. Dhir and the Applicants notice of meeting where at least Mr. Angus could be expected to appear if they did not intend to hold such a meeting;

d. Mr. Angus and Mr. Janvier chose not to attend the meeting even though they both knew about it;

e. Following the meeting, Mr. Rath wrote a letter to the Court dated September 4, 2008, which was copied to Mr. Dhir, providing a full account of what had occurred at the meeting. Mr. Rath was present at the meeting and, according to some of the witnesses, played a role in it. As counsel to the band, there is nothing untoward in that. In addition, Mr. Rath is an officer of this Court and I have no reason to suspect that his letter of September 4, 2008 does not accurately reflect what occurred at the meeting. Had the Applicants wanted to, they could have attended the meeting to ensure that all went well. But they chose not to;

f. There is evidence that officers of the RCMP attended the meeting and that 52 members of the band showed up. There is nothing to suggest that these numbers were low for attendance at a band meeting, even for a band with 700 members.

[75] There is conflicting evidence on whether adequate notice of the meeting was given. Mr. Nokohoo says that he posted notices in the usual way. Witnesses for the Applicants say that they were looking for notices in the usual places but did not see them. But this meeting was no secret to the Applicants, and the fact that 52 band members showed up for it suggests to me that it was no secret to a lot of people.

[76] Hence, I am not convinced on a balance of probabilities, that the meeting of September 3, 2008 was not a legitimate band meeting, or that Mr. Rath's reporting letter of September 4, 2008 is not an accurate account of what happened at the meeting.

[77] That being the case, I see no reason to suspect that the Respondents have breached my Judgment of August 1, 2008 in any material way, or that the band meeting of September 3, 2008 was not duly called, or that there are grounds for judicial review of any of the motions passes at that meeting.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The motion is denied with costs to the Respondent.

"James Russell"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1267-07
STYLE OF CAUSE:	Albert Angus and Walter Janvier and Chipewyan Prairie First Nation Tribal Council
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	April 15, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	RUSSELL J.
DATED:	June 1, 2009

APPEARANCES:

Sandeep K. Dhir	FOR THE APPLICANTS
Jeffrey R.W. Rath	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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