

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151104

Docket: A-572-14

Citation: 2015 FCA 245

**CORAM: RYER J.A.
BOIVIN J.A.
RENNIE J.A.**

BETWEEN:

CANADIAN HUMAN RIGHTS COMMISSION

Appellant

and

**SADDLE LAKE CREE NATION CHIEF AND
COUNCIL, on their own behalf and on the
behalf of all the members of SADDLE LAKE
CREE NATION**

Respondent

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Calgary, Alberta, on November 4, 2015.
Judgment delivered from the Bench at Calgary, Alberta, on November 4, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on November 4, 2015).**

BOIVIN J.A.

[1] This is an appeal from an Order of a Federal Court Judge (the Judge) dated December 18, 2014.

[2] The Judge, who was appointed Case Management Judge on February 18, 2014, denied the Canadian Human Rights Commission's (the Commission) motion for leave to intervene in an action in which the Saddle Lake Cree Nation (the Nation) seeks a declaration that the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA) does not apply to band custom elections. In his Order, the Judge added that it was "without prejudice to the Commission's right to seek intervener status at some time in the future" (Order of the Judge, Appeal Book at paragraph 20).

[3] On appeal before this Court, while the Commission makes useful arguments as to why its contribution would be different from that of the Attorney General of Canada and why it is well-positioned to make submissions about the CHRA, the question is not whether this Court would have decided the motion for leave to intervene otherwise, but whether the Judge erred in exercising his discretion as the Case Management Judge.

[4] We all agree that the Judge applied the proper legal principles in exercising his discretion and that he did not commit a reviewable error of fact or mixed fact and law in reaching the outcome that he did.

[5] The Commission also submits that the Judge erred by ordering costs and that the amount is excessive. However, "cost awards are quintessentially discretionary" (*Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, Joint Book of Authorities, Tab 21 at paragraph 247).

In the circumstances of this case, while it was at the outer limit of the appropriate range of the Judge's discretion, it was nonetheless open to him to award costs to the Nation given that the motion was dismissed and to do so payable forthwith. There is nothing in the Commission's submissions that suggests an issue of procedural fairness or an unlawful exercise of discretion.

[6] The Court's intervention is not warranted. The appeal will therefore be dismissed without costs.

“Richard Boivin”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-572-14
STYLE OF CAUSE: CANADIAN HUMAN RIGHTS
COMMISSION v. SADDLE LAKE
CREE NATION CHIEF AND
COUNCIL, on their behalf and on
the behalf of all the members of
SADDLE LAKE CREE NATION
AND THE ATTORNEY GENERAL
OF CANADA
PLACE OF HEARING: Calgary, Alberta
DATE OF HEARING: NOVEMBER 4, 2015
REASONS FOR JUDGMENT OF THE COURT BY: RYER J.A.
BOIVIN J.A.
RENNIE J.A.
DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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FOR THE RESPONDENT

(The Attorney General of Canada)