

North Slave Metis Alliance v. Paul et al, 2003 NWTSC 17

S-0001-CV-2003000078

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

NORTH SLAVE METIS ALLIANCE

Plaintiff

- vs. -

CLEM PAUL, KATHY PAUL-DROVER, DARLENE KOYCZAN, LEE
MANDEVILLE, ERNIE CAMSELL, LEROY BLOOMSTRAND, BERNIE
MANDEVILLE, DAVE WILLIAMS AND ROYAL CANADIAN LEGION,
LOCAL 164

Defendants

S-0001-CV-2003000113

THE GENERAL BODY OF THE MEMBERSHIP OF THE NORTH SLAVE
METIS ALLIANCE and CLEM PAUL

Applicants

- and -

NORTH SLAVE METIS ALLIANCE, IRENE LEMOUEL,
CHANTELLE BURKE, EDDIE MERCREDI and ROBERT TURNER

Respondents

Transcript of the Oral Reasons for Judgment by The
Honourable Justice J.P. Foisy, at Yellowknife, in the
Northwest Territories, on March 14th, A.D. 2003.

APPEARANCES:

Mr. A. Marshall: Counsel for the Plaintiff/Respondents
Mr. R. Payne: Counsel for the Defendants/Applicants

1 THE COURT: Thank you both. Indeed, you know,
2 for the Alliance, this is a sad situation, because it
3 basically, if it is allowed to continue, is going to be
4 the basis of the destruction of the Alliance, and that
5 is not to the benefit of the Metis people, which the
6 society is supposed to serve.

7 Speaking as a Judge, it would be an interesting
8 case to reserve and maybe six months or a year from now
9 come down with a very learned judgment on the points
10 which have been made by both counsel here. I am not
11 going to do that, because I don't want to contribute to
12 the mischief -- by mischief I mean the damage which has
13 already been caused by the sad history here. So while
14 what I have to say, I think, in the end result will be
15 clear, it's not going to be a beautiful judgment.

16 I also have some hesitation in deciding the case,
17 because all the evidence is affidavit evidence, and a
18 lot of the affidavit evidence is conflicting.
19 Generally, a Judge would want to hear oral evidence so
20 that matters of credibility can be decided before
21 making a decision of this importance. Nonetheless,
22 having read all the material, I think that the main
23 history of what has occurred here is sufficiently clear
24 to allow me to make a decision today.

25 I will deal firstly with the point made by Mr.
26 Payne, that somehow the procedures set forth in the
27 Business Corporations Act should be made to apply to

1 this situation. At the end of the day, while it may
2 well be obiter, because the resolution which I have
3 arrived at may not necessitate the comments that I am
4 going to make about section 4(2) of the Societies Act
5 and the application of the Business Corporations Act,
6 it seems to me that that section, section 4(2), was not
7 meant to allow the Business Corporations Act to
8 supercede the procedures set forth in the Societies Act
9 and the procedures set forth by by-laws which are
10 properly passed under that act.

11 Generally speaking, it seems to me that that
12 section is there to guarantee a certain autonomy, a
13 certain power to a society which is described and
14 guaranteed under the Business Corporations Act. I
15 don't see it as going any further than that. However,
16 whatever remedies may exist, if the board had refused
17 to act under the by-laws or had acted wrongfully under
18 the by-laws, then, undoubtedly, the Court would have
19 some curative powers, be they statutory or common law,
20 to remedy the situation.

21 I do not read in this case and I do not conclude
22 that the board has acted in a manner which is contrary
23 to the by-laws at least to the point where its
24 decisions are of no effect. Quite to the contrary, I
25 have come to the conclusion that for whatever reason
26 the dissident group, and I use that phrase with some
27 caution, that held the March 1st meeting, in my view,

1 resulted in a nullity. The meeting is of no force and
2 effect. Nonetheless, it has had the effect indirectly,
3 if certainly not legally, of bringing the matter
4 forward so that there can be an election, and the
5 sooner the better.

6 In the meantime, in my view, the board here
7 remains properly constituted. If I had to go further,
8 I would say, in any event, that I would order that the
9 board continue to manage the affairs of the Alliance on
10 an interim basis. The board which is now in place
11 would continue to be in place until the election, which
12 has been called, is held.

13 It is my hope that a democratic election will help
14 solve the problems that this Alliance has encountered
15 and that some resolution can be made so that the
16 Alliance can move forward together as a united
17 society. I know these are nice words and that in real
18 life things often don't go that way, but I certainly
19 hope that once there is an election, that these matters
20 can be put behind the Alliance, because there are
21 important things that the Alliance is doing for the
22 betterment of the Metis people and its members, and
23 that is what the society is all about. It's not to
24 destroy, it's not to hurt, it's not to damage, but to
25 help.

26 So, having said that, what I would like to do now
27 is discuss with counsel a time limit within which the

1 election, which has already been called, will be held.
2 So did you want to take, perhaps, 15 minutes and
3 discuss this with your respective clients and see if
4 you can come up with something that I can endorse?
5 And, if not, well then you're going to have to accept
6 time limits from the Bench.

7 MR. PAYNE: Yes, Your Honour.

8 THE COURT: We will take a 15-minute break.

9 **(ADJOURNMENT)**

10 THE COURT: Gentlemen.

11 MR. PAYNE: Regrettably, Your Honour, and
12 perhaps predictably, we have not been able to agree on
13 dates. My Friend and I differ by approximately a month
14 or two months on dates. I will go through mine,
15 perhaps, first.

16 THE COURT: Okay. Go ahead.

17 MR. PAYNE: The proposal of my client, sir, is
18 that the standard in the by-laws for calling a General
19 Assembly is 10 days' notice. They're suggesting that a
20 notice can be sent out by the board this afternoon and
21 that we have a meeting of the general -- for a General
22 Assembly on Tuesday, March 25th; that the report of Mr.
23 Leratta (ph) which he says he expects to have finished
24 by the 24th, but which he says is already done in draft
25 and says that he will have finished next week, we're of
26 the view that if he can have it done by the 24th, he
27 can probably have it done by next Wednesday, March

1 19th, if it's already in draft form. So we would like
2 to see the draft-- or the final report by March 19th;
3 thereafter, the general assembly on the 25th, the
4 advanced polls on March 29th, that's Saturday, March
5 29, and then the election for Saturday, April 5th,
6 2003.

7 We would also like to see -- if the draft is
8 already available, we would like to have that draft
9 produced --

10 THE COURT: I'm sorry. That was April 5th?

11 MR. PAYNE: Yes. I'm sorry, Your Honour. Have
12 the draft report produced to Mr. Paul today. The
13 glitch between My Friend and I appears to be, again,
14 related to this notion of the election, whether it
15 needs to be duly called again or, because it's been
16 called already, whether you need to wait another 45
17 days and give 45 days' notice.

18 My Friend's clients also want to, perhaps, poll
19 for nominations for new candidates. The position of my
20 clients is that the election has already been called
21 and has been by resolution postponed. The slate of
22 candidates has already been set and the election --
23 everyone is notified that there's going to be an
24 election. It's simply of a matter of now setting a
25 date.

26 My client also says to me, for what it's worth,
27 that Mr. Turner, who is his antagonist in these

1 proceedings, is running as president, or running for
2 president, and he would like to be able to run against
3 him, and he doesn't want him to be able to at this
4 point resile from the slate of nominations and perhaps
5 not run after everything that's gone on. So those are
6 the dates that my clients are suggesting, sir.

7 THE COURT: Okay.

8 MR. MARSHALL: I will give you the dates I'm
9 suggesting and then I will explain it. An election on
10 May 17th; and so what would happen in the meantime is
11 this: The report will be available March 24th. The
12 board is going to meet immediately to look at the
13 report, and then it will go out, then, to the
14 membership, and the Special General Assembly will be
15 end of April. There will be 10 days' notice minimum
16 about that, anyhow, but end of April, and then that
17 will give people two weeks to think about how they're
18 going to vote on May 17th.

19 Now, the board is proposing to not only give
20 notice, and it's 45 days' notice under the by-law, but
21 reopen nominations. And the board's view is that with
22 everything that's happened, it's only fair to the
23 membership that nominations be reopened. So if people
24 want to run who didn't run before, they will have that
25 opportunity.

26 THE COURT: We don't need the 45 days, though.

27 There's been an election called. It's been postponed.

1 So we don't need to have another election called.

2 MR. MARSHALL: Well, the --

3 THE COURT: Or do we? I mean, I don't have the
4 by-laws before me. I'm not -- if there's going to be a
5 problem, I'm going to err on the side of caution,
6 because I don't want this matter coming back.

7 MR. MARSHALL: Right. Well, article 5(4), and
8 it's in -- it's Exhibit A to Mr. Turner's affidavit,
9 says:

10 Notice for election shall be
11 advertised at least 45 days prior
12 to the election date determined by
 the board of directors.

13 So if we're going to err on the side of caution,
14 then as soon as a new date is set, it needs to have the
15 45 days' notice; and if you look at the history of
16 this, that's what happened. That's how we got to March
17 22nd, the date that the Respondents proposed. That was
18 triggered to be 45 days from that -- from those
19 petitions that were dated February the 5th. So it
20 seems as though the 45 days' notice has been accepted
21 by people as appropriate, and it will give time to
22 reopen the nominations.

23 THE COURT: Well, if the notice was given soon,
24 like, within the next day or two, what does that bring
25 us to, the 45 days?

26 MR. MARSHALL: And when we say next day or two,
27 Wednesday's paper is the local paper.

1 THE COURT: Okay. Next Wednesday.

2 MR. MARSHALL: So we can add 45 days to March

3 19th.

4 THE COURT: That brings us into early May.

5 Surely we can then set up the remaining steps within

6 that time.

7 MR. MARSHALL: If the Court sees it that way, I'm

8 certain the board is going to do whatever is

9 necessary --

10 THE COURT: I suppose I'm trying to play

11 Solomon here a little bit, but --

12 MR. MARSHALL: I appreciate that.

13 THE COURT: -- on the other hand, I -- Mr.

14 Payne, I am not suggesting that what you have said is

15 unreasonable. It's just that I want to be sure that

16 it's --

17 MR. PAYNE: Well, I disagree with My Friend's

18 interpretation of the by-law, if I can, maybe, speak to

19 that.

20 THE COURT: Yes.

21 MR. PAYNE: I think that -- it says:

22 Notice for election shall be

23 advertised at least 45 days prior

24 to the election date.

25 The election date was already called. The election

26 date was called for February 8th, 2003. It was then

27 postponed. The election date has been called. It's

postponed. All that is needed to be done is a new date

1 announced. Everyone is aware -- what is the intent of
2 the by-laws? It's to allow everyone to know that
3 there's an election pending. Everyone knows --

4 THE COURT: Let me look at that. That's tab
5 what?

6 MR. MARSHALL: It's Exhibit A to Mr. Turner's
7 affidavit.

8 THE COURT: Exhibit A.

9 MR. PAYNE: His first affidavit.

10 THE COURT: I thought I had all this material
11 nicely, neatly stacked so I would find it, but even
12 Judges have trouble. Okay. Is that the affidavit
13 dated the 11th of March or is that --

14 MR. MARSHALL: It would be dated February 26th.

15 MR. PAYNE: February 26th.

16 MR. MARSHALL: Your Honour, I could pass mine up.

17 THE COURT: Yes, would you. I'm having trouble
18 finding it in this pile of material here.

19 MR. PAYNE: The concern I have, Your Honour, it
20 says:

21 Notice for election shall be
22 advertised at least 45 days prior
to the election date.

23 The election date was called for February 8th, and that
24 was the date determined by the board of directors.

25 This new date is not a date being determined by the
26 board of directors. It's a date being determined by
27 the Court, and we already know that the election date

1 was February 8th; it's been postponed.

2 The intent of the by-law, surely, is that people
3 have a reasonable amount of notice of an election so
4 that they know an election is coming up, they consider
5 whether they want to run, they can do all of those
6 things, put their names forward. All of those things
7 have been done. The election has been called. The
8 date has been set. That was February 8th. Now it's
9 simply postponed, and we just need to arrive at a new
10 postponement date. Surely, to read 45 days into that,
11 again, I think is stretching it, quite frankly, Your
12 Honour.

13 THE COURT: Well, you may be right, but there's
14 something that Mr. Marshall said which I thought was
15 reasonable under the circumstances, and that would be
16 now that we're through what we have been through, that
17 the nominations be reopened. People may want to run
18 that have not declared their intention to run.

19 MR. PAYNE: Well, I guess my response to that
20 is the only reason that could be is because my client
21 has had to wait and wait and wait and wait for things.
22 So the only thing that's changed is delay. And so if
23 the slate of candidates has already been set, nothing
24 has changed, other than further delay. So, you know,
25 there's a scrap, there's a dispute, there's no doubt
26 it's come to a head, but the scrap and the dispute has
27 been ongoing, Your Honour.

1 THE COURT: Yes, I know. I know. I just don't
2 want to have this thing resurface again before the
3 election.

4 MR. PAYNE: Very well, Your Honour.

5 THE COURT: Well, what I am going to do here
6 is -- and basically you are a month apart, as far as I
7 can see. Mr. Marshall wanted more time, but I'm going
8 to whittle it down to 45 days from next Wednesday. So
9 whatever they want to do, if they feel they have to
10 give notice of another election, they can, but at least
11 they are going to have to advertise the date of the
12 election, and that is going to give people 45 days.
13 The report will be out May the 24th. I have that
14 evidence before me. I'm not going to go --

15 MR. PAYNE: March, I believe, Your Honour.

16 THE COURT: Or March the 24th. What did I
17 say?

18 MR. PAYNE: May.

19 THE COURT: Oh, sorry. That's not going to
20 help, is it. You know, do I really have to say that
21 Mr. Paul gets to see it on the 25th or, you know, do I
22 have to be that specific?

23 MR. PAYNE: The draft? I would simply ask
24 for -- if My Friend is prepared to give me an
25 undertaking that I can see the draft today, I have no
26 difficulty with that.

27 MR. MARSHALL: No one --

1 MR. PAYNE: He might want to impose some
2 undertaking on me, and that's fine.

3 MR. MARSHALL: No one has seen it yet, Your
4 Honour. That's an undertaking I can't give. What I
5 will give is an undertaking that I will release it as
6 soon as possible, because Mr. Leratta has got it, and I
7 don't even have instructions from the board yet. The
8 board knows that Mr. Leratta is going to share this
9 with me, and they're going to let me and Mr. Leratta
10 see this document right away, and then I need to get
11 instructions about releasing it. Nobody else has seen
12 it. So I couldn't give the undertaking to just turn it
13 over at this point.

14 THE COURT: Well, ASAP?

15 MR. MARSHALL: Yes, that's fine.

16 THE COURT: You can do that?

17 MR. MARSHALL: Yes.

18 THE COURT: What other steps here would be
19 required?

20 MR. PAYNE: If the election is May -- my rough
21 estimate is May 3rd or thereabouts, Your Honour, that
22 is the election date, then there would have to be
23 advanced polls the week before that.

24 THE COURT: The week before that. All right.
25 Set that in your timetable. Anything else? If the
26 board wants to --

27 MR. PAYNE: Nominations --

1 THE COURT: -- reopen nominations within those
2 time limits, I'm not going to extend this again, so
3 this is it, that is up to the board. I mean, I can't
4 tell the board what to do and what not to do, so long
5 as what they do is in compliance with the authority
6 they have under the by-laws. Anything else here? Any
7 other dates that you want me to set?

8 MR. PAYNE: The actual General Assembly itself
9 for the membership should be a reasonable period of
10 time after. If the report is to come in on the 24th of
11 March, I would suggest that a period of time shortly
12 after that the General Assembly will be able to meet.

13 MR. MARSHALL: I had suggested a month for the
14 members to see the report and come to a special General
15 Assembly. As long as we have got the election date
16 set, it would seem to me that everything else would fit
17 in that. So the plan here would be to have the meeting
18 so that there is two weeks between the time of the
19 meeting and the election, and that gives lots of time
20 to get the report out.

21 THE COURT: Is that okay?

22 MR. PAYNE: I have no difficulty with that.

23 THE COURT: Okay. So it will be two weeks
24 before the election, then. Anything else? Now is the
25 time. I'm here.

26 MR. PAYNE: That's, I think, it, Your Honour.

27 THE COURT: That's it? Okay. Mr. Marshall?

1 MR. MARSHALL: That's everything, Your Honour.

2 THE COURT: All right.

3 MR. PAYNE: I suppose we could address costs.

4 My submission on that, sir, is that this is almost like
5 a familial dispute. It's almost like an estate matter
6 or, perhaps, a business corporation dispute. It is a
7 dispute under the Societies Act. I think that the
8 appropriate course when members are fighting with each
9 other and they're forced to come to court is that the
10 company of which they are members pay or be responsible
11 for all of the costs of the case.

12 MR. MARSHALL: Well, costs should follow the
13 event, Your Honour, if we had to decide it today. If
14 you want to leave it to be spoken to, that would be
15 fine, too, but if we were to make an order today, the
16 order should be costs to follow the event.

17 MR. PAYNE: On the event I think I have
18 succeeded, as well, Your Honour.

19 THE COURT: Well, that's the problem. I think
20 both sides may have some reason to think that there's
21 been some success.

22 I take it that this finalizes this particular
23 portion of the litigation? In other words, your
24 Statement of Claim now is -- that action is finished.
25 Your Originating Notice, that's finished. So there's
26 some finality here.

27 MR. PAYNE: If My Friend will confirm the

1 Statement of Claim is finished.

2 MR. MARSHALL: Well, there is a damage claim in
3 there, too. This is like the labour cases we see. The
4 first step, the injunction, is often the critical
5 stroke. But we can't say that it's over at this point,
6 but it may very well be over. I just don't know right
7 now.

8 THE COURT: Well, I think what I will do is if
9 this is not -- if there's some chance that it isn't
10 over, I will simply order that costs be determined by
11 whoever is going to end up finalizing this matter. Or,
12 if counsel choose to terminate the proceedings and wish
13 to bring the matter forward to Chambers to have a
14 Chambers Judge or myself deal with costs, that is also
15 an alternative. All right?

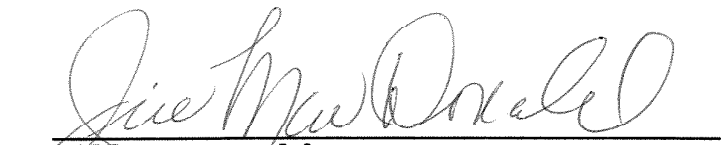
16 MR. PAYNE: Very well. Thank you, Your Honour.

17 THE COURT: Thank you both.

18 **(AT WHICH TIME THE PROCEEDINGS CONCLUDED)**

19 Certified to be a true and accurate
20 transcript, pursuant to Rules 723
and 724 of the Supreme Court Rules.

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Jill MacDonald,
Court Reporter