

Federal Court



Cour fédérale

Date: 20180815

Docket: T-978-16

Citation: 2018 FC 836

Ottawa, Ontario, August 15, 2018

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**ERIC SHIRT, SHANNON HOULE, VALERIE
STEINHAUER, AND GREG CARDINAL**

Applicants

and

**SADDLE LAKE CREE NATION, SADDLE
LAKE CREE NATION APPEAL
COMMITTEE AND RON LAMEMAN,
ELECTORAL OFFICER FOR SADDLE LAKE
CREE NATION**

Respondents

ORDER AND REASONS

I. Overview

[1] Eric Shirt has brought two motions pursuant to Rule 467 of the *Federal Courts Rules*, SOR/98-106, for orders requiring the Saddle Lake Cree Nation [SLCN] to show cause why it

should not be found in contempt of the judgment of Justice Glennys McVeigh in *Shirt v Saddle Lake Cree Nation*, and the judgment of Justice Michael Manson in *Shirt v Saddle Lake Cree Nation*, 2018 FC 399 [*Saddle Lake #2*].

[2] As a preliminary matter, Mr. Shirt concedes that the SLCN did in fact comply with the judgment of Justice Manson in *Saddle Lake #2*, albeit just one day before the deadline for doing so expired. It is therefore unnecessary to deal further with the relief sought regarding compliance with that judgment.

[3] For the reasons that follow, I conclude that Mr. Shirt has not met his onus of presenting a *prima facie* case that the SLCN is deliberately flouting the judgment of Justice McVeigh in *Saddle Lake #1*. The judgment is silent regarding the timeframe within which the new process to determine the candidates' eligibility must be completed, or within which any new election must be held. An outer time limit may be inferred from her refusal to defer the matter until the next scheduled election in 2019, but that is all.

[4] Justice McVeigh found in *Saddle Lake #1* that the SLCN does not currently have an election custom that is generally accepted and supported by a majority of its members. The SLCN has been working in cooperation with Indian and Northern Affairs Canada [INAC] to develop new electoral and membership codes. I am not persuaded that Mr. Shirt has presented a *prima facie* case that the delay in complying with the judgment of Justice McVeigh in *Saddle Lake #1* amounts to wilful and contumacious conduct.

[5] The motions are therefore dismissed.

II. Background

[6] The Saddle Lake Cree First Nation is a “band” as defined by the *Indian Act*, RSC 1985, c I-5. It comprises two communities: the SLCN and the Whitefish Lake First Nation [WLFN].

[7] The SLCN and WLFN elect separate chiefs and councils in separately-held elections. Once elected, the nine representatives of the SLCN and the four representatives of the WLFN together form the Saddle Lake Band’s “council of the band” as defined in the *Indian Act*.

[8] Elections are governed by the *Saddle Lake Tribal Custom Election Regulations* [SLTCER], which were developed in band meetings that occurred in 1955 and 1960 and have never been amended.

[9] An SLCN election was scheduled for June 2016. A nomination meeting was held in advance of the election. Several protests were subsequently received regarding nominees who were said not to meet the requirements of the SLTCER. The protests were referred to an election committee, which removed a number of nominees from the official candidates’ list.

[10] Elections were held for the positions of Councillor on June 15, 2016, and for the position of Chief on June 22, 2016. The outcomes of the elections were the subject of an application for

judicial review to this Court (*Saddle Lake #1*). In allowing the application, Justice McVeigh made the following findings (at paras 26-66):

- The SLCN has election regulations, and s 74 of the *Indian Act* and the *Indian Band Election Regulations*, CRC, c 952 therefore do not apply.
- The SLCN does not have an election custom that is generally accepted and supported by a majority of its members.
- There is no provision in the SLTCER for the creation of an election committee or for the protest of a nomination. Band members were entitled to know the criteria, role and process for the appointment of an election committee.
- The election committee's procedures for determining the eligibility of the applicants did not meet the minimum requirements of notice, an opportunity to make submissions, and a full and fair consideration of those submissions. Furthermore, the complete lack of reasons suggested that the negative determinations were unreasonable.

[11] Justice McVeigh quashed the election committee's decision to remove the applicants from the official candidates' list, and ordered that their eligibility be re-determined. If any of the applicants were found to be eligible, then a new election would have to be called (*Saddle Lake #1* at para 72). She continued at paragraph 76:

If a new election must be held, it must be done in accordance with the [SLTCER] and/or a custom that has the support of the majority of band members. Any process chosen by the band must be procedurally fair including a transparent process known to all members. If a nominee is protested they must be notified and given an opportunity to respond. Any decision to remove a nominee due to a protest must be made by an unbiased decision maker(s) who gives full and fair consideration to the protest and nominee's submissions. Since none of these processes are currently defined in the [SLTCER] they must either be amended to reflect the above or a custom must be approved by a majority of the band membership. The current Chief and Council will remain in place until and if the new election is [*sic*] needs to be held because one or more of the applicants become eligible.

[12] In *Saddle Lake #2*, Justice Manson heard applications for judicial review brought by candidates who were dissatisfied with the outcome of the new eligibility determination process that resulted from this Court's judgment in *Saddle Lake #1*. He dismissed one of the applications as premature, but allowed the other. He ruled that the panel considering the eligibility of candidates must complete the process and notify them of its decision within two months of the date of his judgment (April 12, 2018). As previously noted, the SLCN complied with this deadline, albeit just one day before it expired.

III. Issue

[13] The sole issue raised by these motions is whether Mr. Shirt has demonstrated a *prima facie* case that the SLCN is disobeying the judgment of Justice McVeigh in *Saddle Lake #1*.

IV. Analysis

[14] Before a person alleged to be in contempt will be ordered to appear before the Court to address the allegation of contempt, Rule 467(3) of the *Federal Courts Rules* stipulates that the Court must be satisfied that there is a *prima facie* case that contempt has been committed by that person. To so satisfy the Court, the alleging party must show a *prima facie* case of wilful and contumacious conduct on the part of the contemnor (*Chaudhry v Canada*, 2008 FCA 173 at para 6).

[15] A successful motion for a show cause order “requires proof of a court order, proof of the respondent’s knowledge of the order, and proof of deliberate flouting of the order” (*Rameau v Canada (Attorney General)*, 2012 FC 1286 at para 13 [*Rameau*], citing *Angus v Chipewyan Prairie First Nation Tribal Council*, 2009 FC 562). It must be clear on the face of the order what is required (*Rameau* at para 19, citing *Telecommunications Workers Union v Telus Mobility*, 2004 FCA 59 at para 4).

[16] In *Chédor v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 291 at para 30, Justice Martine St. Louis recently declined to issue a show cause order on the ground that “no finding of contempt can be made from implied terms of an order”. She observed that “the interpretation of the order must rather be discernable from its face”.

[17] Justice McVeigh’s judgment in *Saddle Lake #1* reads as follows:

THIS COURT’S JUDGMENT is that:

1. The application is granted. The decision of the committee to remove the nominees from the Nomination list is quashed;

2. The candidates removed must be subject to a new process to determine their eligibility and if any are found eligible then a new election must be held;
3. Costs are awarded in the lump sum amount of \$2,000.00. That total amount is to be divided equally among the Applicants and is to be paid forthwith to each individual applicant by the Respondents

[18] Justice McVeigh's judgment is silent regarding the timeframe within which the new process to determine the candidates' eligibility must be completed, or within which any new election must be held. It is clear from her reasons for judgment, however, that she was not prepared to defer the matter until the next scheduled elections in 2019 (*Saddle Lake #1* at para 71). The SLCN concedes that the judgment requires any new election to be held prior to that date.

[19] In *Saddle Lake #2*, Justice Manson observed that the re-determination process needed to occur as soon as possible, given that the SLCN Chief and Council continued to represent the SLCN despite the impugned legitimacy of the June 2016 election (at para 48). For this reason, he imposed a two month deadline for completion of the re-determination process. However, no comparable deadline was ever imposed by Justice McVeigh in *Saddle Lake #1* for the calling of a new election, in the event that one were found to be necessary. An outer time limit may be inferred from her refusal to defer the matter until the next scheduled election in 2019, but that is all.

[20] According to the SLCN, since Justice McVeigh's judgment in *Saddle Lake #1*, they have been consulting their membership regarding a new electoral code. This is being undertaken together with a project to revise the membership criteria. In June 2017, the SLCN received a

grant of \$200,000 from INAC to assist in the joint project. They are working towards a deadline of December 2018 for completion of the new electoral and membership codes.

[21] Based on the foregoing, I conclude that Mr. Shirt has not met his onus of presenting a *prima facie* case that the SLCN is deliberately flouting the judgment of Justice McVeigh in *Saddle Lake #1*. The judgment is silent regarding the timeframe within which the new process to determine the candidates' eligibility must be completed, or within which any new election must be held. The only restriction on the timing of a new election is that it must take place before the date of the next scheduled election in 2019.

[22] Furthermore, Justice McVeigh found in *Saddle Lake #1* that the SLCN does not currently have an election custom that is generally accepted and supported by a majority of its members. The SLCN has been working in cooperation with INAC to develop new electoral and membership codes. I am not persuaded that Mr. Shirt has presented a *prima facie* case that the delay in complying with the judgment of Justice McVeigh in *Saddle Lake #1* amounts to wilful and contumacious conduct.

[23] These matters were recently referred to case management by order of Mr. Justice Alan Diner dated July 6, 2018. If Mr. Shirt wishes to ask this Court to impose clear timelines for the completion of steps preceding a new election, he may bring an appropriate application following consultation with the case management judge.

V. Conclusion

[24] The motions for orders requiring the SLCN to show cause why it should not be found in contempt of the judgments of this Court in *Shirt v Saddle Lake Cree Nation*, 2017 FC 364 and *Shirt v Saddle Lake Cree Nation*, 2018 FC 399 are dismissed.

[25] One set of costs is awarded to the SLCN in accordance with the mid-range of Column III of Tariff B.

[26] The notices of motion were brought in the context of Court File Nos. T-1298-17 and T-1522-17. The first of these proceedings was dismissed by Justice Manson as premature, while the second was allowed (*Saddle Lake #2*). The judgment granted in T-1522-17 was ultimately complied with, and neither matter can now form the basis for contempt proceedings.

[27] Mr. Shirt alleges non-compliance with Justice McVeigh's judgment in T-978-16 (*Saddle Lake #1*). This is the proceeding within which the show cause motions should have been brought, and the style of cause shall be amended accordingly.

ORDER

THE ORDER OF THIS COURT is that:

1. The motions for orders requiring the Saddle Lake Cree Nation to show cause why it should not be found in contempt of the judgments of this Court in *Shirt v Saddle Lake Cree Nation*, 2017 FC 364 and *Shirt v Saddle Lake Cree Nation*, 2018 FC 399 are dismissed.
2. One set of costs is awarded to the Saddle Lake Cree Nation in accordance with the mid-range of Column III of Tariff B.
3. The style of cause is amended to conform to that of Court File No. T-978-16.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-978-16

STYLE OF CAUSE: ERIC SHIRT, SHANNON HOULE, VALERIE
STEINHAUER, AND GREG CARDINAL v SADDLE
LAKE CREE NATION, SADDLE LAKE CREE NATION
APPEAL COMMITTEE AND RON LAMEMAN,
ELECTORAL OFFICER FOR SADDLE LAKE CREE
NATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 19, 2018

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: AUGUST 15, 2018

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