Federal Court  Cour fédérale

Date: 20191206

Docket: T-1282-19

Citation: 2019 FC 1568

Vancouver British Columbia, December 6, 2019

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

WILLIAM GORDON GLENDALE IN HIS CAPACITY AS CHIEF OF BAND COUNCIL OF THE DA'NAXDA'XW FIRST NATION AND AS A MEMBER OF THE HEREDITARY CHIEFS COUNCIL AND MICHAEL JACOBSON-WESTON AND ANNIE GLENDALE IN THEIR CAPACITY AS COUNCILLORS OF THE DA'NAXDA'NW FIRST NATION

Applicants

and

BILL PETERS, NORMAN GLENDALE, ROBERT DUNCAN

Respondents

ORDER AND REASONS

I. Nature of the Matter

[1] These motions concern the Da'naxda'xw First Nation in British Columbia [DFN], a band within the meaning of the *Indian Act*, RSC 1985, c I-5 [*Indian Act*]. The Applicants are the band

council known in this file as the “Glendale Council” [Glendale Council] and the Respondents are known as the “Hereditary Chiefs Council” [HCC]. Both assert the authority to govern the DFN.

[2] These two motions are grounded in the T-1282-19 Application (Glendale Council versus HCC), but there is now a T-1725-19 Application (HCC versus the Glendale Council). Both Applications are case managed by Prothonotary Ring.

[3] In an earlier motion before Prothonotary Ring, the HCC sought to remove the law firm JFK Law as solicitors for the Glendale Council. Prothonotary Ring dismissed the HCC’s motion and the HCC has appealed Prothonotary Ring’s order. I heard that appeal on December 3, 2019. The decision is under reserve.

II. Background

[4] DFN is a small community with a small on-reserve population. As a result, many of the people involved in this proceeding have some familial relationships with one another. The overwhelming majority of its membership reside away from the reserve.

[5] The parties agree that, since around 1987, DFN was governed by a band council pursuant to an unwritten custom. Prior to that, DFN’s governance was determined in accordance with the *Indian Act*. In 2016, two members of DFN expressed their desire for an electoral system, filing for judicial review of the Glendale Council’s positions [2016 Judicial Review].

[6] In February 2017, a survey polled DFN members about their preferred governance model. 82 of 151 voting members participated (82 of 211 total members). None of the 82 members voted to maintain the status quo [0%], 65/82 voted for a "hereditary chiefs council supported by a family leadership council" [79%], 14/82 voted for an elected chief and council [17%], and 3/82 indicated "no preference" [4%]. The parties do not dispute the survey results but they dispute the net effect of the survey results on the governance of DFN. More will be said on this point below.

[7] In May 2017, the 2016 Judicial Review proceedings were halted as a result of a successful mediation involving then Prothonotary Lafrenière (now Justice Lafrenière). The successful mediation resulted in a consent order establishing the HCC for the purpose of developing a future governance code for DFN [May 2017 Order]. See Appendix A for a copy of the May 2017 Order. The May 2017 Order had two main points: (1) the HCC was to develop a new system of governance for DFN and present it to the membership for ratification, (2) the Band Council was not to do anything more than "day-to-day" governance and administration matters in the interim.

[8] The members of the band council at the time of the May 2017 Order were Chief William Gordon Glendale [Chief Gordon Glendale] and two elected councillors— Michael Jacobson-Weston and Annie Glendale. They are the same individuals who comprise the Glendale Council in this proceeding. The members comprising the HCC were Gordon Glendale, Bill Peters, Norman Glendale, and Robert Duncan.

[9] While not making a finding on this issue in these motions, the parties have advanced different positions as to what occurred before and after the May 2017 Order. On one hand, the Glendale Council asserts that they would typically involve other DFN members, and the HCC, in different deliberations and decisions however the Glendale Council remained the governing body. On the other hand, the HCC asserts that due to the wishes expressed in the 2017 survey and by its involvement in deliberations and decisions of the Glendale Council, the governance of DFN transitioned to the HCC. The circumstances giving rise to this situation are at the heart of these motions.

[10] On July 5, 2019, the HCC met, without notice to Chief Gordon Glendale, and suspended him for alleged suspicious financial activities. The HCC asserted their power to govern the DFN, given that they had been involved in making decisions for DFN business including signing contribution agreements with Indigenous Services Canada [ISC]. The HCC then took various actions related to the suspension, including making personnel decisions related to DFN employees and administering DFN funds. They now seem to have control over many aspects of DFN's day-to-day activities.

[11] Now, the question is, "who has governing authority over the DFN?" Is it the Glendale Council, or is it the HCC? The parties agree that the issue revolves around what is the custom of the band.

[12] The Glendale Council asserts that the May 2017 Order established that it was to remain in power until a draft governance code was established by the HCC and a referendum held, but

that it was to make no decisions that were outside of “day to day” operations. On the other hand, the HCC argues that the HCC has become the governing body of DFN primarily as a result of the 2017 survey and the resulting decisions it has taken for, and on behalf of, the DFN such as dealing with contribution funding agreements.

[13] The motions are similar. Each party seeks to deny the authority of the other party and establish their own until the final determination of the matter. The HCC abandoned its motion seeking to have the Glendale Council’s judicial review application summarily dismissed. This matter now deals only with the respective motions for injunctive relief and other relief as set out in their respective motions.

[14] Both the Glendale Council and the HCC agree that the applicable legal test for their respective motions for injunctive relief are as set out in *RJR-Macdonald Inc. v Canada*, [1994] 1 SCR 311 [*RJR*].

[15] The parties have filed voluminous materials in support of their respective motions. I will not be referring to the evidence in detail, as the parties take different positions on many parts of it. Suffice to say that I have reviewed these materials and the very similar materials in the related appeal of the order of Prothonotary Ring.

III. Preliminary Issue – Chief Gordon Glendale’s Affidavit #4

[16] At the hearing, the Glendale Council sought leave to file a fourth affidavit from Chief Gordon Glendale seeking to clarify his position on the allegation of the financial irregularities

and to set out a description of the custom for suspension or removal of hereditary chiefs. Counsel for the HCC agreed that it could be filed but only for the purposes of responding to the financial irregularity issue (paras 1-5) but that the remainder of the affidavit should not be considered. The remainder of the affidavit described a custom for addressing suspensions or removals of hereditary chiefs.

[17] I will allow the affidavit and uphold the HCC's objection. In any event, there is no shortage of materials before me in which I can rely on for the purpose of considering whether to grant either of the motions before me.

IV. Glendale Council's Motion for interlocutory relief

[18] The Glendale Council request the following relief:

1. An order for the following interim relief:

    a) That the Respondents be prohibited from acting as a band council and the Applicants declared band council;

    b) All of the Respondents' decisions enacted under band council authority since July 1, 2019 be suspended;

    c) That the Applicant Gordon Glendale be declared a member of the HCC and his suspension be deemed unlawful;

2. Costs of the motion; and

3. Any further relief as the Court deems just and appropriate.

A. *The Glendale Council's Argument*

[19] The Glendale Council relies on the test in *RJR*. The well known three-part conjunctive test requires a party to demonstrate that, (a) there is a serious issue to be tried, (b) that the applicant would suffer irreparable harm if the application were refused, and (c) that the balance of convenience favors the applicant—that is, the applicant will suffer more harm if the injunction is not granted than the respondent will suffer if the application is granted. (*RJR* at 334) The Glendale Council argue that they have met all three stages of the test, and thus the injunction ought to be granted.

[20] On the "serious issue to be tried" stage, the Glendale Council notes that the bar is rather low—they must only be satisfied that the matter is not frivolous or vexatious (*RJR* at 338). The Glendale Council argues that their application has merit in that, (a) they believe that they are the appropriate governing body of DFN, and (b) determining who has the authority to govern DFN raises a serious issue in light of the facts.

[21] On the "irreparable harm" stage, the Glendale Council contends that the HCC's actions are causing long-lasting, cumulative, irreparable harm to both the Glendale Council and the DFN. From *RJR*, they note that irreparable harm is harm that "cannot ultimately be cured by the court's judgment", and that the concept of such harm is informed by one party's ability to pay damages to the other (*RJR* at 341). The Glendale Council rely on the following lines of argument in this regard:

1. As the underlying application seeks *quo warranto* relief, damages for the harms currently being suffered are not available in the event of the Band Council's success.

2. This Court has found on other occasions that political harm is irreparable in *Gabriel v Mohawk Council of Kanesatake*, 2002 FCT 483 [*Gabriel*] and *Myiow v Mohawk Council of Kahnawake*, 2009 FC 690, etc., and the Glendale Council will suffer from the loss of the prestige associated with their position.

3. The HCC have purportedly fired four employees. The cumulative effect of this is that a severe loss of knowledge and expertise on how to run the day-to-day affairs of DFN. Further, if the Glendale Council win, they would be responsible for dealing with wrongful dismissal claims. These harms are irreparable.

4. The HCC have usurped the Glendale Council's rightful ability to act as spokespeople for DFN and work with their partner organizations. Without a court order authorizing the Band Council as the governing authority of DFN, partner organizations will be hesitant to work with DFN, and especially the HCC. These harms are irreparable.

5. The Glendale Council claims that the HCC are in contempt of the May 2017 Order by acting as if they had band council authority. They cite *Ontario (Agriculture and Food and Dairy Farmers) v Georgian Bay Milk Company Ltd.*, 2008 CanLII 4780 (ONSC) [*Georgian Bay*] as authority that contemptuous conduct may constitute irreparable harm.

[22] On the "balance of convenience" stage, the Glendale Council makes the following arguments toward establishing that they would suffer greater harm if the injunction was not granted than the HCC would suffer if the injunction was refused:

1. The Supreme Court in *RJR* stated that "impacts to third parties" can be considered at the balance of convenience stage (*RJR* at 344). They contend that the HCC's actions have "thrown the community into chaos", making access to funding, essential services, and other things uncertain. They rely on a British Columbia Supreme Court decision, *Gitwangak Indian Band v Davis*, 2017 BCSC 744, as support that interfering with the ability of a governing body to provide such services weighs in favor of granting an injunction, and contend that this case is similar;

2. They argue that preserving the *status quo* favors the Applicants. They cite *Frank v Bottle et al*, [1993] FCJ No 670 at paras 34-37, as authority that granting an injunction that preserves the *status quo* is preferable. They argue that since they are the proper governing authority, granting an injunction will preserve the *status quo* as intended by the May 2017 Order;

B. *The HCC Argument*

[23] The HCC submits that the Glendale has not satisfied the three-part *RJR* test.

[24] On the "serious issue to be tried" part, the HCC claim that it has been governing DFN since August 2017. They argue that the evidence shows that the HCC has the authority to govern DFN. They refer to letters, emails, band council resolutions signed by the HCC (then including

Gordon Glendale), and meeting notes from HCC meetings. They further argue that the May 2017 Order does not prevent them from governing the DFN, and DFN members prefer the HCC to the "former" Glendale Council. Finally, the HCC argues that the suspension of Chief Gordon Glendale was justified.

[25] On the "irreparable harm" stage, the HCC acknowledge that the Court has previously determined that losses of prestige or status have constituted irreparable harm, but take the position that there have been no such losses for the Glendale Council. For Chief Gordon Glendale, the HCC notes that he cannot have claimed to have lost prestige, because he was suspended from council due to suspicious financial activities. For Annie Glendale, she voluntarily stepped down in favour of the HCC. For Mr. Jacobson-Weston, he was inactive as band councillor from April 2016-July 2019; and, by the time he purportedly rejoined the band council, his term had expired. Further, the HCC argues that the members of DFN supported the HCC, not the members of the Glendale Council.

[26] The HCC also argues that the Glendale Council cannot show there will be irreparable harm to DFN's community or partner organizations. For them, it is speculative—the HCC maintains that there is no reason why business cannot continue as usual under the HCC. Besides that, the HCC argue that any such "problems" have arisen from the Glendale Council's own actions to usurp the HCC's authority and encourage partner organizations to do business with them instead. The HCC also states that it is in a position to continue providing services to the DFN community. Finally, they hold that there has been no contempt, as the Glendale Council's position relies on an incorrect interpretation of the May 2017 Order.

[27] On the "balance of convenience" stage, the HCC hold that the balance favours them. They note that *Canadian Broadcasting Corp v CKPG et al*, 1992 CanLII 560 at 11 (BCCA) [*CBC*], *RJR* at 342-343, 347, and *Duncan v Behdzi Ahda First Nation*, 2002 FCT 581 at para 18 [*Duncan*], establish that the Court may consider a number of factors in this analysis, including the strengths of the Glendale Council's case, the irreparable harm involved, the *status quo*, and the public interest. The HCC then argues that:

1. The Glendale Council's case is weak and this should weigh against them in the balance of convenience. They cite *CBC* at 10 for this.

2. The irreparable harm in this case will be to the HCC, because DFN will lose faith in their authority. In addition, the people of DFN willed that the HCC should govern. The HCC argues that the scope of the HCC has transformed from the simple development of a governance code to administering DFN's affairs generally. The Applicants' injunction would impair its ability to do this.

3. The *status quo* favors the HCC and tilts the balance of convenience accordingly. According to the HCC's correct interpretation of the May 2017 Order and past practice, the *status quo* actually favors the HCC continuing to administer DFN's affairs.

4. Finally, the public interest favours the HCC. The HCC argue that the various government and partner agencies doing business with DFN would have uncertainty in their further dealings, and such agencies would be prohibited from continuing to deal with DFN as they have since August 2017. Further, the people of DFN wish for the HCC to govern, and rejecting the injunction would affirm these wishes.

V. HCC's Motion for interlocutory relief

[28] The HCC request the following relief:

1 An order summarily dismissing the underlying application;

2. An order for the following interim relief:

a. An interlocutory injunction preventing the BC or anyone under their control or persuasion or anyone with knowledge of the order from:

i. Representing the BC as the DFN band council;

ii. Exercising the authority of the band council carrying on business as band council; and

iii Interfering with the band council's exercise of its lawful authority or its ability to carry on the business affairs of the DFN;

b. That the HCC may fulfill its governing duties and responsibilities of the DFN;

c. That the BC disclose all decisions, resolutions, or other purported exercises of authority since July 5, 2019 and product all such disclosure within seven days of the order;

d. That the BC transfer all funds and consideration received for the benefit of the DFN to the DFN;

e. That the BC disclose and transfer all documentation in their possession, power, or control respecting the governance of the DFN to the HCC within seven days of the order;

3 Costs on a solicitor-client basis; and

4 Any further relief as the Court deems just and appropriate.

A. *The HCC's Arguments*

[29] The HCC relies on Rule 373(1) of the *Federal Courts Rules* as authority that the Court may grant injunctive relief. They rely on the same three-step test in *RJR*.

[30] On the first "serious issue" part of the test, the HCC submit that (1) they have established a strong *prima facie* case that the Glendale Council lacks lawful authority to govern the DFN and, (2) since July 2019, the Glendale Council has unlawfully purported to govern the DFN and attempted to usurp the authority of the HCC. Noting that the bar is low, they claim to have met it through the evidence they have gathered.

[31] On the second "irreparable harm" part of the test, the HCC rely on *Duncan* for the proposition that a "loss of confidence in the leadership structure of the band" can constitute irreparable harm. They claim that, if the Glendale Council is allowed to continue its activities, band members' confidence in the DFN leadership structure will weaken. They further rely on *Napaokesik v Shamattawa First Nation*, 2012 FC 153 for the proposition that "unjustifiable interference with the moving party's governance responsibilities may amount to irreparable harm". For the HCC, if the Court denies this motion, the Glendale Council will continue to operate as a competing governing body, hampering their efforts and perhaps constituting irreparable harm.

[32] On the third "balance of convenience" part of the test, the HCC submits that it should weigh in their favor. They cite *RJR* and *CBC*, noting the broad scope of this test, which may

include a number of factors like the strength of the moving party's case, the preservation of the *status quo*, and the public interest. They claim that their evidence establishes a strong case, since they have acted as governing body unopposed from August 2017 to July 2019. Further, they argue that the *status quo* should be maintained in their favor, because they have been dealing with various government and partner organizations since August 2017.

B. *The Glendale Council's Argument*

[33] The Glendale Council submit that the HCC has not satisfied the *RJR* test.

[34] On the "serious issue" part of the test, the Glendale Council claim that the HCC motion is improper because they seek to enjoin the Glendale Council's rights without asserting rights of their own. The Glendale Council notes that *RJR* establishes that the test for an injunction must be firmly rooted in an underlying application, otherwise it would make no sense. In other words, it is the strength of the *Applicant's case* that must be reviewed. The Glendale Council also notes that the HCC cannot ground its request for injunctive relief on its parallel application T-1725-19 because of my October 23, 2019 order (for that application) that no motions for injunctive relief can be made before a case management conference is requisitioned. The Glendale Council also argue that the judicial review was filed (and not even served) so close to the HCC's motion for injunctive relief, with no notice, that it would be prejudicial to allow the HCC to rely on T-1725-19 in any case.

[35] Further on the first part of the test, the Glendale Council argue that the HCC's evidence is *not* evidence of their authority to govern DFN, but rather just evidence of their conduct, which

was improper. The Glendale Council maintains the position that the HCC's only "claims to legitimacy" are a survey and an incorrect interpretation of the May 2017 Order. The HCC claims to have a "broad consensus of the community" that gives them authority, but they have failed to establish it. The Glendale Council argues that the conduct of outside parties in dealing with the HCC is not relevant to the "broad consensus" test, and, in any case, the only "broad consensus" that could lead to a change in governance is that of the community accepting a new governance structure as originally intended. Further, they argue that the HCC are not even the real HCC. Finally, they note that the one member of the HCC, Norman Glendale, has sent the Glendale Council a letter acknowledging the Glendale Council's authority and he also acknowledges his error in participating in certain actions of the HCC.

[36] The Glendale Council also note that the HCC has included many "groundless" statements accusing Chief Gordon Glendale of certain things, which are not connected to any legal argument.

[37] On the second "irreparable harm" stage of the *RJR* test, the Glendale Council argue that the HCC have failed to show any. They claim that the HCC erroneously relies on harms to third parties, will not suffer political harm, that the DFN did not choose the HCC as a governing body through the survey, that abiding by a Court order cannot create irreparable harm, and that there will be no disruption in their fiduciary duty to act as a "council of the band". Primarily, the Glendale Council claims that the HCC's claims of losing DFN members' confidence is speculative. Given that the HCC retain *de facto* power over DFN, they will face no irreparable harm if the injunction is not granted (they cite *Stoney First Nation v Shotclose*, 2011 FCA 232 at

para 51 and *Ledoux v Gambler First Nation*, 2019 FC 380 at para 15). The Glendale Council argues that the survey results are not proof of the HCC's authority. Finally, the Glendale Council note that fiduciary duties only attach to "councils of the band", so they will apply to whichever party is in power and the DFN's fiduciary duties to its members will not be irreparably harmed.

[38] On the "balance of convenience" stage, the Glendale Council contends that the balance favors them. They note that most partner organizations continue to deal with them, the Glendale Council's position affirms the rule of law and members' will, the *status quo* favors the Glendale Council, and the HCC do not come with clean hands.

[39] The Glendale Council claim that the evidence shows partner organizations have chosen to deal with *them*, not the HCC; therefore, there will be no irreparable harm. With respect to the rule of law, the Glendale Council claims that they are doing exactly what the court order process imagines—governing DFN while a new governance process is developed and established. With respect to the *status quo*, the Glendale Council claim that it never changed and they were always in power in law; that it was only in July 2019 when the HCC "seized *de facto*" power of the DFN that their power was usurped. Finally, the Glendale Council takes the position that the Court, as in *Ledoux*, should prohibit the HCC from attaining relief because they have not operated in accordance with the rule of law in their seizure of power.

VI. Analysis – Glendale Council's Motion and HCC's Motion

[40] Looking at the relief sought in each party's motion, it is clear that only one of them can be granted; or neither can be granted.

[41] Interim injunctive relief remains a discretionary remedy, as evidenced by the inclusion of the words “a judge may” in Rule 373 of the *Federal Courts Rules*. I agree that the three-part test in *RJR* applies.

A. *The Glendale Council Motion*

[42] I will focus on the “irreparable harm” and “balance of convenience stages”, as the threshold for the “serious issue” stage of the *RJR* test is so low—merely not “frivolous or vexatious”—that I have no trouble finding that the Glendale Council has satisfied this part of the test. The determination of the proper governing group is no doubt a serious question.

[43] On irreparable harm, the evidence must establish harm that is beyond mere speculation. Anyone can assert that certain harms will befall them, but is the harm real or is it speculative? Based on the evidence presented, I am not persuaded that Glendale Council will suffer irreparable harm.

[44] As for whether there will be harm to the prestige of the Glendale Council, I am of the view that due to the contents of the various conflicting affidavits there will likely be harm to the prestige of all of the individuals involved in these proceedings as per *Gabriel*. There is also no doubt that the entire community of DFN is suffering from this dispute and the associated legal proceedings. In fact, both the Glendale Council and the HCC acknowledge this albeit from different vantage points. The harms flowing to the individuals involved in these proceedings and to the DFN community are not irreparable.

[45] I find the claims related to the loss of institutional knowledge is a neutral factor. With clear rules and clearly identified contact people within the administration, the membership should not be prejudiced by the lines drawn by the state of matters. The membership is certainly inconvenienced due to the actions of both the Glendale Council and the HCC but there is no evidence that any essential services will be in jeopardy. In addition, whether the injunction is granted or refused, one party will suffer harm because they have been delegitimized.

[46] Finally, I am not satisfied that, per *Georgian Bay*, the Glendale Council has established that the members of the HCC have conducted themselves contemptuously. The parties clearly have different perspectives about the nature and scope of the May 2017 Order but the consideration of the merits including the nature and scope of the May 2017 Order will be for the applications judge.

[47] Regarding the *status quo* arguments of the Glendale Council, the *status quo* is not a return to an earlier time. It is a way to preserve the current state of things pending the hearing of the matter. Without delving into the merits of the case, the Court is left with no real idea of what DFN's current governance structure truly is. Accordingly, a *status quo* determination is impossible. The line is blurred.

[48] I find that the Glendale Council has not provided clear and non-speculative evidence of irreparable harm. The *RJR* test is not satisfied. I am dismissing the Glendale Council's motion.

[49] In light of the above, there is no need to consider the balance of convenience part of the test.

B. *The HCC Motion*

[50] I find that the HCC also satisfies the first part of the test of establishing a serious question to be tried due to the ongoing DFN governance issues. I make this determination notwithstanding the Glendale Council's written argument that the HCC's motion should not even be considered seeing as it did not convene a case management conference as directed in my Order recommending this for case management. This argument was not advanced in oral argument by the Glendale Council.

[51] As for the irreparable harm part of the test, it is my view that the parties argue much, if not all, the same harms as the other, albeit from different vantage points. For the same reasons as set out in my analysis of the Glendale Council's motion, I find that the HCC has not established the required irreparable harm to satisfy this aspect of the test. The harms claimed are, at this point and at best, speculative.

[52] The HCC has not satisfied the *RJR* test. I am dismissing the HCC's motion.

[53] In light of the above, there is no need to consider the balance of convenience part of the test.

C. *Costs*

[54] On the HCC's motion, the Glendale Council have requested solicitor-client costs. Solicitor-client costs may be awarded where there has been "reprehensible, scandalous, and

outrageous" conduct, though they are exceptional: *Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at para 67. The Glendale Council provide a comprehensive list of "bad faith" activities of the Respondents that, for them, might justify such an award if believed. Whether the actions of the HCC are considered as being reprehensible, scandalous or outrageous will be for the Justice hearing this judicial review application.

[55] The Glendale Council have noted, though, that lump sum cost awards are sometimes awarded in these situations where there is a resource imbalance between the parties: *Whalen v Fort McMurray No 468 First Nation,* 2019 FC 1119 at paras 21 and 30.

[56] The HCC on the other hand suggest that the circumstances and the conduct give rise to costs in their favour.

VII. Conclusion

[57] For the reasons above, I am dismissing both motions as they have failed to show clear and non-speculative irreparable harm. As such, both parties have not satisfied the second part of the *RJR* test dealing with irreparable harm on their respective motions. As the test is conjunctive, meaning all three parts must be satisfied, it follows that both applications must be dismissed.

[58] The Court retains full discretion to order whatever cost amounts it desires per Rule 400 of the *Federal Courts Rules*. Under the circumstances, as both motions are dismissed, there is no reason to award costs.

JUDGMENT in T-1282-19

THIS COURT'S JUDGMENT is that both motions are dismissed. There is no order as to costs.

"Paul Favel"
Judge

APPENDIX A to the Judgment in T-1282-19: COPY OF THE MAY 26, 2017 ORDER

Date: 20170526

Docket: T-1908-16

Vancouver, British Columbia, May 26, 2017

PRESENT: Case Management Judge Roger R. Lafrenière

BETWEEN:

NICOLE HAJASH AND LOU-ANN NEEL

Applicants

and

WILLIAM ('GORDON') GLENDALE (CHIEF), AND MICHAEL JACOBSON-WESTON AND ANNIE GLENDALE (COUNCILLORS) IN THEIR CAPACITY AS THE CHIEF AND COUNCIL OF THE DA'NAXDA'XW FIRST NATION

Respondents

ORDER

UPON a Dispute Resolution Conference being held with the Applicants, Nicole Hajash and Lou-ann Neel; the Respondents, William (Gordon) Glendale and Annie Glendale; the parties' solicitors; and other members of the Da'naxda'xw First Nation, in Campbell River, British Columbia, on May 25, 2017;

AND UPON the consent of the parties to the terms of this Order, including the issuance of a Joint Statement in the form attached as Schedule "A";

THIS COURT ORDERS that:

1. The Hereditary Chiefs who are willing and available, consisting of William (Gordon) Glendale, Robert Duncan, Norman Glendale, and Giyaka (Billy Peters) (the 'Hereditary Chiefs') shall form a Council for the purpose of developing a governance code for the Da'naxda'xw First Nation to be presented to the membership for their approval (the Hereditary Chiefs Council). Ruby Mannila may be present to assist Giyaka but any input shall be provided by Giyaka.
2. Prothonotary Roger R. Lafrenière shall assume the role of lead facilitator to convene a meeting as soon as practicable of the Hereditary Chiefs Council to reach an agreement on a budget and community engagement process, leading to the formulation of a governance code.
3. The Hereditary Chiefs Council may, at their discretion, include additional persons as members of the Hereditary Chiefs Council.
4. Reasonable Band funds will be made available to the Hereditary Chiefs Council, including for research, legal support, and governance experts to engage in the process of formulating and presenting the governance code to the community.
5. The Hereditary Chiefs Council shall, unless agreed to by the Hereditary Chiefs Council or otherwise ordered by the Court, present the proposed governance code to the community for approval by December 1, 2017.

6. Gordon Glendale and the Councillors of the Da'naxda'xw First Nation shall take no decisions and make no expenditures that would be outside of the ordinary day-to-day administration of the Band, including long-term agreements, pending either a resolution or the hearing of the application.

7. The hearing of this matter is adjourned to a date certain in April 2018, unless the Court orders otherwise.

8. Deadlines for completion of cross-examinations on the affidavits is adjourned to a date certain in January 2018, unless the Court orders otherwise.

9. The dates for service of the Applicants' Record is adjourned to a date certain in February 2018, unless the Court orders otherwise.

10. The dates for service of the Respondents' Record is adjourned to a date certain in March 2018, unless the Court orders otherwise.

11. It is understood that this agreement is without prejudice to the parties' positions in respect to all matters, including in respect to the protocols and laws that define the Da'naxda'xw hereditary ranking system, should the matter continue through the hearing process.

12. If the parties cannot reach an agreement, the legal fees incurred by the parties, together with the issue of costs, shall be the subject of adjudication either upon the resolution or hearing of the application.

13. Upon the conclusion of the referendum on the Da'naxda'xw First Nation governance code, the Applicants shall discontinue the application.

"Roger R. Lafrenière"

Case Management Judge

Schedule "A" to the Order of Prothonotary Lafrenière dated May 26, 2017 in Court File No. T-1908-16

Joint Statement by the Parties to the Da'naxda'xw First Nation Governance Lawsuit

We write with respect to an update on the lawsuit filed in December 2016 challenging the current system of governance of our Nation. The parties have recently met to discuss ways the governance issues raised in the lawsuit might be resolved.

At this meeting, we agreed upon many foundational principles. We have agreed we are stronger working together than being divided. We have agreed that the community must decide how they wish to be governed, not any one person or the current Council. We have agreed that any process for community engagement on issues relating to governance be thorough and transparent, and give the community the time and information it needs to give informed input.

The parties have agreed that the next step in the process is for the Hereditary Chiefs Council, in collaboration with the families and community to develop a governance proposal for the community to consider. The mandate of the Hereditary Chiefs Council will be to work towards achieving community consensus and support for any proposed governance model culminating in a referendum on a Da'naxda'xw Code of Governance.

The parties agree that leadership from the Hereditary Chiefs Council on this issue reflects our customs, traditions, and culture and provides the best opportunity for voices from all families to be heard.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1282-19
STYLE OF CAUSE:	WILLIAM GORDON GLENDALE IN HIS CAPACITY AS CHIEF OF BAND COUNCIL OF THE DA'NAXDA'XW FIRST NATION AND AS A MEMBER OF THE HEREDITARY CHIEFS COUNCIL AND MICHAEL JACOBSON-WESTON AND ANNIE GLENDALE IN THEIR CAPACITY AS COUNCILLORS OF THE DA'NAXDA'NW FIRST NATION V BILL PETERS, NORMAN GLENDALE, ROBERT DUNCAN
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATES OF HEARING:	NOVEMBER 28-29, 2019
JUDGMENT AND REASONS:	FAVEL J.
DATED:	DECEMBER 6, 2019

APPEARANCES:

Karey Brooks Jason Harman	FOR THE APPLICANTS
Dean Dalke Samuel Bogetti	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

JFK Law Vancouver, British Columbia	FOR THE APPLICANTS
DLA Piper Vancouver, British Columbia	FOR THE RESPONDENTS