Federal Court  Cour fédérale

Date: 20210322

Docket: T-1344-20

Citation: 2021 FC 246

Ottawa, Ontario, March 22, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

BRIAN JACKSON

Applicant

and

ERWIN BASTIEN, PIIKANI NATION CHIEF AND COUNCIL, PIIKANI NATION REMOVAL APPEAL BOARD, ROBERT HAWKES, CAIREEN HANERT AND MICHEAL PFLUEGER

Respondents

ORDER AND REASONS

[1] Mr. Jackson is a councillor of the Piikani Nation. He is facing a petition for his removal. The council referred the petition to the Removal Appeal Board, an independent body tasked with hearing such petitions. Councillor Jackson brought an application for judicial review of the council's decision.

[2] Councillor Bastien, who initiated the petition, now brings a motion to stay Councillor Jackson's application. I am granting this motion, because the application is premature.

I. Background

[3] Elections for the chief and council of the Piikani Nation are governed by the *Piikani Nation Election Bylaw, 2002* [the Election Bylaw]. The Election Bylaw contains an elaborate mechanism for the removal of a chief or councillor. It creates a decision-making body for this specific purpose, called the Piikani Nation Removal Appeal Board [the Board]. Pursuant to chapter 10 of the Election Bylaw, petitions for the removal of a chief or councillor may be brought before the council. Section 10.4 provides that the council must consider the evidence in support of a petition and decide whether the matter should be referred to the Board. Chapter 11 then describes the procedure to be followed by the Board.

[4] In September 2020, Councillor Erwin Bastien brought a petition for the removal of Councillor Brian Jackson. After considering the issue, the council adopted a resolution on September 30, referring the matter to the Board.

[5] Councillor Jackson initiated an application for judicial review of the council's September 30 decision. He alleges several breaches of the procedure outlined in the Election Bylaw. He also challenges the merits of the petition.

[6] By order of the Chief Justice, my colleague Prothonotary Alexandra Steele was designated as the case management judge. On January 27, 2021, she directed that only two

interlocutory motions would be entertained at this stage: a motion for a stay and a motion for injunctive or interim relief. Pursuant to this direction, Councillor Bastien brought a motion for a stay. Councillor Jackson, however, brought a motion that appeared to seek an early determination of the merits of the main application.

[7] For this reason, and in conformity with Prothonotary Steele's decision, I issued a direction on March 15, 2021, to the effect that I would only hear Councillor Bastien's motion for a stay and Councillor Jackson's motion, to the extent that it requested interim relief. I underlined that I would not hear the merits of the main application, nor any motion in separate proceedings brought by other parties.

II. Analysis

[8] I will deal with Councillor Bastien's motion first, because, if it is successful, it will not be necessary to consider Councillor Jackson's motion.

A. *Councillor Bastien's Motion for a Stay*

[9] Councillor Bastien asks the Court to decline to hear the application, on the basis that it is premature. In the alternative, he seeks a stay of the proceedings until the Board makes a decision on the petition to remove Councillor Jackson. At the hearing, Councillor Bastien clarified that he is mainly seeking a stay of the application, not that it be struck out.

[10] I am allowing Councillor Bastien's motion and staying the application, for the following reasons.

[11] Paragraph 50(1)(b) of the *Federal Courts Act*, RSC 1985, c F-7, allows this Court to stay a proceeding "where . . . it is in the interest of justice." In *Mylan Pharmaceuticals ULC v Astrazeneca Canada, Inc*, 2011 FCA 312, Justice David Stratas of the Federal Court of Appeal stated that the decision to stay a proceeding temporarily is not constrained by the test normally applied when a reviewing court decides whether to stay the proceedings before an administrative tribunal, as set out in *RJR-Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311. The court has broad discretion to consider all relevant factors: *Clayton v Canada (Attorney General)*, 2018 FCA 1.

[12] Here, the decisive consideration is the prematurity of the application. In *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paragraph 30, [2011] 2 FCR 332 [*CB Powell*], Justice Stratas stated that "[t]he normal rule is that parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted." This rule has been applied in a long line of cases, most recently in *Dugré v Canada (Attorney General)*, 2021 FCA 8 [*Dugré*]. In that case, at paragraph 37, the Court warned that "the non-availability of interlocutory relief is next to absolute."

[13] The main focus of Councillor Jackson's application is the council's September 30 decision to refer the matter to the Board. This was not a final decision. This decision was only a preliminary step in the administrative process created for dealing with removal petitions. The

administrative process will be exhausted only when the Board makes its final decision. Because this has not yet happened, Councillor Jackson's application is premature, which is a very weighty reason for staying it.

[14] My colleague Justice Sean Harrington dealt with a very similar issue involving the same First Nation and the same removal process in *Strikes With a Gun v Piikani First Nation Council*, 2013 FC 966 (an interlocutory decision not available on public databases). The council referred a petition for the removal of the Chief to the Board. The Chief sought an injunction to prevent the Board from hearing the case. Justice Harrington noted that the council had merely "made a recommendation" to the Board and that the Chief's motion for an injunction was premature. He adjourned the matter *sine die*. There is no reason for me to stray from the path laid out by my colleague.

[15] The rule against judicial review of interlocutory decisions can only be set aside in exceptional circumstances, and these exceptions are very rare: *CB Powell*, at paragraph 31; *Dugré*, at paragraph 35. Councillor Jackson argues that his circumstances are exceptional. He notes that the timelines set out in the Election Bylaw were not complied with, resulting in the Board losing its jurisdiction. He also highlights several breaches of procedural fairness.

[16] However, the fact that an applicant raises jurisdictional or procedural fairness issues does not, in itself, give rise to exceptional circumstances justifying the intervention of the Court before the administrative process is completed: *CB Powell*, at paragraphs 33, 39-40.

[17] I have reviewed the grounds invoked by Councillor Jackson. As these grounds may be considered by the Board, or by one of my colleagues when dealing with the merits of the application for judicial review, I will say as little as possible, so as not to unduly influence subsequent decision-makers. All that needs to be said at this stage is that I have not found any exceptional circumstances justifying an immediate intervention in the Board's process.

[18] Thus, I will order a stay of Councillor Jackson's application until the Board issues its decision.

B. *Councillor Jackson's Motion*

[19] As I am staying the application, it is not necessary to deal with Councillor Jackson's motion. Suffice it to say that, contrary to Prothonotary Steele's direction, the motion was not for interim relief, but was essentially asking for the application to be decided on the merits immediately. At the hearing, Councillor Jackson indicated that he was not seeking other forms of interim relief.

C. *Costs*

[20] Both Councillor Bastien and the Piikani Nation are seeking costs. At the hearing, Councillor Bastien made it clear that he is not seeking costs on an elevated basis and does not want the costs award to bear any punitive dimension. Thus, he is seeking costs according to column III of the Tariff, which is the default rule: *Federal Courts Rules*, SOR/98-106, r 407. He

suggested that a fixed amount of $1500 to $1700 would reflect an award pursuant to column III of the Tariff and claimed one set of costs for both motions.

[21] I agree with Councillor Bastien and I award costs in a fixed amount of $1500. As I am applying the default rule, I need not make any findings regarding the conduct of Councillor Jackson in this proceeding.

[22] I also award costs in the amount of $1000 in favour of the Piikani Nation. While Councillor Bastien is the main respondent and brought the motion for a stay, the Piikani Nation filed a motion record providing information as to the procedure followed by the council and the Board. This justifies an award of costs in its favour, but for a somewhat lesser amount than the award in favour of Councillor Bastien.

ORDER in T-1344-20

THIS COURT ORDERS that:

1. This application for judicial review is stayed until the Piikani Nation Removal Appeal Board issues its decision in this matter.

2. The applicant is condemned to pay costs to the respondent Erwin Bastien in the amount of $1500, inclusive of disbursements and taxes.

3. The applicant is condemned to pay costs to the respondent Piikani Nation Chief and Council in the amount of $1000, inclusive of disbursements and taxes.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1344-20
STYLE OF CAUSE:	BRIAN JACKSON v ERWIN BASTIEN, PIIKANI NATION CHIEF AND COUNCIL, PIIKANI NATION REMOVAL APPEAL BOARD, ROBERT HAWKES, CAIREEN HANERT AND MICHEAL PFLUEGER
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 16, 2021
ORDER AND REASONS:	GRAMMOND J.
DATED:	MARCH 22, 2021

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