

Federal Court



Cour fédérale

Date: 20210512

Docket: T-4-21

Citation: 2021 FC 434

Ottawa, Ontario, May 12, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MARION KATHLEEN STANDINGREADY

Applicant

and

**THE CHIEF OF OCEAN MAN FIRST
NATION, CONSTANCE BIG EAGLE, THE
COUNCIL MEMBERS OF OCEAN MAN
FIRST NATION,
JASON BIG EAGLE, CRAIG BIG EAGLE,
TIMOTHY STANDINGREADY,
FAYE MCARTHUR, DANIEL AKACHUK**

Respondents

JUDGMENT AND REASONS

[1] This application challenges the right of the chief and council of Ocean Man First Nation to hold office. The applicant, Ms. Standingready, submits that the chief was removed by a vote of the members and that the council overstayed its term of office. These submissions are devoid of merit. There is no evidence that the resolutions purportedly adopted at the members' meetings

reflected the broad consensus of the community or were authorized by Ocean Man's constitution. Federal regulations empowered the council to extend its term of office and postpone the election. Accordingly, the application will be dismissed.

I. Background

[2] Ocean Man First Nation adhered to Treaty 4 in 1875. In 1901, it was amalgamated with the Pheasant Rump Nakota First Nation and the White Bear First Nation. Pursuant to an agreement reached in 1986 with the federal government, the three First Nations were de-amalgamated and Ocean Man was re-established by ministerial order in 1990. Ocean Man, however, was not added to the list of First Nations holding their elections pursuant to the *Indian Act*, RSC 1985, c I-5. Thus, from that time, and until recently, Ocean Man's elections were governed by its own "custom."

[3] The parties disagree as to the sources of this custom and, in particular, as to the legal status of Ocean Man's constitution. Ms. Standingready, a member of Ocean Man, asserts that the constitution was adopted in 1990, as part of the process of re-establishing the First Nation, and that it is in full force today. The council respondents, on their part, say that the constitution was never validly adopted and that many of its provisions were never followed. The parties disagree as to the teachings that can be drawn from *Bigstone v Big Eagle*, [1993] 1 CNLR 25 (FCTD), and *Parisier v Ocean Man First Nation* (1996), 108 FTR 297, two cases in which the Ocean Man constitution was discussed.

[4] What is reasonably certain, however, is that elections have been held for three-year terms. The last election was held in January 2018, for a term ending in January 2021. The respondents are Ocean Man's current council.

[5] In December 2018, a group of Ocean Man members petitioned the council for a membership meeting, according to section 13 of chapter II of the constitution. As the council did not accede to this request, they held a meeting on their own, which was attended by about 30 members. Several resolutions were adopted, one of which purported to suspend Chief Constance Big Eagle.

[6] In July 2019, another meeting was held in similar circumstances and was attended by fewer than 20 members. A resolution was adopted to reaffirm the suspension of Chief Constance Big Eagle.

[7] In June 2020, the council adopted two resolutions regarding the next election. The first one extended the council's term of office until June 1, 2021, as council was of the view that this was necessary to prevent, mitigate and control the spread of COVID-19. The second one petitioned the Minister of Indigenous Services to make an order subjecting Ocean Man to the *First Nations Elections Act*, SC 2014, c 5, and to set the next election for June 1, 2021.

[8] On December 27, 2020, Ms. Standingready brought the present application for judicial review, in which she seeks an order of *quo warranto* or an interlocutory injunction to prevent the respondents from illegally exercising the powers of the Ocean Man council. The application is

based on the resolutions of the December 2018 and July 2019 members' meetings, the allegation that the extension of the council's term of office to June 2021 was invalid, as well as various allegations of financial mismanagement. Two of the respondents, Messrs. Timothy Standingready and Daniel Akachuk, support Ms. Standingready. The other respondents, whom I will call the "council respondents," oppose the application.

[9] On March 23, 2021, the Minister of Indigenous Services made an order adding the name of Ocean Man First Nation to the schedule of the *First Nations Elections Act*, and fixed the date of the first election as June 1, 2021.

[10] At the hearing, I was informed that the election was recently postponed from June 1 to June 2, apparently because an earlier step in the electoral process was delayed due to a snowstorm. Nothing of substance turns on this one-day difference.

II. Mootness

[11] Based on *Bertrand v Acho Dene Koe First Nation*, 2021 FC 287 [*Bertrand*], the council respondents first assert that the matter is moot, as the election will take place on June 2. Indeed, in *Bertrand*, at paragraph 26, I held that an application for a writ of *quo warranto* challenging the right of a councillor to hold office loses its practical utility when the term of office of the councillor ends and a new election is called. See also *Narte v Gladstone*, 2021 FC 433 at paragraphs 9-10 [*Narte*].

[12] However, at the hearing of this application, counsel for Ms. Standingready suggested that the logical consequence of the Court granting the remedy she is requesting would be that the June 2 election is invalidly called and should be postponed. Thus, given this specific allegation, rendering judgment on the merits retains practical utility and the matter is not moot.

III. Analysis

[13] The writ of *quo warranto* is a remedy available to prevent someone from holding public office illegally: *Lake Babine Band v Williams* (1996), 194 NR 44 (FCA); *Marie v Wanderingspirit*, 2003 FCA 385 at paragraph 20. The alleged illegality must pertain to the person's eligibility for office or to the electoral process itself. *Quo warranto* is not available to remedy alleged illegalities that are not directly related to the person's eligibility: *Salt River First Nation #195 v Martselos*, 2009 FC 25 at paragraph 12. *A fortiori*, *quo warranto* is not a tool for the expression of political grievances. In other words, the Court's intervention must be based on the breach of a legal rule regarding eligibility for office, not on assertions that office holders have made unwise decisions or misused the powers entrusted to them: *Gadwa v Joly*, 2018 FC 568 at paragraphs 28-41.

[14] Much of the submissions made at the hearing would have made good political speeches. This Court, however, is a court of law. It cannot entertain arguments challenging the political merits of the council's decisions. The Court was urged to intervene to ensure democratic accountability. Yet, it cannot do so outside of the parameters set by law. In this regard, the best guarantee of democratic accountability remains a vigilant citizenry.

[15] I will therefore focus on the submissions that pertain directly to the right of the respondents to hold office. As will quickly become clear, these submissions are entirely devoid of merit. In analyzing these submissions, I will not rule on the validity or effect of the Ocean Man constitution because, even if the constitution is effective, Ms. Standingready is not entitled to the remedy she is seeking.

A. *Effect of the Purported Membership Meetings*

[16] Ms. Standingready's first ground for seeking the removal of the respondents is the resolutions adopted at the December 2018 and July 2019 meetings. The difficulty with this submission is that she does not identify any legal basis for the power of a members' meeting to remove the chief and council.

[17] While the constitution provides for the holding of membership meetings, it is silent as to the powers that the members may exercise. In this regard, I note that section 41 of chapter I of the constitution enumerates grounds for which the office of chief or councillor becomes vacant. No one argues that the situation falls under one of these grounds. In *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 732 at paragraphs 42-55, [2019] 4 FCR 217 [*Whalen*], I noted that the explicit granting of a power to remove councillors under specific circumstances usually leads to the inference that there is no general, unrestricted power to the same effect.

[18] Nor did Ms. Standingready prove any consistent practice regarding removal of the chief or councillors that would give rise to a "custom," in the sense of an Indigenous law arising from

a course of conduct tacitly accepted by the community: *Whalen*, at paragraph 36; *Bertrand*, at paragraph 40.

[19] The evidence is also insufficient to show that the resolutions adopted at the December 2018 and July 2019 meetings attracted the broad consensus of the community: see *Narte*, at paragraph 22. These meetings were attended by no more than 30 persons, in a community of more than 500 members. Moreover, the evidence does not convince me that sufficient notice was given, so as to enable all interested members to attend.

[20] Thus, the resolutions of the December 2018 and July 2019 were ineffective in suspending or removing the respondent Constance Big Eagle from the office of chief. I also note that these resolutions did not purport to suspend or remove the other respondents.

B. *Postponement of the Election*

[21] Ms. Standingready also submits that the council would already have been defunct when it postponed the election, rendering the whole exercise invalid. This submission, however, can simply not be reconciled with the facts. The council resolutions extending the term of office and asking the Minister to bring Ocean Man under the *First Nations Elections Act* were adopted in June 2020, whereas the council's term of office was initially set to end in January 2021. Thus, the council was within its initial term of office when it extended this term.

[22] The extension was made pursuant to section 4 of the *First Nations Election Cancellation and Postponement Regulations (Prevention of Diseases)*, SOR/2020-84 [the Regulations]. In

Bertrand, I found section 4 of the Regulations to be *ultra vires*, as the *Indian Act* did not empower the Governor in Council to make them. However, I suspended the declaration of invalidity of the Regulations for 60 days, that is, until June 1, 2021. Thus, the Regulations were deemed to be valid when Ocean Man's council invoked them in June 2020.

[23] Ms. Standingready is not challenging the reasonableness of the council's decision to avail itself of the power granted by the Regulations. On their face, the conditions set by section 4 of the Regulations are met, as Ocean Man possesses a reserve and the council stated in its resolution that it is of the view that extending its term of office is necessary to prevent, mitigate and control the spread of COVID-19.

[24] Likewise, the council was within its initial term of office when it asked the Minister to subject Ocean Man to the *First Nations Elections Act*. Ms. Standingready has not suggested any reason why the ministerial order made in response to this request would be invalid. In any event, the application for judicial review is not aimed at the ministerial order, and the Attorney General was not named as a defendant.

[25] Lastly, nothing turns on the further postponement of the election from June 1 to June 2. The application does not challenge this decision and I have little information as to how and when it was made. As I explained above, the council is still validly in place and, *prima facie*, the Regulations empower the council to postpone an election held pursuant to the *First Nations Elections Act*.

IV. Conclusion

[26] For the foregoing reasons, the application for judicial review will be dismissed. I see no reason to depart from the usual rule whereby the losing party pays the costs of the prevailing party according to the Tariff.

JUDGMENT in T-4-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The applicant is condemned to pay costs to the respondents Constance Big Eagle, Jason Big Eagle, Craig Big Eagle and Faye McArthur, according to the Tariff.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-4-21

STYLE OF CAUSE: MARION KATHLEEN STANDINGREADY, v THE CHIEF OF OCEAN MAN FIRST NATION, CONSTANCE BIG EAGLE, THE COUNCIL MEMBERS OF OCEAN MAN FIRST NATION, JASON BIG EAGLE, CRAIG BIG EAGLE, TIMOTHY STANDINGREADY, FAYE MCARTHUR, DANIEL AKACHUK

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO AND REGINA, SASKATCHEWAN

DATE OF HEARING: MAY 10, 2021

JUDGMENT AND REASONS: GRAMMOND J.

DATED: MAY 12, 2021

APPEARANCES:

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