

Federal Court



Cour fédérale

Date: 20220830

Docket: T-1550-22

Citation: 2022 FC 1246

Vancouver, British Columbia, August 30, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

**KARL STONE IN HIS CAPACITY AS
COUNCILLOR FOR DAKOTA TIPI FIRST
NATION**

Applicant

and

**THE MINISTER OF INDIGENOUS
SERVICES CANADA, BURKE RATTE AND
DAKOTA TIPI FIRST NATION AS
REPRESENTED BY ERIC PASHE,
KYLE PASHE, CAMERON HALL**

Respondents

ORDER AND REASONS

I. Nature of the Matter

[1] Karl Stone [Applicant], a councillor of the Dakota Tipi First Nation [DTFN], brings a motion seeking an interlocutory injunction prohibiting an electoral officer [EO] from continuing

to act as the EO for the DTFN general election [Election], scheduled for tomorrow, August 31, 2022, in order to have a new EO appointed at a proper DTFN Band Council meeting. In effect, the Applicant asks this Court to put a stop to the Election.

[2] The motion is dismissed. My reasons are set forth below.

II. Background

[3] The DTFN conducts its elections in accordance with the *First Nations Elections Act*, SC 2014, c 5 [*FNEA*] and the *First Nations Elections Regulations*, SOR/2015-86 [*FNER*]. The Election is scheduled for tomorrow, August 31, 2022. Several steps in the Election process have already occurred: Nominations took place on July 27, 2022; an Advanced Poll was conducted in Winnipeg on August 22, 2022; and August 25, 2022 was the deadline to request mail-in ballots.

[4] The subject of this motion concerns the appointment of one of the EOs, Burke Ratte [EO Ratte]. The Applicant has concerns about EO Ratte's ability to fairly and impartially administer the Election. Specifically, stemming from information provided by a community member, the Applicant has concerns about potential and actual business dealings between DTFN and EO Ratte that give rise to a conflict of interest, as well as an arrangement with a business associate of EO Ratte to provide election funds to Chief Eric Pashe. The Applicant does not directly contest the appointment of the other EO, Sherry Lynn Gobeil, apart from submitting that a co-EO is not permitted under the *FNEA* or the *FNER*.

[5] The Applicant states that the appointment of the EOs was improper, as the Applicant was not given notice of the Band Council meeting when the EO was to be selected. Rather, he only became aware of the EO's appointment on July 21, 2022, following conversations with representatives from Indigenous Services Canada and DTFN Chief Eric Pashe.

[6] The Respondents state that the EO's appointment was proper, as it is well established that Band Council meetings occur every Thursday. There was a proper quorum of the Band Council on June 23, 2022, when the Band Council authorized the appointment of the EOs. The Band Council Resolution confirming the appointment of the EOs is dated June 27, 2022.

[7] The only issue for consideration is whether the test for an injunction has been satisfied.

III. Analysis

[8] The parties agree that an interim injunction can only be granted if the Applicant satisfies a three-part conjunctive test (*RJR-MacDonald Inc v Canada (AG)*, 1994 1 SCR 311 at 314-15 [*RJR*]):

- (1) A preliminary assessment must be made of the merits of the case to ensure there is a serious question to be tried;
- (2) It must be determined whether the applicant would suffer irreparable harm if the application were refused; and
- (3) An assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[9] The first part of the *RJR* test has subsequently been modified in the case of a mandatory injunction, which requires an assessment of whether an applicant has shown a strong *prima facie* case (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at paras 15-16 [*CBC*]).

A. *A Serious Question to be Tried/A Strong Prima Facie Case*

[10] The Applicant has failed to satisfy this part of the test. I will provide my reasons following an overview of the parties' submissions.

[11] The Applicant submits that the threshold for this part of the test is low and has been met. Specifically, the serious question has been satisfied because EO Ratte is in a conflict of interest and his integrity is in question, as set out in another case before this Court (*Whitford v Red Pheasant First Nation*, 2022 FC 436). The Applicant also states that he was not given notice of the Band Council meeting where EO Ratte was appointed.

[12] The Respondents submit that the higher threshold applies because this is a mandatory injunction. The Respondents further submit that the Applicant has not satisfied this elevated threshold. Specifically, the Applicant has not demonstrated a strong likelihood of success because he had notice of the Band Council meeting and there is no evidence to support the allegations against EO Ratte. In the event that the Court finds that the Orders are prohibitive in nature, triggering the lower threshold, the Respondents submit that this lower threshold has also not been met. There is no strict requirement for providing notice and, given the fact that Band Council meetings were held every Thursday, the Applicant was aware.

[13] The first part of the test also requires a Court to take into account whether other available remedies have been exhausted (*Newbould v Canada (AG)*, 2017 FCA 106 at para 24; *Dugré v Canada (AG)*, 2021 FCA 8 at para 34, citing *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30-32; *McDonald v Fond du Lac Denesuline First Nation*, 2021 FC 96 at para 16 [*McDonald*]).

[14] If there is another available remedy and an applicant fails to seek redress through that process, the application will be considered to be premature. In this case, I find that if the Applicant is of the view that the appointment of EO Ratte contravened the *FNEA* or the *FNER*, he can seek recourse through section 31 of the *FNEA*:

Contestation of election

31 An elector of a participating First Nation may, by application to a competent court, contest the election of the Chief or a Councillor of that First Nation on the Ground that a contravention of this Act or the regulations is likely to have affected the result.

B. Irreparable Harm

[15] The Applicant submits that he will suffer irreparable harm because the integrity and accuracy of the Election results will be irreparably tainted, resulting in a loss of confidence in the democratic election process.

[16] The Respondents submit that irreparable harm will be suffered by the DTFN if EO Ratte is not permitted to continue his duties and the Election is postponed. The Band Council's term ends on September 1, 2022; accordingly, there will be difficulty in appointing another EO as there will be no Band Council in office.

[17] Since section 31 of the *FNEA* provides another remedy available to the Applicant, I find that the Applicant has not established that he will suffer irreparable harm (*McDonald* at para 20).

[18] The Applicant has failed to satisfy the conjunctive three-part test for the granting of an interlocutory injunction, having failed to establish that a *prima facie* case exists and irreparable harm will ensue if the application is not granted. As such, it is unnecessary to assess the balance of convenience part of the test.

[19] The Applicant's motion is dismissed.

ORDER in T-1550-22

THIS COURT ORDERS that the Applicant's motion for an interlocutory injunction is dismissed with costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1550-22

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CAMERON HALL

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 30, 2022

ORDER AND REASONS: FAVEL J.

DATED: AUGUST 30, 2022

APPEARANCES:

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