

Federal Court



Cour fédérale

Date: 20230328

Docket: T-1109-22

Citation: 2023 FC 431

Ottawa, Ontario, March 28, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

KAREN BIRD

Applicant

and

**PETER BALLANTYNE CREE NATION,
PETER BALLANTYNE CREE NATION BAND COUNCIL, and
PETER BALLANTYNE CREE NATION COUNCIL OF ELDERS**

Respondents

SUPPLEMENTARY JUDGMENT AND REASONS

[1] In the Judgment and Reasons in *Bird v Peter Ballantyne Cree Nation*, 2023 FC 229 [Judgment], I granted costs in favour of the Applicant, Karen Bird, as the successful party. I found that the process leading to her removal as the elected Chief of Peter Ballantyne Cree Nation [PBCN] was procedurally unfair.

[2] Having considered the post-judgment written submissions from the parties on costs, the following are my Reasons on costs.

I. Applicant's Submissions on Costs

[3] Ms. Bird seeks solicitor-client costs of \$62,020.10 in part based upon the Respondents' conduct prior to and during the proceedings. Alternatively, she seeks elevated lump sum costs in the amount of \$31,000.00.

[4] She requests that costs be awarded to her as a public interest litigant as she advanced matters of public importance to the membership of PBCN. Ms. Bird says that she meets the criteria for an award of costs on a public interest basis as outlined in *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 (para 16).

[5] Ms. Bird asserts she has an inability to pay her legal fees, even after fundraising to cover a portion of her legal fees. She notes that the legal fees are a significant portion of her annual salary.

[6] Second, Ms. Bird asserts the claim raised legitimate issues about the process for removal of a Chief from elected office at PBCN. She claims the Judgment served the interests of PBCN by confirming the need for a petition to remove an elected official and by strengthening the protections for elected officials.

[7] Ms. Bird notes this is not the first time PBCN has failed to afford procedural fairness in its decision-making, or to comply with the PBCN Electoral Code when attempting to remove elected officials (see *Lecoq v Peter Ballantyne Cree Nation*, 2020 FC 1144 [*Lecoq*] and *McCallum v Peter Ballantyne Cree Nation*, 2016 FC 1165). Ms. Bird submits full indemnity on a solicitor-client basis is justified, to deter the Respondents from further violating the rights of elected officials in the future.

[8] Lastly, Ms. Bird submits the proposed amounts are reasonable and consistent with the awards made in other proceedings.

II. Respondents' Submissions on Costs

[9] PBCN accepts the jurisprudence of this Court that has found where the resolution of the issues in a judicial review application were in the interests of a First Nation as a whole, the Nation may be liable for costs, regardless of the outcome (see *Willier v Sucker Creek Indian Band #150A*, 2002 FCT 192 [*Willier*]; *Cowessess First Nation No 73 v Pelletier*, 2017 FC 859 [*Cowessess*]; *Lecoq*; and *McCallum v Peter Ballantyne Cree Nation*, 2019 FC 898 [*McCallum* 2019]).

[10] PBCN submits an elevated lump sum costs award is not appropriate, as the issues raised are not solely within the public interest and largely deal with Ms. Bird's immediate interests. PBCN submits if costs are awarded against the Nation, the circumstances are similar to those in *Lecoq* and nominal lump sum costs of \$2,500.00-\$3,000.00 are appropriate.

[11] The PBCN Band Council and PBCN Council of Elders submit costs in the range of \$2,500.00 to \$3,500.00 should be awarded. Relying on *Wewayakum Indian Band v Wewayakai Indian Band*, (1999), 1999 CanLII 8839 (FCA), the Councils submit there is no basis for solicitor-client costs. The PBCN Band Council and PBCN Council of Elders adopt the arguments of PBCN and support the position taken by PBCN.

III. Analysis

[12] The purpose of an award of costs is threefold: “providing compensation, promoting settlement and deterring abusive behaviour” (*Air Canada v Thibodeau*, 2007 FCA 115 at para 24).

[13] Rule 400(1) of the *Federal Courts Rules*, SOR/98-106 provides that the Court retains full discretion over the amount and allocation of costs.

[14] For an award of solicitor-costs in the public interest to be justified, the matter must “raise an issue that is novel or otherwise extends beyond the immediate interests of the parties” (*Cowessess* at para 23; *Willier* at para 22). The issues raised “must also have a significant and widespread societal impact” (*Carter v Canada (Attorney General)*, 2015 SCC 5 at para 140).

[15] Costs on a solicitor-client or an elevated lump sum basis are not justified in this case.

[16] Here, as in *McCallum* 2019, I conclude that the issues raised by Ms. Bird are not solely in the public interest and do not extend beyond her own immediate interests (at para 109). While

the Application raised issues around the procedural aspects of the *Peter Ballantyne Cree Nation Election Code*, which are of importance to PBCN members as a whole, Ms. Bird benefitted directly and personally from the Judgment.

[17] I also note that cost awards in other Indigenous governance matters have tended to be in the range of \$2,500.00 to \$5,000.00 (see *McCallum* 2019; *Lecoq*; *Whitstone v Onion Lake Cree Nation*, 2022 FC 399; *Duckworth v Caldwell First Nation*, 2021 FC 648; *Halcrow v Kapawe'no First Nation*, 2021 FC 219; *Anderson v Nekaneet First Nation*, 2021 FC 843).

[18] In the exercise of my discretion, I award lump sum costs to the Applicant, Karen Bird, in the all-inclusive amount of five thousand dollars (\$5,000.00) to be paid by PBCN.

JUDGMENT IN T-1109-22

THIS COURT'S JUDGMENT is that Karen Bird is entitled to costs to be paid by Peter Ballantyne Cree Nation in the all-inclusive sum of five thousand dollars (\$5,000.00).

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1109-22

STYLE OF CAUSE: BIRD v PETER BALLANTYNE CREE NATION ET
AL

**SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
THIS COURT'S JUDGMENT IN 2023 FC 229**

SUPPLEMENTARY JUDGMENT AND REASONS: MCDONALD J.

DATED: MARCH 28, 2023

WRITTEN SUBMISSIONS BY:

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