

Federal Court



Cour fédérale

Date: 20100421

Docket: T-654-09

Citation: 2010 FC 432

Ottawa, Ontario, April 21, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

**CASEY RATT, RICKEY DECOURSAY, ROGER JEROME,
WAYNE PAPTIE and DONAT THUSKY IN THEIR CAPACITY
AS CHIEF AND BAND COUNCIL and THE ELDERS OF
MITCHIKINABIKOK INIK (ALGONQUINS OF BARRIERE LAKE)
and the PEOPLE**

**Applicants
(Respondents in this Motion)**

and

**JEAN MAURICE MATCHEWAN, BENJAMIN NOTTAWAY,
EUGENE NOTTAWAY, JOEY DECOURSAY and DAVID
WAWATIE IN THEIR CAPACITY AS THE PURPORTED NEW
CHIEF AND BAND COUNCIL OF THE ALGONQUINS
OF BARRIERE LAKE CUSTOMARY BAND COUNCIL and
EDDY NOTAWAY, MICHEL THUSKY, JEANNINE MATCHEWAN
and LOUISA PAPTIE, IN THEIR CAPACITY AS THE PURPORTED
MEMBERS OF THE MITCHIKANIBIKOK INIK ELDERS COUNCIL**

**Respondents
(Moving Party)**

REASONS FOR ORDER AND ORDER

[1] This concerns a motion submitted by the Respondents, and subsequently amended, for reconsideration under subsection 397(1) of the *Federal Courts Rules* of my decision in this case T-654-09 dated February 17, 2010 bearing citation number 2010 FC 160.

[2] This motion seeks that I declare that the present customary council of the Algonquin of Barriere Lake consists of Jean-Paul Ratt, Benjamin Nottaway, Moise Papatie and David Wawatie who had resigned as councillors to make way for the new Chief and council whose selection process was declared invalid pursuant to my decision dated February 17, 2010.

[3] The Applicants contest this motion for reconsideration on the basis that it does not comply with Rule 397 and rather seeks to obtain a new judgment on an issue which was never litigated.

[4] The motion for reconsideration is rejected for the reasons which follow.

[5] First, neither Jean-Paul Ratt nor Moise Papatie are named parties to these proceedings, and consequently any declaration concerning these individuals made without them being party to the proceedings would be improper.

[6] Second, subsection 397(1) of the *Federal Courts Rules* is limited to situations where the order does not accord with any reasons given, or a matter that should have been dealt with has been overlooked or accidentally omitted. This is not the case here.

[7] Indeed, the original application as submitted by the Applicants questioned the authority of the Respondents to act as Chief and Council and as members of an Elders Council and also sought certain declarations related to the process leading to the selection of certain of the Respondents as Chief and Council.

[8] As I noted in my decision dated February 17, 2010, in light of the fact the Applicants were raising as a first ground to support their original application their own legitimacy as the validly selected Chief and Council, the process leading to their selection was itself an issue which needed to be reviewed in order to reach a conclusion on the original application.

[9] However, here the Respondents now seek from me an *ex post facto* declaration on an issue that was not necessary to determine in order to reach the conclusions of my February 17, 2010 decision and that was not raised by either the Applicants or the Respondents in the proceedings leading to that decision.

[10] It would therefore be improper for me to respond favorably to the motion for reconsideration brought by the Respondents: *Halford v. Seed Hawk Inc.*, [2004] FC 455, 253 F.T.R. 122.

ORDER

THIS COURT ORDERS AND ADJUDGES that the motion for reconsideration brought by the Respondents is dismissed with costs in favor of the Applicants.

"Robert M. Mainville"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-649-09

STYLE OF CAUSE: CASEY RATT ET AL v.
JEAN MAURICE MATCHEWAN ET AL

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF THE PARTIES

**REASONS FOR ORDER
AND ORDER:** Mainville J.

DATED: April 21, 2010

WRITTEN REPRESENTATIONS BY:

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FOR THE APPLICANTS
(Respondents in this Motion)

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FOR THE RESPONDENTS
(Moving Party)

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