Date: 20060531

Docket: T-183-06

Citation: 2006 FC 666

Ottawa, Ontario, May 31, 2006

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

GEORGE LESLIE MINDE

Applicant

and

ERMINESKIN CREE NATION AND ERMINESKIN TRIBAL COUNCIL

Respondents

REASONS FOR ORDER AND ORDER

[1] In virtue of various Orders issued by Madam Justice Heneghan the application for judicial review in this matter has been scheduled to proceed peremptorily on August 23, and August 24, 2006. I am faced with a motion by Clinton Roan, Jr., and Jody Small, two individual members of the Ermineskin Cree Nation, to intervene.

[2] The background to the pending judicial review is set out in the Reasons for Judgment of Mr. Justice Belzil of the Court of Queen's Bench of Alberta, in *Ermineskin Cree Nation v. Minde* 2006 ABQB 118. In August of last year, Mr. Minde was re-elected Chief of the Ermineskin Cree Nation,

an Indian Band. Allegedly and on his own initiative, and without the knowledge or consent of the Tribal Council, he arranged for the purchase of heavy construction equipment. The Tribal Council commenced an investigation through Band Elders which ultimately led to a Council Resolution that Mr. Minde had vacated his position as Chief.

[3] Mr. Minde commenced an application for judicial review seeking a declaration that he remains Chief. In the interim Mr. Justice Belzil issued an injunction at the behest of Ermineskin Cree Nation and Ermineskin Tribal Council enjoining Mr. Minde from entering Band offices, conducting financial transactions and generally from interfering with staff, Band members, or Tribal enterprises.

[4] Messrs. Roan and Small, apparently supported by other members of the Ermineskin Cree Nation, are critical of the Tribal Council as it is currently comprised. Ideally, they would halt the legal proceedings both in this Court and the Court of Queen's Bench. The whole process is pitting elders against elders. There ought to be a cultural and traditional resolution to this matter. The litigation erodes the assets of the community which could be put to better use.

[5] They say that their intervention may assist to bring a resolution to the dispute. There is a widespread perception within the community that they have been kept in the dark, and that since the litigation appears to be limited to the selfish interests of Mr. Minde and the Tribal Council, the chances of the decision, whatever it might be, having acceptance within the community would be increased if they were granted intervention status.

[6] If they were to intervene they would request that the hearing on the merits be moved forward. Failing that, they would certainly do nothing to impede the current schedule. As interveners they would be provided with copies of documents, which otherwise they say they cannot afford, might wish to submit affidavit evidence and would limit themselves to oral argument at the hearing. I pointed out that oral argument, without advance warning by way of written representations, could in fact result in delays should those arguments take the existing parties by surprise.

[7] I have come to the conclusion that the malaise identified by Messrs. Roan and Small would in no way be solved by granting them intervener status, and so I must dismiss the application. The test was well established by the Federal Court of Appeal in *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.* 2000 FCJ 220, (2000), 95 A.C.W.S. (3d) 249, and frequently re-iterated since then, for instance in *International Association of Immigration Practioners* v. *Her Majesty the Queen* 2004 FCJ 770, (2004), 130 A.C.W.S. (3d) 1100. There are six criteria to be considered. Not all have to be met.

[8] The criteria, and my answers thereto, are as follows:

A. Are the proposed interveners directly affected by the outcome?

The answer is no. They are, like other members of the Cree Nation, indirectly affected. Those directly affected are Mr. Minde and the Tribal Council.

B. Does there exist a justiciable issue and veritable public interest?

There is a justiciable issue which has been defined. There is no overriding public interest beyond the interests of the parties to the litigation.

C. Is there an apparent lack of or any other reasonable or efficient means to submit the question to the Court?

The answer is no. No one was able to point to anything in the tribal constitution which required the taking of steps precedent to an application for judicial review, such as the grievance procedure which prevails in the public service.

D. Is the position of the proposed intervener adequately defended by one of the parties to the case?

The interveners are somewhat ambivalent. On the one hand they oppose the process by which an elective Chief could be effectively removed from office, but on the other hand they say he is pursuing his personal agenda, rather than the overall interest of the Band. It may be that the Band's constitution ought to be changed, but the unfortunate reality is that the Court system is geared to resolve private, or if you like selfish, disputes.

E. Are the interests of justice better served by their intervention?

I cannot see that justice would be better served. The hearing has already been expedited. A cross-examination of Mr. Minde on his affidavit was scheduled to take place the day after this motion was heard. Counsel for the respondents had no objection to the interveners and their counsel attending that cross-examination. Furthermore, although he had no specific mandate on

behalf of the Council, it was his understanding that all documents relating to this case would be, or should be, or will be, available for consultation. In any event, copies are available from the Court once they are filed.

F. Can the Court herein decide the case on its merits without the proposed interveners? The answer is clearly yes. Their concern is that there ought to be a better way to resolve this dispute. They are probably right. Litigation is inherently divisive. The answer however lies in the hearts and minds of all those affected. The Courts are here for those who are not able to resolve their disputes in a better way. In a sermon I once heard, people in trouble were coming downstream to the local town. They were helped by the townfolk. However, no one went upstream to find and correct the cause of the problem. So it is in this case. An intervention will not solve such problems as may exist; the answer lies upstream, within the Band.

ORDER

The application of Clinton Roan, Jr., and Jody Small for intervener status is dismissed. There shall be no order as to costs.

"Sean Harrington"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-183-06
STYLE OF CAUSE:	GEORGE LESLIE MINDE v. ERMINESKIN CREE NATION AND ERMINESKIN TRIBAL COUNCIL
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	May 23, 2006
REASONS FOR ORDER:	HARRINGTON J.
DATED:	May 31, 2006

APPEARANCES:

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Mr. David F. Holt	FOR THE RESPONDENTS

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