Date: 20070119

Docket: T-68-06

Citation: 2007 FC 55

Ottawa, Ontario, January 19, 2007

Present: The Honourable Mr. Justice Blais

BETWEEN:

RÉMY VINCENT

Applicant

and

HURONNE-WENDAT NATION COUNCIL

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, filed pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act), from the "decision" dated December 22, 2006 rejecting the applicant's counter-offer and reiterating the decision of the Huronne-Wendat Nation Council (the HWNC) to enforce the order of forfeiture issued against the applicant if he did not agree to the HWNC's terms by January 5, 2006.

RELEVANT FACTS

[2] The applicant was found guilty of an organized crime offence related to cigarette smuggling. Pursuant to that judgment, the Court of Quebec ordered the forfeiture of a lot and a building in the possession of the respondent; that decision was upheld by the Quebec Court of Appeal. As required under the *Indian Act*, R.S.C. 1985, c. I-5, the rights, titles and interests forfeited to the Government of Canada were subsquently transferred to the Huronne-Wendat Nation Council.

[3] On November 5, 2005, the members of the Huronne-Wendat Nation took part in a referendum and voted for the seizure of the lot and building by the HWNC and for the eviction of the applicant from the premises.

[4] On November 11, 2005, counsel for the applicant submitted a settlement proposal to the HWNC.

[5] Following up on the results of the referendum, and having read the proposal from November 11, 2005, the Huronne-Wendat Nation Council unanimously passed resolution number 5755. By this resolution, dated November 18, 2005, the HWNC granted the applicant a strict deadline of December 2, 2005 to accept the HWNC's terms, under which he would be allowed to continue occupying the premises. If he refused the HWNC's terms, the Grand Chief of the Nation had the mandate to act for and on behalf of the HWNC in order to take the required measures, including recourse to the courts, to enforce the forfeiture order and enable the HWNC to retake physical possession of the lot and building under dispute. This resolution of the HWNC, together

with the settlement counter-proposal, was communicated to the applicant through his counsel on November 21, 2005.

[6] On November 30, 2005, counsel for the applicant informed counsel for the respondent that the applicant rejected these terms and was awaiting a written response to the counter-offer dated November 11, 2005.

[7] On December 2, 2005, counsel for the respondent informed counsel for the applicant that the HWNC was giving the applicant a grace period of 30 days as of December 5, 2005 to inform the HWNC of his decision. In the letter, counsel for the respondent also informed the applicant that the proposal dated November 18, 2005 still applied.

[8] On December 15, 2005, the applicant submitted a counter-proposal to the HWNC through his counsel.

IMPUGNED DECISION

[9] On December 22, 2005, through its counsel, the HWNC informed counsel for the applicant that his latest counter-proposal had been refused on imperative grounds of transparency and integrity owed to the other members of the Nation and reiterated that the grace period granted in the letter of December 2, 2005 would end on January 5, 2006.

[10] Pursuant to an order issued by Madam Justice Johanne Gauthier on April 21, 2006, only the validity of this “decision” of December 22, 2005 may be challenged in the present judicial review

proceedings. That being said, in a second order dated April 27, 2006, Gauthier J. noted that it would be up to the judge hearing the merits of this case to decide whether or not the letter of December 22, 2005 can be considered a “decision of a federal board, commission or other tribunal” under section 18.1 of the Act.

ISSUES

[11] The issues in this application for judicial review are the following:

a) Does the letter of December 22, 2005 from counsel for the respondent constitute a “decision of a federal board, commission or other tribunal” and the first communication thereof within the meaning of sections 18 and 18.1 of the Act?

b) In the affirmative, are the applicant’s evidence and arguments sufficient to persuade this Court of the need to declare this “decision” contained in the December 22, 2005 letter invalid or unlawful under subsections18.1(3) and 18.1(4) of the Act?

RELEVANT LEGISLATIVE EXCERPTS

***Federal Courts Act*, R.S.C. 1985, c. F-7**

18.1 (2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow	**18.1** (2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

before or after the end of those 30 days.

(3) On an application for judicial review, the Federal Court may

(*a*) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(*b*) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(*a*) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(*b*) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(*c*) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(*d*) based its decision or order on an erroneous

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l’office fédéral en cause d’accomplir tout acte qu’il a illégalement omis ou refusé d’accomplir ou dont il a retardé l’exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu’elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l’office fédéral.

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l’exercer;

b) n’a pas observé un principe de justice naturelle ou d’équité procédurale ou toute autre procédure qu’il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d’une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance fondée sur

finding of fact that it made in a perverse or capricious manner or without regard for the material before it; (*e*) acted, or failed to act, by reason of fraud or perjured evidence; or (*f*) acted in any other way that was contrary to law.	une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose; *e*) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages; *f*) a agi de toute autre façon contraire à la loi.

ANALYSIS

a) Does the letter of December 22, 2005 from counsel for the respondent constitute a "decision of a federal board, commission or other tribunal" and the first communication thereof within the meaning of sections 18 and 18.1 of the Act?

[12] The respondent submits that the application for judicial review cannot confer jurisdiction on this Court to declare invalid and unlawful the terms contained in the letter dated December 22, 2005 because the letter is not a "decision of a federal board, commission or other tribunal" within the meaning of sections 18 and 18.1 of the Act. The letter does not constitute an "order" or a "decision" to evict the applicant on that date; rather, it reiterates the HWNC's November 18, 2005 decision by resolution number 5755 to evict the applicant. According to the respondent, it is that resolution, communicated to the applicant on November 21, 2005 and repeated on December 2, 2005, which constitutes the "decision of a federal board, commission or other tribunal."

[13] The case law is well settled : an Indian band council is a " federal board, commission or other tribunal" within the meaning of section 2 of the Act (*Canatonquin v. Gabriel*, [1980] F.C.J. no. 87, [1980] 2 F.C. 792). Additionally, as acknowledged by Gauthier J. in her order of April 27, 2005, it is clear that Mr. Michel Beaupré was acting for and on behalf of his client, the Huronne-

Wendat Nation Council, or its mandatary the Grand Chief, when he drafted the letter of December 22, 2005.

[14] The real issue then is whether or not the letter of December 22, 2005 constitutes a "decision" under sections 18 and 18.1 of the Act or is merely a confirmation of such a decision (*Wenzel v. Canada (Minister of National Defence)*, [2003] F.C.J. no. 373).

[15] At first blush, one might easily argue that the real decision that should have been the subject of the judicial review application was the HWNC resolution passed on November 18, 2005, or more precisely, the communication of that resolution to the applicant through his counsel on November 21, 2005.

[16] That being said, the affidavit of Max Gros-Louis, Grand Chief of the Huronne-Wendat Nation, reveals that the decision to grant a 30-day grace period to the applicant was motivated in part by the fact that discussions between the parties were ongoing. Accordingly, it would not be unreasonable to argue that the November 18, 2005 decision was not final and that the December 22, 2005 letter rejecting the applicant's counter-offer was also a decision of the Huronne-Wendat Nation.

[17] Given the ambiguity of this question, I am not of the view that it would be appropriate to dismiss the judicial review application on that basis. I therefore accept that the December 22 letter constituted the first communication of a decision of a federal board, commission or other tribunal

within the meaning of sections 18 and 18.1 of the Act, namely, to reject the applicant's last counter-proposal.

b) Are the applicant's evidence and arguments sufficient to persuade this Court of the need to declare this "decision" contained in the December 22, 2005 letter invalid or unlawful under subsections18.1(3) and 18.1(4) of the Act?

[18] In the alternative, the respondent submits that the applicant cannot meet the burden of proof necessary to invoke any of the grounds set out in subsection 18.1(4) of the Act, as the applicant's assertions are unsupported by the evidence.

[19] On that point, I agree with the respondent. The applicant's "submissions" are essentially a series of allegations and a recital of facts, several of which go beyond the parameters established by Gauthier J.'s orders and do not form any argument that could demonstrate a breach by the HWNC warranting the intervention of this Court under section 18.1 of the Act.

[20] The HWNC clearly acted within the scope of its jurisdiction and observed the appropriate legal principles. Furthermore, nothing in the evidence demonstrates a violation of natural justice or procedural fairness. In fact, the HWNC decision represents the follow-through of an expression of public opinion by the Huronne-Wendat Nation through a democratic process. Finally, nothing in the evidence indicates that the HWNC based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[21] In the conclusion of his memorandum, the applicant states that he seeks the same treatment as that received by his father, François Vincent, to whom the HWNC had decided to return all

forfeited property. In so doing, he fails to see the fundamental differences between his own situation and his father's: the latter pleaded guilty to the charges that arose as a result of his wife's cigarette smuggling activity and was acknowledged by the Crown to be a passive possessor who had not taken part in the smuggling activities and in fact had objected to them.

[22] The applicant, having failed to demonstrate that the decision of the Huronne-Wendat Nation Council is of such a nature as to warrant the intervention of this Court under section 18.1, the application for judicial review must be dismissed.

[23] As to costs, the respondent will file its written submissions no later than January 26, 2007, and the applicant will file his reply no later than February 2, 2007.

JUDGMENT

1. The application for judicial review is dismissed;

2. With respect to costs, the respondent will file its written submissions no later than January 26, 2007, and the applicant will file his reply no later than February 2, 2007.

"Pierre Blais"

Judge

Certified true translation
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

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