

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20090921

**Dockets: A-12-09
A-13-09**

Citation: 2009 FCA 269

**CORAM: NOËL J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

CONSEIL DES INNUS DE PESSAMIT

Applicant

and

**ASSOCIATION DES POLICIERS
ET POLICIÈRES DE PESSAMIT**

Respondent

Heard at Montréal, Quebec, on September 21, 2009.

Judgment delivered from the Bench at Montréal, Quebec, on September 21, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on September 21, 2009)

NOËL J.A.

[1] These are applications for judicial review of two interim decisions by the Canada Industrial Relations Board (the Board) in a certification process initiated by the applicant. These decisions dismissed two motions for a stay of proceedings filed by the applicant and set a date for the provision of its evidence.

[2] The first decision, dated December 18, 2008, required that the evidence in support of a constitutional question raised by the applicant under section 35 of *The Constitution Act, 1982* be provided on or before January 15, 2009. The second decision, dated December 23, 2008, extended that deadline to February 3, 2009.

[3] On March 15, 2009, on the basis of a motion filed by the applicant, a motion that the respondent did not oppose, this Court ordered that the decisions be stayed until determination of the applications for judicial review.

[4] Other than the applicant, only the Board, pursuant to its intervention authority under subsection 22(1.1) of the *Canada Labour Code*, R.S.C. 1985, c. L-2, appeared in the appeal before this Court and filed a memorandum.

[5] In support of its applications, the applicant alleges that the impugned decisions were made by an unauthorized person, in this case, the Executive Director and Senior Registrar of the Board (the Registrar). According to the applicant, only the Board had the authority to act. Furthermore, the applicant alleges that the limited time it was given was insufficient and violated its right to be heard.

[6] There is no need to answer either of these questions raised by the applicant because other decisions have since replaced the impugned decisions, amending the deadline they had set. Following the last of these decisions, the parties were informed on April 1, 2009, that the Board would hold a hearing to allow the applicant to make its constitutional argument. This hearing, convened by the Board, may now take place. In light of the fact that many months have passed since

the constitutional argument was raised, there is no cause for concern that the applicant will be unable to present its evidence. In fact, counsel for the applicant notified the Court that he would be ready to proceed within a month.

[7] The subject matter of the applications for judicial review now being moot, there is no need to consider the applications in further detail.

[8] Therefore, the applications for judicial review are dismissed.

“Marc Noël”

J.A.

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKETS: A-12-09, A-13-09

STYLE OF CAUSE: Conseil des Innus de Pessamit and
Association des policiers et policières de
Pessamit

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 21, 2009

**REASONS FOR JUDGMENT OF THE COURT
BY:** NOËL J.A.
NADON J.A.
PELLETIER J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

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