Federal Court of Appeal | Cour d'appel fédérale

Date: 20200309

Docket: A-40-19

Citation: 2020 FCA 59

CORAM: **STRATAS J.A.**
DE MONTIGNY J.A.
LASKIN J.A.

BETWEEN:

FOND DU LAC DENESULINE FIRST NATION

Appellant

and

KEVIN BRUCE MERCREDI

Respondent

Heard at Saskatoon, Saskatchewan, on March 9, 2020.
Judgment delivered from the Bench at Saskatoon, Saskatchewan, on March 9, 2020.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Saskatoon, Saskatchewan, on March 9, 2020).

STRATAS J.A.

[1] This is an appeal from the judgment dated December 21, 2018 of the Federal Court (*per* Favel J.): 2018 FC 1272. The Federal Court allowed the respondent's judicial review on account of violations of the First Nation's *Elections Act*. It ordered that a new appeal board be appointed under that Act in order to adjudicate the allegations of irregularity.

[2] Both parties agreed that the appeal board's decision should have been quashed. On appeal, the parties' sole focus was the remedy awarded by the Federal Court.

[3] We see no error of law or palpable and overriding error on the part of the Federal Court.

[4] The appellant submitted that the Federal Court did not need to award a remedy in order to address the circumstances before it. The decision whether to award a remedy is discretionary: *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202. And, overall, remedies awarded by a reviewing court are discretionary. Absent error of law, the discretionary remedial decisions of a reviewing court can be set aside only on the basis of palpable and overriding error: *Sturgeon Lake Cree Nation v. Hamelin*, 2018 FCA 131, 424 D.L.R. (4th) 366 at para. 51; *Canada v. Long Plain First Nation*, 2015 FCA 177, 388 D.L.R. (4th) 209 at paras. 88-89. We are not persuaded that there was any such error here.

[5] That is not to say that we would have necessarily granted the remedial order the Federal Court did. If a similar case were to arise in the future, the reviewing court should consider all of the remedial tools at its disposal and, during argument, put a number of these to counsel. While the reviewing court must tailor its remedy to fit with the relevant elections legislation adopted by the First Nation (see, *e.g.*, *Gitxaala Nation v. Canada*, 2016 FCA 187 at paras. 333-341) much scope for creativity exists. For example, strict timing requirements for implementation can be imposed to ensure that the remedial purposes are carried out quickly. It is also possible for the reviewing court to supervise the implementation of its remedy to ensure it is followed: *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 S.C.R. 3. Other terms,

consistent with public law values, can also be imposed: see discussion in *Paradis Honey Ltd. v. Canada*, 2015 FCA 89 at para. 138. However, in the end, regardless of what is decided, remedial orders should be clear and specific so they can be enforced. Those to whom they are directed need to know what constitutes compliance and what constitutes non-compliance: *Pro Swing Inc. v. ELTA Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612 at para. 24.

[6] The respondent submitted that the Federal Court should have granted a different remedy. But the respondent has not brought a cross-appeal and so we cannot consider those submissions.

[7] In this case, neither party moved to expedite the hearing of this appeal. At times, both failed to comply with the time limits for various procedural steps under the *Federal Courts Rules*.

[8] For the good of the community, disputes over the conduct of elections must be resolved quickly. The community deserves stability in its governance. In these circumstances, the failure of the parties to move to expedite the hearing of this appeal is deplorable and not in the best interests of the community. For this reason, we will not award either party its costs.

[9] The next election is to be held in a few months. For the good of the community, we expect that the First Nation's *Elections Act* will be followed to the letter. If changes to the *Elections Act* are desired, the amendment formula therein should be followed to the letter.

[10] Therefore, we will dismiss the appeal without costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-40-19
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE FAVEL DATED DECEMBER 21, 2018, DOCKET NO. T-1768-17	
STYLE OF CAUSE:	FOND DU LAC DENESULINE FIRST NATION v. KEVIN BRUCE MERCREDI
PLACE OF HEARING:	SASKATOON, SASKATCHEWAN
DATE OF HEARING:	MARCH 9, 2020
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. DE MONTIGNY J.A. LASKIN J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

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