2011 CarswellOnt 2196, 2011 ONSC 1345

Mississaugas of the New Credit First Nations v. Landry

Mississaugas of the New Credit First Nations, Applicant and Cathy Landry, Respondent

Ontario Superior Court of Justice

Arrell J.

Heard: February 28, 2011
Judgment: March 31, 2011
Docket: CV-101-699

Counsel: D. Touesnard, for Applicant

Cathy Landry, for herself

Subject: Public; Property

Aboriginal law.

Administrative law.

***Arrell J.*:**

Introduction:

1 The applicant is a First Nation Band Council established pursuant to S.74 of the *Indian Act* R.S. 1985 c.5 as amended. The Band council is responsible for the administration, management and government of the Mississaugas of the New Credit Indian Reserve in the County of Brant. Ms. Landry lives on the reserve. The Band Council has ordered her removal from the reserve and she has refused. The Band Council therefore has applied to this court for an order enforcing the eviction order against Ms. Landry made by it.

Facts:

2 The Band Council is responsible for the administration of the reserve which is comprised of approximately 6059 acres. Approximately 840 people reside on the reserve and approximately 700 are members of the Band.

3 The Band receives government funding based on the number of actual Band members and not based on the number of residents. The sole source of funding for the various expenses of the Reserve is this government funding formula.

4 The reserve currently does not have sufficient housing for its current population or anticipated future growth. Its physical space is finite.

5 The Band, under S.81 of the *Indian Act*, supra, enacted a residency by-law in 2003. It notified all persons on the reserve by letter for the reasons it was enacting the by-law.

6 The by-law was amended in 2008 and was approved by the Federal Government in 2008.

7 The Band advised all residents of the amended by-law and that non-members were to apply for residency no later than June 19, 2009.

8 Ms. Landry is not a member of the Band. She did advise the court that her common-law spouse of 11 years, John Barnes, was a band member.

9 The by-law lists several exceptions whereby a non-band member may be granted permission to reside on the Reserve. One of those exceptions is that the person is a spouse of a Band member.

10 The by-law further provides a 6 month probationary period prior to a residency permit being granted. Further, the residency permit may be revoked if a petition is received from at least 10 electors of the Band and after a hearing is held.

11 Ms. Landry applied for residency permit within the required time period. She was granted the 6 month probationary period. A petition from 23 electors was received requesting she be removed because of "continued disagreeable behavior and a bad reflection for the community".

12 The Band conducted a hearing on November 20, 2009 after giving Ms. Landry proper notice. Evidence was called by various witnesses, Ms. Landry gave evidence and called one witness. She was given on additional 11 days to make any further submissions or provide any further evidence. She provided no further information. A decision was rendered on December 1, 2009 and conveyed to Ms. Landry in writing that her residency was revoked pursuant to S.7.6 (c) (d) of the by-law.

13 Ms. Landry appealed the decision and it was heard on January 26, 2010 and denied, without reasons.

14 Ms. Landry has filed no material on this application, other than a letter by her common law husband indicating the only reason she was being "kicked off the reserve is because she charged a member of the New Credit with sexual assault."

15 No submissions were made to me by Ms. Landry that the by-law was passed in bad faith or was unconstitutional in any manner. Nor did she make any submissions that she did not get all the requisite notices, a fair hearing and a fair appeal under the terms of the by-law.

Analysis:

16 There is nothing before me to indicate the by-law is not valid and properly constituted under the *Indian*

Act, supra; *Six Nations of the Grand River Band v. Henderson*, [1996] O.J. No. 1953. Likewise, there is nothing before me to suggest the Band did not follow all of the procedures set out in the by-law. As well, there is nothing before me to indicate that Ms. Landry did not have a full and fair hearing.

17 The by-law is quite clear that if a person is a non-member she must apply for a residence permit. It *may* (my emphasis) grant residency if the person is a spouse of a member. The applicant took no objection to the verbal submissions of Ms. Landry that she has lived with her "boyfriend", a member, on the reserve for the past 11 years. The applicant also made no submissions that she was not a spouse of a member. That being the case her residency could only be denied upon petition by at least10 electors for one of the reasons enumerated in S.7 of the by-law which I reproduce in full:

> S.7.6 "If the council receives a petition from ten (10 electors), the Registrar of Residents Committee may revoke a non-member's residency permit if it has been shown after a hearing, pursuant to Section 8, that,
>
> a) the non-member has been convicted of a indictable offence under the Criminal Code for which a pardon has not been granted, or
>
> b) the non-member has been convicted under the Criminal Code for two (2), or more offences (within any 2 year period), against the persons or property of another resident, or
>
> c) the non-member had breached the Mississaugas of the New Credit First Nation by-laws and/or
>
> d) It can be demonstrated that the actions of the non-member would be detrimental to the best interest of the First Nation". (my emphasis)

18 The letter setting out the decision of the Band is dated December 17, 2009. The pertinent part of that letter regarding this application is as follows:

> "The decision to revoke your entitlement to reside is based on 7.6;
>
> c) The non-member has breached the Mississaugas of the New Credit First Nation By-laws and/or
>
> d) It can be demonstrated that the actions of the non-member would be detrimental to the best interests of the First Nation.

19 It is apparent from this letter that no reasons are given under either section listed. The appeal decision is also silent on reasons. It is difficult to understand how the appeal committee made any decision on the validity of the hearing committee when it gave no reasons for its decision.

20 The transcript of the hearing that I was referred to in the applicant's material appears to be simply a memo of what various people may have said at the hearing. It is of no use in helping this court determine why the committee felt Ms. Landry either breached a by-law or how it could be demonstrated that her remaining on the reserve would be detrimental to the best interests of the First Nations.

21 The applicant is seeking a very harsh penalty — the removal of Ms. Landry from the home she has apparently shared with her common law spouse for the past 11 years. Surely she is entitled to know why.

22 The committee is performing a semi judicial role since it is conducting a hearing, accepting evidence,

listening to witnesses and therefore making a determination of facts it accepts and is then applying those facts to the criteria of S.7 (a-d) of the by-law. It therefore must render a decision with sufficient reasons that the parties, an appeal body and the public will know why the decision was made. *R. v. Sheppard* (2002) SCC 26, *R. v. Kendall* (2005) 75 O.R. (3d) 565 (O.C.A.).

23 The requirement of adequate reasons is a core feature of the administration of justice in Canada. *R. v. Kendall*, supra. Here no reasons whatsoever were given. Ms. Landry was therefore denied natural justice such that the decision cannot be upheld.

24 The application is therefore dismissed.

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