



Pokue v Innu Nation, 2014 FC 325

By Camille Israël

A ruling of the Federal Court of Canada in *Pokue v Innu Nation* (2014 FC 325) was released on April 3, 2014. The applicant, Simon Pokue, sought judicial review to set aside the results of Innu Nation elections. The Innu Nation moved to strike the application on the basis that the Federal Court has no jurisdiction over the Innu Nation, which is not a band council under the *Indian Act*, but a not-for-profit organization incorporated under the *Canada Corporations Act* to represent the Innu people of Newfoundland and Labrador.

The Innu communities of Mushuau and Sheshiatshiu in Newfoundland and Labrador were not recognized as bands under the *Indian Act* or allotted reserves until 2002. The Innu Nation was established as a not-for-profit in 1976 to fill the gap and carry out certain governance functions on behalf of the Innu, including the negotiation of land claims, providing education, healthcare and social services to the two communities, policing, and regulating trapping and fishing on reserve lands. Innu Nation has negotiated an Agreement in Principle with Canada and the province, and is working towards a final agreement.

The Federal Court's jurisdiction is limited to reviewing the actions of federal boards, commissions, or other tribunals. While band councils fit within that definition,

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UPCOMING EVENTS:

May 31 – June 1: Eamon Murphy will present at *As Long As the Rivers Flow*, a conference on Treaties and the challenges and opportunities facing First Nations in Ft. McMurray, AB.

Your Woodward Team

As we noted in our last issue, our firm is growing and evolving. As of May 2014, we have 19 lawyers and two articling students on our roster. All of our lawyers work in all areas in the field of aboriginal law, and we depend on teamwork among lawyers who concentrate in specific areas to provide professional advice in the most efficient way possible. At the heart of our business model is the goal of providing excellent, professional and timely service to our busy clients at reasonable rates. In this issue, we continue where we left off in April to (re)-introduce you to our legal team and some of the areas where they focus their practices.

Drew Mildon

Drew concentrates on solicitor's work, drafting and reviewing contracts, assisting with business structures, trusts and the negotiation and implementation of Impacts Benefits Agreements. He also handles securities work, resource law, and complex secured transactions.

Leah Mack

Leah's practice covers the full gamut of Aboriginal law practices from Aboriginal rights and title matters to governance issues such as citizenship codes, election laws, and bylaws. Leah has also developed a strong employment law practice, working for First Nations governments and corporations on: drafting contracts, policy drafting and enforcement, employment standards disputes, unjust dismissals & wrongful dismissals.

Leigh Anne Baker

Leigh Anne is now our main lawyer in the Whitehorse office. She assists First Nations governments to protect Aboriginal and treaty rights in their Traditional Territory and assists with effective consultation and accommodation. She also helps develop effective self-government – including drafting laws and promoting good

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it was not clear whether an umbrella organization like Innu Nation would also be included. Innu Nation argued that as a not-for-profit, its actions should be subject to corporate law remedies, not judicial review. The Court stated that the legal status of Innu Nation was but one factor to be considered, and that the true legal question was whether the Innu Nation's elections possessed a public character. The Court found that Innu Nation represented itself as a governing body, acted as such by exercising substantial financial, political and legal control over an identifiable group of people, and had abandoned the standard titles of "president", "vice-president" and "board of directors" in favour of titles consistent with a public authority, "Grand Chief", "Deputy Grand Chief" and "Council". Members of Innu Nation could not be thought of as mere shareholders in a corporation. The Court stated that it would be difficult "to conceive of a power more public in nature than an election of those who will exercise wide and significant powers which directly affect individuals and ... the generations that will follow" [21].

The Innu Nation has announced its intention to appeal the ruling. If it stands, it will affect First Nations in British Columbia, where First Nations have formed not-for-profit and corporate structures to hold land, carry out business, and negotiate in the BC Treaty Process. The ruling potentially opens the door to their structures having their actions and decisions subjected to scrutiny via judicial review. However, the scope of the decision is expressly limited to elections of the Innu Nation, and it likely only extends to similar organizations that carry out governance functions, such as providing services and negotiating final agreements. Corporations set up solely to hold land or carry out business are less likely to be captured. ❖

governance. Leigh Anne enjoys working on specific claims and has a significant portion of her practice concentrated in this area.

Kylie Buday

Kylie is working on her call to the Yukon Bar and has developed familiarity with the Final Agreements. She assists our clients with housing and governance issues, with work that ranges from bylaws, to policies, to self-government laws and Land Code. She also helps clients with specific claims matters.

Holly Vear

Holly came to Woodward & Company LLP with a background in forestry. She assists our clients in complex environmental assessment and regulatory matters, dealing with consultation and accommodation issues that arise. She assists in governance matters such as election and membership codes, and has developed a specific interest in on-reserve land management, helping with bylaw and lease development.

Matt Boulton

Matt is a dedicated litigator working in Aboriginal rights and title, employment, and contract litigation. He also assists First Nations clients to develop self-government laws and policies and works on and off-reserve development issues.

Laura Bonenfant

Laura practices in both the barrister and solicitor areas, including assisting with the protection of Aboriginal and Treaty rights, working on specific claims, and advising on sustainable economic development initiatives. Laura also focuses on taxation, working on legislative drafting and enforcement as well as providing advice on specific taxation issues.

You can read more about our whole team online, at www.woodwardandcompany.com/ourteam.html. ❖

Woodward & Co Updates



Congratulations to **Drew Mildon**, who was appointed (by acclaim) to the CBA Provincial Council as a Member for Victoria County for a 3-year term.

Please also join us in welcoming two new support staff to our expanding team! **Barb LeClair** and **Barb Barber** started with us last month. The list of the lawyers they assist is on our website.