Gitwangak Indian Band V. Davis, 2017 BCSC 744, Supreme Court Of British Columbia (Punnett J.), 21 February 2017

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The B.C. Supreme Court granted an injunction to restrain persons from occupying or entering the Gitwangak Band Office. The Court emphasized that the Band Council has legal authority over the Band and the reserve, and the occupation interfered with their operations. Issues relating to Aboriginal title, or whether the defendants were acting on behalf of the hereditary leadership of the First Nation, could not be resolved in the context of an injunction application.

The underlying dispute arose after the Band Council for the Gitwangak Indian Band terminated an agreement with the Gitwangak Education Society. The delivery of education services had been delegated by the Band Council to the Society since 1990, but various failures by the Society in its financial reporting created a risk that the Band would lose funding from the federal government. The Society subsequently filed a judicial review application in Federal Court, and that proceeding is still underway.

The defendants are certain Band members who have grown frustrated with the Band Council, and opposed how the Band Council dealt with the Society. On 12 December 2016, one of the defendants delivered an "eviction order" which demanded that the Chief and Council resign immediately. The “order” was purportedly made on behalf of the Gitwangak Hereditary Chiefs, and other community members. The defendants then occupied the Band Office on 15 December 2016. They ignored a Band Council Resolution passed on 18 January 2017 to leave the building. The employees and contractors of the Band Office have not been able to carry out functions at the Band Office, and incurred $56,000 in costs relating to private security. There was also evidence that some of the defendants gained access to locked rooms in the Band Office, and may have accessed private and confidential materials.

The defendants relied upon Aboriginal rights and title, including the right to govern themselves. They have purported to replace the Band Council and take over Band operations.

Mr. Justice Punnett considered the issues of indigenous governance raised by the defendants. He held that the authority of Band Councils under the *Indian Act* to exercise their powers and carry out their statutory responsibilities is well-established. The fact that a Band Council may take direction from hereditary leaders does not change the nature of the legal authority of the Band Council. Punnett J. noted:

It is clear then that the Band Council has legal authority over the Band... The Band Office is on Reserve lands and those lands are subject to the *Indian Act* and the Band Council. There is no evidence in this case of any lawful possession by others under the *Indian Act*. In addition, our Court of Appeal has recognized that the granting of an injunction does not prejudice such hereditary claims.

In any event, this is not the time or the place for complex issues of aboriginal title or authority to be resolved: see *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 1999 Carswell BC 929, [1999] B.C.J. No. 984. The defendants are still free to pursue such claims: see *Gitxsan Indian Band v. Gitxsan Treaty Society*, 2017 BCCA 16.

The Court granted the injunction sought by the Band. There was clearly a serious issue to be tried. The actions of the defendants went beyond mere protest and amounted to an effort to oust a legitimately elected Band Council. The Court also held that the balance of convenience weighed in favour of granting an injunction. The actions of the defendants have interfered with the ongoing governance of the Band, and have prevented Band members from obtaining services. The continued occupation would interfere with the ability of the Band Council to function. Due to the relative isolation of the Reserve, and other factors, the Court held that it was appropriate to include an enforcement provision in the order.

By

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