

One injunction dropped, but other motions against Caldwell chief and council continue

By Dan Smoke - Asayenes (NNNC)

TORONTO — A federal court judge has given the Caldwell First Nation band council and the federal government the go-ahead to continue providing information to the Caldwell people on a proposed agreement to settle their \$23.4 million land claim with a reserve of their own.

But Madama Justice Barbara Reid, in her ruling in federal court July 5, continued part of a previous injunction granted on May 31 to a group of dissident Caldwell members preventing the band council from purchasing any more land in the Chatham area until Sept. 15.

The same injunction, until Justice Reid ruled otherwise, had also effectively prevented the Caldwell band members from being informed about — or voting on — the settlement

being offered by the federal government.

The Caldwell FN band signed an agreement in principle with the federal government last November to pave the way for rebuilding the band's "lost" community on the shores of Lake Erie. New funding makes it possible for the Caldwells to purchase additional land to create a community for the band's 231 members, dispersed from their original homelands at Point Pelee and Pelee Island.

Jim Mays, a lawyer for the Caldwell FN, told the Native News Network of Canada (NNNC) how the parties appearing before Justice Reid worked out the trade-offs which resulted in her ruling.

The substance of the legal action

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brought on May 31, he explained, "is an application for a judicial review by a group of Caldwell members who dispute the actions of the Chief (Larry Johnson) and the council of the Caldwell FN over the past 10 or 12 years with regard to the formulation of the band."

The group applied for three reviews: "1) of the current membership voters list; 2) of any actions taken by the band council with regard to purchase of property; and 3) of the settlement agreement process and the land acquisition program undertaken by the council," he said. Initially, the dissenters wanted a court order to "enjoin" (prohibit) the band council from doing anything, i.e., not holding meetings; not acquiring any further land, etc.

Mays said his role as Caldwell lawyer on July 5 was to "create a context which would allow the council, the majority of the band and the minority of the band to move forward in some kind of organized context."

After discussion, both parties agreed on the appointment of a "management judge" to oversee the case and help in an administrative fashion. The Chief Justice of the federal court will appoint the judge.

It was also agreed to change the nature of these actions into a lawsuit whereby the judicial reviews will continue. Examinations for discovery, where the lawyers get to ask the applicants questions under oath and similarly, the Chief and council will be questioned under oath, are scheduled to be completed by Sept. 15.

The final agreement of both parties was that the motion to "enjoin" council be dropped, in exchange for the council agreeing not to purchase any more land until Sept. 15. The council also agreed to disclose its current band membership list to the dissenting group, "so they can formulate in their mind whether or not band members are appropriate or inappropriate," said Mays.

Elections for chief and council are governed by band custom which is different from section 74 of the Indian Act.

Their band custom says that an election can be called whenever a majority of the voting members want to call one. The issue of an election was last raised in a general meeting early in 1997, when a motion was called about an election.

However a strong majority voted to give the Chief and council a further mandate resulting in no election being called. The last formal election was called in 1989 and since then there have been "two or three" calls for an election, but a majority have always subsequently given the Chief and council a mandate to continue leading the Caldwell FN.

The dissenting members feel that they have been excluded from band governmental issues. They allege that the membership list and the voters' list have been manipulated and that the outcome of elections have been predetermined.

The membership code of the Caldwells was established in 1987 and the membership list is made up of status members on a list maintained by the Department of Indian Affairs. To date, no member has ever been removed from the list without their consent or without death. The voting list is made up of members 18 years of age and over. Mentally infirmed members can't vote. Associate members (members by marriage) and probationary members (members who go through nomination process) are also not allowed to vote.

Stanley Mayes (no relations to Jim Mays), a lawyer for the 48 Caldwell members locked in the current dispute with the chief and council, said there is a question about whether the membership code and membership list are properly constituted. "They want to have the proper membership constituted, and would like to see a membership list that everyone can agree on, because they feel there has been some manipulation of the band list for improper purposes," explained Mayes.

There is some question about whether the membership code was ever passed and if it was passed, if it's ever been followed. The group Mayes represents disagree with both propositions, and they feel there has been wrongdoing.

In a telephone interview, Chief Larry Johnson explained away the dissenting group as individuals motivated "by the individual desire for money as opposed to the collective rights of the band."

Council, he said, "is defending the overall rights of the band against a few individuals who have money in mind. We'll have to deal with them so that we can get to the land claim settlement and set up a permanent land base for the entire band. We want to ensure that, collectively, we're all going for the same thing and that we're all going for the right thing.

"This council would not have continued if we did not have this mandate. We're going for what's best for the First Nation as a whole. This has been the mandate for the past 12 years and that mandate has never wavered," the Chief said.

But not all dissenters want only money. Out of the nine affidavits disclosed among the dissenting group, only one was a declaration that the member was interested in a cash offer. Some of them disagree with where the reserve is going to be located, others want a leader other than Chief Larry Johnson.

The timetable for future Caldwell meetings include meetings with the DIA once or twice a month throughout the summer, and there will be one more information meeting with a vote to follow. There will be a public information meeting on one weekend in late August and the vote will follow one to three weeks later.

The trust document and the settlement document are completed. At a public information meeting these documents will receive final reading and any questions will be answered by the representatives to the agreements. Stan Mayes said that the group he represents feel that if a reserve is to be created, it should be in the Point Pelee area. Legal counsel will be allowed to be present at the information meeting to advise clients.

A final vote will give all the voting members a chance to vote on all the documents.

Meanwhile, another splinter group of 27 Caldwell members, being represented by Kevin Ross and Linda Martschenko, have commenced a separate legal action with applications in federal court. Both Stan Mayes clients and Kevin Ross' clients have also commenced actions in