

Court of King's Bench of Alberta

Citation: Tallcree First Nation v Rath & Company, 2024 ABKB 393

Date: 20240627
Docket: 1803 05262
Registry: Edmonton

Between:

Tallcree First Nation

Applicant

- and -

Rath & Company and Jeffrey R.W. Rath

Respondent

Reasons for Decision of the Honourable Justice Donald Lee

[1] I last issued written reasons in this matter on March 26, 2021 now reported at 2021 ABQB 234 and June 9, 2021 now reported at 2021 ABQB 440. Rath and Company and Jeffrey Rath (“Rath”) have paid monies into Court in early 2024 after the Court of Appeal dismissed his appeal at 2022 ABCA 174, and the Supreme Court of Canada subsequently refused Rath’s leave application.

[2] These reasons now deal with who the “unreasonable fee” amount of \$8,518,075 plus interest should be returned to. Tallcree First Nations (“Tallcree”) submits that the Tallcree First Nation Chief and Council should receive the monies for the benefit of the Band since the contingency fee retainer agreement (“CFA”) was clearly between it and Rath. Rath never raised

any question about this issue before the Hearing Officer or this Court until Tallcree was successful in having his 20% contingency fee declared unreasonable by me.

[3] However, initially Tallcree filed an Appointment for Review regarding the reasonableness of the retainer agreement only, and not for a review of the lawyer's accounts or charges.

[4] Although the CFA was clearly between Tallcree and Rath, Rath's contingency fee was technically not paid by Tallcree. Rather it was paid as an approved distribution from the Tallcree First Nation Trust ("the Trust"), in accordance with the terms of the Declaration of Trust (the "Trust Declaration").

[5] Tallcree settled the irrevocable Trust, with the settlement funds paid to the Trust by the Government Canada ("Canada") for Tallcree's Treaty 8 Agricultural Benefits Specific Claim (the "Settlement Funds") under a Settlement Agreement between Tallcree and Canada (the "Settlement Agreement").

[6] With the exception of some amendments which may be agreed to by the parties for specified purposes that do not apply here, the Settlement Agreement may only be amended or replaced by written agreement between the parties and upon approval pursuant to the same procedures as the Settlement Agreement was approved (i.e., a Ratification Vote by the eligible voting members of Tallcree as of June 28, 2017).

[7] Under the terms of the Trust, the balance of the Settlement Funds are for the benefit of the "Beneficiaries" of the trust, which are defined as those members of Tallcree alive on June 28, 2017 (or the estate of such and individual if they died after June 28, 2017).

[8] In this regard, it must be noted that Tallcree's current membership differs from those persons defined as Beneficiaries of the Trust. As of August 29, 2018 there were approximately 444 Beneficiaries who were no longer members of Tallcree. Therefore, a return of monies to the Band would not benefit those members who no longer are part of the Band, and their interests are not likely aligned.

[9] The Trust Declaration was executed on July 21, 2017 and specifically provided that legal fees "in the amount of 20% of the Settlement Funds" be immediately paid to Rath & Company as a first charge on the Settlement Funds.

[10] Unlike the CFA, which was ratified by Chief and Council of Tallcree on October 23, 2015, the terms of the Settlement Agreement and the Trust Declaration were taken directly to the members, a majority of whom voted in favour of their terms, including the 20% legal fees, through a Ratification Vote on June 28, 2017.

[11] Tallcree retained counsel to advise it in respect to the CFA in April or May 2017, prior to the Ratification Vote and prior to execution of the Settlement Agreement and Trust Declaration. However, Tallcree elected not to seek a review of the CFA until long after the Ratification Vote was concluded, and the Settlement Agreement and Trust Declaration were executed.

[12] Tallcree did not name the Trustee or the Beneficiaries of the Trust as parties to these proceedings, nor did it name Canada, The other party in the Settlement Agreement.

[13] It is also regrettable that Rath only subsequently advanced his argument that the monies were not returnable to Tallcree until after my 2021 written decisions.

[14] Nevertheless, as regrettable as it may be since it obviously would be simpler and less expensive to return the monies to the Chief and Council for the benefit of the Band, that is not the correct order in the unique circumstances of this case. Therefore, I must direct that the \$8,518,075 plus interest be returned to the individual members pursuant to the Settlement Agreement under the terms of the Trust.

Heard on the 11th and 12th day of April, 2024.

Dated at the City of Edmonton, Alberta this 27th day of June, 2024.

Donald Lee
J.C.K.B.A.

Appearances:

Priscilla Kennedy and P. Jonathan Faulds KC
for Tallcree First Nation

Marco Poretti
for Rath and Company and Jeffrey Rath