

Date: 2001-10-12
File No. 01 00 241 CV

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

PAUL CROWLEY

and

THE MUNICIPALITY OF IQALUIT

REASONS FOR JUDGEMENT

[1] This is an Application for an Interim Injunction brought by Paul Crowley, private citizen of the City of Iqaluit, Nunavut. The Application is brought against the corporate City of Iqaluit, in an attempt to enforce a License issued to them by the Nunavut Water Board on January 26, 2001.

[2] There has been significant interest in this action by various parties who are concerned about the jurisdiction of the Nunavut Water Board to issue this License as it relates to solid waste management issues. The Federal Government, Department of Indian and Northern Affairs has been joined as a party to this action. Nunavut Tunngavik Inc. has been joined as an intervener. Mr. Tilleman, on behalf of the Nunavut Water Board, has filed an appearance by letter. Mr. Wallace appeared briefly for the Government of Nunavut indicating that they would watch the matter with interest.

[3] These parties are all interested and concerned as to whether the Nunavut Water Board exceeded its jurisdiction by dealing with solid waste management (open burning at Iqaluit's dumpsite) and whether the signature of the Minister of Indian and Northern Affairs is essential to the legality or enforceability of any License issued by the Nunavut Water Board. Those issues will be determined on another day and in another forum. The Federal Court of Canada is the only Court with jurisdiction to determine those issues. All parties agree that the Federal Court will hear those issues.

[4] Therefore, in spite of the interest of the other parties in that limited issue, this application will proceed between Mr. Crowley, as the Applicant, and the City of Iqaluit, as the Respondent. The other parties who have filed appearances or are parties to the actions are not interested in appearing at this application for the interim injunction.

[5] An interim injunction is an extraordinary remedy that can be sought wherein one party to an action may apply to stop a proceeding or activity in which another is engaged until an important or controversial issue has been determined. Interim injunctions are, therefore, only granted in exceptional circumstances. The Supreme Court of Canada and other courts have affirmed the test that must be met by an Applicant for an interim injunction as follows:

RJR-Macdonald Inc. v. Attorney-General of Canada; Heart and Stroke Foundation of Canada et al., Interveners (1994) 111 D.L.R. (4th) 385 (S.C.C.) @ p.400

"Metropolitan Stores adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits."

[6] Counsel have agreed that the jurisdiction of the License as it relates to solid waste management goes to the first issue to be addressed -- Is there a serious question to be tried? Counsel have, therefore, invited me not to address issue one but rather to proceed to a consideration of issues two and three. If I decide that the Applicant has satisfied me on a balance of probabilities that issues two and three have been met, then the case should adjourn until the Federal Court has determined the validity of the Water Board License before I consider the first issue on the interim injunction application.

[7] Therefore, I will turn my discussion to issues two and three. To put these discussions in context, it is useful at this point to recite some relevant facts in chronological order:

1995 - a temporary measure the dumpsite across the inlet from the Town/City of Iqaluit was established for solid waste garbage. It was established with a 5-year life span, as the previous dump was full.

January 20, 2000 - One year License issued by Nunavut Water Board until December 31, 2000. See Exhibit "D" in Paul Crowley's affidavit.

January 26, 2001 - Water License issued "limits open burning to food waste, paper products, paper board, limits to be effective June 1, 2001." See Exhibit "F" in Paul Crowley's affidavit, Part E, page 10 and page 11: *the License referred to in this case

"Effective June 1, 2001 the Licensee shall limit open burning at the Solid Waste Disposal Facilities to food waste, paper products, paperboard packaging and untreated wood, subject to the conditions of Part E, Item 2."

April 11, 2001 - Labour dispute between the City and employees causing serious problems with the ongoing garbage issue

May 3, 2001 - City of Iqaluit filed a request for an amendment with the Water Board as a result of the Labour dispute

July 2, 2001 - City was burning unsorted garbage at the open pit across the bay from the City

July 16, 2001 - City of Iqaluit and employees ended their labour dispute

Issue 2: Will the applicant suffer irreparable harm if the application is refused?

[8] Mr. Crowley argues that irreparable harm is being done to the citizens of Iqaluit on an ongoing basis as a result of the open-pit burning. He argues that burning unsorted garbage in the fashion done at the temporary dump location so close to the community of Iqaluit is inherently dangerous. He files a number of reports issued from Environment Canada and other sources that discuss health and environmental problems arising from open-pit burning. The nature of burning garbage is that emissions go into the air and can never be retrieved. Therefore, he argues we will never know the damage that is being done to the environment or to the health of the citizens.

[9] The City argues in reply that there is no relevant evidence, in the legal meaning of the word "evidence", to show that actual harm is being done to this environment or to any individual citizens of Iqaluit because of the open-pit burning. The many reports filed do not specifically address the issues that exist in Iqaluit. The City argues that actual harm is speculative and that although the burning may be a nuisance there is no admissible evidence that the open burning of garbage at the dump is dangerous.

[10] The context of this application is that an individual citizen of Iqaluit is attempting to require a corporate city to obey a License issued by a tribunal. The tribunal should be responsible for its own enforcement or instruct other enforcement agencies or organizations to that effect. In the absence of those instructions, Mr. Crowley felt no alternative but to deal with the issue publicly by bringing this application. The Courts must be cautious when dealing with an individual citizen who is up against a corporation to ensure that the rules of evidence do not operate to prevent an ordinary citizen from receiving justice. The challenge always for a court is to find balance and determine in which cases the rules of evidence should be interpreted more or less strictly.

[11] Mr. Crowley further argues that the Nunavut Water Board is an expert tribunal with experience and authority. Since The Board issued the License with terms restricting burning at the dump, (as noted in chronology - License dated January 26, 2001) that License should be obeyed and irreparable harm is shown once disobedience of that License is established. The applicant further argues that the City of Iqaluit made a decision to defy the terms and

conditions of the Water Board License and therefore, they should be required to obey the License immediately (or exercise due diligence in their attempt to obey the License).

[12] In reply to the latter argument, the City argues that they felt the Water Board did not have jurisdiction to make rulings regarding solid waste management issues. The City says that is confirmed by the letter from the Honourable Minister of Indian and Northern Affairs, Robert Nault, which appears to have a date of August 13, 2001. In spite of their disagreement with the jurisdiction of the Board, they claim they are doing their best to deal with the situation under difficult circumstances. They had asked for an amendment to the license during the course of the labour dispute. The City is trying to raise the funds to purchase an incinerator (money is a problem). There are plans to implement an extensive recycling program, plastics, tin, and paper some of which is in place already. Therefore, although they dispute the jurisdiction of the Board, they feel they are taking reasonable steps to alleviate this present situation.

[13] Once the Nunavut Water Board decided (in a public forum with significant input from concerned citizens) that they had jurisdiction to deal with solid waste management, it is difficult for citizens to understand how and why the City officials could continue to take the position that the Order was unenforceable because the Nunavut Water Board had no jurisdiction to make the decision. The public would have some legitimate questions about that position. Thankfully the issue of jurisdiction is finally before the proper court for decision on this important issue.

[14] The summer of 2001 in Iqaluit will become known as the 'summer of garbage' as a result of the labour dispute between the City of Iqaluit and its employees. It was an emotional and difficult summer for city employees, administration and elected officials alike and citizens of Iqaluit as they struggled to deal with garbage piling up in various places around the city creating very unsatisfactory and certainly unsanitary conditions. However, even in the context of those emotionally charged months, city employees must remember that they are accountable to their citizens. They may disagree with citizens but they must respectfully disagree.

[15] Although I am tempted to make a finding that irreparable harm is being done in this case, there is no "evidence" to support that finding. I have reviewed carefully the material of Mr. Crowley and the cases that have been presented to me. I would invite all of the City Councillors to read at least some of the general material that has been provided by Mr. Crowley that relates to open pit burning and the potential hazards it may cause. I do not however have any specific evidence that shows that some or any harm is being done to the citizens of Iqaluit by that open pit burning.

[16] Perhaps the City of Iqaluit owes a duty to its citizens to ensure proper air quality in the City. It is not clear who may be responsible for air quality in Nunavut's communities. It is no answer to concerns about air quality to say that in most communities in Nunavut, open pit burning is the usual method of dealing with garbage and therefore it is safe. Perhaps air quality tests being done would assist with the process of convincing Governments and

Regulatory Agencies that this is a serious problem and that the funds should be made available to assist the City in dealing with this important issue.

Issue 3: An assessment must be made as to which of the parties would suffer a greater harm from the granting or refusal of the remedy pending a decision on the merits.

[17] Mr. Crowley argues that no one is aware if any harm or to what extent harm is caused to the individual citizens of Iqaluit if the open burning continues. He has proposed a number of other options, which he says should be immediately implemented to deal with the garbage problem.

[18] The City argues that the incinerator is the long-term option for garbage management. If burning were halted, then there would be nowhere to put the garbage and the present site would be full within a short period of months. The present site's original capacity (estimate of use) is already passed. The labour dispute showed us what happens if the garbage is not handled properly. During the period of time of the labour dispute, no one was sure what was in the garbage. At least now, with the hazardous waste products being picked up separately, there is some assurance that garbage is being sorted to some limited extent.

[19] It is unfortunate that the City of Iqaluit did not focus on recycling projects many years ago. The present garbage situation is a crisis and will continue to be for some time. In the affidavit of Rick Butler, the City Administrator, he recognizes the serious problems they face and that they must be solved. I am also aware, because of my involvement in another case, that the burning situation across the inlet became most serious and critical as a result of the recent labour dispute between the City and its employees. The public during the time of the labour dispute became extremely concerned about the issue of garbage and burning garbage in this community. Since that labour dispute has been settled that interest has not diminished.

[20] Every citizen of Iqaluit is concerned about open burning at the pit across the inlet and what is in that pile of garbage. It is at least an eyesore and an environmental nuisance. However, there is no evidence that it is also dangerous. The City is in the process of taking significant steps to address the garbage problems, recycling and education programs are to commence soon. It is unfortunate that they did not start a long time ago, however we cannot rewrite history. The large issue of the incineration and sorting of garbage must be given immediate priority so that the present unsatisfactory situation is not allowed to continue any longer than absolutely necessary. I do not get a sense that the City administration intends to put this issue on the back burner. I do not believe the citizens of Iqaluit will allow that to happen.

[21] However, in the interim, if an injunction were granted immediately to stop the burning, the situation would be far worse as there is simply no place to put garbage, sorted or unsorted. Therefore the Applicant has failed to satisfy me on the balance of convenience or in the public interest that the injunction is necessary or appropriate.

Conclusion

[22] The Applicant has failed to meet the test required for an interim injunction. Regarding issue No. 2, I am not satisfied that there is evidence that in this case irreparable harm has been shown to individual citizens of Iqaluit. I hope that someone with the funds necessary will do some air emission tests so that the citizens of Iqaluit know that the open burning is not causing their children any harm. Further, regarding issue No. 3, without any other solution to the garbage problem, an injunction would create another unsatisfactory situation. Therefore, the Applicant has also failed to meet the balance of convenience or public interest test.

[23] All residents of Iqaluit are aware that the open pit burning at the dump is an eyesore and at least an environmental nuisance. Regularly as I sat down to work on this judgement, either the smoke or the smell of the burning dump was apparent. The situation has been allowed to develop over many years. It is not my responsibility in this application to tell the city what to do with garbage or to give lessons in the art of diplomacy to elected or non-elected officials of the City. My only task is to determine the issue of whether an interim injunction should be issued based on the facts of this case.

[24] I find it somewhat disturbing in this case that we talk about legal technicalities, whether or not certain pre-conditions to an injunction have been met - whether an injunction should be granted when an unsatisfactory situation continues because the City of Iqaluit does not have the money available to deal with this issue of garbage in a proper and timely way. I hope that all of the individuals involved in significant organizations will look carefully at this issue to see how they can help the city solve this issue quickly. The solution to the issue is money. Iqaluit, with a very small tax base, has little access to taxation funding.

[25]

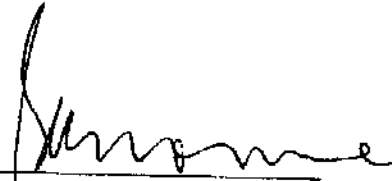
[26] I hope that Mr. Crowley and his group of concerned citizens will continue to work with the Solid Waste Management Committee so that they can continue to advocate for their position. I hope that they will become active in the recycling programs that are proposed to reduce the amount of garbage that will go to the interim dumpsite. I hope that the City will welcome all of those individuals onto the Committee so that all those with positive ideas can put their minds together and come up with some creative solutions to difficult problems.

[27] In the event that the dump is still burning by December 2001, I would invite Mr. Crowley to return and continue with his application.

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[27] The application for interim injunction is adjourned sine die as issues two and three not having been met at the present time.

Dated at Iqaluit this 15 day of October, 2001.



B.A. Browne
Senior Judge
Nunavut Court of Justice

Paul Crowley, appearing on his own behalf
John Tidball, for the City of Iqaluit
Doug Wallace, for the Government of Nunavut
Heather Potter, for the Government of Canada
Dougald Brown, for Nunavut Tunngavik Inc.
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