

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-031045-068

DATE: July 4, 2007

THE HONOURABLE DIONYSIA ZERBIAS, J.S.C.

MITCHELL HORNE

Plaintiff

v.

KAHNAWAKE GAMING COMMISSION (KGC)

Defendant

And

MOHAWK COUNCIL OF KAHNAWAKE (MCK)

Mis en cause

TRANSCRIPTION OF J U D G M E N T RENDERED VERBALLY

[1] Plaintiff seeks an order of Mandamus to annul Defendant Kahnawake Gaming Commission's ("KGC") denial of his application for an Interactive Gaming License on April 18, 2006; to issue the said permit upon payment of the prescribed fees; for the annulment of S. 28 of the Kahnawake Gaming Commission Regulations Concerning Interactive Gaming ("the regulations") enacted by the KGC on July 8, 1999 pursuant to s. 35 of the Kahnawake Gaming Law, (the "Gaming law"), (KGL c.G-1, P-1).

[2] Plaintiff, a Mohawk, resident of the Mohawk Territory of Kahnawake applied to the KGC on February 13, 2006 for an Interactive Gaming License ("IGL") which is one of the two types of permits foreseen by the law and regulations, the other permit being Client Provider Authorizations ("CPA"). In essence, the holder of an IGL must establish and maintain an infrastructure from which CPAs operate gaming related activities. In fact, only one IGL has been issued since the enactment of the law and the regulation i.e. to Mohawk Internet Technologies ("MIT"). That permit is the source of major funds for the Mohawk community, e.g. \$ 2 million derived in 2006.

[3] Save as set out in the Gaming law and regulations, gambling within the Mohawk Territories is prohibited.

[4] The purposes of the Gaming Law pursuant to s. 2.1 are :

- a) to provide a legal basis for the regulation of gaming and gaming related activities within the Territories as a means of promoting and preserving economic development, self-sufficiency and peace, order and good government within the Territories;
- b) to ensure that gaming and gaming related activities within the Territories are conducted fairly, honestly and in the best interests of the Mohawk People of Kahnawake;

[5] The Gaming law creates the KGC (s.6.1) and entrusts it with the power to issue, suspend or revoke permits, licenses or authorisations as provided in that law, (s. 20) which includes gaming related activities, (s. 26.1); and to exercise such further powers related thereto, to issue or revoke such permits; to regulate, monitor and inspect all gaming activities, to take measures to ensure that the provisions of the law and regulations are carried out, and, any other matters required to carry out their functions (s. 20).

[6] The KGC is an administrative body which exercises the powers duly delegated to it by the Mohawk Counsel of Kahnawake (MCK) (s. 6.1) which is obliged to "administer this Mohawk law in the best interests of the Mohawks of Kahnawake" in accordance with the highest principles of honesty and integrity (s. 6.2).

[7] The purposes of the regulations are set out in s. 4 :

- (a) to provide a lawful basis for the regulation and control of interactive gaming and interactive gaming related activities conducted within and from the Territories as a means of promoting and preserving economic development, self-sufficiency and peace, order and good government within the Territories;
- (b) to ensure that interactive gaming and interactive gaming related activities are conducted responsibly, fairly, honestly and in the best interests of Kahnawakero:non and all other affected parties;

(c) to ensure that the operators of interactive games treat players fairly; that they pay winners promptly and that all information related to player accounts is held in the strictest confidence.

[8] The regulations provide that the KGC may grant an application for a permit (s. 27) and that the KGC has the discretion to deny an application on purely policy grounds, even when the criteria for qualifying for a permit are met (s. 28).

[9] Upon reception of the application from Plaintiff, the Commissioners of the KGC were concerned about the impact of issuing the permit sought.

[10] On February 24, 2006, prior to reception from Plaintiff of technical material required in support of his application, the KGC wrote to him and indicated its concerns: it requested that he take no further steps in relation to the application until the commission had consulted with the MCK.

[11] By March 1, 2006, the members of the KGC had reached their consensus that the permit should not be issued.

[12] Thus, on March 1, 2006, it wrote to the MCK :

"The regulations, as they are presently drafted, do not limit the number of IGL's the Commission may issue. However, it is our view that the issuance of other IGL's is likely to significantly impact the conduct of online gaming in Kahnawake from regulatory, operational and policy-making perspectives. Accordingly, as we have in the past when regulatory decisions have a potential impact on wider policy matters, we are seeking guidance from the Council on the following question.

"Should the Kahnawake Gaming Commission consider issuing one or more Interactive Gaming Licenses in addition to the one that is presently held by Mohawk Internet Technologies"?

We strongly recommend that before deciding this matter, Council requests and obtains information about the potential impact of issuing more than one IGL from regulatory, operational and policy perspectives. The commission would, of course, provide council any information from a regulatory perspective that would assist in the decision-making process.

Until the requested guidance is received from Council, we will hold in abeyance any applications received for Interactive Gaming Licenses and will advise applicants accordingly." (underlining added)

[13] On April 6, 2006, the MCK informed the KGC that on March 6, it had formalized its own policy, that in the community's best interest, the only IGL to be issued was the one already issued to Mohawk Internet Technologies. Simultaneously, it confirmed that the KGL was to continue to act according to its vested powers.

[14] By letter dated April 18, 2006, the KGC refused Plaintiff's application on the grounds that it was obliged to administer the Mohawk law in the best interests of the Mohawks of Kahnawake, in accordance with the highest principles of honesty and integrity, and, that on that basis, it had decided that it was in the best interests of the community that only one IGL should be issued.

[15] Based on the documentary evidence and the uncontradicted testimony of members of the KGC and MKC, the Court is of the view that the decision made by the KGC to refuse the application was :

- A. prior to the formulation by the MKC of its own policy;
- B. without any interference or influence by MKC;
- C. pursuant to the powers and discretion vested in it by the gaming law and regulations;
- D. in full respect of the purposes of the gaming law to promote and preserve economic development, self sufficiency and peace, order and good government within the Mohawk Territories;
- E. to ensure that gaming activities were conducted fairly and honestly and in the best interests of the Mohawk people;
- F. in consideration of the fundamental Mohawk principle that future generations must be protected and that individual rights must accede to the Community's rights and future;
- G. made after a full consideration of the impact of granting another IGL upon the KGC's resources and its ability to regulate and control gambling within the Mohawk Territories;

[16] Given that there is no inherent right to the permit sought, and that the community's interest prevailed as required by its constituting law, the Court finds that the KGC had no duty to issue the permit.

[17] The application must therefore fail. On that basis, the Court does not consider it necessary to rule on the validity of s. 28 of the gaming law.

FOR THESE REASONS THE COURT :
DISMISSES the Motion;

With costs.



DIONYSIA ZERBIAS, J.S.C.

Mtre Denis Godbout
For Plaintiff

Mtre Jean-Pierre Sheppard
For Defendant

Me François Dandonneau
For Mis en cause

Dates of hearing: June 13, 14, 15, 2007