

Federal Court



Cour fédérale

Date: 20090930

Docket: T-927-09

Citation: 2009 FC 968

Ottawa, Ontario, September 30, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHIEF BEVERLY BELLEGARDE

Applicant

and

**ALMA POITRAS, LEO DESNOMIE,
LAMBERT STONECHILD, INEZ DEITER,
GLORIA DEITER, ELAINE PINAY,
ELWOOD OSCAR PINAY, DELMA POITRAS,
FREDA EVELYN DESNOMIE, GREGORY BRASS,
AVEN ROSS, EVELYN POITRAS,
MARTINE DESNOMIE, HOWARD DESNOMIE,
ENOCH POITRAS AND GERALD DESNOMIE**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The parties to this application are among the approximately 2,500 members of the Peepeekisis First Nation (the Peepeekisis or the First Nation). The Peepeekisis is a signatory to Treaty 4.

[2] It is fair to say that consensus has recently been lacking among the members of the First Nation relating to its leadership. This has resulted in political instability, conflict between the two factions that have developed, and many applications to this Court to set aside or quash decisions made regarding the leadership of the Peepeekisis. The present application asks the Court to set aside decisions that removed the applicant as Chief of the Peepeekisis and which prevent her from any elected office for the next 10 years.

[3] For the reasons that follow, the application is granted.

BACKGROUND

[4] First nations may elect their governing councils by custom or pursuant to the *Indian Act*, R.S.C. 1985, c. I-5. The election of the Peepeekisis is governed by the *Peepeekisis First Nation Custom Election Act*, (the Election Act) revised and ratified by the Peepeekisis on November 1, 2006. The First Nation is governed by the Governing Council which is comprised of the Chief and four Headpersons.

Council of Elders

[5] Only the Council of Elders has authority under the Election Act to remove a Chief or Headperson from office. Article 7C of the Election Act provides that the office of Chief “shall become vacant when the person who holds that office ... is found by the Council of Elders to be guilty of corrupt election practice, accepting a bribe, dishonesty or malfeasance within the office.”

Article 7D further provides that the Council of Elders may declare a person who ceases to hold office by virtue of the Election Act to be ineligible to hold office for a period of up to 10 years.

[6] “Council of Elders” is defined in the Election Act as “the body of persons recognized by Tradition in the community for their wisdom and ability by reason of their age and experience.” There is nothing in the Election Act that sets out how the Council of Elders is selected or its size.

[7] There are two competing councils of elders, each claiming to be the Council of Elders set out in the Election Act.

[8] A meeting of elders and members of the Peepeekisis was held on January 6, 2006. The minutes of that meeting indicate that the purpose of the meeting was to “expand on the existing Elders Council and move forward, to share insight and knowledge, review the terms of reference, and start working on the community governance structure.” Although the minutes indicate that the Council of Elders was to be comprised of 12 elders, it then lists 15 elders selected for the Council: Tom Desnomie, Elwood Pinay, Doris Bellegarde, Evelyn Desnomie, Anita McLeod, Mary Keewatin, Albert Daniels, Thomas Bellegarde, Alice Sangwais, Charlie Desnomie, Lucy Daniels, Fran Ironquill, Gilbert Keewatin, Ben Stonechild and Leo Desnomie. Chief Bellegarde then wrote to Indian and Northern Affairs Canada setting out the “current” members of the Council of Elders in the form of a resolution. There is no indication where this resolution came from or whether it was passed. This list contains 12 names: Tom Desnomie, Tom Bellegarde, Wayne Pinay, Glen Goforth, John B. Desnomie, Margaret (Larose) Stonechild, Lucy Daniels, Frieda Bellegarde, Gloria Jean Stonechild, Mona Dieter, Anita McLeod and Doris Bellegarde. Thomas Desnomie provided

an affidavit in this proceeding in which he swears that these 12 elders constitute the current Council of Elders. This group will be referred to as the Thomas Desnomie Council of Elders.

[9] On October 25, 2008, a meeting of the Peepeekisis was held. Its approved agenda listed the following items for discussion and/or decision at the meeting:

1. Adoption of Agenda
2. Dates of Nominations
3. Appointment of Chief Electoral Officer
4. Appointment of Deputy Electoral Officer
5. Clarification of process of Council of Elders (Discussion and Motion)
6. Appointment of Council of Elders to govern this process (Election) as per Peepeekisis Custom Election Act
7. Open Discussion
8. Closing Prayer.

[10] Under heading 5 above, Evelyn Poitras brought a motion to remove the Council of Elders from the Election Act on the basis that elders should be advisory only. That motion was denied as it would be an amendment to the Election Act. Under heading 6 above, a motion was passed that read: “Appointment of Council of Elders who identify themselves as such to take part in appeal if there is one.” (emphasis added). The council of elders chaired by Alma Poitras that passed the resolution removing the applicant as Chief and that banned her from office claims that it is the Council of Elders under the Election Act as a consequence of this resolution. This group, the

composition of which changed for each of the relevant meetings but which included a few, if any of the members of the Thomas Desnomie Council of Elders, will be referred to as the Alma Poitras Council of Elders.

Events Leading to the Removal of Chief Bellegarde

[11] The respondent, Evelyn Poitras, is a member of a group called the Peepeekisis Kiskimanacihk Treaty Enforcement Group (PKTE). It is a non-elected body. Evelyn Poitras describes the PKTE as a “community-based organization interested in taking steps in the best interest of Peepeekisis with respect to good governance, indigenous lawmaking and treaty enforcement.” At paragraph 6 of her affidavit filed in this application she describes her concerns with the applicant as follows:

I was concerned that Bellegarde was not speaking on behalf of the Band, her actions in removing the Headmen, Brian Desnomie and Lambert Stonechild, were personally and politically motivated and she was using a Council of Elders that was not recognized by Peepeekisis to accomplish these ends. I am not aware of the Band approving or being consulted with respect to either of the Applications commenced by Bellegarde.

The applications referenced by Evelyn Poitras are Court Files T-202-08 and T-502-08 which are described below. I note that these very same concerns were raised by Evelyn Poitras and are set out in her affidavit sworn May 22, 2008, filed in T-502-08. The present circumstance is rooted in the past.

[12] As a consequence of her concerns Evelyn Poitras wrote an open letter to the membership of the Peepeekisis on April 23, 2008, in which she set out her concerns with the conduct of the applicant. That letter states on its face that it is from “Evelyn Poitras on behalf of her mother Marie Alma Poitras and Family” and is signed by Evelyn Poitras, Marie Alma Poitras, and others. Marie Alma Poitras is Alma Poitras, a respondent in this application and the person who chaired the meetings of elders which removed the applicant as Chief and banned her from office for 10 years.

[13] Receiving no response from the applicant, although none was asked for, she wrote directly to the applicant on September 22, 2008 and again on October 20, 2008. No response to these letters was provided by the applicant. Evelyn Poitras also states that she brought her concerns forward at two First Nation meetings at which Chief Bellegarde was present but she received no response.

[14] On February 3, 2009, Evelyn Poitras presented a resolution from the PKTE to the Alma Poitras Council of Elders which, if adopted, would remove Chief Bellegarde from office. The minutes of that meeting indicate that Inez Deiter, Delma Poitras, May Desnomie, James Poitras, Gregory Brass, Alice Sangwais and Evelyn Desnomie each supported the motion. Mabel George indicated that “if I am able to support resolution, I’ll go for it” while Alma Poitras, as Chair, not having a vote, made no statement. Evelyn Poitras in her cross-examination stated that this group wanted her to consider a few things, but otherwise there was unanimous support for the resolution she presented. The applicant was given no notice of this meeting nor that her removal was being considered by the elders.

[15] On March 28, 2009, this resolution was brought back to the Alma Poitras Council of Elders, in the absence of the applicant and without notice to her. A motion was passed calling for the immediate removal of the applicant from her office of Chief of the Peepeekisis. On April 3, 2009, the same group, but after notice to the applicant, passed a motion affirming that the “motion from March 28, 2009 still stands as submitted.” A further meeting of this group was held on May 15, 2009 at which a motion was passed that the applicant “will be ineligible to hold office as Chief or Headperson for a period of ten (10) years.”

[16] On May 21, 2009, Band Council Resolution No. 589 was passed by another group purporting to constitute the Governing Council establishing the appointment of the Chief and Deputy Electoral Officers, the dates of the nomination and by-election for the positions of Chief and Headman, and requesting a voter’s list from Indian and Northern Affairs Canada. By agreement, no election has taken place as a consequence of this application.

[17] By application to this Court filed June 5, 2009, the applicant sought review of the decisions of the purported Council of Elders and of the purported Governing Council all of which are directed at her removal from office, her disqualification from re-election and the setting of by-election procedures and dates. Specifically, the applicant seeks the following relief:

1. Relief in the nature of a Declaration that the applicant is the Chief of Peepeekisis First Nation;
2. Relief in the nature of an Order quashing the motion passed by the respondents at the meeting on May 15, 2009;

3. Relief in the nature of an Order quashing Band Council Resolution No. 589 passed by the respondents on May 21, 2009;
4. Relief in the nature of an Injunction preventing the nomination meeting scheduled for June 16, 2009 and the by-election scheduled for July 2, 2009 and July 3, 2009;
5. Relief in the nature of an Injunction preventing the respondents, the respondent MARTINE DESNOMIE and anyone else from failing to recognize the authority of the applicant as Chief of Peepeekisis First Nation, and requiring the respondents and the respondent MARTINE DESNOMIE to immediately cease and desist from any and all actions that undermine the applicant's authority including, but not limited to:
 - a. Restoring signing authority of the applicant, and other powers that rightfully belong to the applicant;
 - b. Allowing the applicant to regain full access to Peepeekisis First Nation records, materials, documents, offices;
 - c. Restoring and maintaining office procedures and protocol; and
 - d. Such other actions as may be required to restore order and good government to the Peepeekisis First Nation.
6. Relief in the nature of a Declaration that the respondents are not the current Elders of the Council of Elders for Peepeekisis First Nation;

7. Relief in the nature of a writ for *quo warranto* requiring the respondents to prove by what authority they had to decide on May 15, 2009 to set and call a nomination meeting and a by-election, and by what authority they had to decide that the applicant would be ineligible to hold office as Chief, and, prohibiting the respondents from purporting to exercise authority as the Council of Elders of the Peepeekisis First Nation;
8. Relief in the nature of Abridgement of time for service of this application, and abridgement of time for reply and for the timelines for this proceeding generally.

Previous Litigation

[18] A brief summary of the recent political turmoil of the Peepeekisis as has been litigated in this Court is appropriate. I do so as a backdrop for the present dispute and in the hope that the membership of the Peepeekisis and their leaders may gain some appreciation for the personal and financial cost these disputes have caused.

[19] Throughout the hearing of this matter the respondents took the position that the Peepeekisis is a self-governing nation opposed to the intervention of this Court. Perhaps the following history of litigation will show why this Court's intervention has been sought out so often in recent years. Perhaps also, this judgment, coupled with that past history, will provide some guidance to the First Nation in arranging its internal affairs so that this Court's intervention is not required, or is not so frequently sought in the future.

Court File T-1759-05: *Lyle Desnomie v. Peepeekisis First Nation*

[20] Former Chief Lyle Desnomie was sent a letter dated July 26, 2005, informing him that the Peepeekisis Governing Council had permanently removed him from his position as Chief for breaches of his fiduciary duties to the First Nation. The members of the Governing Council, other than Chief Desnomie were Maurice Nokusis, Allan Bird, Lambert Stonechild and Brian Desnomie. Chief Lyle Desnomie brought an application to the Federal Court for judicial review of the decision to remove him. Justice Blais of this Court, as he then was, in *Desnomie v. Peepeekisis First Nation*, 2007 FC 426, quashed the decisions of the Governing Council removing Chief Desnomie from office and ordering a by-election. He did so primarily on the basis that the Governing Council had no authority to remove a Chief from office, as under the Election Act, only the Council of Elders could remove a Chief or Headman from office. Although the decision to remove him as Chief was subsequently ratified by a purported Council of Elders and the Peepeekisis membership, this Court found that this failed to cure the deficiency of the original decision to remove Chief Desnomie.

[21] Justice Blais made a number of other findings that are directly relevant to the present application:

1. No proper Council of Elders was ever created following the adoption of the Election Act although this had been identified as an issue at First Nation meetings held in January and February 2005.
2. When it was thought that there were grounds to remove Chief Desnomie from the office of Chief, a process was followed to create a Council of Elders. However, Chief

Desnomie objected to the process selected to create a Council of Elders as not every possible elder was informed that such a Council was being formed, nor were they informed as to why it was being formed (namely to deal with his removal). He submitted that the Council thus selected represented only a minority of the Peepeekisis membership.

3. There is nothing in the Election Act that sets out how the Council of Elders is to be created and there was no evidence filed to support that the process that was followed was in keeping with the customs of the Peepeekisis. Therefore, the Court looked to the principles of procedural fairness to determine whether the rights of Chief Desnomie were violated and whether the process used to create the Council of Elders raised a reasonable apprehension of bias.
4. Other than expediency, there was no valid reason why all of the elders of the Band were not asked to participate in the Council of Elders. In that case the decision was made by a Council of only three elders. The Court observed that “elementary prudence and fairness commanded that they try to gather the largest possible audience of elders, considering the importance of the decision for the applicant.”
5. The invitation to Chief Desnomie to answer the charges after the decision was made to release him was insufficient as “it did not remove the obligation of the Council of Elders to invite the Chief to respond to the allegations in the context of their deliberations.” (emphasis added). “[T]o meet the test of procedural fairness, there is, at

a minimum, an obligation to provide the person with adequate notice and an opportunity to respond when serious allegations of wrongdoing are raised, which could have serious consequences, such as in this case, the release of the applicant from his position as Chief.”

[22] The Court set aside the decision to remove Chief Desnomie. However, in the interim, the present applicant had been elected Chief in a by-election in September 2005 held as a result of the removal of Chief Desnomie. She was subsequently re-elected by the Peepeekisis at a regularly scheduled election in December 2006, and but for the events under review, she would have remained Chief until December 2010.

Court File T-202-08: *Bellegarde v. Lambert Stonechild, Brian Desnomie and Gerald Desnomie*

[23] On November 26, 2007, at a meeting of the Peepeekisis membership, a motion was made, supported by the 18 members present, to remove Beverley Bellegarde from her office as Chief. On November 28, 2007, three Headmen passed Band Council Resolution No. 540 adopting the membership resolution. Chief Bellegarde was actually removed from her office on December 17, 2007. Chief Bellegarde then brought an application asking this Court to set aside Band Council Resolution No. 540 on the basis that it had no authority under the Election Act to remove the Chief from office. On April 17, 2008, with the consent of Lambert Stonechild, Brian Desnomie and Gerald Desnomie, the application was allowed without costs and the decision to remove Chief Bellegarde was quashed and a declaration issued that Chief Bellegarde was the Chief of the Peepeekisis First Nation.

Court File T-502-08: *Bellegarde v. Lambert Stonechild and Brian Desnomie*

[24] On March 27, 2008, Chief Bellegarde commenced an application for judicial review asking under what authority Lambert Stonechild and Brian Desnomie continued to exercise their authority as Headmen in light of the decision on March 14, 2008 by the Thomas Desnomie Council of Elders to remove them from their positions. This application was discontinued by Chief Bellegarde, with the consent of Lambert Stonechild and Brian Desnomie, without costs, on April 21, 2009.

ISSUES

[25] The issues raised in this application by the parties are the following:

- I. Whether this Court has jurisdiction under the *Federal Courts Act*, R.S.C. 1985. c. F-7 to review the decisions at issue in this application;
- II. What are the decisions under review and whether the Court should exercise its discretion under Rule 302 to hear the application if it is not limited to a single order;
- III. Whether the application is out of time and, if so, whether the Court should extend the time and hear the application; and
- IV. Whether the proper procedure was followed in this case to effect the removal of the applicant as Chief and to ban her from office for 10 years.

I. Jurisdiction of the Federal Court

[26] The respondents submit that this Court has no jurisdiction over the subject matter of the application - a decision of a council of elders. They submit that the Council of Elders, as defined in the Election Act of the Peepeekisis, is not a “federal board, commission or other tribunal” under section 18(1) of the *Federal Courts Act* as is required if this Court is to have jurisdiction.

[27] This argument has previously been raised and has been dealt with by the Federal Court of Appeal in *Minde v. Ermineskin Cree Nation*, 2008 FCA 52. The facts there are on all-fours with the facts in this case. The Ermineskin Cree Nation Elder’s Council passed a resolution declaring that Chief Minde had vacated his office as Chief. That resolution was approved and enforced by the Band Council. Mr. Minde submitted to the Federal Court of Appeal that the Elders Council was not a federal board, commission or other tribunal and that its decision was not subject to review by this Court. The Court of Appeal at paragraph 33 of its decision found otherwise:

With respect to Mr. Minde's preliminary argument that the Elders Council, if it was the decision-maker, is not amenable to judicial review because it is not a federal board, commission or other tribunal within the meaning of section 18 of the *Federal Courts Act*, I need only say that the jurisdiction of the Federal Court under section 18 does not depend on form, but is based on the authority to decide. To the extent that the Elders Council is empowered to and did terminate Mr. Minde as Chief pursuant to the Band Constitution, its decision can be reviewed pursuant to section 18. (emphasis added)

[28] Accordingly, this Court has jurisdiction to review decisions of the Council of Elders made under the Election Act.

II. What Is Under Review

[29] The respondents, at paragraph 47 of their memorandum, raise the question as to what or which decisions are under review:

It is unclear from the Applicant's material exactly what decision is being attacked by the Applicant:

(a) Is it the decision of the Council of Elders to remove the Applicant as Chief and prohibit her from serving in office for a period of ten years?

(b) Is it the decision of the Peepeekisis General Band Membership to hold the elections, filling her position as Chief?

(c) Is it the Band Council Resolution to fix the dates for the nomination and election in accordance with the results of Peepeekisis General Band Membership Meeting?

[30] This "concern" was raised for the first time in the respondents' memorandum filed on July 29, 2009. Apparently, the respondents had a clear enough understanding of the decision(s) being attacked to file responding affidavits and to conduct cross-examinations of the applicant's affiants.

[31] It is clear to the Court from the notice of application that the applicant is seeking judicial review of all of these decisions.

[32] The respondents correctly point out that Rule 302 of the *Federal Courts Rules* requires that "unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought." Here the applicant is seeking judicial review of four orders: (1) the March 28, 2009 decision of the Alma Poitras Council of Elders removing the

applicant from her office as Chief, (2) the May 15, 2009 decision of the Alma Poitras Council of Elders banning the applicant from holding office for 10 years, (3) the May 15, 2009 decision of the Alma Poitras Council of Elders recommending a by-election, and (4) the May 21, 2009 decision of three Headmen setting the dates and procedures for the by-election.

[33] In my view, this is one of those exceptional circumstances where the interests of justice requires that the Court exercise its discretion to permit all of these decisions to be subject to this single application for judicial review. In my view, this is warranted for two basic reasons. First, the parties filed evidence and cross-examined the affiants on all of these decisions, and so there is no prejudice to either party if all decisions are under review. Second, the latter decisions flow directly from the former decisions. If the decisions of the Alma Poitras Council of Elders do not stand, then the applicant remains Chief and the subsequent two decisions cannot stand.

III. Extension of Time

[34] The respondents submit that the first decision, the decision of the Alma Poitras Council of Elders removing the applicant as Chief made on March 28, 2009, is the date from which the 30 day period in section 18.1(2) of the *Federal Courts Act* commences. That provision permits a judge of this Court to fix or allow further time for the filing of an application for judicial review before or after the expiration of the 30 days. Therefore, assuming the respondents are correct and that the time for challenging at least one of the decisions under review expired before this application was filed, an extension of that time may be permitted by this Court.

[35] Generally, this Court has permitted extensions when necessary to ensure that justice is done between the parties taking into consideration whether the applicant has an arguable case, whether the applicant had a continuing intention to challenge the decision, whether the applicant offered a reasonable explanation for the delay in initiating the application, and whether there will be undue prejudice to the responding party.

[36] I am satisfied that the applicant has an arguable case and that there is no prejudice to the respondents in permitting an extension for the filing of the application for judicial review. With respect to the other factors, I consider the following facts to be relevant. Although the first decision of the Alma Poitras Council of Elders was made on March 28, 2009, Chief Bellegarde was only denied access to her office from and following June 10, 2009. On that same date she was denied remuneration and compensation as Chief, which she had received previously, notwithstanding the March decision. Further, it was on that date that she was denied signing authority as Chief. These actions implemented and brought home to the applicant that the decisions of the elders were being acted upon, as did the mid-May decisions to hold a by-election. In these circumstances, the delay, if there was one, in filing this application was understandable.

[37] For these reasons the Court exercises the discretion provided in the *Federal Courts Act* and extends the time for filing the within application for judicial review.

IV. Whether Proper Procedure Was Followed

[38] I find that I am in the same position Justice Blais was in 2007. There is no evidence that the Thomas Desnomie Council of Elders is or was properly constituted in accordance with the Election

Act or by custom. Equally, there is no evidence that the Alma Poitras Council of Elders is or was properly constituted in accordance with the Election Act or by custom.

[39] The question of custom was considered by the Court in *Francis v. Mohawk Council of Kanesatake*, [2003] 4 F.C. 1133 at paragraph 21. The party relying on custom has the burden of establishing what that custom is. The Court further held at paragraph 23 that the constituent elements of custom, in the selection of a council in that case, are (1) "practices" for the choices of a council, (2) practices that are "generally acceptable to members of the band", and (3) practices upon which there is a "broad consensus".

[40] With respect to the Peepeekisis Council of Elders it is clear that there was no practice prior to 2007 when Justice Blais rendered his decision. Since that time there have been at least two councils "selected" and both by different means. It is therefore impossible to say that there has been a "practice" or that it has been generally accepted by the Peepeekisis members. The fact that there are two purported councils proves that the "practice", if there had been one, is not one on which there is broad consensus.

[41] Although the Alma Poitras Council of Elders appears to have the endorsement of the membership at a meeting, the documentary record does not indicate that it was authorized to make decisions other than decisions on appeals under the Election Act.

[42] If it is the intention of the Peepeekisis that for all purposes under the Election Act, including the removal of a Chief, that the Council of Elders established under the Election Act is to be comprised of everyone who considers himself or herself to be an elder then, at a minimum, a clearly

worded resolution to this effect, passed at a meeting of the Peepeekisis having broad-based attendance, after proper notice to all of the motion to be considered, would be required. If it is the intention of the Peepeekisis that the elders eligible to be on a Council of Elders must be recognized by the Peepeekisis as such, then one would expect to see some confirmation of the composition of the Council of Elders perhaps at a broad-based meeting of members at which elders are recognized for this purpose, after proper notice to all of the matter under consideration.

[43] The Court has been struck by the discrepancy within the Peepeekisis between the process followed in an election for Chief and in the removal of an elected Chief. The record shows that elections are contested and taken very seriously by all of the electors. It appears that while there are some sharp divisions among the membership as to the best candidate, there is a good turn-out of electors such that it can be said that there is a broad support for the election process, even when the successful candidate has only a plurality and not a majority of the votes cast.

[44] Having established such a democratic process for an election, including rights of appeal, one would expect to see an equally fair process having broad based support and an appeal opportunity when considering the removal of a duly elected official. Regrettably, that has not been the case in recent years. Partly because of the historical composition of the First Nation, partly because of the fact that its members are spread over a large territory, and partly because of a lack of detailed notice, the attendance at meetings of elders and at membership meetings has not been significant. Just as custom requires a broad support for the custom if it is to be recognised as such, broad support should be evident when considering the removal from office of a democratically elected leader.

[45] It is not clear from the record that the elders of the Peepeekisis even wish to have the power to remove its Chief. Indeed, Evelyn Poitras brought forward a motion to the membership to remove that power. Thomas Desnomie, an elder of the First Nation, in his cross-examination states that the traditional role of the elders is to guide and advise, not to engage in politics. As long as the elders have this political role, then its decisions to remove a Chief must, in keeping with custom and tradition, have broad-based support. Similarly, if that role is removed from the elders and given to the membership as a whole, decisions to remove should have as much of a broad-based support and be reached as fairly as election decisions. If not, the Peepeekisis will continue to be subject to having their elected officials removed by a small number of members aligned in a faction without the overall support, or perhaps without even prior knowledge of the First Nation membership.

[46] In this case, even if the Alma Poitras Council of Elders was properly constituted as the Council of Elders under the Election Act, its decisions with respect to the applicant would have been set aside on the ground that procedural fairness and natural justice were not observed, unless it could be established that it is the custom of the Peepeekisis not to observe those principles.

[47] In this case the applicant was given no notice at all of the meeting in March at which the resolution was approved removing her from office. She was not provided with any opportunity to address the elders or to defend herself to them prior to the decision made on March 28, 2009. In my view, the subsequent meeting at which she was given an opportunity to address the issues was not sufficient to cure that original error for the decision had already been made. There is no evidence at all that the group was prepared to seriously reconsider its decision. The suggestion made at the

hearing that the previous letters from Evelyn Poitras constituted proper notice is equally without merit. They do not alert the applicant to the action subsequently taken to remove her from office.

[48] Moreover, the Alma Poitras Council of Elders failed to observe the principles of natural justice and procedural fairness in other ways. First, the group is chaired by Alma Poitras, the mother of Evelyn Poitras, the person who brought the proposal for the removal of the Chief to the group. This family relationship, in itself, may not be sufficient to create an impression of conflict of interest or perceived bias as was alleged by the applicant. However, the basis and support for the motion was a letter written by Evelyn Poitras on behalf of her mother and their family in opposition to the Chief. It was written prior to the decision of the elders. In light of that letter, Alma Poitras appears to have pre-judged the issue and this gives the appearance of bias. Even if she made no comment or tendered no vote, she should not have chaired the meeting at which the decision was made.

[49] Second, the motion to remove the Chief was previously brought before the Alma Poitras Council of Elders for their review and comment. It is clear from the record, indeed from the statement of Evelyn Poitras herself, that there was unanimous support for the motion to remove the Chief. Therefore, it can hardly be said that the decision made on March 28, 2009 was made afresh. The record indicates that the decision had already effectively been made and thus the decision-makers cannot be said to have exercised independent decision-making. They had pre-judged the issue.

[50] Lastly, even if the Alma Poitras Council of Elders is the established Council of Elders and even if it is accepted that any elder could serve on it, the record indicates that the meetings under review were conducted by Alma Poitras calling “some” of the elders to advise them of the meeting. They may or may not have been given notice of the purpose of the meeting. Regardless, if the composition of the Council of Elders is open to all elders, then all elders, not just some, must be given notice of the meeting and the matters to be discussed at it, otherwise it cannot be said that the composition of the group was fair, broad-based, or in compliance with the requirements of the Peepeekisis.

[51] As noted above, there is no evidence that the rules of procedural fairness and natural justice do not apply to the Council of Elders. In fact, there is evidence that they are to be followed. The appeal provisions of the Election Act provide that appeals are heard by the Council of Elders. The Election Act provides that appeals “will take the form of a formal public inquiry” at which the person who is the subject of the complaint is to be present, as well as the person who has brought the appeal. It further provides that each member of the Council of Elders hearing an appeal “must agree to act impartially and must appear to be unbiased.” If this respectful and fair process is followed by the Peepeekisis in appeals from elections why would a lesser standard be suggested as acceptable when proposing the removal of the duly elected Chief?

[52] For all of the foregoing reasons this application is allowed. The applicant is entitled to her costs of this application. The Court will remain seized with respect to the question of costs. If the parties cannot agree upon the disposition of costs within 10 days, then the applicant is to serve and file her submissions within 5 days and the respondents are to serve and file their submissions within

5 days after receiving the applicant's submissions. The applicant shall have a further 5 days to reply.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is granted;
2. The March 28, 2009 decision of the Alma Poitras Council of Elders removing the applicant from her office as Chief, the May 15, 2009 decision of the Alma Poitras Council of Elders banning the applicant from holding office for 10 years, the May 15, 2009 decision of the Alma Poitras Council of Elders recommending a by-election, and the May 21, 2009 decision of three Headmen setting the dates and procedures for the by-election are set aside;
3. As a result of paragraph 2 of this Judgment, the Court declares that Beverly Bellegarde is the Chief of the Peepeekisis First Nation and she is entitled to receive forthwith all wages and compensation that were not paid as a consequence of the decision made on June 10, 2009 to cease her compensation; and
4. Costs are reserved.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-927-09

STYLE OF CAUSE: CHIEF BEVERLY BELLEGARDE v.
ALMA POITRAS ET AL

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: August 20, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: September 30, 2009

APPEARANCES:

Jeffrey R.W. Rath
L. Nathalie Whyte

FOR THE APPLICANT

Philip J. Gallet

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

RATH & COMPANY
Barristers & Solicitors
Priddis, Alberta

FOR THE APPLICANT

MCDOUGALL GAULEY LLP
Barristers & Solicitors
Regina, Saskatchewan

FOR THE RESPONDENTS