



**Date: 20120126**

**Docket: T-73-12**

**Citation: 2012 FC 107**

**Vancouver, British Columbia, January 26, 2012**

**PRESENT: Roger R. Lafrenière, Esquire  
Case Management Judge**

**BETWEEN:**

**CHIEF JEFFREY NAPAOKESIK,  
COUNCILLOR LIBERTY REDHEAD,  
COUNCILLOR ERNIE REDHEAD,  
COUNCILLOR SANDY MILES AND  
COUNCILLOR HOWARD CANABIE**

**Applicants**

**and**

**SHAMATTAWA FIRST NATION  
MEMBERSHIP COMMITTEE AS  
REPRESENTED BY ELIE HILL,  
SAM MILES, VERONICA MILES,  
CELINE MILES, MABEL MILES-TAKER,  
DEANNA REDHEAD, JOHN DOE AND  
RICHARD ROE**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] On January 10, 2012, the Chief and Councillors of the Shamattawa First Nation (SFN), commenced an application for judicial review of a decision by the Shamattawa First Nation Membership Committee (SFNMC) dated January 9, 2012 purportedly removing the Applicants

from the office of Chief and Council of the SFN. The Applicants concurrently filed a motion seeking an interim injunction prohibiting the holding of an election for the offices of Chief and four Councillors, scheduled to be held on January 18, 2012, an interim injunction staying the effect of the meeting of the SFNMC which took place on January 9, 2012, or alternatively an order reinstating the Applicants to their position pending final determination of the application for judicial review. The Applicants also requested that the motion be heard on an expedited basis.

[2] By Order dated January 17, 2012, Mr. Justice Leonard Mandamin declined to fix a date for the hearing of the motion because the Respondents had not been provided two clear days to file responding material, and no notices of appearance or response of any kind had been filed by any of the Respondents to the application for judicial review. Mr. Justice Mandamin ordered that the application continue as a specially managed proceeding and directed the Applicants could reapply to fix a date for hearing of the Applicants' motion upon service of their motion record on the Respondents, and completion of any requirements arising in case management.

[3] The Notice of Application and the Applicants' motion record was served on the Respondents on January 14, 2012. The Respondents filed separate Notices of Appearance on January 20, 2012.

[4] A case management conference was held by teleconference on January 26, 2012. In attendance were Norman Boudreau, solicitor for the Applicants, and the Respondents, Eli Hill, Sam Miles, Veronica Miles, Mable Miles-Taker, and Deanna Redhead. The Respondents agreed that

since most of them did not have telephone or fax number, they could be contacted in the future through Eli Hill at his phone number (204)-565-2898 or by e-mail at [elihill458@hotmail.com](mailto:elihill458@hotmail.com).

[5] On January 25, 2012, after the close of business, Mr. Hill communicated a request via voice mail that the case management conference be adjourned. This request was reiterated during the case management conference as Mr. Hill advised that the Respondents had consulted Ms. Aimée Craft, a lawyer with the Public Interest Law Centre in Winnipeg, but had yet to retain her services. The request was denied since the Respondents had ample time to retain counsel and could not provide a sufficient reason to delay the fixing of hearing date of the Applicants' motion.

[6] The Applicants seek an expedited hearing of their motion. A brief overview of the relevant facts is in order.

[7] Mr. Jeffrey Napoakesik was elected Chief of Shamattawa First Nation on August 10, 2010 for a two year term. The Respondents, who describe themselves as concerned band citizens, called a membership meeting on January 2, 2012 to address concerns of certain SFN members. According to Mr. Napoakesik, neither he nor any member of Council were invited to the meeting. Although he did not attend the meeting on January 9, 2012, Mr. Napoakesik listened to the proceedings which were broadcast over the local radio airwaves. During the meeting, the members in attendance were told that the Chief and Councillors had failed to stop the consumption of alcohol on reserve, failed to provide a recreation centre for the youth on reserve, failed to ensure construction of housing on reserve, created a debt in the community, and each gave \$1,700.00 to their wives.

[8] According to Mr. Napoakesik, the allegations made against his administration during the meeting were false. He was not provided an opportunity to defend himself and his reputation against the allegations that were made against his leadership. A vote was held resulting in the removal of the Applicants from their offices as Chief and Council.

[9] After the vote was taken, the Respondent, Mr. Eli Hill, announced that there would be a nomination meeting for the positions of Chief and four Councillors. On January 11, 2012, the nomination meeting took place. According to the Applicants, they were not allowed to attend the nomination meeting. In addition, they were precluded from running in the election.

[10] On January 20, 2012, an election was held for the position of Chief of SFN and Mr. William Miles was elected. It is unclear whether the Chief-elect will be assuming the position of Chief while the present proceedings are outstanding. An election for the positions of the four Councillors is scheduled to be held tomorrow, on January 27, 2012.

[11] On the basis of the affidavit evidence filed by the Applicants (which has yet to be contradicted), I am satisfied that the application for judicial review raises a serious issue whether the principles of objectivity, impartiality and fairness were respected in the process resulting in the removal of the Applicants from their elected positions and the calling of an election on short notice to replace them. The Respondent, Sam Miles, submits that the band custom permits 25 members to convene a meeting. While that may be, it remains that the allegations by the Applicants of lack of notice and denial of an opportunity to defend themselves against allegations of grave misconduct call the entire process of their divestiture into question.

[12] There is clearly great discord in the SFN community. The chaos and potential conflict that may be caused by two administrations claiming to represent the SFN would only exacerbate matters. In my view, the Applicants' motion should be fixed for hearing as soon as possible to address the current uncertainty regarding the governance of the band.

**ORDER**

**THIS COURT ORDERS that:**

1. The Applicants' motion for interim relief shall be heard by teleconference on Wednesday, February 1, 2012 at 9:00 a.m. (Central).
2. The Applicants are granted leave to serve and file an additional affidavit in support of their motion to update the events that occurred following the filing of the motion record no later than January 27, 2012 at 2:00 pm (CST).
3. Unless and until a solicitor of record is appointed, service of any document on the Respondents may be effected by sending a PDF version as an attachment to an e-mail addressed to the Respondent, Eli Hill at [elihill458@hotmail.com](mailto:elihill458@hotmail.com).

"Roger R. Lafrenière"  
\_\_\_\_\_  
Case Management Judge

**SOLICITORS OF RECORD**

**DOCKET:** T-73-12

**STYLE OF CAUSE:** CHIEF JEFFREY NAPAOKESIK et al  
v. SHAMATTAWA FIRST NATION et al

**CASE MANAGEMENT CONFERENCE HELD  
VIA TELECONFERENCE ON JANUARY 26, 2012  
FROM WINNIPEG, MANITOBA AND VANCOUVER, BRITISH COLUMBIA**

**REASONS FOR ORDER  
AND ORDER:** LAFRENIÈRE P.

**DATED:** JANUARY 26, 2012

**ORAL REPRESENTATIONS BY:**

Mr. J.R. Norman Boudreau FOR THE APPLICANTS

Mr. Eli Hill FOR THE RESPONDENTS  
(SELF-REPRESENTED)

**SOLICITORS OF RECORD:**

Booth Dennehy LLP FOR THE APPLICANTS  
Winnipeg, Manitoba

Eli Hill FOR THE RESPONDENTS  
Shamattawa First Nation Membership  
Committee (SELF-REPRESENTED)  
Winnipeg, Manitoba