

Federal Court



Cour fédérale

Date: 20210423

**Dockets: T-1282-19
T-1725-19**

Citation: 2021 FC 360

Ottawa, Ontario, April 23, 2021

PRESENT: The Honourable Madam Justice Strickland

Docket: T-1282-19

BETWEEN:

**WILLIAM GORDON GLENDALE IN HIS
CAPACITY AS CHIEF OF BAND COUNCIL
OF THE DA'NAXDA'XW FIRST NATION
AND AS A MEMBER OF THE
HEREDITARY CHIEFS COUNCIL AND
MICHAEL JACOBSON-WESTON AND
ANNIE GLENDALE IN THEIR CAPACITY
AS COUNCILLORS OF THE
DA'NAXDA'XW FIRST NATION**

Applicants

and

**BILL PETERS, NORMAN GLENDALE AND
ROBERT DUNCAN**

Respondents

Docket: T-1725-19

AND BETWEEN:

**BILL PETERS AND ROBERT DUNCAN, IN
THEIR CAPACITY AS MEMBERS OF THE
HEREDITARY CHIEFS COUNCIL OF
DA'NAXDA'XW FIRST NATION**

Applicants

and

**WILLIAM GORDON GLENDALE,
MICHAEL JACOBSON-WESTON, AND
ANNIE GLENDALE**

Respondents

JUDGMENT AND REASONS

[1] Before me are two related applications for judicial review. The applications are both concerned with the question of which entity or persons have the legal authority to govern the Da'naxda'xw First Nation [DFN] and are brought pursuant to s 18 and s 18.2 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*]. The applications involve the same parties and concern many of the same issues. Accordingly, pursuant to the Order of the Case Management Judge dated December 20, 2019, they were set down to be heard together. The applications were argued before me over three days.

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[2] The Applicants in T-1282-19 are William Gordon Glendale [Gordon Glendale], in his capacity as Chief of DFN Band Council and as a member of the Hereditary Chiefs Council [HCC], Michael Jacobson-Weston and Anne Glendale in their capacity as Councillors of DFN Band Council [together, the Glendale Band Council]. They claim to have the legal authority to

govern the DFN. They seek judicial review of the purported authority of the Respondents, Bill Peters, Norman Glendale and Robert Duncan [Peters & Duncan], to hold meetings and make decisions, including band council resolutions, on behalf of DFN, and the authority of Peters & Duncan to remove Gordon Glendale as a member of the HCC. The Glendale Band Council seeks the following relief as set out in their Notice of Application:

1. An order in the nature of *quo warranto* declaring Chief Gordon Glendale and Councillors Michael Jacobson-Weston and Annie Glendale the Band Council of DFN;
2. And on that basis,
 - (a) a declaration that the Respondents, Bill Peters, Norman Glendale, and Robert Duncan, lack lawful authority to act as the governing body of the Band;
 - (b) a declaration that the HCC, however constituted, does not have lawful authority to act as the governing body of the Band;
 - (c) an order in the nature of *certiorari* quashing any and all decisions made by the Respondents while purporting to be the lawful governing body of the Da'naxda'xw First Nation;
3. Further an order in the nature of *quo warranto* in respect to the lawful composition of the HCC, declaring that William (Gordon) Glendale is a required member;
4. And on that basis, an order in the nature of *certiorari* quashing
 - (a) the decision to remove Chief Gordon Glendale as member of the HCC; and,
 - (b) any and all decisions made by the HCC following the removal of Chief Gordon Glendale.
5. Leave of the Court, pursuant to Rule 302 of the *Federal Court Rules*, for the following order:
 - (a) Pursuant to Section 18.2 of the *Federal Courts Act*, an interim order pending the final disposition of this Application in the nature of an Injunction,

enforceable by the RCMP, prohibiting the Respondents from exercising any powers on behalf of the Da'naxda'xw First Nation, and authorizing the Applicants to resume governance of the Nation on the terms established by order of this court, dated May 26, 2017;

6. An order for costs of and incidental to this application; and
7. Such further and other relief as this Honourable Court may deem appropriate and just.

T-1725-19

[3] After the Glendale Band Council filed the above application for judicial review, Bill Peters and Robert Duncan, in their capacity as members of the HCC, brought an application for judicial review in matter T-1725-19, naming William Gordon Glendale, Michael Jacobson-Weston and Annie Glendale as the Respondents. In their Notice of Application, Peters & Duncan seek the following relief:

1. An order in the nature of *quo warranto* declaring that:
 - (a) the Former Band Council of the Da'naxda'xw First Nation ("DFN"), composed of the Respondents, or any of them, lacks lawful authority to act as the governing body of the Da'naxda'xw First Nation; and
 - (b) the Da'naxda'xw First Nation Hereditary Chiefs Council ("Chiefs Council"), however constituted, is the lawful governing body of the Da'naxda'xw First Nation;
2. An order in the nature of *certiorari* quashing any and all decisions and Band Council Resolutions made by the Former Band Council after August 1, 2017;
3. Leave of the Court, pursuant to Rules 105 and 302 of the *Federal Courts Rules*, for an order that this proceeding be

consolidated or heard together with Federal Court File No.T-1282-19;

4. Leave of the Court, pursuant to Rule 302 of the *Federal Courts Rules* and pursuant to section 18.2 of the *Federal Courts Act*, for the following interim orders pending the final disposition of this Application:
 - a) An interlocutory injunction prohibiting the Former Band Council or anyone taking instruction from them or anyone supporting them or anyone having knowledge of this injunctive order from in any way, directly or indirectly:
 - i. the Former Band Council to be the band council of the DFN until such time as this Honourable Court decides the issue raised in this proceeding;
 - ii. exercising the authority of the band council or carrying on the business of the band council until such time as this Honorable Court decides the issues raised in this proceeding;
 - iii. unlawfully interfering with the band council's exercise of its lawful authority or its ability to carry out the business and affairs of the DFN until such time as this Honorable Court decides the issues raised in this proceeding;
 - b) An order authorizing the Chiefs Council to fulfill its lawful governmental duties and responsibilities to the DFN until such time as this Honorable Court decides the issues raised in this proceeding.
 - c) An order requiring the Former Band Council to fully disclose any and all decisions, resolutions or other purported exercises of the authority of the band council that the Former Band Council has made, resolved or exercised since July 5, 2019 and to produce any and all documentation in respect thereof to the Chiefs Counsel within 7 days of the date of this order.
 - d) An order requiring the Former Band Council to fully account for any and all funds and/or benefits and/or monies received by or on behalf of the Former Band Council in respect of the DFN or paid out or

disbursed or transferred by the Former Band Council since July 5, 2019 within 7 days of the date of this order.

- e) An order requiring the Former Band Council to immediately transfer any and all funds or other consideration received for the benefit of the DFN to the DFN.
 - f) An order requiring the Former Band Council to fully disclose and transfer any and all documentation in their possession, power or control with respect to the governance of the DFN to the Chiefs Counsel within 7 days of the date of this order.
5. Costs of this motion on a solicitor-client basis payable forthwith; and
 6. Such further orders as the Court may determine are just in the circumstances.

[4] These applications have lengthy procedural histories. This includes a motion by Peters & Duncan to remove the law firm of JFK Law as solicitor for the Glendale Band Council, which was dismissed by Prothonotary Ring by an Order dated October 30, 2019. On February 6, 2020 Justice Favel upheld the Prothonotary's ruling on appeal by Peters & Duncan (2020 FC 208). By Order dated December 6, 2019 Justice Favel dismissed the injunction motions brought, respectively, by the Glendale Band Council and by Peters & Duncan (2019 FC 1568).

[5] Further, in early 2020, the Glendale Band Council brought a motion seeking rulings relating to the cross-examination of Gordon Glendale and Molly Dawson. The Glendale Band Council sought to affirm counsel's objections to questions asked of Mr. Glendale and Ms. Dawson during cross-examination on their respective affidavits and requiring that Robert Duncan answer certain questions objected to on his cross-examination. They also brought a

motion to strike out the affidavit of Bill Peters sworn on October 24, 2019. By Order dated February 16, 2021, Prothonotary Ring made determinations relating to the objections on cross-examinations, and adjourned, on the parties' consent, the motion to strike until the hearing of the application in T-1282-19. That motion is dealt with below as a preliminary matter.

[6] The parties have also filed more than twenty-five affidavits in support of their respective applications, some affiants swearing multiple affidavits. They have conducted cross-examinations of some affiants and the joint record of evidence contains eight transcripts of cross-examinations. The parties' respective written memorandums of fact and law, and oral arguments made before me, address the evidence in considerable detail, closely parsing wording and making many submissions as to the interpretation, application and inferences that should be drawn from it. Although I have read and considered all of the evidence and the submissions of the parties, my reasons that follow will not recite each and every piece of evidence referred to by the parties or every submission raised in support of their respective submissions. I will be addressing only the submissions and evidence that is, in my view, most relevant to resolving the issues in the judicial reviews before me.

Background

[7] The DFN is a band within the meaning of the *Indian Act*, RSC 1985, c I-5 [*Indian Act*]. The DFN is a small First Nations community of about 226 members. Only about 19 members live in what is known as the "Village" which is situated on a reserve within the DFN's traditional territory near Alert Bay, Vancouver Island. About 200 members live off the reserve. The DFN community is made up of Namimas, or clans, each led by a family head. Some of the family

heads are also recognized by the DFN as hereditary chiefs. The main families include the Glendales, Duncans, Jacobsons, Gillespies (Peters), and Nolies.

[8] From around 1954, the DFN's band council was selected pursuant to the electoral scheme in s.74 of the *Indian Act*. However, somewhere between 1972 and 1987, the DFN adopted a governance structure based on their unwritten custom. Since 1987, DFN has been governed by a band council of one hereditary chief and two councillors. It is undisputed that the DFN has never had a written governance or election code. The record before me includes a band council resolution dated August 24, 1987 that was prepared to advise what is now Indigenous Services Canada [ISC] of a custom election held in 1987:

THAT the [Da'naxda'xw] go back to the ancient custom of having a hereditary Chief. So we thereby appoint William M. Glendale, band #44, to take his rightful place as the hereditary chief of the [Da'naxda'xw] tribe. This custom shall pass from generation to generation until such time as the tribe wishes to change it back. The tribe shall have two councillors who will remain the same two people until such time as the chief and tribe wishes to change them.

[9] At the 1987 meeting, William McKenzie Glendale was appointed Chief, and Anne Glendale and Fred Glendale were selected as Councillors. William McKenzie Glendale was Gordon Glendale's father, Anne Glendale is his mother, and Fred Glendale was William and Anne's son.

[10] There is no evidence that Anne Glendale's role as Councillor was ever subsequently challenged by way of an election for that office.

[11] After Fred Glendale's death in 2013, an election was held and Michael Jacobson-Weston was elected as Councillor. In April 2016, Councillor Jacobson-Weston's wife became seriously ill and he "stepped back" from his duties as a Councillor.

[12] Also in 2013, William McKenzie Glendale named his son, Gordon Glendale, as heir to the Glendale family's hereditary Chieftainship. When Chief William McKenzie Glendale died in 2016, Gordon Glendale assumed the role of Chief of the Glendale Band Council. Gordon Glendale's evidence is that he attended, and was received at, a number of potlatches to recognize him as Hereditary Chief of the DFN and that he was recognized as such at community meetings. The record before me includes a band council resolution dated May 31, 2016, signed by Gordon and Anne Glendale, that states:

The Danaxda'xw First Nation follows the Hereditary Leadership system, the heir to Hereditary Chief William Mackenzie Glendale's chieftainship is William Gordon Glendale. William Gordon Glendale will take on the responsibilities of Hereditary Chief of the Da'naxda'xw Nation until such time that the membership wish to change the Leadership system.

[13] It appears that during the more than 30 years that the Glendale Band Council governed, some DFN members expressed discontent intermittently with the Hereditary Chief and Councillors governance model.

[14] The discontent came to a head on or around November 6, 2016 when two DFN members, Nicole Hajash and Lou-Ann Neel, filed an application for judicial review (Federal Court file T-1908-16), naming the Glendale Band Council as respondents, challenging the legality and

authority of the Glendale Band Council and seeking an elected chief and council [2016 Judicial Review].

[15] On November 12, 2016, a meeting of Chief Gordon Glendale and four family heads was held and the attendees agreed that the Glendale Band Council would convene a membership meeting on January 21, 2017 to canvas DFN members about their preferred form of governance.

[16] The Glendale Band Council, through DFN's Communication Officer, sent an initial Notice of Meeting informing DFN members of an all members meeting to be held on January 21, 2017. A second notice was sent on January 18, 2017, giving notice of the upcoming governance review and leadership options [Governance Review]. As this document is significant to the issues before me, I reproduce it here in full:

ALL MEMBERS MEETING NOTICE

The Da'naxda'xw/Awaetlala Nation Leadership are currently reviewing the leadership structure and would like to gather input from the membership.

The following information is intended to provide you with some background about our current governance system, why it's being reviewed, other governance options, and how to have your voice or input included.

1. What is Da'naxda'xw/Awaetlala Nation's Current Leadership Structure?

Throughout our history, our Nation was led by hereditary chiefs who occupied the top rank of our social system. Hereditary chiefs carry the responsibility of leading and governing our people, and ensuring our traditions and protocols are respected. Under our strict cultural laws, the title of hereditary chief is passed down to the chief's eldest son during a potlach.

Our traditional governance structure was interrupted under Canada's early colonial policy that imposed the Indian Act elected

Chief and Council system. However, by a membership vote in the early 1970s, our Nation returned to its hereditary system. Since then our Nation has been led by a band council comprised of a hereditary chief (formerly Chief William Glendale, now his eldest son, William Gordon Glendale) and two elected councillors (currently Anne Glendale and recently elected Michael Jacobson Weston).

2. Why is the current leadership structure being reviewed?

Our current Custom Code states that our hereditary Chief and two elected Councillors will form our leadership, until the members decide to change this. Recently some concerns have been raised about whether or not the Nation should replace its hereditary leadership with an elected chief. The current leadership decided to seek community input on the system to ensure the voices of the members were heard, and to ensure continued community acceptance over our leadership selection process.

3. What is the process for the review?

Community Meeting will be Held

- A community meeting is being held on January 21 in Campbell River at the Coast Discovery Inn at 2:00-6:00.
- The purpose of the meeting is to discuss our leadership system and decide on our form of leadership. *Please note, if members require more time to consider and discuss the matter, we will schooled a further meeting before deciding.*

Facilitator

- The meeting will be facilitated by a third party neutral facilitator, Richard Dawson. Mr. Dawson from Namgis First Nation and is well respected for his work in First Nations governance matters.

Options: Forms of Leadership

- Three forms of leadership systems will be discussed: the current custom code with a hereditary chief and two elected councillors; current custom code with hereditary chief supported by family leadership council; and elected chief and two elected councillors.

Meeting Agenda

- The facilitator will describe the leadership structure options.

- Members will have an opportunity to voice their opinions about which form of leadership will best meet the needs of the community.
- The question of leadership structure will be asked and members present will have final opportunity to have their choice recorded.

Decision Making Procedure

- All on and off reserve registered band members who are 18 or older.
- Qualifying members are required to provide their full name, status registration number and date of birth.
- At the end of the meeting, a show of hands will be held to record the input of the community regarding the current form of leadership.
- Qualifying members are also permitted to provide a written submission. Please provide your submission by January 27.
- Written submissions should be delivered to the band office at:
P.O. Box 330 Alert Bay, BC VON 1A0
Email to: molly@danaxdaxw.com or trish.n@danaxdaxw.com
Fax to: 250-974-2706.

Form of Leadership Determined by Majority of Membership

- The leadership structure will be determined by the majority of the membership in favour of one of the proposed structures.
- For the decision to be valid at least 1/3 of qualifying community members must participate. If that number is not achieved, the decision will be sought at a rescheduled meeting.

Post Decision

- The current leadership agrees to be bound by the wishes of the community and will facilitate any necessary leadership change should the wishes of the community be different from the current form of leadership, including working with the community to prepare a written leadership selection code that reflects the wishes of the community.

- After broad community consensus on the preferred structure is achieved, a community meeting will be held to discuss any transition or process matters.

4. What will the members be asked?

1. What form of leadership do you prefer?
 - a. Hereditary Chief and two elected Councillors
 - b. Hereditary Chief supported by Family Leadership Council
 - c. Elected Chief and Councillors
 - d. I would like the Nation to engage in a longer process to discuss the different options.

[17] Approximately 41 DFN members returned the attached Membership Submission Form at the meeting and it was decided to extend the period for participation in the Governance Review to February 27, 2017. Ultimately, the Governance Review notice and Member Submission Form was provided to 114 (of 150) voting members and 82 responses were received, which is generally accepted as high membership participation. The review results clearly favoured option b, Hereditary Chiefs supported by Family Leadership Council (option a received 0 votes; option b received 65 votes; option c received 14 votes; option d received 3 votes). I note in passing that all parties agree that option b, in the above Governance Review, should have read “Hereditary Chiefs supported by Family Leadership Council”.

[18] A “Community Notice - Results of the Community Input on our Nation’s Leadership Structure”, was published on March 22, 2017 [Governance Review Results]. It reports the above results and, in its Next Steps section indicates that the outcome of the leadership structure review process was that the majority of DFN’s voting members wished to see a change in governance

structure to a Hereditary Chiefs supported by a Family Leadership Council. As a result, the Glendale Band Council asked that all family heads contact Trish Nolie, Molly Dawson or the band office to schedule a meeting to discuss how DFN would engage the community in deciding how to implement this new leadership structure. The notice anticipated that shortly after the initial meeting, a community meeting would be held to invite input on how to transition into the new structure and to develop a code for governance.

[19] On May 25, 2017, a dispute resolution conference, or mediation, was conducted in relation to the 2016 Judicial Review. The mediation was attended by the parties, their counsel as well as invited community members and family heads, including Norman Glendale, Billy Peters, Ruby Manilla, Robert Duncan, Molly Dawson, Nick Chowdhury and others. The result was a consent order issued by (now) Justice Lafrenière [Lafrenière Order] with a Joint Statement attached as Schedule A. A complete copy of the Lafrenière Order is attached as Annex A of these reasons. The Order reads in part:

THIS COURT ORDERS that:

1. The Hereditary Chiefs who are willing and available, consisting of William (Gordon) Glendale, Robert Duncan, Norman Glendale, and Giyaka (Billy Peters) (the ‘Hereditary Chiefs’) shall form a Council for the purpose of developing a governance code for the Da’naxda’xw First Nation to be presented to the membership for their approval (the Hereditary Chiefs Council). Ruby Mannila may be present to assist Giyaka but any input shall be provided by Giyaka.
2. Prothonotary Roger R. Lafrenière shall assume the role of lead facilitator to convene a meeting as soon as practicable of the Hereditary Chiefs Council to reach an agreement on a budget and community engagement process, leading to the formulation of a governance code.
3. The Hereditary Chiefs Council may, at their discretion, include additional persons as members of the Hereditary Chiefs Council.

4. Reasonable Band funds will be made available to the Hereditary Chiefs Council, including for research, legal support, and governance experts to engage in the process of formulating and presenting the governance code to the community.

5. The Hereditary Chiefs Council shall, unless agreed to by the Hereditary Chiefs Council or otherwise ordered by the Court, present the proposed governance code to the community for approval by December 1, 2017.

6. Gordon Glendale and the Councillors of the Da'naxda'xw First Nation shall take no decisions and make no expenditures that would be outside of the ordinary day-to-day administration of the Band, including long-term agreements, pending either a resolution or the hearing of the application.

7. The hearing of this matter is adjourned to a date certain in April 2018, unless the Court orders otherwise.

.....

13. Upon the conclusion of the referendum on the Da'naxda'xw First Nation governance code, the Applicants shall discontinue the application.

**Schedule "A" to the Order of Prothonotary
Lafrenière dated May 26, 2017 in Court File No.
T-1908-16**

**Joint Statement by the Parties to the
Da'naxda'xw First Nation Governance Lawsuit**

We write with respect to an update on the lawsuit filed in December 2016 challenging the current system of governance of our Nation. The parties have recently met to discuss ways the governance issues raised in the lawsuit might be resolved.

At this meeting, we agreed upon many foundational principles. We have agreed we are stronger working together than being divided. We have agreed that the community must decide how they wish to be governed, not any one person or the current Council. We have agreed that any process for community engagement on issues relating to governance be thorough and transparent, and give the community the time and information it needs to give informed input.

The parties have agreed that the next step in the process is for the Hereditary Chiefs Council, in collaboration with the families and community to develop a governance proposal for the community to consider. The mandate of the Hereditary Chiefs Council will be to work towards achieving community consensus and support for any proposed governance model culminating in a referendum on a Da'naxda'xw Code of Governance.

The parties agree that leadership from the Hereditary Chiefs Council on this issue reflects our customs, traditions, and culture and provides the best opportunity for voices from all families to be heard.

[20] There is little agreement on the facts after this point, other than that a governance code has never been developed and presented to the DFN membership.

[21] In October 2017 the Hereditary Chiefs Council, or HCC, as established by the Lafrenière Order, began to meet to discuss the development of a governance code.

[22] At HCC meetings held throughout 2018, funding for the code, proposals for a consultant and other DFN matters were discussed. The scheduled community meeting was postponed. The Glendale Band Council asserts that, since the timeline for completing the governance code was extended, beginning in the fall of 2018 Chief Glendale began permitting the other hereditary chiefs to share in a few governance decisions. While such participation was consistent with the traditional role of hereditary chiefs, the control and operation of the DFN remained with the Glendale Band Council, which remained the DFN's governing body.

[23] Conversely, Peters & Duncan assert that beginning around August 2017 the Glendale Band Council ceased acting a band council and the HCC began to govern the DFN. They assert that Gordon Glendale supported and participated in this transition and that a band council resolution signed by Gordon Glendale confirms the HCC as the governing body of DFN. Further, that Anne Glendale and Michael Jacobson-Weston resigned as councillors in favour of governance by the HCC.

[24] On July 5, 2019, Robert Duncan, Billy Peters and Norman Glendale signed a band council resolution suspending Gordon Glendale from the HCC until further notice. Gordon Glendale's suspension was premised on information provided by the interim band administrator, Ruby Mannila. She alleged that after assuming that role on May 22, 2019, she found evidence of financial irregularities involving Gordon Glendale, members of his family, and DFN monies.

[25] The Glendale Band Council describe Robert Duncan, Billy Peters and Norman Glendale's decision to suspend Gordon Glendale as usurping the lawful government of the DFN and effecting a coup. They say that the suspension was made without regard to DFN customs, without notice to Gordon Glendale, without specifying the allegations and without giving Gordon Glendale an opportunity to respond to the allegations. Further, that the HCC members have no authority to suspend Gordon Glendale from the HCC or his position as Chief. They assert that the allegations against Gordon Glendale are merely a pretext for the unlawful seizure of power as demonstrated by the subsequent actions of those members of the HCC, such as changing the signing authority on DFN bank accounts, changing locks on office doors, relocating the band council office and suspending band administration staff.

[26] Although uninvited, Gordon Glendale, accompanied by some DFN members, attended a scheduled HCC meeting at Mr. Peters' home on July 12, 2019. Gordon Glendale claims that this was when he first learned of the nature of the allegations against him but that he was not offered the opportunity to hear the specifics of the allegations or to respond to them.

[27] Subsequently, both the Glendale Band Council and the HCC sent communications to the DFN membership and took other steps aimed at solidifying their respective positions on which entity lawfully governs the DFN. In support of the Glendale Band Council, Gordon Glendale sent a July 29, 2019 letter to DFN members, and the Glendale Band Council passed a band council resolution dated July 30, 2019 challenging the authority of the HCC, asserting that the Glendale Band Council is the legal governing authority, and purporting to reverse decisions made by the HCC (including terminating Ruby Mannila's appointment as band administrator). The HCC composed of Norman Glendale, Billy Peters, and Robert Duncan, in turn, signed a band council resolution dated July 26, 2019 asserting that that the DFN "is legally represented by" a hereditary chiefs council of which they are the members, as acknowledged by ISC, and taking steps to change signing authority for band bank accounts and other actions. There is also an unsigned copy of an August 2, 2019 letter from Norman Glendale, Billy Peters and Robert Duncan on the record. In that letter, they describe themselves as the HCC and assert that the HCC was formed as a result of the DFN's wishes, "was confirmed by the Federal Court of Canada on May 27, 2017 in a consent order" and that on August 1, 2017 the HCC became the legally recognized council of the band under the *Indian Act*.

[28] By letter dated August 20, 2019, Norman Glendale, one of the hereditary chiefs named to the HCC by the Lafrenière Order, advised the Glendale Band Council that he now realized that the four members of the HCC should not have changed the leadership of the DFN without the support of the membership. He also questioned the lawfulness of the actions of the HCC after the suspension of Gordon Glendale and stated that he no longer supported them but stood behind Gordon Glendale as Hereditary Chief of DFN. It is of note that Norman Glendale did not file a notice of appearance in response to the Glendale Band Council application for judicial review and did not join Peters & Duncan in bringing their application. He is not represented by counsel for Peters & Duncan and he did not participate in these applications for judicial review.

Preliminary Matter (T-1282-19) – Motion to Strike

[29] As noted above, the Glendale Band Council filed a motion seeking to strike out the affidavit of Mr. Billy Peters sworn on October 24, 2019 [Peters Affidavit #1] as invalid and inadmissible. In his affidavit, Mr. Peters indicated that his first language is Kwak’wala and he has limited ability to read and write English. The grounds for the motion are that when cross-examined on his affidavit Mr. Peters testified that his affidavit was translated by Ruby Mannila, and not Robert Thomas Charles Williams, who affirmed the Form 80B – Rule 80 Form of Oath of Interpreter accompanying Peters Affidavit #1. The Glendale Band Council submits that Ms. Mannila is a family relation to Mr. Peters, his appointed successor as hereditary chief and is also a significant witness for Peters & Duncan and has filed three (up to that point) affidavits in her own name in connection with these applications. The Glendale Band Council submits that Mr. Peters’ evidence on cross-examination impugns the credibility and validity of his affidavit. Further, that Ms. Mannila is not a “competent and independent interpreter” nor did she swear an

oath of interpreter, which are both requirements of Rule 80. The Glendale Band Council submits that Ms. Mannila's role in the authorship and translation of Peters Affidavit #1 is evidence of collusion between two separate and distinct witnesses, which interferes with the truth seeking function of cross-examination. Therefore, Peters Affidavit #1 should be struck out with the costs of examining Mr. Peters and of the motion payable to the Glendale Band Council pursuant to Rules 97 and 400.

[30] Peters & Duncan's responding motion record contains four affidavits responding to the motion to strike Peters Affidavit #1. In Affidavit #4 of Ruby Mannila, she describes herself as a successor of her family's chieftainship, agent to her uncle Bill Peters who is a hereditary chief of DFN and the band administrator of the DFN. She states that she was not present when Peters Affidavit #1 was translated or sworn and that she was not involved in making the affidavit. There is also an affidavit of Robert Thomas Charles Williams. Mr. Williams states that on October 24, 2019 he accompanied Bill Peters to the office of Mr. Benjamin Esau, a lawyer in Port Hardy, British Columbia, to act as interpreter for the swearing of Peters Affidavit #1. Mr. Williams states that while they were with Mr. Esau, he translated each paragraph of Mr. Peter's affidavit to Kwak'wala, Mr. Peters confirmed that he understood each paragraph and that its contents were true before executing his affidavit. Mr. Williams states that no one else was present when he translated Peters Affidavit #1. Mr. Esau has also sworn an affidavit, dated February 5, 2021, confirming that he met with Mr. Peters and Mr. Williams on October 24, 2019 in Mr. Esau's office where he attended to the execution of Peters Affidavit #1 and that no one else was present during that process.

[31] Also included in the response motion record is an affidavit of Bill Peters affirmed on March 23, 2021 [Peters Affidavit #2]. This states that Peters Affidavit #1 was translated and sworn as described by Mr. Williams. It also goes further and attempts to repair Mr. Peter's cross-examination evidence. Mr. Peters states that the transcript of his cross-examination records him as saying that Ruby Mannila prepared and translated Peters Affidavit #1 for him but that his answer was wrong. He also states he is 83 years old, has diabetes and a heart condition and that he needs sufficient time to rest and eat or these conditions impact his ability to communicate clearly.

[32] Counsel for Peters & Duncan submit that Peters Affidavit #1 was properly translated and complies with Rule 80. Counsel goes on to address the circumstances of Mr. Peter's testimony on cross-examination submitting that his erroneous statements indicating that Ruby Mannila had translated and prepared Peters Affidavit #1 should be attributed to a lengthy examination of an elderly party "experiencing health issues" and that it would therefore be unjust to strike out Peters Affidavit #1.

[33] I note first that there seems to have been some confusion as to the filing of the Glendale Band Council's motion record. My understanding was that the motion record before me was filed on March 8, 2021, after the proposed motion was adjourned to the hearing of these applications by Prothonotary Ring's Order of February 16, 2021. However, counsel for the Glendale Band Council advised at the hearing that it was their understanding that the March 8, 2021 motion record had not been accepted for filing. As a result, it was their view that the

responding motion of Peters & Duncan was late filed, that leave was required to include the new affidavits and that the Glendale Band Council had no opportunity to cross-examine the affiants.

[34] Regardless of whether the Glendale Band Council motion was filed originally on January 26, 2021, or even if it had been filed (as opposed to re-submitted) on March 8, 2021, the Peters & Duncan response motion was filed in accordance with requirements of Rule 365(1) and leave was not required to file or to include supporting affidavits.

[35] In any event, in my view the affidavits of Mr. Williams and Mr. Esau are not controversial and the Glendale Band Council is not prejudiced by a lack of cross-examination. Based on those affidavits, I am satisfied that Peters Affidavit #1 was translated by Mr. Williams in accordance with the requirements of Rule 80.

[36] However, as I understood counsel for the Glendale Band Council, it is his view that this merely amounted to “technical compliance” with Rule 80, which is not sufficient. I disagree; the requirements of the Rule were fully met.

[37] Counsel for the Glendale Band Council correctly submits that on cross-examination Mr. Peters stated that Ms. Mannila wrote Peters Affidavit #1, which was presented to him when fully written, and that only she translated it for him. Mr. Peters testified that he had no recollection of meeting Mr. Williams. Affidavit #4 of Ruby Mannila states that she was not present when Peters Affidavit #1 was translated or sworn. This is verified by the affidavits of Mr. Williams and Mr.

Esau. To the extent that she may, at some other point in time and for some other purpose, have translated the affidavit for Mr. Peters, there is no prohibition against her doing so.

[38] More significantly, Ms. Mannila does not purport to have translated Peters Affidavit #1 for the purposes of Rule 80. Therefore, she need not meet the requirement of that Rule that she be a “competent and independent interpreter”. Thus, this is not a situation such as *Luu v Wang*, 2011 BCSC 1201, cited by the Glendale Band Council, where the British Columbia Supreme Court [BCSC] held that there were legitimate reasons to doubt the objectivity of the interpreter who, in that case, was related to the affiant and who also endorsed the translation of the subject affidavit in accordance with the rules of that court. In *Luu*, the BCSC concluded that the plaintiff had raised sufficient doubt regarding the competency and neutrality of the interpreter that it was appropriate to require a new affidavit from the affiant. Nor is it a circumstance where there was an absence of a certificate of translation as was the case in *Velinova v Canada (Citizenship and Immigration)*, 2008 FC 269 at paras 10-13 [*Velinova*], also relied upon by the Glendale Band Council.

[39] Ms. Manilla also states that she was not involved in making the affidavit, which is contradicted by the cross-examination testimony of Mr. Peters. However, I am not persuaded that the contradictory evidence on this point “is tantamount to collusion between two separate and distinct witnesses which interferes with the truth seeking function of cross examination” as counsel for the Glendale Band Council submits, in reliance on *Elhatton v Canada (Attorney General)*, 2013 FC 71 at paras 72-72 [*Elhatton*]. In *Elhatton* a “joint affidavit” was accepted as fresh evidence by the administrative decision maker. This Court held that joint affidavits are

unknown to our legal system and for many good reasons, including that they inherently reflect a collusion between two separate and distinct witnesses and interfere with the truth seeking function of cross-examination. I also note that counsel for the Glendale Band Council did not suggest that the applications should be adjourned so that cross-examination on the affidavits filed in response to the motion to strike could be conducted.

[40] Although much other case law was included by each party in their respective written submissions or submitted thereafter, it is sufficient to say that I agree with counsel for Peters & Duncan that Mr. Peters' contradictory statements go to the weight to be afforded to Peters Affidavit #1 and his cross-examination testimony. However, the circumstances do not warrant striking out of Peters Affidavit #1 (*Sierra Club of Canada v Canada (Minister of Finance)*, (1998) 159 FTR 24 (FCTD) at paras 21-22; *Sawridge Band v R*, [2000] FCJ No 192 (FCTD at paras 5-6; *Feher v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 335 at para 166).

[41] That said, I reject the efforts of Peters Affidavit #2, and his counsel's submissions, aimed at correcting and explaining away Mr. Peters' contradictory statements in response to the motion to strike. There is no evidence before me that Mr. Peters' health was raised as an impediment to his testimony during his cross-examination. Nor does he explicitly attribute his contradictory evidence to his health. I afford no weight to Affidavit #2 of Bill Peters.

[42] In conclusion, the motion of the Glendale Band Council seeking to strike out Peters Affidavit #1 is dismissed. However, Mr. Peters' contradictory evidence goes to the weight to be

afforded to Peters Affidavit #1 and his cross-examination testimony in the determination of the two applications before me.

Issues

T-1282-19

[43] The Glendale Band Council identifies the issues as follows:

- a. Whether the Glendale Band Council remains the lawful governing authority of the DFN until the community approves a change in the form of government?
- b. Whether the HCC have authority to indefinitely suspend or remove Hereditary Chief Gordon?

[44] Peters & Duncan respond to those issues by asserting that the HCC is the lawful governing body of the DFN; that the Glendale Band Council lacks authority to govern the DFN; and, the HCC had authority to suspend Chief Gordon for financial misconduct.

T-1725-19

[45] Peters & Duncan assert that the issue is:

- a. Which group is the lawful governing body of the DFN, the HCC or the Glendale Band Council?

[46] The Glendale Band Council submit that the issues are:

- a. Did the DFN community change its governance custom to a “Hereditary Chiefs Council... however constituted”; and
- b. Did the DFN community approve of the selection of Robert Duncan and Billy Peters as members of their lawful government?

[47] In my view, the issues raised in these applications can be framed as follows:

- i. What is the current band custom regarding DFN's governance?
 - a. Was there a change in custom?
 - b. Does the HCC have lawful governing authority?
 - c. Does the Glendale Band Council have lawful governing authority?
- ii. With respect to T-1282-19, did the HCC have the authority to suspend Gordon Glendale?
- iii. What are the appropriate remedies?

Issue 1: What is the current band custom regarding DFN's governance?

[48] Whether the Glendale Band Council or the HCC has the lawful authority to govern the DFN will be determined by DFN band custom. In these applications, the central disagreement between the parties is whether the factual circumstances establish that band custom, and therefore authority to govern, changed. And, from the Glendale Band Council's perspective, even if band custom changed, whether Peters & Duncan have authority to govern.

a. Was there a change in custom?

The Glendale Band Council's position

[49] The Glendale Band Council submits that the rule of law requires that public authorities, including a "council of a band", as the term is used in the *Indian Act*, must be authorized to exercise power. While such authority is usually derived from statute, the DFN derives its authority to govern itself from custom based on the traditions and practices of its people. To establish customary practice, in the absence of a written governance code, there must be

evidence that shows that the practice was “firmly established, generalized and followed consistently and conscientiously by the majority of the community, thus evidencing a ‘broad consensus’” (citing *Francis v Mohawk Council of Kanesatake*, 2003 FCT 115 at para 36 [*Francis*]).

[50] The Glendale Band Council submits that the band custom supporting its governance has broad consensus as indicated by the fact that it was firmly established, generalized, and consistently followed. Conversely, Peters & Duncan’s claim of broad consensus turns almost entirely on the Governance Review (which the Glendale Band Council refer to as a survey) but the Review does not satisfy the legal criteria for a change in custom.

[51] The Glendale Band Council submits that the DFN must not only agree to the new custom, they must know they have agreed. A change in custom requires more than mere opposition to the existing band council or a popular desire for change. It requires specific informed consent as to the content of the custom and a formal agreement to change it (*Shirt v Saddle*, 2017 FC 364 at para 32 [*Shirt*]).

[52] The Glendale Band Council submits that the Governance Review was an information gathering exercise to determine whether and what interest there was in changing the governance of the DFN. It was not a referendum on DFN custom and it did not bring about a change of government. Rather, it provided an opportunity for future change. The Glendale Band Council notes that the Governance Review, its results and the Lafrenière Order all indicate that the band membership would subsequently ratify any formal change in governance arising from the

Governance Review. These documents created an expectation among the community that they had a right to be heard and provide input regarding the implementation of a governance code.

The Glendale Band Council submits that these documents demonstrate an agreement between the community and its leaders on a process for change and that this process has not yet been completed. Until then, the Glendale Band Council continues to govern the DFN and remains its lawful government in accordance with the existing and established custom.

[53] The Glendale Band Council notes that the forms of leadership identified in the referendum were vague and indeterminate. For example, the Family Leadership Council was not defined nor was a mechanism by which individuals would be identified as members or how they would be appointed included in the Governance Review. A bare notion or broad description of a future form of government is not a rule or actual practice, and here the anticipated governance code was never created.

[54] Further, the HCC lacks an established structure and is not a generalized form of government. The HCC is simply a product of the mediation process created for the purpose of developing a governance code to be put to the DFN for approval. It consists of arbitrarily appointed members who were present at the mediation and has no structure that could be reproduced as a sustainable governance form. On this point, the Glendale Band Council notes that status as members of HCC derives from the Lafrenière Order. Further, the Family Leadership Council is only at its conceptual stage and its membership and structure has not been established. Nor is the HCC consistently or conscientiously followed by the community.

[55] The Glendale Band Council disputes that there was a gradual and agreed assumption of governance by the HCC and submits that the DFN community has not agreed to a change of leadership to the HCC. Records of decisions and published summaries of HCC meetings only serve to indicate that the HCC was working on governance matters and other matters that had historically fallen within the purview of traditional leaders – like managing the DFN’s traditional territory and resources. As to any band council resolutions passed by the HCC, these fall within the category of sporadic behaviour or practices followed on a trial basis and such activity does not indicate a broad consensus for the HCC’s authority. Nor would such internal activities be known to the community at large.

[56] While broad community consensus means consensus by the community, not chief and council, the HCC’s meetings were not publicized or open to the public and the HCC has not held a membership meeting or sought approval from the membership. Because the HCC has not given the membership an opportunity to express their will, there is no broad consensus in support of the HCC.

[57] The Glendale Band Council also submit that Gordon Glendale’s actions cannot amount to acquiescence on behalf of the community, rather a majority of the membership must recognize the custom. Further, acquiescence cannot be proven based on agreements between leaders. The Glendale Band Council submits that there is no evidence of community acquiescence. Peters & Duncan point to only private communications in support of community awareness, but the community was not aware of internal discussions or decisions of the HCC.

The Peters & Duncan position

[58] Peters & Duncan acknowledge that as a custom band, as that term is used in the *Indian Act*, the DFN is governed by custom and that the broad consensus test applies to prove custom governance structures. They submit that custom may be established in a variety of ways, and that broad consensus of a custom may be established by a single act or by the cumulative effect of a number of events or the widespread acceptance and acquiescence of the membership. Whether or not there is broad consensus is a question of fact.

[59] In essence, Peters & Duncan assert that lawful governance of the DFN was transferred to, or assumed by, the HCC following the Governance Review and that governance by the HCC was a practice that was broadly accepted.

[60] More specifically, they submit that there is a broad consensus for the transition in governance to the HCC. Peters & Duncan submit that they assumed authority in or around August 2017, as a reflection of the community's wishes as expressed by the Governance Review. They note that an overwhelming majority of DFN members voted in favour of transitioning to a Hereditary Chiefs and Family Leadership Council during the Governance Review, and that a majority vote is a good indication of broad consensus (citing *McLeod Lake Indian Band v. Chingee* (1998), 153 FTR. 257 [*McLeod*] and *Pahtayken v Oakes*, 2009 FC 134 [*Pahtayken*]). The DFN membership received sufficient detail and notice about the January 21, 2017 meeting and what was proposed in the vote, including by way of the January 18, 2017 notice. Further, the meeting was held in an accessible location and absent members were given time to send in their

votes. The meeting and vote were facilitated by a neutral third party, the eligibility criteria were clear, and the DFN members were presented with a clear set of choices. Peters & Duncan note that there was a high level of participation in the vote and they submit that the Governance Review represents broad consensus in line with *McLeod* and *Pahtayken*.

[61] Further, that acquiescence to practices can be evidence of broad consensus (referencing *Awashish v Opticiwan*, 2007 FC 765 [*Awashish*] at paras 38-44 and *Francis* at para 64). Gordon Glendale supported, acquiesced to and participated in the HCC's transition to power. Peters & Duncan submit that a band council resolution naming the HCC as the DFN government, and Anne Glendale and Michael Jacobson-Weston giving up their councillor positions in favour of governance by the HCC supports their position. There is also no evidence that the Glendale Band Council was actively governing between 2017 and 2019. Peters & Duncan emphasize that the Glendale Band Council only challenged the HCC's authority after Gordon Glendale's suspension.

[62] Peters & Duncan also submit that contemporaneous evidence from 2017 to 2019 indicates that the HCC was the acting government and that the DFN membership, as well as Gordon Glendale, acknowledged and acquiesced to this. This evidence includes: the band council resolution naming the HCC as DFN's governing body, an email from Ms. Molly Dawson in her capacity as band manager to Mr. Sanderson of ISC confirming the change in leadership, various band council resolutions and funding agreements signed by the HCC, including by Gordon Glendale, and the July 29, 2019 letter from Norman Glendale.

[63] They submit that the DFN membership understood and accepted the HCC to be the leadership council and no member objected to governance by the HCC. Further, that the HCC represented itself to and was accepted by third parties as the DFN's governing body.

[64] Peters & Duncan also submit that if a custom enjoys widespread acceptance at the time it is adopted, any subsequent controversy surrounding the custom does not invalidate it (citing *Awashish* at paras 38-44 and *Francis* at para 64).

[65] Peters & Duncan assert that the Glendale Band Council never was and is not now supported by a broad consensus and, in any event, that they now lack a mandate to act.

Analysis

i. General Principles - Band Custom

[66] It is useful to begin this analysis by first conducting an overview of the general principles applicable to band custom, as this will provide an analytical framework against which the facts of these matters can then be applied. I have previously summarized these general principles in *Beardy v Beardy*, 2016 FC 383, as follows:

[91] As stated by Justice Strayer in *Bigstone v Big Eagle*, 1992 CarswellNat 721 a band's custom must include practices for the choice of a council which are generally acceptable to members of the band, upon which there is broad consensus (at pp 117-8; *Bone v Sioux*, 1996 CarswellNat 150 at paras 27-28; *Taypotat* at para 25).

[92] In *Francis*, Justice Martineau discussed the general principles applicable to band custom and noted that custom will not always overlap exactly with an election code.

[93] Justice Martineau noted that custom has two components. First, a custom must have practices, which may either be established through repetitive acts in time or through a single act such as the adoption of an electoral code (*McLeod Lake Indian Band v Chingee* (1998), 1998 CanLII 8267 (FC), 153 FTR 257 (FCTD) [*McLeod*]). Custom must also have a subjective element, which refers to the manifestation of the will of those interested in rules for determining the electoral process of band council membership to be bound by a given rule or practice.

[94] On the latter element, Justice Martineau referred to *McLeod* stating:

[30] Finally, one of the clearest articulations of what is the requisite subjective element for the establishment of the custom of a band is found in *McLeod, supra*, where Reed J. stated as follows in paragraphs 18-19:

The question that remains is whether “broad general consensus” equates to a “majority decision of the Band members attending a general meeting of the Band convened with notice”. In my view, it may do so, or it may not, depending upon a number of factors. If for example, the general meeting was held in a location or at a time when it was difficult for a number of members to attend, and there was no provision for proxy voting, it may not meet the broad consensus test. If the notice was not adequate in not providing sufficient detail of what was proposed, or was not given sufficiently in advance of the meeting to allow people a realistic opportunity to attend then it would not be.

There are also situations in which those who do not vote may be signalling a willingness to abide by the majority decision of those who do. I am of the view that approval by a majority of the adult members of the Band is probably a safe indication of a broad consensus (the age of majority being a matter for the band to determine). Whether a majority decision by the Band members attending a general meeting demonstrates a broad consensus depends on the

circumstances of that meeting. (my emphasis)

[95] Justice Martineau concluded that:

[36] For a rule to become custom, the practice pertaining to a particular issue or situation contemplated by that rule must be firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a “broad consensus” as to its applicability. This would exclude sporadic behaviours which may tentatively arise to remedy certain exceptional difficulties of implementation at a particular moment in time as well as other practices which are clearly understood within the community as being followed on a trial basis. If present, such a “broad consensus” will evidence the will of the community at a given time not to consider the adopted electoral code as having an exhaustive and exclusive character. Its effect will be to exclude from the equation an insignificant number of band members who persistently objected to the adoption of a particular rule governing band elections as a customary one.

[96] As stated by Justice de Montigny in *Taypotat* at para 30, “In a nutshell, the existence of a band custom and whether or not it has been changed with the substantial agreement of the band members will always depend on the circumstances”.

[97] Accordingly, in order to determine whether the actions of the Elections Committee were consistent with custom, the Respondents must demonstrate that this type of decision-making was firmly established, generalized, and followed consistently and conscientiously by a majority of the community, thus evidencing a broad consensus (*Francis* at paras 21- 30; *Sucker Creek* at para 28; *Metansinine v Animbiigoo Zaagi’igan Anishnaabek First Nation*, 2011 FC 17 at para 28; *Joseph* at paras 36-39)

[67] The Court in *Francis* also references *McLeod* which describes the nature of custom as a “practice established or adopted as a result of the individuals to whom it applies having accepted to be governed in accordance therewith”, and that custom may evolve with changing

circumstances and is not frozen in time (*McLeod* at para 10; *Francis* at para 24, 35; also see *Shotclose v Stoney First Nation* 2011 FC 750 at para 69 [*Shotclose*]; *Engstrom v Peters First Nation* 2020 FC 286 at para 15).

[68] Custom is determined by the band, not by chief and council (*Shotclose* at para 59, referencing *Bone v. Sioux Valley Indian Band No. 290* (1996), 107 FTR 133; *Shirt* at para 32; *Bertrand v. Acho Dene Koe First Nation*, 2021 FC 287 at para 37 [*Bertrand*]). And, the onus is on the party seeking to rely on a custom to establish what the custom is and how it came into being (*Francis* at para 21; *Shotclose* at para 69).

[69] In *Shirt* Justice McVeigh considered whether broad consensus could be demonstrated in the context of an evolving custom. In *Shirt*, the Chief had appointed an elections committee and that committee decided that the applicants were not eligible candidates for election and removed them from the candidates list. The First Nation had in place a three paragraph Election Code from the 1950s that contained no provision for the establishment of an election committee. The issue before the Court was whether there was a band custom to appoint an election committee.

[70] Justice McVeigh stated:

[31] Madam Justice Strickland has addressed on in two recent decisions what is required to establish unwritten band customs. She concluded that the establishment of band customs requires evidence demonstrating that the action was “firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a broad consensus” (*Gadwa v Kehewin First Nation*, 2016 FC 597 at para 62; *Beardy v Beardy*, 2016 FC 383 at para 97 [*Beardy*], citing *Francis v Mohawk Council of Kanesatake*, 2003 FCT 115 at paras 21-30; *Prince v Sucker Creek First Nation #150A*, 2008 FC 1268 at para

28; *Metansinine v Animbiigoo Zaagi'igan Anishinaabek First Nation*, 2011 FC 17 at para 28; *Joseph v Yekooche First Nation*, 2012 FC 1153 at paras 36-39).

[32] In *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, it was held that a First Nation can elect leaders according to custom but it must meet certain fundamental requirements. For example, **a majority of a band's members must recognize the custom, not just Chief and Council. The band members must not only agree as a community to the new custom, the community must know they have agreed.** In this case the majority of the membership would have had to agree that the Chief, acting alone, would appoint three people to an appeal committee that would determine whether nominees met the nomination criteria.

(emphasis added.)

[71] After reviewing the evidence, Justice McVeigh concluded that while the First Nation was working toward developing fuller election regulations, they were not there yet. She held that there was insufficient proof that appointing an election committee was a custom as defined in the jurisprudence:

[42] Even if the Respondents prove that the election committee has been created for several elections (which is contradicted by the meeting minutes of the electoral reform committee mentioned in Finlay Moses' affidavit), it fails on the second, subjective component from *McLeod*. **The subjective component relies on a band meeting or other means to demonstrate that there is consensus on the new custom. There is no evidence that the SLCN membership approved of the election committee structure used in this election.** The Respondents point to a lack of objections at the nomination meeting as a sign of implicit approval. It is possible that the SLCN membership didn't know what procedures were in place to resolve nominee disputes. The meeting minutes from the nominee meeting provide no information to confirm that protest procedures were presented to the membership or discussed.

(emphasis added.)

Justice McVeigh concluded that the election did not follow a custom approved by the majority of band members who knew of the new custom in that case. Further, that the evidence established that there was no consensus on how elections should be governed.

[72] In summary, custom requires evidence of a practice and the manifestation of the will of the First Nation's members to be bound by that practice (*Francis* at para 26). Establishing band custom requires evidence demonstrating that the custom is firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a broad consensus (*Francis* at para 36; *Beardy* at para 97; *Shirt* at para 31). Chief and Council alone cannot determine that a change in circumstance comprises a new custom, there must be broad consensus among the membership (*Shirt* at para 32; *Bertrand* at para 37; *Shotclose* at para 69). Similarly, custom is not frozen in time, but any change requires a broad consensus of the membership (*McLeod* at para 10; *Francis* at para 24). The inquiry into whether a custom enjoys broad consensus is fact and context specific and the evidence may demonstrate that there is no consensus (*McLeod* at para 17, *Shirt* at para 40, *Taypotat v Taypotat*, 2012 FC 1036 [*Taypotat*]). Custom may be demonstrated by a one-time event like a referendum or majority vote, by a series of events, or possibly acquiescence (*McLeod* at paras 18-19, *Francis* at para 30, *Awashish* at para 44). The burden is on the party trying to demonstrate custom to prove that there is a broad consensus (*Francis* at para 21; *Taypotat* at para 28) and the existence of a band custom and whether or not it has been changed with the substantial agreement of the band members will always depend on the circumstances (*Taypotat* at para 30).

- ii. *Was there a change in governance custom or a new custom supporting transition of governance to the HCC?*

[73] The parties do not dispute that the results of the Governance Review clearly signalled the desire of the DFN members to change their governance structure. And it is true, as indicated in *McLeod*, that a majority vote is often a good indication of membership support or broad consensus (see also *Francis; Pahtayken* at para 59).

[74] However, in my view, although the results of the Governance Review clearly establish that the DFN desired a change to its governance structure from the Hereditary Chief and Councillors model to the Hereditary Chiefs supported by Family Leadership Council model, this does not establish that DFN custom actually changed to support governance by the HCC. I reach this conclusion for several reasons.

[75] First, the Governance Review and related documents as well as the Lafrenière Order all contemplate a change in governance structure premised on the development of an underlying governance code. That is, the details of what actually comprises governance by Hereditary Chiefs supported by Family Leadership Council was still to be worked out.

[76] The Governance Review (All Members Meeting Notice, January 18, 2017) is just that – a review. As it states, the current leadership structure was being reviewed and current leadership sought to obtain community input as to the need for and the form of any change in the leadership structure. The Governance Review also addresses post decision steps, stating that the current leadership agreed to be bound by the wishes of the community and would facilitate any

necessary leadership change should the wishes of the community be different from the current form of leadership, including working with the community to prepare a written leadership selection code that reflects the wishes of the community. Further, that after broad community consensus on the preferred structure was achieved, a community meeting would be held to discuss any transition or process matters.

[77] Following the January 21, 2017 membership meeting at which the Governance Review was discussed, a Membership Notice dated January 27, 2017 was issued. The notice describes the option of Hereditary Chiefs supported by Family Leadership Council as a plan to evolve the custom code to remove elections for councillors. Councillors would be replaced by the Hereditary Chiefs and Family Leaders working together and “[t]here would be work to do between Chief and Family leaders as well as with membership to build the required policies and expectations so that all are clear about how work is done, delegated and communicated to ensure all families have an opportunity for participations”. As to what this will mean or change, the notice states that a new hereditary leadership code will be developed based on input from all the families.

[78] The March 22, 2017 Governance Review Results refers to the “leadership structure review” and the “leadership structure review process”. It also contains a Next Steps section indicating that the outcome of the process was that the majority of DFN’s voting members wished to see a change in governance structure to a Hereditary Chiefs supported by a Family Leadership Council. As a result, all family heads were asked to contact DFN staff to schedule a meeting to discuss how DFN would engage the community in deciding *how to implement this*

new leadership structure. Further, it was anticipated that shortly after this initial meeting, a community meeting would be held *to invite input on how to transition into the new structure and to develop a code for governance.*

[79] Further, the Lafrenière Order, although applicable to the 2016 Judicial Review, is informative as it indicates that the participants in that mediation agreed on how the leadership transition would proceed. Specifically, that the named hereditary chiefs would form the HCC *for the purpose of developing a governance code to be presented to the membership for their approval.* Funds would be made available to permit research, legal support, and governance experts to engage in the process of formulating *and presenting the governance code to the community.* The HCC would, unless agreed to by the HCC or otherwise ordered by the Court, *present the proposed governance code to the community for approval by December 1, 2017.* And, significantly, the Lafrenière Order states that *upon the conclusion of the referendum on the DFN governance code,* the applicants would discontinue the application. The Joint Statement of the parties, being Schedule A to the Lafrenière Order, states that it was agreed that the next step in the process is for the HCC, in collaboration with the families and community, to develop a governance proposal for the community to consider.

[80] The Lafrenière Order and the Joint Statement clearly indicate that the HCC's mandate was to work towards achieving community consensus and support for any proposed governance code, culminating in a referendum.

[81] Therefore, while Peters & Duncan portray the Governance Review as a vote by the DFN membership authorizing the HCC to assume governance of the DFN, nothing in these documents suggests that the effect of the Governance Review was to change DFN custom to make the HCC the lawful governing entity. The documents indicate that the intent of all concerned, including Gordon Glendale, Bill Peters and Robert Duncan, was that a governance code would be developed by the HCC, with community input, that would flesh out the desired new governance structure. This governance code would then be put to the DFN community for acceptance, or rejection, in a referendum. Had this process happened, DFN custom would have been changed by a positive referendum vote on the governance code. And this litigation would have been avoided. Unfortunately, the HCC did not follow its mandate and did not develop a governance code.

[82] In *Shirt Justice McVeigh* held that: “The evidence shows the band is trying to develop election regulations that reflects what the members want but that they are not there yet” (para 40). This is a similar circumstance. The result of the Governance Review makes it clear that the DFN membership wishes to transition to the Hereditary Chiefs supported by Family Leadership Council governance model. However, that transition was premised on the development of a governance code that would define and delimit the new leadership structure. Thus, custom was in transition.

b. Does the HCC have lawful governing authority?

[83] In any event, even if the Governance Review were viewed as indicating a broad consensus for the “Hereditary Chiefs supported by Family Leadership Council”, and not just that form of governance structure, this does not assist Peters & Duncan.

[84] That is because the entity referred to in these reasons as the “HCC”, was created and established by the Lafrenière Order. In the Order, the HCC was an identified group of four named hereditary chiefs who had only one purpose and mandate, to develop the governance code and put it to the DFN for consideration. While the evidence establishes that hereditary chiefs have long contributed to the governance and well being of the DFN, that general advisory role is discrete from the HCC’s role. There is nothing in the Governance Review, its results or the Lafrenière Order indicating exactly who would compose the “Hereditary Chiefs supported by Family Leadership Council”. There is nothing, therefore, to suggest that the four members of the HCC established by and for the purpose of the Lafrenière Order – Gordon Glendale, Robert Duncan, Norman Glendale, and Billy Peters – would also comprise the members this new governing body.

[85] As stated by Mr. Duncan when cross-examined on his affidavit, “the intention of the Hereditary Chiefs Council was to lead the development of a governance code. We have no idea what the governance code would look like”. He repeated this general comment several times during his testimony. It was also his testimony that when the governance plan was formulated the HCC would have something to bring to the community for debate and discussion. Further, that

the community had spoken “very loudly and very clearly and said we want our Hereditary Chiefs to lead the development of a governance code so that we could develop our own constitutions, our own polices, and how we govern ourselves based on how we traditionally governed ourselves in term so of the customs of our tribe”.

[86] Mr. Duncan’s testimony does not support Peters & Duncan’s assertion that the HCC was formed in response to the Governance Review and therefore intended to assume governance. Further, I do not believe that it was the intent of Justice Lafrenière, by establishing the HCC, to have also appointed the members of a new governing body. Rather, he established the HCC for the stated purpose developing a governance code to be presented to the DFN membership for approval.

[87] In the absence of the governance code, and without evidence of prior custom indicating who would compose a Hereditary Chiefs supported by Family Leadership Council, I am not persuaded that there was broad consensus by the DFN community that the four HCC members, without an identified family leadership council, would assume governance of the DFN.

Significance of HCC participating in DFN governance

[88] However, Peters & Duncan also assert that the HCC was actually governing the DFN, which demonstrates broad consensus for governance by that entity.

[89] I agree with Peters & Duncan that the evidence supports that sometime after 2017 the HCC was involved in the governing of the DFN. This includes:

- the cross examination of testimony of Gordon Glendale confirms that the HCC members, including himself, signed a band council resolution naming them as the DFN leadership, although he disputed this was what the HCC was supposed to be doing;
- Affidavit #2 of Robert Duncan sworn on October 21, 2019 states that the HCC initially began work to create a governance code but that the scope of activities grew “to include all band council functions” and that by August 2017 the HCC “was effectively acting as the DFN band council”. Mr. Duncan describes correspondence, agreements and band council resolutions signed by the HCC and states that it is his understanding that the HCC replaced the Glendale Band Council as the governing body of the DFN;
- The affidavit of Nick Chowdhury, DFN Operations Coordinator, sworn on September 17, 2019 [Chowdhury Affidavit #1] states that he attended meetings of the HCC to create meeting summaries [HCC Meeting Summaries] and records of decisions [HCC Records of Decisions]. Attached as exhibits to the Chowdhury Affidavit are HCC Records of Decisions for 8 meetings held from October 13, 2017 to February 22, 2019. Six of these are signed by the three of the HCC members and by Ruby Mannila on behalf of Bill Peters. These deal primarily with the efforts to fund and start developing the governance code but also with other matters such as communications with aquaculture companies, wildlife protection and conservation, moose hunting, the legal fees of the applicants in the 2016 Judicial Review etc. The HCC Meeting Summaries indicate that a broad range of general band management subjects were discussed, such as budgets and planning, language, housing, and that meetings with outside entities such as commercial operators were discussed and held;
- The HCC was also involved in band financial matters and signed funding agreements with ISC; and
- The HCC represented itself as representative of the DFN in meetings with third parties, such as Cermaq, the Pacific Salmon Project, and Nanwakolas Council.

[90] The Glendale Band Council suggests that Gordon Glendale “permitted” the HCC members to share in decision making in accordance with traditional practice of the hereditary chiefs consulting family heads and that he maintained communication with Anne Glendale throughout. Thus, the HCC was not the governing authority.

[91] First, I do not agree with the Glendale Band Council’s assertion that any HCC participation in governance was sporadic, a trial, or a form of benevolent power sharing. In that regard, the Glendale Band Council relies on a passage from *Francis* that states that “sporadic

behaviours which may tentatively arise to remedy certain exceptional difficulties of implementation at a particular moment in time as well as other practices which are clearly understood within the community as being followed on a trial basis” are not custom (*Francis* at para 36). However, the evidence establishes that the HCC held scheduled meetings on a fairly regular basis, usually monthly, for a period of two years. Accordingly, the HCC meetings were not “sporadic”.

[92] Further, *Francis* discusses sporadic activity in the context of responding to exceptional or emergency events, which is not the circumstance here. And finally, even if the HCC was meeting on a trial basis, the community would have had to understand that this was happening. The evidence supports that the HCC’s governance activity was not communicated to the membership until at least February of 2019 when the HCC decided to publish its meeting minutes and decision records online.

[93] Second, while I appreciate that some of the matters discussed by the HCC may overlap with matters that hereditary chiefs were traditionally consulted on, having reviewed the evidence in whole, I accept that the four HCC members were together conducting all of the affairs of the DFN since the first recorded HCC meeting in October 2017 and up to the time of the suspension of Gordon Glendale. Indeed, it is probable that this was done as a good faith effort in recognition of the governance structure that was preferred by the DFN members as indicated by the results of the Governance Review. However, and significantly, the HCC governed based on a tacit agreement between those four individual members, not based on a broad consensus by the DFN members that these four individuals would assume governance of the DFN as the Hereditary

Chiefs supported by Family Leadership Council or as the HCC. This is fatal because, as stated in *Bigstone*: “it is the Band itself, not the Band Council, that has the power to determine what constitutes the Band’s custom” (*Bigstone* at para 29; *Shirt* at para 32; *Bertrand* at para 37; *Shotclose* at para 69).

[94] Third, and importantly, there is no evidence before me establishing that the DFN membership was ever asked if they agreed that the HCC, designated as such by the Lafrenière Order, would comprise and assume that governance.

[95] For example, while Peters & Duncan refer to Gordon Glendale’s cross-examination evidence where he agreed that the HCC signed a band council resolution purporting to establish the HCC as governing authority, no copy of this significant document is contained in the record before me. Nor do Peters & Duncan suggest that this band council resolution was published or brought to the attention of the DFN membership prior to the suspension of Gordon Glendale – the event that precipitated the question of which entity was governing the DFN. Nor do Peters & Duncan point to any official document or any communication with the DFN membership communicating that the HCC is the governing body.

[96] The lack of official communication regarding the alleged governance change is also demonstrated by some of the cross-examination evidence. For example, Mr. Duncan agreed that it was accurate to say that the four HCC members had agreed that the HCC had been operating as the governing body of the DFN. When asked how the change of governance was marked, such as the holding of a community event, his answer was that there had not been such an event, rather,

the change was fairly informal and just a progression of work that the four hereditary chiefs were doing at the time and, later, that nothing official had transpired. Molly Dawson testified that while the DFN leadership was gradually changing it had not officially changed by June 2019.

[97] Moreover, Norman Glendale's August 20, 2019 letter to the Glendale Band Council states that "I realize now that we should not have, as four members of the Hereditary Chiefs Council, changed the leadership of our tribe without the support of our membership".

[98] The closest that I could find to any form of communication to the membership as to a transition of governance to the HCC is in the February 21, 2019 Summary of Chiefs Council Meeting which states that it is the first in a series of progress summaries to be provided quarterly to the DFN membership. It provides a summary of governance code discussions up to that point. It further states that there is an understanding of the need to engage the DFN membership for support and direction of the work to build the governance code which has to start with the healing or reunification of the DFN people "just as the Chiefs Council has moved through their own healing and reuniting as a team".

[99] As to the November 18, 2018 membership gathering, the summary refers to the status of the governance code and states "[a]side from a clear want to see a draft governance code, there was also direct request to see a Terms of Reference for the Chiefs Council". The attached Terms of Reference state that the purpose of "this Chiefs Council" is to rebuild the DFN's governance to move from elected *Indian Act* council members to a Chiefs Council that incorporates family representation and "blending modern governance with our historic leadership". The HCC

members' successors are listed in the Terms of Reference as well. In my view, these communications and documents do not signal to the DFN membership that governance of all DFN matters now lies exclusively with the HCC.

[100] Further, this lack of communication can be contrasted with evidence that indicates that there is a regular DFN newsletter and that when other significant band administration changes occurred, for example when Ruby Mannila became interim band manager after Molly Dawson resigned, the membership was notified through that newsletter.

[101] Peters & Duncan also point to various communications to demonstrate that they enjoyed broad consensus. However, for the reason set out below, I do not agree that the communications serve this purpose.

[102] Peters & Duncan rely heavily on communications between DFN staff and ISC concerning a change in governance, in particular, emails attached to the Affidavit of Molly Dawson, affirmed on September 18, 2019. Ms. Dawson was the long standing DFN Band Administrator from 1998 until May 2019 when she stepped down for personal reasons. Her affidavit attaches a July 16, 2018 email from Brad Sanderson at ISC referring to a meeting held the week before between ISC and DFN staff where the change in DFN leadership from one Chief and two Councillors to that of Hereditary Chiefs was discussed. He states that in order to officially record the change, ISC required notification from DFN and that an email from Ms. Dawson would suffice for that purpose. He asks that she include the date that the hereditary chiefs took over leadership, their names and the names of any persons who officially represent any of the chiefs

on council if that is the case. He also indicated that according to his records Anne Glendale and Michael Jacobson-Weston were serving as DFN Councillors and asked if they retained those roles under the hereditary system.

[103] The meeting with ISC referenced in Mr. Sanderson's email is reflected in a HCC Record of Decision dated July 21, 2018, where the HCC was updated about a meeting with DFN staff and ISC, where ISC sought "notice about the governance" and a list of chiefs and persons next in line. In the HCC Record of Decision, the chiefs and their next in line were listed as Billy Peters, next in line Ruby Mannila; Norman Glendale, next in line James Glendale; Robert Duncan, no next in line listed. The HCC Record of Decision is signed by all four HCC members (Ruby Mannila for Bill Peters), including Gordon Glendale.

[104] On August 15, 2018, Ms. Dawson responded to Mr. Sanderson stating:

Our Nation has decided to follow our Hereditary Governance system with leadership from our four main families. The Hereditary Chiefs and their next in line for the Chieftainships are as follows:

Chief William Gordon Glendale, next in line Harry Glendale

Chief Norman Glendale, next in line James Glendale

Chief Billy Peters, next in line Ruby Mannila

Chief Robert Duncan, next in line (to be determined by Robert Duncan and his family).

[105] By reply email of the following day, Mr. Sanderson asked if Ms. Dawson knew roughly when the hereditary system was adopted and the status of Annie Glendale and Michael Jacobson-

Weston. Ms. Dawson's response to this question is attached as an exhibit to Affidavit #1 of Clifford Brad Sanderson sworn on October 23, 2019. There Ms. Dawson states:

The Hereditary Chiefs Council has been meeting now once a month for approximately a year now. Anne Glendale and Michael Jacobson-Weston are no longer councillors, they have stepped aside for the HCC. When I met with members of ISC at Whelalau last month, they asked if we thought it was time to change the status of our nation to Hereditary Governance since the Chief's have been meeting on a regular basis and they asked that I send an email in that regard.

[106] Ms. Dawson states in her affidavit that she did not understand Mr. Sanderson's request to be that "on behalf of the Nation, I should confirm a change in Council of the Band to the HCC. Rather, I understood he was making a request about the members of the HCC and the direction the governance of our Nation was moving toward". Further, that she did not have the authority to speak on behalf of the DFN members and that at no time did she believe or represent that the HCC had replaced the Glendale Band Council as the legal authority over DFN's affairs. When cross-examined on her affidavit and asked about her statement that Anne Glendale and Michael Jacobson-Weston had stepped down, Ms. Dawson stated that "...since the Chiefs council were taking on more responsibility he – that would just become the natural next steps, and to save time I put that sentence in there just for ISC's information".

[107] The Affidavit of Gordon Glendale affirmed on September 17, 2019 [Glendale Affidavit #1] also address this communication with ISC. In the affidavit, Gordon Glendale acknowledges that during HCC meetings discussions about ongoing priorities of DFN members such as hunting, fish farms and fire risk occurred. Further, that the HCC provided advice on band matters beyond day-to-day operations including regarding amendments to the ISC funding agreement

and funding for the Whe-La-La-U area Council. He states that the HCC instructed Ms. Dawson to inform ISC that it was participating in band decision making and that ISC misunderstood her response to suggest a formal change to band council. He states that at no time was a formal decision made by the Glendale Band Council or the DFN membership to change the composition of band council or to otherwise transfer authority over governance to the HCC or Bill Peters, Norman Glendale and Robert Duncan acting together or individually.

[108] I find the explanations offered by Molly Dawson and Gordon Glendale in an effort to characterize Ms. Dawson's communication with ISC as inaccurate or misunderstood by ISC to be unconvincing.

[109] However, that said, while Peters & Duncan submit that the email communication by Ms. Dawson to ISC demonstrates broad consensus of the membership, I do not agree. This was a communication only known to the HCC, not the DFN membership as a whole, and it establishes only that ISC accepted Ms. Dawson's representation. Similarly, Peters & Duncan point to Ms. Dawson's letter of resignation sent to the HCC in which she stated that she had witnessed the transformation of the DFN leadership and the coming together of its families through its Chiefs to support that DFN members recognized the HCC as the band leadership. Again, this was an internal communication from the band administrator to the HCC. By way of her position, she had internal knowledge of the HCC's activities. This is also the case with respect to other email communications of Molly Dawson, Nick Chowdhury and others sent in their capacity of band administration employees who were supporting the HCC's activities.

[110] Peters & Duncan also point to an email chain from Sandra Glendale to Molly Dawson, forwarded by Ms. Dawson to Ms. Mannila, requesting an emergency chief's conference call to discuss her request for post-secondary funding for her son. Peters & Duncan also filed an Affidavit of Sandra Glendale sworn on October 21, 2019 in which she states that over the prior two years she had understood that the HCC had been the decision makers for DFN and functioning as the band council. She says that her understanding is based on discussions she has had with other members, the band website, and her communications with the band administration. Sandra Glendale primarily details her communications seeking funding for her son's university fees and challenging the September 7, 2019 Emergency All Membership Meeting notice issued by the Glendale Band Council after Gordon Glendale's suspension and the authority to call such a meeting.

[111] I afford this affidavit little weight. While Sandra Glendale may be a DFN member and the email chain references a request made of the hereditary chiefs, in my view, this one communication from one DFN member is not sufficient to demonstrate broad community consensus, particularly as the evidence indicates that the DFN members are widely disbursed.

[112] In the same vein, Peters & Duncan assert that the HCC represented the DFN in relations with outside parties such as an aquaculture business, the Pacific Salmon Project and Nanwakolas Council. And, that outside parties in turn recognized the HCC as the governing body of the DFN. Again, however, the fact that third parties like other First Nations or regional authorities recognized and worked with the HCC demonstrates only that the HCC represented itself to those

entities as the governing authority. Not that the DFN community knew of and agreed to the HCC's assumption of governance as required to demonstrate broad consensus.

[113] In conclusion, as indicated in the jurisprudence discussed above, to agree to a change of band custom the band must know that they are doing so. Peters & Duncan have not established that the DFN membership were aware and agreed that the four hereditary chiefs who, pursuant to the Lafrenière Order comprised the HCC, also assumed governance of the DFN as the Hereditary Chiefs as supported by Family Leadership Council or otherwise.

Acquiescence

[114] Peters & Duncan also assert that the DFN community and Chief Gordon Glendale acquiesced to the HCC's governance and that this too supports broad consensus for their authority.

[115] I would first note that I fail to see how an individual's actions, in this case Gordon Glendale's, can amount to acquiescence attributable to the entire membership of the DFN.

[116] Second, since the DFN community were not actually advised of the assumption of governance by the HCC, the fact that no one in the community objected to the governance as assumed by the HCC is meaningless and does not demonstrate broad acceptance or acquiescence.

[117] Peters & Duncan rely on *Awashish* for the proposition that acquiescence can demonstrate broad consensus. In *Awashish*, the First Nation, after a contested process, adopted a new Electoral Code in 2005. In 2006, the council that had been elected pursuant to the 2005 Electoral Code purported to suspend that Code and implement new electoral standards. The issues before the Court were whether the 2005 Code was validly adopted and, if so, whether the council could suspend that Code. The Court found that the Code had been used in the 2005 elections, in which a large number of the electors in the community took part and that the Code's validity was not questioned before or during the elections. Therefore, the community's acquiescence to the use of the Code in the 2005 elections was sufficient evidence to establish that the Code reflected "practices for the choice of a council which are generally acceptable to members of the Band, upon which there is broad consensus", the test for custom from *Bigstone* (*Awashish* at para 41, 44).

[118] In my view, *Awashish* is distinguishable on its facts. While the Court in *Awashish* accepted that the community acquiesced to the 2005 Election Code, this was because a majority of community members actually participated in the 2005 elections governed by the Code. Here, without an election or any opportunity being afforded to the DFN to affirm the HCC as governing authority, there is no similar evidence of community participation or affirmation. As discussed above, the Governance Review results indicate that the DFN membership wished to adopt a new governance structure, not that the membership accepted the HCC as the new Hereditary Chiefs as supported by Family Leadership Council. Further, in *Shirt*, Justice McVeigh held that the subjective component of the broad consensus test relies on a band meeting or other means to demonstrate that there is consensus on the new custom. She found that

in the case before her there was no evidence that the First Nation membership had approved of the election committee structure used in the election. And while the respondents had pointed to a lack of objections at the nomination meeting as a sign of implicit approval, she rejected that argument noting that it was possible that the First Nation membership did not know what procedures were in place to resolve nominee disputes. There was no evidence to confirm that protest procedures were presented to the membership or discussed.

[119] *Awashish* and *Shirt* suggest that, generally, to establish broad consensus some sort of positive action is required – for example a vote in an election, attending at a band meeting where the new custom is discussed and adopted, or clear and knowing participation in the new custom. Peters & Duncan have not demonstrated that the DFN community in some way came together and collectively agreed that the four hereditary chiefs named to the HCC established by the Lafrenière Order would assume the governance of the DFN and would do so in the absence of a governance code. To imply that uninformed passivity is sufficient to establish broad consensus, when what is at stake is a complete change of governance structure and of those governing, is troubling.

[120] In conclusion, I find that while DFN custom was in transition, there was no broad consensus supporting the HCC, the entity comprised of the four identified hereditary chiefs established by the Lafreniere Order, authority to govern.

c. Does the Glendale Band Council have broad consensus to govern?

The Glendale Band Council's position

[121] The Glendale Band Council submits that, until the membership ratifies a new governance structure or a governance code, the Glendale Band Council is the lawful governing authority.

[122] The Glendale Band Council submits that it operates pursuant to the firmly established and consistently followed custom of the Hereditary Chief and Council governance model that has been recognized and adhered to by the DFN since 1987. The indicia of this recognition includes that the model is “generalized” in the sense that the position of chief is linked to a specific, identified, hereditary chieftainship in the line of William McKenzie Glendale, with the support of two elected councillors. Its structure is defined and can be passed from generation to generation. This governance model has also been consistently adhered to by the community since 1987 as demonstrated by numerous potlatches and community meetings held over the years as well as the petitions, or support letters, provided by 87 (of 161) voting members of the DFN after Chief Gordon Glendale was suspended.

[123] The Glendale Band Council notes that the Lafrenière Order states that the Glendale Band Council was to continue day-to-day governance, or maintain a custodial role, while the HCC developed a governance code. They assert that this confirms that they continued to have lawful authority to govern.

[124] The Glendale Band Council submits that “there is no serious controversy that the members of the Glendale Band Council are the duly elected and appointed members” of the Hereditary Chief and Council. According the Glendale Band Council, if the DFN did not change its governance custom and/or if the DFN did not approve the selection of Robert Duncan and Billy Peters as members of their lawful government, then the Glendale Band Council remains the lawful authority.

Peters & Duncan’s position

[125] Peters & Duncan submit that the Glendale Band Council is not and was never supported by a broad consensus of the DFN members and, in any event, lacks a mandate to govern.

[126] They submit that the 1987 meeting at which the Glendale Band Council assumed governance was attended by only 12 DFN members, many of whom were members of the Glendale family, thereby failing to meet the broad consensus principles established in *McLeod* and *Pahtayken*.

[127] Further, that a broad consensus was not established in the years following 1987. Peters & Duncan point to a letter dated October 18, 2010 to the then Minister of Indian and Northern Affairs from Nicole Hajash attaching approximately 40 “petitions” seeking a democratic election governance structure, as well as the 2016 Judicial Review brought by Nicole Hajash and Lou-Ann Neel, and the absence of any votes for the hereditary chief and two councillor governance model in the Governance Review as evidence of lack of support for the Glendale Band Council.

[128] Peters & Duncan submit that, in any event, the Glendale Band Council lacks a mandate to act as council for the DFN. They submit that Michael Jacobson-Weston was elected for a 5-year term which expired on September 21, 2018 and was not extended. Further, the 2016 Judicial Review and the Governance Review constitute “opposition” to any extension of his term of office. And, based on his own evidence, Mr. Jacobson-Weston did not actively participate in DFN governance since around 2015. Peters & Duncan assert that Anne Glendale lacks capacity to govern since she is 90 years old, was recently diagnosed with dementia and on cross-examination was not able to understand that her status as a band councillor was at issue. As to Gordon Glendale, Peters & Duncan assert that he was appointed Hereditary Chief through a band council resolution signed only by himself and his mother, that the 2010 Petition represented a challenge to the system through which he became chief, and that the 2016 Judicial Review and the Governance Review demonstrate dissatisfaction with his appointment.

[129] As to the letters or “petitions” in support of the Glendale Band Council, Peters & Duncan submit that the petition wording is ambiguous or vague, and on its face it is unclear that members are supporting the Glendale Band Council. Further, that the petition fails to meet the “sufficient detail” requirement of *Pahtayken*, it is hearsay as no DFN member has authenticated their signature through affidavit evidence in this application, and that there is evidence that the signatories did not have sufficient information regarding the petition.

[130] Peters & Duncan submit that the Lafrenière Order only outlines the terms on which the parties to the 2016 Judicial Review agreed to stay that application. It does not affirm the Glendale Band Council’s authority to govern the DFN, nor does it preclude the HCC from

governing. That order limited the Glendale Band Council's authority to day-to-day operations but it did not impose a governance structure on the DFN or prevent the DFN from changing its governance.

Analysis

[131] In their written representations, Peters & Duncan assert that the Glendale Band Council was not founded with broad consensus of the DFN members in 1987. In support of this view, they make a footnote reference to Affidavit #1 of Anne Glendale. There, Ms. Glendale attached as an exhibit an affidavit that she filed in response to the 2016 Judicial Review in which she describes the DFN governance history during her lifetime. This included efforts assisted by the then Department of Indian Affairs to have DFN members attend a meeting aimed at restoring the DFN to their traditional territory and governance by hereditary chief. Ms. Glendale states that because the membership had been widely disbursed since around 1969 when their traditional Village was abandoned, it was difficult to reach members. However, efforts were made to bring together as many members as possible. Ms. Glendale kept notes of that August 19, 1987 meeting which she attaches as Exhibit B of her affidavit. These notes state:

That the Tanakteuk Band #635 go back to the ancient custom of having a Hereditary Chief. So we there-by appoint William M. Glendale Band 44 to take his rightful place as the Hereditary Chief of the Tanakteuk tribe.

This custom shall pass from generation to generation until such time as the tribe wishes to change it back. The tribe shall have two councillors who will remain the same two people until such time as the chief and tribe wishes to change them.

The reason for the ruling for the council been that the tribe is all off reserve except for 10% on reserve.

[132] The notes also list the two councillors as Anne Glendale and Fred Glendale, state that the appointment was reached at a duly convened meeting on August 19, 1987, list the twelve DFN members in attendance, and state that Pat Faulkner of the Department of Indian Affairs was “in charge” of the meeting.

[133] In her affidavit filed in response to the 2016 Judicial Review, Anne Glendale also states that she recalled signing the band council resolution, which was attached as Exhibit J of the Affidavit of Nicole Hajash filed in the 2016 Judicial Review. The Hajash affidavit is attached as Exhibit B of Affidavit #2 of William Gordon Glendale. The August 24, 1987 band council resolution almost identically states the wording quoted above. It is signed by William and Anne Glendale.

[134] In challenging the existence of broad consensus in 1987 for the Glendale Band Council, Peters & Duncan point to a December 16, 1987 internal letter of the Department of Indian Affairs, Exhibit K of Ms. Hajash’s affidavit. The letter states that the Department had received two inquiries from disgruntled band members as to how this change in custom could have taken place without consultation and approval from at least a majority of the electors.

[135] Putting aside the question – not raised by the parties – of whether the Hajash affidavit is hearsay as she is not a party to and did not swear her affidavit in connection with these applications (see *Redhead v Miles*, 2019 FC 1605 at para 29; *Orr v Alook*, 2012 FC 590 at para 16), I note that the Hajash affidavit states that it was Ms. Hajash’s understanding and belief that the 1987 band council resolution was submitted together with 21 statements from band members

“but many of the Band members who signed a statement did not understand what they were agreeing to or the impact it would have on the governance of the Band”. However, Ms. Hajash does not state the basis of her belief that the 21 supporting band members did not understand what they were supporting nor are those statements found in the record before me.

[136] In my view, whether or not there was broad consensus to the hereditary chief and two councillor governance model adopted in 1987 is beyond the scope of this judicial review. In any event, Peters & Duncan point to no evidence – beyond the reference in the internal Department of Indian Affairs memo attached to the Hajash affidavit to two disgruntled members – that any challenge or objection was made to the leadership model for the next 23 years. Until the 2010 Petition, it appears that the hereditary chief model of governance was consistently followed. More specifically, the 1987 band council resolution states that the custom adopted at that time shall pass from generation to generation “until such time as the tribe wishes to change it back”. Further that there will be two councillors “who will remain the same two people until such time as the chief and tribe wishes to change them”. There is no evidence before me that any DFN members sought to change custom or to have councillor elections held between 1987 and 2010.

[137] That said, the 2010 Petition, the 2016 Judicial Review and the events leading to the Governance Review establish that at least part of the community did not support the Glendale Band Council. Put otherwise, that broad consensus was eroding. More significantly, the results of the Governance Review are indisputable. No member of the DFN who participated in the Governance Review supported the current hereditary chief and two councillor governance

model, the model that Glendale Band Council represents. A clear majority favoured the Hereditary Chiefs supported a Family Leadership Council governance model.

[138] In my view, the Governance Review results establish that the Glendale Band Council no longer enjoyed broad consensus support of the DFN.

[139] In that regard, I am not persuaded that the letters of support, which the Glendale Band Council refer to as “petitions”, confirm that their governance maintained broad consensus in the DFN community after Gordon Glendale was suspended. The Glendale Band Council submits that 89 DFN members signed these petitions, which exceeds the number of members who participated in the Governance Review. This may be numerically so, however, as Peters & Duncan point out, the letters of support are vague and ambiguous as to intent. The letters are all identical. They start out by stating that “we are seeking to confirm support and input for our Hereditary Chief and Council as they re-organize our Nation”. They then state that three of the four HCC members have decided that Gordon Glendale is no longer a Chief of the Nation and that this type of leadership change can only be made by the membership, and not unilaterally by the Chiefs. The petitions conclude as follows:

MEMBERSHIP STATEMENT

I have an understanding of what is going on with our leadership and administration. If I have questions I will ask them and if I have information or advice, I will share it with our Hereditary Chief and Council.

[140] Unlike the Governance Review, where the options and results were clear, the purpose and effect of the Membership Statement is unintelligible.

[141] Although factually distinguishable, this Court addressed competing expressions of support, one through a petition, in *Pahtayken*. There, the First Nation had passed a new constitution and governance act through a referendum codifying their band custom. However, a portion of the membership did not support the new governance initiatives and did not participate in the referendum or the subsequent election held pursuant to the new governance structure. Instead, the dissenting faction organized their own election according to previous custom. At that election, a petition was signed by 113 people indicating their support for the previous band custom. The Court found there was no evidence that it was the First Nation's custom to have members sign such petitions at election time and found, in the context of the dispute before it, that the purpose of the petitions was an attempt to undermine the consensus reflected in the referendum (*Pahtayken* at paras 44(b), 63). The Court concluded:

[64] The problem for the Court is that the Respondents have provided no evidence that would allow the Court to gauge the significance or the legitimacy of the petition as an indicator of band consensus on the issues before the Court. They simply attempt to undermine the legitimacy of the Referendum Vote and place the petition before the Court as a means of doing this. Based upon the record as a whole, the Court must remain highly sceptical of this tactic.

[142] Ultimately, in *Pahtayken* the Court held that the referendum vote was the best indication of the membership's views (*Pahtayken* was upheld on appeal: 2010 FCA 169). Here, of course, because the HCC failed to develop a governance code, the intended referendum was never held. However, in my view, the Governance Review is the best indication of the DFN membership's views as to the desired change of custom as it was presented to the DFN community in an informed and neutral way. Conversely, the purpose of the letters of support, or petitions, were

intended to shore up support for the Glendale Band Council after Gordon Glendale was suspended by the other members of the HCC.

[143] I also point out that the parties generally agree that the Lafrenière Order reflected the agreement of the parties to that application, and those who attended the mediation as reflected by the Joint Statement, that the Glendale Band Council was to continue day-to-day governance while the HCC developed a governance code to be put to the membership in a referendum. Thus, the Order reflects an understanding that the DFN intended to change in the band custom to a model reflected by the Governance Review. The parties to the mediation agreed that the Glendale Band Council's role would be circumscribed – it was time limited and restricted to day to day administrative actions and precluded major decisions. To my mind, this indicates that the Glendale Band Council accepted that it no longer enjoyed the broad support of the band and was now functioning in a caretaker role during what should have been the relatively short time until a governance code was developed and put to the band for consideration.

[144] This is also reflected in the fact there is no evidence that the Glendale Band Council was actually conducting any band governance after the Governance Review. Rather, the evidence supports that Gordon Glendale began working with the other HCC members to conduct DFN band business.

[145] As to status of Anne Glendale and Michael Jacobson-Weston, it is not disputed that Mr. Jacobson-Weston did not participate in any Glendale Band Council activities from 2016 when his wife became seriously ill. In his affidavit affirmed on September 19, 2019, Mr. Jacobson-

Weston states that he has never resigned as councillor. He states that since Gordon Glendale's suspension in July 2019 he has been regularly meeting with Glendale Band Council to address the claim of Bill Peters, Norman Glendale and Robert Duncan that they have the authority to pass band council resolutions and act as band council for DFN. In her affidavit affirmed on September 19, 2019, Anne Glendale states that she has never given up her position as councillor and that since the expulsion of Chief Glendale, she, Gordon Glendale and Michael Jacobson-Weston "have confirmed our authority as the government ... through a series of band council resolutions issued over the past 3 months". These band council resolutions are attached as exhibits to her affidavit.

[146] In my view, the evidence establishes that Anne Glendale and Michael Jacobson-Weston were not functioning as councillors after the Governance Review and did not make any attempt to fulfill their roles as such until after the suspension of Gordon Glendale. They did so then only in an effort to re-establish band support for the hereditary chief and two councillor governance model that they represent. While a failure to govern does not speak directly to a lack of broad consensus, in these circumstances it is indicative of an acknowledgment by the Glendale Band Council of a lack of community support of the Glendale Band Council governance structure.

[147] Although Peters & Duncan also argue that the members of the Glendale Band Council "have no mandate" to continue as council of the band, in my view, this is not the issue before me. For example, to the extent that Peters & Duncan assert that Anne Glendale is not fit to hold office based on her age and health, they do not tie this assertion to her lawful authority to hold office. I also note the absence of any evidence that a specific demand has ever been made, and

refused, that elections be held for the offices of councillor held by Anne Glendale or Michael Jacob-Weston on the basis that a band member opposes the continuation of those individuals in those offices. That is, challenging their mandate to continue in those roles. While the 2016 Judicial Review and the Governance Review clearly took issue with the model of governance effected by band custom, to my mind, this is a different issue than opposing the continued holding of elected offices of chief or councillors by specific individuals.

[148] What is at issue before me is whether the governance system – the hereditary chief and two councillor model – as reflected by the Glendale Band Council, in the factual context of these matters, enjoys broad consensus support by the DFN community. That is, whether that system or structure reflects current band custom. For the reasons above, I am not persuaded that it does.

Conclusion

[149] This is an unusual set of factual circumstances that could have been avoided had the HCC complied with the Lafrenière Order and developed a governance code to put to the DFN membership for ratification by referendum.

[150] In these competing applications, both the Glendale Band Council and Peters & Duncan assume that if one of these entities does not have lawful authority to govern then the other one does. Given these odd circumstances, I am not sure that this is so.

[151] In my view, the Governance Review is the best indication of the membership's preference for a governance model. This makes it clear that the DFN membership wishes to

transition to the Hereditary Chiefs supported by Family Leadership Council governance structure. Indeed, that desire is not contested by the Glendale Band Council. I also agree with the Glendale Band Council that the transition process has not yet been completed. However, the Governance Review results also demonstrate that the DFN no longer views the hereditary chief and two councillor governance model to be generally acceptable to the members of the band and, therefore, that that practice does not enjoy broad consensus support of the DFN membership. Further, the Glendale Band Council stopped governing when the HCC members decided that the HCC would assume governance, implicitly acknowledging a lack of broad consensus for the governance structure that the Glendale Band Council represents.

[152] On the other side of the coin, while Peters & Duncan assert that the HCC has assumed governance, custom cannot be recognized solely by the leadership, it must be recognized by the membership (*Bigstone* at para 29; *Shirt* at para 32; *Bertrand* at para 37; *Shotclose* at para 69). The record before me does not establish that the DFN membership ever agreed or now agrees that the four hereditary chiefs, identified in the Lafrenière Order as forming the HCC, would also comprise the Hereditary Chiefs supported by Family Leadership Council and would assume that role in the absence of a governance code, including without determining the family leadership representatives. The HCC was established solely for the purpose of developing the governance code and putting it to the membership for ratification by way of referendum. Further, the evidence before me does not establish that the DFN membership has ever been formally and clearly advised of the HCC's decision to assume governance and that there was broad consensus for governance by the HCC.

[153] In sum, neither party has met their burden of establishing the broad consensus for the governing authority of either the Glendale Band Council or the HCC.

Issue 2: Does the HCC have authority to suspend Gordon Glendale?

[154] This issue arises only in T-1282-19.

[155] There, the Glendale Band Council submits that the Federal Court has jurisdiction to judicially review decisions by bodies purporting to exercise authority even if that body, like the HCC, did not have such authority. Further, that decisions affecting governance must respect custom and procedural fairness. The Glendale Band Council submits that Gordon Glendale's suspension from the HCC did not comport with custom, since the DFN families are entitled to choose their own leaders and matters between families are to be resolved by the community through a community meeting or at the Big House. They also submit that Gordon Glendale's suspension lacked procedural fairness.

[156] Peters & Duncan submit that, as the governing body of the DFN, the HCC has inherent authority to discipline its members where necessary and in the best interests of the nation.

Relying on *Whitehead v Pelican Lake First Nation*, 2009 FC 1270 at paras 11 – 14 [*Whitehead*]

Peters & Duncan submit that, absent a written code, a First Nation governance body has the inherent authority to suspend councillors for financial misconduct and that “the DFN leadership must, by necessity, have the authority to suspend its members for misconduct”. Peters & Duncan submit that the decision to suspend Gordon Glendale was urgent, necessary and warranted based on the allegations of financial misconduct made by Ruby Mannila. Further, that Gordon

Glendale has not justified his conduct or provided evidence to establish that his suspension was unwarranted.

Analysis

[157] As I have found above, the HCC was not the lawful governing authority of the DFN. Accordingly, Bill Peters, Robert Duncan and Norman Glendale (who has since disavowed the suspension), purporting to act as the HCC, did not have the authority to suspend Gordon Glendale.

[158] That said, it is not in dispute that the Court has jurisdiction to review conduct by a body, including a “council of the band” – whether that council is appointed by custom or election – with respect to the custom of the band and the application of that custom by an entity purportedly acting in the name of the council or otherwise purporting to exercise governance decision making authority – even if that body did not lawfully have the authority to act (see *Francis* at paras 12-13). The evidence discussed above confirms that four hereditary chiefs named to the HCC by the Lafrenière Order, or some combination thereof, purported to exercise governance between late 2017 and 2019. Thus, regardless of my finding that the HCC lacked lawful authority, I will also address the discrete issue of the suspension of Gordon Glendale.

[159] Regarding the HCC’s authority to suspend, Peters & Duncan refer to *Whitehead*. There the First Nation’s election act gave council the power to remove councillors but was silent on suspensions. The Court noted that chief and band councils can still have customary or inherent powers to suspend councillors if such a custom is established. The Court in *Whitehead* references

Prince v Sucker Cree First Nation, 2008 FC 1268 [*Prince*] where the court held that the council held customary powers, such as the power to suspend councillors. In *Whitehead*, the Court held that the reasoning in *Prince* applied to the case before it as there was evidence showing that a councillor was suspended for misconduct at least once before. Further, that the election act was not an exhaustive code and the council must “have the inherent ability to enforce its policies, such as the Guidelines, or else the Council’s power to make its own procedures would be ineffectual” (*Whitehead* at para 44).

[160] I first note that *Whitehead* has been overtaken by the Federal Court of Appeal’s decision in *Fort McKay First Nation v. Orr*, 2012 FCA 269 [*Orr*] which confirms the clear line of authority finding that when an election code exhaustively covers the topic of removals then there is no residual or continuing custom authority (*Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at para 80; *McKenzie v Onion Lake Cree Nation*, 2020 FC 1184 at para 81 [*McKenzie*]).

[161] I also would note that in all the cases mentioned above, the First Nations involved had a written election code in place and the issue was whether an election code covered the field or whether a custom co-existed with the code allowing for councillor suspension. Here, there is no code governing the HCC’s purported authority. However, in my view, this does not mean that the HCC has “inherent authority” to suspend a hereditary chief. Rather, the HCC must demonstrate that there is a customary authority to suspend as was the case in *Prince* and *Whitehead*. As stated by Justice Stratas in *Orr* at para 20, “At a more basic level, the Chief and

Council have not demonstrated the existence of any custom or inherent power that bears upon the issue of suspending councillors. The onus lies on the Chief and Council to establish this...”.

[162] When asked directly what part of DFN custom permits the suspending of hereditary chiefs, Mr. Duncan could not identify such a custom but stated that he guessed that there would have been practices relating to the conduct of hereditary chiefs that would have taken place in the Big House which traditionally is where conflicts between chiefs and families were addressed. As discussed above, to become custom, the practice pertaining to a particular issue or situation contemplated by that rule must be firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus demonstrating a “broad consensus” as to its applicability. Peters & Duncan have not met this test and have failed to demonstrate any such custom supporting the authority to suspend chief or councillors.

[163] Nor do Peters & Duncan purport that, when suspending Gordon Glendale, they were enforcing existing guidelines or policy.

[164] And while Peters & Duncan assert that the evidence demonstrates that the suspension was necessary and urgent, the only basis on which urgency is claimed is that official documents were being destroyed.

[165] In Affidavit #2 of Ruby Mannila she states that on July 5, 2019 she received a text from Justin Glendale stating that he believed that office staff were trying destroy or remove documents at the band office. Ms. Mannila defines the “Office Staff” as Gloria Glendale and Elizabeth

Davidson, who are Gordon Glendale's sisters, and Angela Davidson, who is Gordon Glendale's niece. Based on this text and her concerns about financial impropriety, she contacted Bill Peters and Robert Duncan. Robert Duncan then emailed the draft band council resolution suspending Gordon Glendale to the RCMP station where Bill Peters and Norman Glendale were waiting to sign it. The July 5, 2019 band council resolution, which suspended Gordon Glendale, also referenced this ongoing document destruction and requested that the RCMP accompany Ruby Mannila to the Band Office to ensure the safe keeping of records.

[166] Ms. Mannila states in her affidavit that some days before the events leading to his suspension, Gordon Glendale had informed her that he would be working at the head of Knight Inlet that week and she "assumed we were not able to contact Gordon Glendale because he does not usually have cell signal or an email connection when he does remote work". Thus, at that time of the purported document destruction and his suspension, based on this evidence as well as that of Gordon Glendale, he was not in the community. He therefore could not have participated in the document destruction. Moreover, Ms. Mannila then attended the band office accompanied by the RCMP to remove documents and on the same day she suspended the Office Staff and took steps to safeguard documents. I am not persuaded that the suspension of Gordon Glendale was urgent based on the allegation of document destruction.

[167] Peters & Duncan's submission on necessity simply sets out Ruby Mannila's allegations of financial impropriety and asserts that the HCC's decision to suspend was therefore warranted. They also submit that Gordon Glendale, in the context of this judicial review, has failed to justify or explain the allegations. However, the issue of whether or not the decision to suspend was

warranted, i.e. was reasonable, is not before me. I am considering only whether the other members of the HCC had the authority to suspend Gordon Glendale.

[168] In any event, Gordon Glendale's suspension lacked procedural fairness. I refer to my prior decision *McKenzie* which is equally applicable to the suspension of chiefs:

[88] Further, while the level and content of the duty of fairness varies and is determined by context, as the Respondents submit, it is well established that **in the context of councillor suspensions procedural fairness requires the right to be heard and the right to make representations** (*Tourangeau* at para 57; *Beardy* at paras 128 – 129). Indeed, even where only minimal procedural rights are required, those rights include notice and an opportunity to make representations (see, for example, *Peguis First Nation v. Bear*, 2017 FC 179 at para 62; *Minde v. Ermineskin Cree Nation*, 2006 FC 1311, at para 44; *Orr v Fort McKay First Nation*, 2011 FC 37 at para 12; *Blois v Onion Lake Cree Nation*, 2020 FC 953 at para 73). And, **even if the decision to suspend a councillor is well-founded or reasonable, the decision will be set aside if the procedure was unfair** (*Laboucan v Little Red River # 447 First Nation*, 2010 FC 722 at para 37 [*Laboucan*]).

(emphasis added.)

[169] In this context, Ruby Mannila's evidence establishes that Gordon Glendale was not given notice of the decision to suspend him. The cross-examination testimony of Robert Duncan is that a meeting was not arranged with Gordon Glendale before the suspension nor were the allegations against him laid out or was he given an opportunity to address them after the suspension. In Affidavit #5 of William Gordon Glendale, affirmed on January 9, 2020, Gordon Glendale states that he first learned about why he was suspended when he showed up at a scheduled HCC meeting on July 12, 2019. That meeting was recorded by Amy Puglas and a transcript of it is attached to her affidavit sworn on January 9, 2020. I note that there is no evidence that the details of Ms. Mannila's allegations were put to Gordon Glendale in advance of the meeting. Nor was

the purpose of that meeting to afford him an opportunity to respond to articulated allegations. Indeed, he was not even invited to the meeting as he had been suspended as a member of the HCC. Moreover, a review of the transcript reveals that the meeting devolved into arguments as to the authority of Bill Peters, Robert Duncan and Norman Glendale to suspend Gordon Glendale and the administrative staff.

[170] In my view, Peters & Duncan's assertion that the obligation was on Gordon Glendale to justify, in response to their application for judicial review, why the allegations against him were not valid is misplaced. Procedural fairness required that Gordon Glendale be provided with notice and sufficient information so that he knew the case against him and was afforded a reasonable opportunity to respond. The lack of procedural fairness cannot be cured by asserting that Gordon Glendale should have provided an in depth response to the allegations in these judicial reviews. I also note that Peters & Duncan insist that it is their intention that Gordon Glendale's suspension would only continue while a forensic audit was conducted, yet they demand that he respond to Ms. Mannila's allegations prior to the completion of that process. And, while Peters & Duncan emphasize that their actions were warranted given Gordon Glendale's alleged impropriety, as stated in *Laboucan*, above, even well-founded suspensions will be set aside if the procedure was unfair.

[171] Therefore, I conclude that the HCC lacked authority to suspend Gordon Glendale and that the suspension was procedurally unfair. Consequently, the decision to suspend him must be quashed.

Issue 3: What is the appropriate remedy?

[172] As noted above, both the Glendale Band Council and Peters & Duncan seek the remedy of *quo warranto*.

[173] The Glendale Band Council seeks an order in the nature of *quo warranto* declaring Chief Gordon Glendale and councillors Anne Glendale and Michael Jacobson-Weston “the Band Council of DFN” and that Bill Peters, Norman Glendale and Robert Duncan lack lawful authority to act as the governing body of the DFN. Peters & Duncan seek a declaration that the Glendale Band Council, or any of its members, lacks authority to act as the governing body of the DFN and that the DFN Hereditary Chiefs Council “however constituted”, is the lawful governing body of the DFN.

[174] Section 18(1)(a) of the *Federal Courts Act* permits this Court to issue writs of *quo warranto*. That relief can be granted when the authority by which a public office is held is successfully challenged. In the First Nation governance context, the availability of *quo warranto* is demonstrated in *Salt River First Nation 195 (Council) v Salt River First Nation 195*, 2003 FCA 385 [*Salt River*]. There, a meeting was held without notice at which one group of councillors was removed from office and another group was elected as councillors. This Court determined on judicial review that the removal of the prior group of councillors and the election of the new councillors was void and of no effect. On appeal, the respondents argued that there was no decision before the Federal Court against which relief could be granted. The Federal Court of Appeal found while there was no decision of the new group of councillors, any elected

officer or of the band, in the circumstances a decision was not necessary. This was because, in bringing their judicial review, the respondents were challenging the authority by which the new group of councillors were purporting to act as band councillors in the place of the former group. And, although the application was for a declaration and not expressly for a writ of *quo warranto*, the substance of what they were seeking was a declaration equivalent to the prerogative writ of *quo warranto*. The Federal Court of Appeal found that the requested relief was available and held that *quo warranto* or a declaration in the nature of *quo warranto*, where the challenge is to the right of a public office holder to hold office, is a circumstance where relief may be granted on judicial review, even in the absence of a decision (*Salt River* at paras 17- 18, 20).

[175] This Court has also held that “though the discretion to withhold relief in the form of *quo warranto* may be quite limited, the test to grant such relief is nevertheless stringent” (*Ratt v. Matchewan*, 2010 FC 160 at para 165 [*Ratt*]). The test for issuing *quo warranto* is set out in *Jock v. Canada*, [1991] 2 FC 355 at para 49 [*Jock*] (also see *Gagnon v Bell*, 2016 FC 1222).

[176] As a preliminary point, I note that *quo warranto* challenges the right of an individual office holder to hold that particular office. Accordingly, it is not clear to me that the Court can issue a writ of *quo warranto* declaring which council of the band is the lawful governing body. Here, for example, Peters & Duncan request a declaration that “the Da’naxda’xw First Nation Hereditary Chiefs Council (“Chiefs Council”), *however constituted*, is the lawful governing body” of the DFN. However, the composition of the Hereditary Chiefs supported by Family Leadership Council, the model of governance option preferred by the DFN, has not been defined or identified by the DFN community. Further, although the DFN have a longstanding tradition of

hereditary chiefs contributing to band matters, the “HCC” as created by the Lafrenière Order was a discrete entity with a single purpose, to develop the governance code. Its members as identified by Justice Lafrenière may, or may not, constitute the Hereditary Chiefs Council supported by Family Leadership Council or what Peters & Duncan refer to as the “Chiefs Council”.

[177] Further, this issue has already been addressed in these proceedings in the context of Peters & Duncan’s motion seeking to disqualify JFK Law as counsel for the Glendale Band Council. There Prothonotary Ring referred to jurisprudence holding that *quo warranto* allows a challenge of an individual’s right to hold a particular office.

[178] Thus, I fail to see how this Court could declare that a “Chiefs Council”, however constituted, is the lawful governing council of the band. Rather, the question is which of the purported office holders have authority to hold office as members of a band council.

[179] In my view, the members of the Glendale Band Council and Peters & Duncan have both met the *Jock* criteria. And, as stated in *Bell*: “a remedy in the nature of *quo warranto* is available and appropriate in these circumstances if the Applicant demonstrates the absence of legal basis for the Chief and Council to hold their respective offices”.

[180] The Glendale Band Council and Peters & Duncan have both established that the other entity currently lacks a legal basis to hold office, in the case of the HCC, purported office. Neither has established that they have the broad consensus of the DFN community to govern. In effect, this means that Gordon Glendale, Anne Glendale and Michael Jacobson-Weston do not

have lawful authority to hold office as Chief and Councillors, respectively, comprising the Glendale Band Council. Bill Peters and Robert Duncan (as well as Norman Glendale and Gordon Glendale) may be hereditary chiefs but they have not demonstrated broad consensus support for the HCC, nor have they been chosen by the DFN to hold office as members of the HCC, the Hereditary Chiefs supported by Family Leadership Council or otherwise.

[181] This is one of the exceptional situations where an order in the nature of *quo warranto* should issue to remove chiefs and councillors from office (*Shotclose* at para 105). Even more exceptionally, however, this leaves the DFN without governance. And, of course, it is for the DFN to determine its governance model, those persons who comprise the members of that entity and the terms of their holding office, not this Court.

[182] However, faced with a gap in band administration and to avoid the potential of still further litigation, I must fashion some sort of interim remedy, appropriate to the circumstances, until the DFN makes its determination (*Ballantyne v Nasikapow*, [2000] FCJ No 1896, at para 79). In *Shotclose* Justice Mosley granted an order in the nature of *quo warranto* to remove chief and councillors from office. He also prohibited the chief and council from exercising any of the powers of those offices pending the next election and issued an order in the nature of *mandamus* requiring an election be held within 60 days, to be conducted in accordance with the procedure set out the First Nations election code. Thus, in *Shotclose* the gap in band administration resulting from the *quo warranto* relief was short and was cured by the holding of a new election.

[183] The DFN do not have an election code. Further, DFN governance has been the subject of litigation for the last 5 years beginning with the 2016 Judicial Review. There, to avoid the Court making a determination as to governance model, the parties to that matter, and others including Bill Peters and Robert Duncan, attended a mediation which resulted in the May 26, 2017 Lafrenière Order. That consent order contemplated a governance code being presented to the DFN community for approval approximately 6 months later, on December 1, 2017. Regrettably, the Lafrenière Order has not been complied with as the HCC has not developed a governance code and put it to the DFN membership for a referendum. Nor have the parties in that matter caused the judicial review to be heard and determined on its merits. Further, Mr. Duncan's cross-examination testimony is that a funding application for the development of the governance code has never been submitted and that there has been no work on the code since Gordon Glendale's suspension nearly two years ago.

[184] The DFN membership has clearly signalled that the "Hereditary Chiefs supported by Family Leadership Council" is the preferred model of governance. In order to transition to that model it would, of course, be ideal to first have in place a comprehensive governance code developed that the DFN members could adopt by referendum following community input and discussion.

[185] But this is not necessarily a prerequisite to effecting this change in governance custom. It is open to the DFN members to take interim action.

[186] Specifically, to confirm that it is their intention that their custom will now change to governance by Hereditary Chiefs supported by Family Leadership Council, prior to the development of a comprehensive governance code, and identifying and appointing interim hereditary chiefs and interim members of the family leadership council who would fill those positions until a governance code is developed and ratified and those positions are filled in accordance with the code. And, importantly, requiring that the interim Hereditary Chiefs supported by Family Leadership Council immediately progress the development of a governance code to be presented to the DFN for consideration and ratification within a set time frame. All of this can be quickly accomplished by way of a DFN membership meeting.

[187] This will require that notices of the members meeting be provided to the members setting out what is needed and why. The January 18, 2017 All Members Meeting Notice for the Governance Review is a good example of how this can be accomplished in a clear and neutral manner. The January 21, 2017 members meeting was also facilitated by an independent third party, Richard Dawson. Given the animosity between the various hereditary chiefs and some other DFN members demonstrated by the record before me, this approach should also be followed with respect to a membership meeting called for the purpose of confirming a new DFN custom of governance by Hereditary Chiefs supported by Family Leadership Council, prior to the development of a governance code, and the appointment of an interim Hereditary Chiefs supported by Family Leadership Council. If available, Mr. Dawson may well be a good candidate to assist in preparing the meeting notices and facilitating the members meeting to confirm band custom as to governance and to identify and appoint the interim members of the Hereditary Chiefs supported by Family Leadership Council.

[188] The evidence before me is consistent in that disputes within the DFN have traditionally be dealt with by members meetings or in the Big House. Regrettably, the DFN governance dispute now before me has never been put to the membership for resolution. The interim measure I have described above, in effect, causes that tradition to be utilized to resolve the governance issue and thereby confirming the broad consensus of the DFN as to its governance.

[189] Regarding Gordon Glendale's status, as I have found above, Peters & Duncan lacked authority to suspend him and, in any event, the suspension lacked procedural fairness.

[190] However, the allegations made against Gordon Glendale by Ruby Mannila concerning conflicts of interest and financial improprieties are serious and remain unresolved. Robert Duncan's evidence is that he and Mr. Peters intended to resolve Gordon Glendale's status after the forensic audit was complete. When appearing before me, counsel for Peters & Duncan indicated that the audit was complete, however, the results are unknown to the Court.

[191] If the DFN membership confirms that it wishes to now proceed with a change of custom governance to Hereditary Chiefs supported by Family Leadership Council prior to the development of a governance code and identifies and appoints the hereditary chiefs and family leadership members of an interim council, then the new interim council will have to decide how to appropriately safeguard the DFN's financial welfare while the allegations of financial misconduct are being resolved. At the membership meeting the DFN members may wish to provide input for consideration by the council when making this determination.

[192] The above solution is premised on the results of the Governance Review by which the DFN membership indicted their clear desire to transition to a Hereditary Chiefs supported by Family Leadership Council governance model. It is, of course, open to the DFN membership to effect any form of governance of their choosing. But they must make a clear and immediate decision.

[193] I would also note that the record before me indicates that when contemplating the governance code the HCC appeared to envision this as an all encompassing constitutional type document. However, generating such a document is very ambitious. It may be that a more streamlined or limited governance code would suffice or would at least suffice in the short term.

[194] In summary, as to remedies, I conclude as follows:

- i. In T-1282-19 I am refusing the request of the Glendale Band Council for an order in the nature of *quo warranto* declaring Chief Gordon Glendale and Councillors Anne Glendale and Michael Jacobson-Weston “the Band Council of DFN”. However, I am granting the request of the Glendale Band Council and declaring that Bill Peters and Robert Duncan lack governing authority, that is broad consensus, to hold purported office as council of the band, either as members of the HCC or individually. I am also refusing the Glendale Band Council’s request for a further order in the nature of *quo warranto* declaring that Gordon Glendale “is a required member” of the HCC;
- ii. The decision to suspend Gordon Glendale shall be quashed as Peters & Duncan lacked authority to make the decision and because it was made without procedural fairness;
- iii. In T-1725-19, I am refusing Peters & Duncan’s request for an order in the nature of *quo warranto* declaring that the “Hereditary Chief’s Council (“Chiefs Council”), however constituted, is the lawful governing body” of the DFN. However, I am granting their request for a declaration that Gordon Glendale, Anne Glendale and Michael Jacobson-Weston lack lawful authority, that is broad consensus, to act as chief and councillors, respectively, as council of the band.
- iv. In both matters the parties seek an order quashing any and all decisions and band council resolutions made by the other party. The Glendale Band Council seeks

this relief against the HCC from the time Gordon Glendale was suspended. Peters & Duncan seek to quash any decisions made by the Glendale Band Council after August 1, 2017. I would first note that I am not prepared to blindly quash unidentified decisions. That said, it is apparent that there are now conflicting decisions of these two entities, such as the status of the band administrator and office staff. Assuming that the DFN membership confirms that the Hereditary Chiefs supported by Family Leadership Council will assume governance while a governance code is being developed, and identifies and appoints an interim Hereditary Chiefs supported by Family Leadership Council, then the interim council can revisit the decisions made by both the Glendale Band Council and the HCC, subsequent to Gordon Glendale's suspension, and determine how it wishes to resolve those matters and make decisions accordingly;

- v. I will order that Gordon Glendale, Robert Duncan, Norman Glendale and Bill Peters – as they all agree that the intention of the DFN is to move to a Hereditary Chiefs I supported by Family Leadership Council governance model – shall together cause a notice of members meeting to be prepared, utilizing a independent and neutral third party to be retained on behalf of the DFN to assist in the preparation of the notice. The purpose of the members meeting is to obtain confirmation from the DFN membership that it is their intention that their custom will now change to governance by Hereditary Chiefs supported by Family Leadership Council, prior to the development of a governance code. And, in that regard, identifying and appointing the interim Hereditary Chiefs and the interim members of the Family Leadership Council who would fill those positions until a governance code is developed and ratified. Further, requiring that the interim Hereditary Chiefs supported by Family Leadership Council immediately progress the development of a governance code to be presented to the DFN for consideration and ratification within a set timeframe, not to exceed one year from the date of the members meeting; and
- vi. Until the interim Hereditary Chiefs supported by Family Leadership Council is in place, the ordinary day-to-day administration DFN band matters shall be overseen by Gordon Glendale, Robert Duncan, Norman Glendale and Bill Peters, in their traditional capacity as hereditary chiefs. No significant decisions or actions shall be taken pending the appointment of the interim Hereditary Chiefs supported by Family Leadership Council by the DFN membership.

Costs

[195] As to costs, pursuant to Rule 400 of the *Federal Court Rules* the Court has full discretionary power over the amount and allocation of costs and the determination of by whom

they are to be paid. And, in making that determination it may consider the factors listed in Rule 400(3).

[196] In *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 1119 [Whalen] Justice

Grammond summarized the principles applicable to costs in First Nations governance disputes as follows:

[27] I would summarize the applicable principles as follows:

- In First Nations governance cases, as in other cases, an award of costs is in the trial judge's discretion, which must be exercised after taking all relevant factors into consideration;
- The imbalance between the financial resources of an applicant and those of the First Nation, or a party whose legal fees are paid by the First Nation, is a relevant factor;
- Taken in isolation, however, the resource imbalance is not a sufficient factor to justify an award of costs on a solicitor-client basis;
- The fact that an application contributed to clarify the interpretation of a First Nation's laws or governance framework may be taken into account when making a costs award; but not every application falls in that category.

[197] This is a governance dispute between two groups who each claim to have lawful authority to govern the DFN. Neither have been successful as I have concluded that neither has established that they have broad consensus to govern. Further, these applications could both have been avoided if a governance code had been developed and put to the DFN membership for ratification as envisioned by the Lafrenière Order or by the calling of a membership meeting to address the governance issue.

[198] However, the overarching purpose of these applications was to resolve the DFN's current governance framework. Accordingly, I have concluded that each party shall bear its own costs, including with respect to the motion to strike the affidavit of Bill Peters. Further, as both parties claimed to be acting as the lawful governing authority of DFN, if the costs of either of them is being paid through DFN band funds then so too shall the costs of the other, all based on column III of Tariff B.

JUDGMENT IN T-1282-19 AND T-1725-19

THIS COURT'S JUDGMENT is that:

T-1282-19

1. It is declared that Bill Peters, Norman Glendale, Robert Duncan and Gordon Glendale, or any combination of them, as members of the hereditary chiefs council which was established by way of and for the purposes of the May 26, 2017 consent order of (now) Justice Lafrenière, lack broad consensus and therefore do not have lawful authority to govern the Da'naxda'xw First Nation [DFN]. An Order in the nature of *quo warranto* removing them from their purported respective offices as members of the council of the band is hereby granted;
2. An order in the nature of *certiorari* quashing the decision of Bill Peters, Norman Glendale and Robert Duncan purporting to suspend Gordon Glendale from the HCC is hereby granted;

T-1725-19

1. It is declared that Gordon Glendale, Anne Glendale and Michael Jacobson-Weston as Hereditary Chief and Councillors of the DFN lack broad consensus and therefore do not have lawful authority to govern the Da'naxda'xw First Nation [DFN]. An Order in the nature of *quo warranto* removing them from their respective offices is hereby granted;

T-1282-19 and T-1725-19

1. On or before June 30, 2021 an all members meeting of the DFN will be convened. The purpose of the membership meeting is to permit the DFN membership to confirm that it is their intention that their custom will, by way of agreement confirmed at that meeting, change to governance by Hereditary Chiefs supported by Family Leadership Council, prior to the development of a governance code, and to permit the DFN membership to identify and appoint interim Hereditary Chiefs and interim members of the Family Leadership Council who would fill those positions until a governance code is developed and ratified. Further, and importantly, requiring that the interim Hereditary Chiefs supported by Family Leadership Council to immediately progress the development of a governance code to be presented to the DFN for consideration and ratification within a set time frame, not to exceed one year from the date of the members meeting;
2. Gordon Glendale, Robert Duncan, Norman Glendale and Bill Peters, in their traditional capacity as hereditary chiefs, shall together cause a notice of the members meeting to be prepared, utilizing an independent and neutral third party to be retained on behalf of the DFN to assist in the preparation of the notice and to also facilitate the members meeting. Ruby Manilla shall not participate in this process;
3. Until the interim Hereditary Chiefs supported by Family Leadership Council is in place, the ordinary day-to-day administration DFN band matters shall be

overseen by Gordon Glendale, Robert Duncan, Norman Glendale and Bill Peters, in their traditional capacity as hereditary chiefs. No significant decisions or actions shall be taken pending the appointment of the interim Hereditary Chiefs supported by Family Leadership Council by the DFN membership;

4. Each party shall bear its own costs. If the costs of either of them is being paid from DFN band funds then so too shall the costs of the other, all based on column III of Tariff B; and
5. A copy of there reasons shall be placed in the Court files of both T-1282-19 and T-1725-19.

"Cecily Y. Strickland"

Judge

ANNEX A

Federal Court



Cour fédérale

Date: 20170526

Docket: T-1908-16

Vancouver, British Columbia, May 26, 2017

PRESENT: Case Management Judge Roger R. Lafrenière

BETWEEN:

NICOLE HAJASH AND LOU-ANN NEEL

Applicants

and

**WILLIAM ('GORDON') GLENDALE (CHIEF),
AND MICHAEL JACOBSON-WESTON AND
ANNIE GLENDALE (COUNCILLORS) IN
THEIR CAPACITY AS THE CHIEF AND
COUNCIL OF THE DA'NAXDA'XW FIRST
NATION**

Respondents

ORDER

UPON a Dispute Resolution Conference being held with the Applicants, Nicole Hajash and Lou-ann Neel; the Respondents, William (Gordon) Glendale and Annie Glendale; the parties' solicitors; and other members of the Da'naxda'xw First Nation, in Campbell River, British Columbia, on May 25, 2017;

AND UPON the consent of the parties to the terms of this Order, including the issuance of a Joint Statement in the form attached as Schedule "A";

THIS COURT ORDERS that:

1. The Hereditary Chiefs who are willing and available, consisting of William (Gordon) Glendale, Robert Duncan, Norman Glendale, and Giyaka (Billy Peters) (the 'Hereditary Chiefs') shall form a Council for the purpose of developing a governance code for the Da'naxda'xw First Nation to be presented to the membership for their approval (the Hereditary Chiefs Council). Ruby Mannila may be present to assist Giyaka but any input shall be provided by Giyaka.
2. Prothonotary Roger R. Lafrenière shall assume the role of lead facilitator to convene a meeting as soon as practicable of the Hereditary Chiefs Council to reach an agreement on a budget and community engagement process, leading to the formulation of a governance code.
3. The Hereditary Chiefs Council may, at their discretion, include additional persons as members of the Hereditary Chiefs Council.
4. Reasonable Band funds will be made available to the Hereditary Chiefs Council, including for research, legal support, and governance experts to engage in the process of formulating and presenting the governance code to the community.
5. The Hereditary Chiefs Council shall, unless agreed to by the Hereditary Chiefs Council or otherwise ordered by the Court, present the proposed governance code to the community for approval by December 1, 2017.

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6. Gordon Glendale and the Councillors of the Da'naxda'xw First Nation shall take no decisions and make no expenditures that would be outside of the ordinary day-to-day administration of the Band, including long-term agreements, pending either a resolution or the hearing of the application.
7. The hearing of this matter is adjourned to a date certain in April 2018, unless the Court orders otherwise.
8. Deadlines for completion of cross-examinations on the affidavits is adjourned to a date certain in January 2018, unless the Court orders otherwise.
9. The dates for service of the Applicants' Record is adjourned to a date certain in February 2018, unless the Court orders otherwise.
10. The dates for service of the Respondents' Record is adjourned to a date certain in March 2018, unless the Court orders otherwise.
11. It is understood that this agreement is without prejudice to the parties' positions in respect to all matters, including in respect to the protocols and laws that define the Da'naxda'xw hereditary ranking system, should the matter continue through the hearing process.
12. If the parties cannot reach an agreement, the legal fees incurred by the parties, together with the issue of costs, shall be the subject of adjudication either upon the resolution or hearing of the application.

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13. Upon the conclusion of the referendum on the Da'naxda'xw First Nation governance code, the Applicants shall discontinue the application.

"Roger R. Lafrenière"
Case Management Judge

**Schedule "A" to the Order of Prothonotary Lafrenière
dated May 26, 2017 in Court File No. T-1908-16**

**Joint Statement by the Parties to the Da'naxda'xw First Nation
Governance Lawsuit**

We write with respect to an update on the lawsuit filed in December 2016 challenging the current system of governance of our Nation. The parties have recently met to discuss ways the governance issues raised in the lawsuit might be resolved.

At this meeting, we agreed upon many foundational principles. We have agreed we are stronger working together than being divided. We have agreed that the community must decide how they wish to be governed, not any one person or the current Council. We have agreed that any process for community engagement on issues relating to governance be thorough and transparent, and give the community the time and information it needs to give informed input.

The parties have agreed that the next step in the process is for the Hereditary Chiefs Council, in collaboration with the families and community to develop a governance proposal for the community to consider. The mandate of the Hereditary Chiefs Council will be to work towards achieving community consensus and support for any proposed governance model culminating in a referendum on a Da'naxda'xw Code of Governance.

The parties agree that leadership from the Hereditary Chiefs Council on this issue reflects our customs, traditions, and culture and provides the best opportunity for voices from all families to be heard.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1282-19

STYLE OF CAUSE: WILLIAM GORDON GLENDALE IN HIS CAPACITY AS CHIEF OF BAND COUNCIL OF THE DA'NAXDA'XW FIRST NATION AND AS A MEMBER OF THE HEREDITARY CHIEFS COUNCIL AND MICHAEL JACOBSON-WESTON AND ANNIE GLENDALE IN THEIR CAPACITY AS COUNCILLORS OF THE DA'NAXDA'XW FIRST NATION v BILL PETERS, NORMAN GLENDALE AND ROBERT DUNCAN

AND DOCKET: T-1725-19

STYLE OF CAUSE: BILL PETERS AND ROBERT DUNCAN, IN THEIR CAPACITY AS MEMBERS OF THE HEREDITARY CHIEFS COUNCIL OF DA'NAXDA'XW FIRST NATION v WILLIAM GORDON GLENDALE, MICHAEL JACOBSON-WESTON, AND ANNIE GLENDALE

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: MARCH 29, 2021, MARCH 30, 2021, MARCH 31, 2021

JUDGMENT AND REASONS: STRICKLAND J.

DATED: APRIL 23, 2021

APPEARANCES:

Jason Harman
Karey Brooks

FOR THE APPLICANTS/RESPONDENTS
WILLIAM GORDON GLENDALE, MICHAEL
JACOBSON-WESTON AND ANNIE GLENDALE

Samuel Bogetti
Dean Dalke

FOR THE RESPONDENTS/APPLICANTS
BILL PETERS AND ROBERT DUNCANT

SOLICITORS OF RECORD:

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