

Federal Court



Cour fédérale

Date: 20210514

Docket: T-1013-20

Citation: 2021 FC 446

BETWEEN:

**SHELLEY GAUTHIER, ROBIN EWASKOW
and TROY WOLF**

Applicants

and

**MERLITA DE GUZMAN (IN HER
CAPACITY AS DIRECTOR OF
OPERATIONS/CHIEF OPERATING
OFFICER OF THE BLUEBERRY RIVER
FIRST NATIONS BAND), THE BAND
COUNCIL OF THE BLUEBERRY RIVER
FIRST NATIONS BAND, MARVIN YAHEY,
SHERRY DOMINIC and WAYNE YAHEY**

Respondents

REASONS FOR JUDGMENT

PHELAN J.

I. Introduction

[1] This decision concerns a First Nations Band's governance structure intractably locked into a systemic and behavioural stalemate that must be unlocked for the well being of the members of the Band.

[2] This proceeding is an application for judicial review of an alleged decision of the Chief Operating Officer [COO] of the Blueberry River First Nations Band [Band/BRFN] and/or the Band Council [Council] to not hold Band Council meetings or alternatively of the failure of the COO and Council a) to make a decision to schedule Band Council meetings with an agenda at least twice monthly; and b) to post a report [2nd Report] under s 188 of the *Blueberry River Custom Election By-law, 2017* [Custom Code] calling for removal of the Chief, as required by s 190 thereof.

[3] The relief sought includes an order to quash an order of mandamus, declaration of entitlement to Band Council meetings, mandatory injunction and related relief all directed to a meeting to consider the 2nd Report calling for the removal of the Chief, Marvin Yahey.

II. History of Proceedings

[4] This judicial review was commenced on August 28, 2020, by another counsel. The individual Respondents (the Yahey Group who are members of the Band Council) had commenced previously an interlocutory injunction application under Court File No. T-648-20 (since discontinued) to stay two Band Council Resolutions [BCRs] directed at removal of the

Chief. The opposing party – the Applicants in the current file – are also members of the Band Council (Gauthier Group). ACJ Gagné rendered her decision on June 29, 2020, in which the BCRs were stayed until the final resolution of that underlying application. In her Reasons, the ACJ sought to bring some focus to the dispute by ordering restraining conduct.

[5] In the June 29 Order, the Chief was ordered to convene a special meeting of the Band Council and to put the first s 188 Report [1st Report] on the agenda. The Court found that the Gauthier Group had failed to abide by the *Custom Code*; that the First Nation members would suffer from the conflict and uncertainty in the power structure; that there were serious allegations made against the Chief in the 1st Report and that it was imperative that a regular meeting of Band Council be held in 30 days. The Court had hoped suggested mediation might assist. That turned out to be an unfulfilled hope.

[6] On July 27, 2020, the ACJ amended the June 29 Order to set a schedule for the hearing of T-648-20, to delay the meeting to deal with the 1st Report and noted that nothing was preventing the convening of regular meetings of Council twice a month. Despite the ACJ's Order, no meetings have been held.

[7] On September 13, 2020, the Gauthier Group brought a motion in writing in this T-1013-20 file for interlocutory relief to require the COO to call a regular Band Council meeting, and that thereafter Band Council meetings be held twice a month. Justice Bell, on October 7, 2020, in dismissing the motion, noted that the Order of the ACJ had not been acted on nor was there any enforcement of that Order.

[8] In T-648-20, the Gauthier Group (Applicants here in T-1013-20) brought a contempt motion. ACJ Gagné dismissed the motion on grounds of mootness. The Court noted that the Gauthier Group did not proceed with the prosecution of T-648-20 and that the Gauthier Group withdrew the 1st Report and filed this judicial review now in T-1013-20. The ACJ noted that because the motion before Justice Bell was in writing, there was not a proper forum to appreciate that not only were the June 29 and July 27 Orders moot but that T-648-20 was directed at a *special* meeting to deal with a s 188 Report whereas T-1013-20 was directed at convening the twice monthly *regular* Band Council meetings.

[9] This somewhat confusing state of affairs came before this Court and both the issues of a special meeting to deal with the 2nd Report and a mandatory injunction to compel the resumption of regular Council meetings were fully argued.

[10] As a result of submissions made by both counsel and given the past experience in these two files, this Court will remain seized of this matter until all issues are resolved or otherwise ordered.

III. Background Facts

[11] The BRFN Band Council consists of five elected Councillors and an elected Chief. Three of the current Councillors are the Applicants (Gauthier Group); the Chief and two other Councillors are the Respondents (Yahey Group). The other Respondents include the COO (Ms. de Guzman) who reports only to the Chief. She has been served with this Application but has

neither filed an Appearance nor participated in this hearing despite the fact that relief is sought directly against her.

[12] Governance of BRFN is, the parties agree, in disarray with each side blaming the other for the current state of affairs. The Band is governed by a fairly extensive *Custom Code*. The major relevant parts are set forth in Schedule A to these Reasons.

[13] The Band is in this state in part because the *Custom Code* calls for a Council of six elected officials (including the Chief) with no provision to deal with a deadlock.

[14] The Band Council is required by s 142 of the *Custom Code* to have at least two (2) regular Council meetings per month to “address the business or affairs of Blueberry River”. No such meetings have been held since April 20, 2020.

Further, s 144 of the *Custom Code* provides that the Chief may summon a special meeting of Council where urgent matters arise. The current state of paralysis is caused by the failure to call either type of Council meeting.

[15] The Applicants initiated a motion to have the COO investigated on allegations of fraud. Grant Thornton was ultimately retained to do so.

[16] On June 9, 2020, the Applicants gave 24-hours’ notice of a special Band Council meeting for June 10, 2020. This meeting was called because the Applicants had received a report and petition [1st Report] – a s 188 Report – from BRFN members to remove the Chief. The

Respondent Councillors did not attend and the Applicants purported to pass a BCR (# 2020-012) removing Chief Yahey from his position.

[17] On June 17, 2020, the Applicants held another purported Council meeting and issued another BCR to remove the COO from her position. Again, the Respondent Councillors did not attend. It was obvious that the Respondent Councillors viewed these meetings and BCRs as unauthorized.

[18] In response, the Respondent Councillors commenced legal proceedings (T-648-20) in which they sought injunctive relief from the two BCRs. As noted earlier, ACJ Gagné granted the injunction on June 29, 2020, holding that the Applicants had no authority to call the meetings, that the meeting lacked a quorum, and that the BCR removing the Chief was contrary to the removal provisions of the *Custom Code*. The Chief or COO were ordered to convene a meeting within 30 days (later extended to 60 days) to address the 1st Report.

[19] The Applicants, on July 27, 2020, withdrew the two BCRs as well as the 1st Report and on the next day, another BRFN member submitted a second s 188 report calling for the removal of the Chief due to loss of confidence [2nd Report]. A petition signed by 217 Band members was attached to the 2nd Report.

[20] The 2nd Report was said to comply with the *Custom Code*.

Council Removal from Office

185. The Chief may be subject to removal from office if:

- (a) they lose the confidence of Blueberry River, as evidenced by a petition that:
 - (i) is signed by at least sixty per-cent (60%) of Blueberry River electors; and
 - (ii) sets out each of those elector's full names, membership numbers, phone numbers and either their mailing or email addresses;

...

Report by Member Regarding Grounds for Disciplinary Action or Eligibility of a Council Member to Hold Office

188. A member of Blueberry River may make a written report either to a Council member or to the chief operating officer if they:

...

- (c) wish to request the removal of a Council member from office due to a loss of confidence in that Council member and they have a petition to submit that meets the criteria set out in section 185 or 186.

Requirements in Written Report Regarding Grounds for Disciplinary Action or Eligibility to Hold Office

189. A report under section 187 or 188 must set out:

- (a) the name of the Council member to whom the allegation or loss of confidence relates;
- (b) either:
 - (i) the specific paragraph in section 184 to which the allegation or loss of confidence relates,
 - (ii) that they wish to seek the removal of that Council member, or
 - (iii) the eligibility criteria under section 41 to which the allegation relates;
- (c) where relevant, a description of the allegation, including the names of any witnesses to the alleged circumstances; and

- (d) where relevant, any supporting documentation such as the original petition signed by electors in accordance with section 185 or 186, respectively.

[21] The Applicants demanded on July 30 that the COO immediately post around the Reserve a redacted copy of the cover page of the 2nd Report and that she contact all the signatories of the petition. The obligations to post and to contact are set forth in s 190 of the *Custom Code*.

Addition of Report to Council Meeting Agenda, Notice of Report as an Agenda Item, and Distribution of Report

190. Where a Council member or the chief operating officer receives a written report under section 187 or 188:

- (a) they must immediately provide a copy of that report to every Council member and to the chief operating officer, as applicable;
- (b) the chief operating officer must immediately after receiving the report:
 - (i) add a review of that report to the agenda for the next Council meeting, and
 - (ii) contact the following people to advise them of the date, time and location of the Council meeting at which the report will be considered:
 - (A) the person who made the report, and
 - (B) where the report is made in relation to a loss of confidence in the Council member, each person whose signature is set out in the petition; and
- (c) the chief operating officer must prepare and post a copy of that report, with the name of the person making the report redacted from it, along with a notice setting out the date, time and location on which the report will be reviewed by Council in a conspicuous place:
 - (i) on the Blueberry River website, and

- (ii) at all public buildings located on a Blueberry River reserve.

[22] The COO responded that she was seeking legal advice with respect to the 2nd Report to which the Applicants replied demanding immediate compliance with the *Custom Code*.

[23] A Band Council meeting was planned for August 18 but the day before the Applicants were informed by the Chief that the meeting was cancelled. It has not been rescheduled.

[24] As a result, the Applicants commenced this judicial review. As noted earlier, Justice Bell denied the R 369 motion for interlocutory injunction to commence regular meetings. That decision does affect this Court in dealing with the merits of the judicial review.

[25] The Applicants then brought a contempt motion in respect of ACJ Gagné's Order, which was scheduled to be heard on November 27, 2020. The COO then called a meeting for a day before the contempt hearing for which the COO set an agenda to deal with legal updates, and which was to be held in camera.

[26] The Applicants complained about the agenda and objected to an in camera meeting. The Chief responded by contending that the agenda complied with the *Custom Code* and that an in camera session was necessary because of the confidential information at issue.

The Applicants maintained their objection and refused to attend the meeting.

[27] On November 27, 2020, ACJ Gagné dismissed the contempt motion on grounds of mootness.

[28] As matters now stand:

- there are no regular Band Council meetings being held or scheduled; and
- the 2nd Report process is in a quagmire due to a dispute over what the COO can or should do.

[29] The issues are:

1. Should the Court order the holding of regular Band Council meetings at least twice monthly until the next election?
2. Should the Court order the COO to proceed with the obligations under s 190 of the *Custom Code* in respect of the 2nd Report and if so, on what terms?

IV. Standard of Review

[30] The Court ought to show some deference in respect of decisions of Indigenous bodies; the issue here, however, is the failure of such body to act. The BRFN has its *Custom Code* and it must be respected and enforced.

[31] This judicial review does not seek to review a decision but to issue a mandatory order. The legal requirement for such an order is set forth in *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 66, as the establishment of a legal right, the inadequacy of damages and the appropriate exercise of the Court's discretion.

[32] I concur with the parties that the Court has jurisdiction in this matter. The *Custom Code* came into effect as a result of Ministerial Order pursuant to s 74(1) of the *Indian Act*, RSC 1985, c I-5. Each of the Chief, Council and the COO exercise powers conferred by federal law and each in their respective capacities are “a federal board, commission or other tribunal”.

V. Analysis

A. *Regular Meetings*

[33] The Applicants request a permanent mandatory injunction requiring twice-monthly regular Council meetings. They have framed the issue as if it is their right to such meetings. It is more appropriate to consider the right as belonging to the members of the Band but imposing an obligation on the Applicants in their capacity as Councillors to not frustrate the calling of meetings and so attend at such meetings. Section 142 could hardly be clearer.

Subsequent Meetings of Council

142. After the first meeting of Council, regularly scheduled Council meetings must take place

- (a) at least two (2) times per month and as often as is necessary for Council to address the business or affairs of Blueberry River; and
- (b) on dates, at times, and in locations set by Council

[34] ACJ Gagné’s June 29, 2020 Order in T-648-20 was to the same effect – that there is a clear requirement to hold twice monthly regular Council meetings and such a meeting was ordered at which all six Councillors were to be present.

[35] The Respondents do not seriously challenge, nor could they, this requirement. However, the Respondents argue that given the conduct of the Applicants, they have disintitled themselves to the right to require a meeting (the “clean hands argument”). The clean hands argument is effectively an argument that the Court ought not to exercise its discretion to order such regular meetings.

[36] To the extent relevant, the parties agree, as do I, that damages are not an effective remedy.

[37] With respect to the Respondents’ clean hands argument, there are two points I consider relevant. Firstly, the right to the regular meetings is a right accruing to each Band member and no Band member’s conduct can disintitle the other members to the benefit of such meetings, nor can such conduct alter the *Custom Code* provision.

The second point is that while certain conduct of the Applicants – refusal to attend meetings, conducting parallel meetings without a quorum, passing unauthorized BCRs – was wrongheaded (admittedly so by the Applicants) and potentially contrary to their obligations as Councillors, it is explainable and not sufficient for me to refrain from ordering the calling of such meetings. It is conduct which cannot be repeated without consequences.

[38] My view of this aspect of the litigation is reinforced by the Saskatchewan Court of Queen’s Bench decision in *Métis Nation - Saskatchewan v Provincial Métis Council of the Métis Nation Legislative Assembly*, 2014 SKQB 421. In that decision, on facts similar to this present matter, that Court concluded that the Assembly’s failure to hold meetings resulted in a “delay or

denial of the opportunity to exercise rights of democratic decision-making process” and should be remedied by mandatory injunctive relief.

[39] There is little to be gained in rehashing competing accusations on this issue. I accept the concern of Respondents’ counsel that Band business is being held up, budgetary matters not being attended to, and unresolved issues accumulating. I accept the concerns because they are made by an officer of the Court and because they are consistent with this Court’s experience in such matters.

[40] The critical issue is to put those regular meetings on track in accordance with the *Custom Code*. The Court will not assume that the competing parties will behave badly, ignore their responsibilities to the Band or engage in chicanery to frustrate the requirement for such meetings. The obligation to have these meetings and the order to do so may have been ignored or frustrated in the past. Compliance with Court orders is not optional and this Court remains seized of the matter.

[41] Toward this end, the Court will grant the Applicants’ relief and on terms with which the parties are to comply.

[42] A major point of contention has been the s 188 Report but that matter is to be dealt with separately from the resumption of regular Council meetings.

B. *Section 188 Report*

[43] At the heart of this issue is the COO's alleged failure to follow the *Custom Code* in response to the 2nd Report. The Applicants seek relief against the COO directly in part because she has not "immediately" posted notice of the Report. There is evidence that the COO wishes to obtain independent legal advice before proceeding further.

[44] The Respondents contend that the Applicants are not entitled to relief because the COO has not made a "determination" that 60% of the Blueberry River electors have signed a petition which calls for the removal of the Chief due to a loss of confidence.

The Respondents also raise the same type of clean hands argument raised with respect to the regular general meetings' issue.

[45] The Court has dealt with the clean hands argument previously. To that conclusion of inapplicability can be added that whatever the issues may be in respect of the 1st Report, it was withdrawn and corrected by the filing of the 2nd Report.

[46] Importantly, the Respondents add a characterization of "determination" (as if a quasi-judicial decision) to the function of the COO under sections 185 and 190 which the provisions do not support. The function of the COO is administrative and where the criteria is *prima facie* met, the process is to proceed. Issues of whether the signatories still support the petition – the Respondent suggests that some have withdrawn support – are to be dealt with subsequently, as provided in the *Custom Code*.

[47] It is clear that the COO has certain statutory responsibilities with respect to s 188 reports, including tabulating the signatories pursuant to s 185(a). The dispute between the parties has largely prevented the COO from carrying out her duties. It is hardly surprising that she may wish the advice of independent counsel to assist her through this process, paid for by the Band which is addressed in the Judgment.

[48] In my view, it is essential for the Band that this 2nd Report be dealt with promptly. Therefore, the Court will make an order directed to the COO to carry out her functions under s 190 of the *Custom Code* and a general Council meeting is to be called to deal exclusively with this s 188 Report.

VI. Conclusion

[49] For the reasons given, the application is granted in part and on terms set by the Court.

[50] There is both a mixed result and sufficient blame on both sides that no award of costs may be made.

[51] The Court remains seized and available with respect to implementing its Judgment.

"Michael L. Phelan"

Judge

Ottawa, Ontario
May 14, 2021

SCHEDULE A

Blueberry River Custom Election By-law, 2017

Duties of the Chief

19. Duties and responsibilities of the Chief shall include, without limitation, the following:

- (a) to act in the best interests of Blueberry River honestly, impartially and in good faith;
- (b) to communicate with the Blueberry River members including members of each Family Group;
- (c) to be accountable to Blueberry River members who are resident on Reserve and off Reserve and to conduct Council business in an open and transparent manner;
- (d) to avoid a conflict of interest or the appearance of a conflict of interest and to avoid being involved in any transaction or business matter where the Chief is in a conflict of interest or appears to be in a conflict of interest;
- (e) to avoid use of any property or assets owned by Blueberry River for personal use or for operation of the Chief's own business, to avoid purchasing property or assets owned by Blueberry River unless such use or purchases are equally available to all on and off Reserve Blueberry River members and the use or purchase is authorized by a quorum of Family Councillors;
- (f) to demonstrate leadership with a focus on the Blueberry River community, the needs of future generations and fulfilling the vision statement in this By-law;
- (g) to act as a team leader for all negotiations;
- (h) to respect confidentiality in Blueberry River business and negotiation meetings;
- (i) to be a liaison with Blueberry River Elders; and
- (j) to be spokesperson for Council when consulting with government, industry, first nations organizations, media and the general public.

...

Eligibility to be a Candidate / Member of Council

41. To be eligible for nomination as a candidate, and to be eligible to act as a Council member, a person must:

- (a) be an elector;
- (b) in the case of a nomination for Family Councillor, be listed as a member of the Family Group eligible to nominate that Family Councillor on the elector's list;
- (c) not have been convicted of an indictable criminal offence before the date of the nomination meeting or during the Council member's term in office, unless:
 - (i) they have been granted a pardon in relation to that conviction, or
 - (ii) the conviction is directly related to the exercise of that person's Aboriginal rights;
- (d) not have been removed from a position on Council within the five (5) years prior to the date of the nomination meeting;
- (e) not be bankrupt, as that term is defined in the Bankruptcy and Insolvency Act, on the date of the nomination meeting or during the Council member's term in office;
- (f) if it is a by-election, not be the person who resigns or is removed from their position on Council, prompting the holding of the by-election;
- (g) not have a civil court judgment against them or a criminal conviction in respect of any matter involving theft, fraud or misuse of property either:
 - (i) within the five (5) years before the date of the nomination meeting, or
 - (ii) during the Council member's term in office;
- (h) not be in arrears for any debt to Blueberry River or a Blueberry River business entity, unless:
 - (i) they have a debt repayment agreement that is entered into at least six (6) months before election day, and
 - (ii) they are in good standing in relation to their debt repayment agreement; and
- (i) if the candidate is employed with Blueberry River or a Blueberry River business entity, they must agree at the time of nomination to either take an

unpaid leave of absence or resign from that employment immediately after being sworn in to office.

Requirement to Resign from Blueberry River or Blueberry River Business Entity Employment if Elected

42. Where an employee of either Blueberry River or a Blueberry River business entity is declared elected they must either take an unpaid leave of absence or resign from their position as an employee, effective on the date they take office as a Council member and continuing for the duration of that term in office.

...

Subsequent Meetings of Council

142. After the first meeting of Council, regularly scheduled Council meetings must take place

- (a) at least two (2) times per month and as often as is necessary for Council to address the business or affairs of Blueberry River; and
- (b) on dates, at times, and in locations set by Council.

Notice of Council Meetings

143. The chief operating officer must provide members with at least five (5) business days notice of all regularly scheduled Council meetings by posting the dates, times and locations of each Council meeting in a conspicuous place on the Blueberry River website and at all public buildings located on a Blueberry River reserve where members may attend to access Blueberry River programs or services.

Special Meeting of Council

144. (1) Where urgent matters arise in the business or affairs of Blueberry River, the Chief may summon a special meeting of Council by providing each Council member at least twenty-four (24) hours written notice of the date, time and location of that special meeting of Council, and a summary of the urgent matter that will be discussed.

(2) A notice under subsection (1) must be delivered by the Chief to each Council member either at an email address or at a texting phone number that is provided by each Council member for such purpose.

...

Council Meeting Agendas

152. For every agenda for a Council meeting, the order of business must be as follows:

- (a) reading and adoption of the agenda;
- (b) reading and adoption of previous Council meeting minutes;
- (c) unfinished business;
- (d) presentation and reading of correspondence and petitions;
- (e) presentation and consideration of reports of committees;
- (f) new business; and
- (g) adjournment.

Motions at Council Meetings

153. Any Council member may make or second a motion at a Council meeting and every motion at a Council meeting must be made and seconded before it is decided.

...

Council Meeting Minutes

157. The Council chairperson is responsible for delegating someone to take minutes at Council meetings and the chief operating officer is responsible for maintaining copies of all Council meeting minutes.

158. The minutes of a Council meeting must:

- (a) provide a summary, not verbatim transcripts, of Council discussions;
- (b) reflect that Council deliberated before making a decision, which might include documentation of a brief summary of the options considered, or pros and cons raised; and
- (c) identify any motions made, and the outcome of any votes taken or consensus reached, but not identify how the vote was split in a majority decision, or how individual Council members voted, unless a Council member asks that their vote go on record in which case that person's vote must be documented.

Storage of, and Access to, Council Meeting Minutes

159. The chief operating officer must store all Council meeting minutes in a secure area or computer system.

160. Upon request to the chief operating officer, the chief operating officer must provide Blueberry River members' access to Council meeting minutes.

In Camera Sessions at Council Meetings

161. For the purposes of this section, "in camera" means the part of a Council meeting that is held in private and closed to Council members who are in a conflict of interest with regard to the topic of discussion.

162. Council may approve a motion to order that a portion of, or whole, Council meeting be held in camera if Council is satisfied that either:

- (a) the order is necessary to address a conflict of interest of a Council member;
- (b) the order is necessary to maintain the confidentiality of information relating to human resources, including Council's oversight of the chief operating officer's employee performance;
- (c) the order is necessary to allow for independent auditors to present audit results to Council without interference from the Blueberry River administration or members;
- (d) the order is necessary to protect the confidentiality of information relating to a civil or criminal proceeding, or information that is subject to solicitor-client privilege; or
- (e) the order is necessary for the safety of a person.

...

Council Removal from Office

185. The Chief may be subject to removal from office if:

- (a) they lose the confidence of Blueberry River, as evidenced by a petition that:
 - (i) is signed by at least sixty per-cent (60%) of Blueberry River electors; and
 - (ii) sets out each of those elector's full names, membership numbers, phone numbers and either their mailing or email addresses;

- (b) a Council member submits a report in accordance with section 187 alleging that the Chief:
 - (i) has become ineligible under section 41; or
 - (ii) has engaged in conduct listed in section 184; or
- (c) a member of Blueberry River submits a report under section 188 alleging that the Chief:
 - (i) has become ineligible under section 41; or
 - (ii) has engaged in conduct listed in section 184.

...

Report by Member Regarding Grounds for Disciplinary Action or Eligibility of a Council Member to Hold Office

188. A member of Blueberry River may make a written report either to a Council member or to the chief operating officer if they:

- (a) have reason to believe a Council member participated in conduct that is subject to disciplinary action as set out in section 184;
- (b) have reason to believe the Council member is no longer eligible to hold office under section 41; or
- (c) wish to request the removal of a Council member from office due to a loss of confidence in that Council member and they have a petition to submit that meets the criteria set out in section 185 or 186.

...

Addition of Report to Council Meeting Agenda, Notice of Report as an Agenda Item, and Distribution of Report

190. Where a Council member or the chief operating officer receives a written report under section 187 or 188:

- (a) they must immediately provide a copy of that report to every Council member and to the chief operating officer, as applicable;
- (b) the chief operating officer must immediately after receiving the report:
 - (i) add a review of that report to the agenda for the next Council meeting, and

- (ii) contact the following people to advise them of the date, time and location of the Council meeting at which the report will be considered:
 - (A) the person who made the report, and
 - (B) where the report is made in relation to a loss of confidence in the Council member, each person whose signature is set out in the petition; and
- (c) the chief operating officer must prepare and post a copy of that report, with the name of the person making the report redacted from it, along with a notice setting out the date, time and location on which the report will be reviewed by Council in a conspicuous place:
 - (i) on the Blueberry River website, and
 - (ii) at all public buildings located on a Blueberry River reserve.

Duty of Petitioners to Be Available for Council Meeting

191. Each person whose name is set out on a petition regarding their loss of confidence in a Council member must:

- (a) make themselves available either in person or by other telephonic or electronic means on the date and at the time of the Council meeting at which the report will be heard, to confirm their signatures, and that they seek the removal of the Council member from office; and
- (b) advise the chief operating officer of the best manner in which they may be contacted during the Council meeting at which the report will be heard.

Review of Report at Council Meeting

192. At the next duly convened Council meeting following the distribution of a report under section 190:

- (a) Council must review the report;
- (b) where the report relates to a loss of confidence in a Family Councillor, Council must send a copy of the report to each member of the Family Group represented by the Family Councillor at the mailing address or email address listed by their name on the electors' list;
- (c) where the report relates to a loss of confidence in a Council member, Council must contact each person who signed the petition in the manner specified by them under section 191, to confirm their signatures, and that they seek the removal of the Council member from office; and

- (d) where the report relates to any other allegation or to a Council member's eligibility to hold office, the Council member who is the subject of the report must:
 - (i) provide his or her perspective on the allegation or eligibility criteria; and
 - (ii) either:
 - (A) admit in full to the facts set out in the report,
 - (B) admit to some of the facts set out in the report, specifying which facts are admitted and which facts are denied, or
 - (C) deny the allegations in the report.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1013-20

STYLE OF CAUSE: SHELLEY GAUTHIER, ROBIN EWASKOW and TROY WOLF v MERLITA DE GUZMAN (IN HER CAPACITY AS DIRECTOR OF OPERATIONS/CHIEF OPERATING OFFICER OF THE BLUEBERRY RIVER FIRST NATIONS BAND), THE BAND COUNCIL OF THE BLUEBERRY RIVER FIRST NATIONS BAND, MARVIN YAHEY, SHERRY DOMINIC and WAYNE YAHEY

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 14, 2021

REASONS FOR JUDGMENT: PHELAN J.

DATED: MAY 14, 2021

APPEARANCES:

Oliver Pulleyblank

FOR THE APPLICANTS

Mark Underhill
Caroline North

FOR THE RESPONDENTS
MARVIN YAHEY, SHERRY DOMINIC and
WAYNE YAHEY

SOLICITORS OF RECORD:

Thomas Arbogast
Barrister and Solicitor
Vancouver, British Columbia

FOR THE APPLICANTS

Pulleyblank Law
Barristers and Solicitors
Vancouver, British Columbia

Arvay Finlay LLP
Barristers and Solicitors
Vancouver, British Columbia

FOR THE RESPONDENTS
MARVIN YAHEY, SHERRY DOMINIC and
WAYNE YAHEY