

Federal Court



Cour fédérale

Date: 20160210

Docket: T-242-16

Ottawa, Ontario, February 10, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

**PEGUIS FIRST NATION AS REPRESENTED
BY CHIEF CYNTHIA SPENCE AND
COUNCILLOR GLENNIS SUTHERLAND**

Applicants

and

**COUNCILLOR MARY TYLER BEAR,
COUNCILLOR DARLENE BIRD AND
COUNCILLOR WADE SUTHERLAND**

Respondents

ORDER

UPON motion on behalf of the Applicants for: 1) an order pursuant to Rule 8 of the *Federal Court Rules* abridging the time for the hearing of this motion; 2) an interim order staying any further action under BCR FY 2015/16-91 and any other postponement of the election of a Community Fund Trustee scheduled for February 11, 2016, until the final disposition of the application for judicial review and any appeals therefrom; and, 3) an interim order directing the Electoral Officer to proceed with the election scheduled for February 11, 2016;

AND UPON considering that the Applicants have made the following proposal, namely that: 1) the election proceed as scheduled on February 11, 2016; 2) that the Electoral Officer will not count the ballots and will simply hold all ballots that have been cast, either in-person or by mail, until such time as the judicial review application can be heard and determined on an expedited basis; 3) if the judicial review application is allowed, then the Electoral Officer will count the ballots and a declaration will be made regarding the election results; and, 4) if the judicial review application is denied, then the Electoral Officer will destroy the ballots and the election will be of no effect;

AND UPON considering that the parties have consented to the application for judicial review being case-managed and for the matter to proceed on an expedited basis;

AND UPON considering that in order to obtain the requested stay and injunctive relief, the Applicants must meet the tripartite test articulated by the Supreme Court of Canada in *Manitoba (Attorney General) v Metropolitan Stores (MTS) Ltd*, [1987] 1 SCR 110, 38 DLR (4th) 321 and *RJR-MacDonald v Canada (Attorney General)*, [1994] 1 SCR 31 1, 111 DLR (4th) 385, which requires the Applicants to demonstrate that: (a) there is a serious issue to be tried; (b) that they would suffer irreparable harm if no order were granted; and (c) that the balance of convenience favours the granting of the order;

AND UPON reading the material filed with the Court and hearing the oral submissions of the Applicants and the Respondents by teleconference on this date;

AND UPON noting that the threshold is low for finding a serious issue in this context, specifically the underlying application for judicial review must be neither frivolous nor vexatious;

AND UPON finding that the Applicants have established that there is a serious issue to be decided in this case, namely the validity of a band council resolution [BCR- 91] to postpone the election of a Community Fund Trustee scheduled for February 11, 2016;

AND UPON considering that mail-in ballots have already been distributed and received by the Electoral Officer and that the process for the election has already commenced, and that postponing the election would risk undermining the integrity of the Chief and Band Council and the electoral process, the Applicants would suffer irreparable harm if the orders requested are not granted;

AND UPON concluding that the balance of convenience favours the granting of the orders based on the terms proposed by the Applicants. In the event that the application for judicial review is granted, the ballots will be preserved and in the case that it is refused, they will be destroyed.

THIS COURT ORDERS that:

1. The Applicants' motion is granted;

2. The time for the hearing of this motion has been abridged pursuant to Rule 8 of the *Federal Courts Rules*;
3. Any further action under BCR FY 2015/16-91 and any other postponement of the election of a Community fund Trustee scheduled for February 11, 2016 is hereby stayed;
4. The Electoral Officer is directed to proceed with the election scheduled for February 11, 2016;
5. The Electoral Officer is directed to communicate the outcome of this order to all Peguis First Nations members on the communication platforms available to him upon its receipt;
6. The Electoral Officer will not count the ballots and will simply hold all ballots that have been cast, either in-person or by mail, until such time as the judicial review application can be heard and determined on an expedited basis;
7. If the judicial review application is allowed, then the Electoral Officer will count the ballots and a declaration will be made regarding the election results; and,
8. If the judicial review application is denied, then the Electoral Officer will destroy the ballots and the election will be of no effect;
9. Costs to be determined at the hearing of the judicial review application.

"Sylvie E. Roussel"

Judge