

Federal Court



Cour fédérale

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TO / DESTINATAIRE(S) :

1. Name / Nom : Robert A. Watchman and Karen R. Poetker

Address / Adresse : Pitblado LLP, Winnipeg

Facsimile / Télécopieur : (204)957-0227

Telephone / Téléphone :

2. Name / Nom : James Beddome, Markus Buchart and Jessica Barlow

Address / Adresse : P. Michael Jerch Law Corporation, Winnipeg

Facsimile / Télécopieur : (204)774-8349

Telephone / Téléphone :

3. Name / Nom :

Address / Adresse :

Facsimile / Télécopieur :

Telephone / Téléphone :

**FROM / EXPÉDITEUR : Bob Lemoine
Registry Officer**

Telephone / Téléphone : (613)992-4238

Facsimile / Télécopieur : (613)952-3653

DATE : October 26, 2016

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Nombre de pages (incluant cette page) : 24**

SUBJECT / OBJET :

Court File No. : T-242-16

**Between: Cynthia Spence In her capacity as Chief of Peguis First Nation et al v.
Mary Tyler Bear and others**

Enclosed is a true copy of the Judgment and Reasons of Madam Justice McVeigh

Dated: October 26, 2016

COMMENTS / REMARQUES :

**If you require a certified copy of the above-noted decision, please advise and one
will be forwarded to you by regular mail**

Federal Court



Cour fédérale

Date: 20161026**Docket: T-242-16****Citation: 2016 FC 1191****Ottawa, Ontario, October 26, 2016****PRESENT: The Honourable Madam Justice McVeigh****BETWEEN:**

**CYNTHIA SPENCE in her capacity as CHIEF
OF PEGUIS FIRST NATION and GLENNIS
SUTHERLAND in her capacity as
COUNCILLOR OF PEGUIS FIRST NATION**

Applicants**And**

**MARY TYLER BEAR, DARLENE BIRD and
WADE SUTHERLAND, each in their capacity
as COUNCILLORS OF PEGUIS FIRST
NATION**

Respondents**JUDGMENT AND REASONS****I. Introduction**

[1] This is an application for judicial review of Peguis First Nation Band Council Resolution 91 FY 2015/16-91 [the election resolution]. The Application was brought by Chief Cynthia

Spence and Councillor Glennis Sutherland [the Applicants] against Councillors Mary Tyler Bear, Darlene Bird, and Wade Sutherland [the Respondents]. The Respondents signed the election resolution on February 5, 2016, which attempted to postpone trustee elections of February 11, 2016 [the election]. As a result of an injunction application, the election proceeded as scheduled but the votes were not counted.

[2] The Applicants originally had asked that a second decision regarding the elimination of the Peguis School board dated June 10, 2016 be reviewed. Pursuant to *Federal Courts Rules*, SOR/98-106, Rule 302 [the *FCR*], only the decision regarding the election of the trustees was reviewed.

[3] There was no compliance with Rule 317 of the *FCR* so there was no Certified Tribunal Record [CTR] before the Court. However, the material that was before the Respondents as decision makers was provided to me in materials filed by the parties. Arguments contained in affidavit material filed by the parties and any material that was not before the Respondents at the time of their decision has not been considered.

II. Preliminary

[4] The style of cause has been amended by agreement of the parties to reflect their proper capacities.

III. Background

[5] The Peguis First Nation is the largest First Nation in Manitoba, with a population of approximately 10,000 members spread across nine reserves. The members of Peguis First Nation are of Saulteaux (Anishinaabe) and Cree descent. They are a Treaty 1 First Nation which was signed in 1871. In 1907, Canada signed but did not honour terms for the surrender of land by the Peguis First Nation. This breach led to the October 2010 Surrender Claims Trust Agreement [SCTA] between the government of Canada and the Peguis First Nation. The sum of the settlement proceeds totaled more than \$126,000,000.00.

[6] The SCTA was established to receive, invest, manage and administer settlement proceeds from the government of Canada. The SCTA requires five community fund trustees, all of whom must be elected, and seven financial trustees, five of whom must be elected and two appointed by Council. The SCTA sets out all eligibility requirements including a requirement that at least three of the community trustees and four of the financial trustees ordinarily reside on reserve.

[7] In March 2015, Cynthia Spence was elected Chief of the Peguis First Nation and the Councillors named as both Respondents and Applicants were elected. At the time of their election, there were only three community trustees (two short of the required number) and four financial trustees (three short of the required number).

[8] In October 2015, a trust nominating committee was formed for the purposes of soliciting applications to fill the SCTA trustee vacancies. In November 2015, Council unanimously passed a resolution calling for trustee elections and appointed a person to act as electoral officer.

[9] On November 13, 2015, the nominating committee advised the Chief and Council that there was a lack of eligible candidates necessary to fill the trustee vacancies. After two calls and twenty applicants, only one was deemed eligible to stand for election under the SCTA. The SCTA does not address how or whether a trustee may be acclaimed. Following SCTA procedure, a trustee election date was scheduled for February 11, 2016.

[10] On January 29, 2016, the Respondents requested that the election be postponed until a later date. Chief and Council sought a legal opinion on their ability to postpone elections after they received the list from the nominating committee. On January 22, 2016, a lawyer advised Chief and Council in writing that the SCTA did not contemplate a postponement of elections. Solicitor-client privilege attached to the opinion was waived as the material was provided to the Court and reproduced in public documents.

[11] Due to band member concerns, the Respondents sought a meeting to deal with the postponement of the election. The Chief put the matter on the agenda for the next general meeting that was held February 4, 2016. A discussion was held at that meeting regarding the election as reflected in the minutes. After discussion, the Chief took the election resolution for legal advice and set the matter over to the next meeting on February 8, 2016.

[12] On February 5, 2016, the Respondents held a meeting and passed the election resolution postponing trustee elections indefinitely; it was the only business conducted at that meeting (see Appendix A). In the minutes, it resolved that the election scheduled for February 11, 2016, be “modified to ensure that more than one name appears for each vacancy on the list for members to choose from.” It postponed the election until a “list” of candidates could be produced as required in section 9.7 of the SCTA (see Appendix B).

[13] At the regularly scheduled meeting on February 8, 2016, the Chief and Councillor Glennis Sutherland tried to convince the two other Councillors present to stop trying to postpone the election. The Councillors refused and proceeded with implementing the election resolution.

[14] An injunction motion resulted in an order by Madam Justice Roussel dated February 10, 2016, that ordered the election to proceed on February 11, 2016. The electoral officer was directed to not count the ballots but to hold them until this judicial review could be heard. According to this order, if the judicial review is allowed then ballots are to be counted and a declaration made regarding the results.

IV. Issue

[15] The issue that I must determine is whether the Council meeting – special or otherwise – of February 5, 2016, was duly convened?

V. Standard of Review

[16] The Applicants submit that aboriginal governance issues should be reviewed on a standard of correctness (*Gamblin v Norway House Cree Nation Band Council*, 2012 FC 1536 at para 27).

[17] This matter is a mix of procedural fairness and interpretation of governance issues. I must interpret the procedural rules of governance that Council and Chief must follow on a correctness standard to which no deference is owed (*Laboucan v Little Red River Cree Nation No 447*, 2010 FC 722 at paras 20-21 (appeal to FCA dismissed) citing *Martselos v Salt River Nation #195*, 2008 FCA 221 at paras 28-32).

VI. The Law

[18] To better understand the matter before me we must look at the pertinent sections of the SCTA as well as the *Indian Act*, RSC 1985, c I-5 [the *Indian Act*] and the *Indian Band Council Procedure Regulations*, CRC c-950 [the *Procedure Regulations*]. The applicable sections are set out below and in appendixes.

[19] According to the *Indian Act*, paragraph 2(3)(b), unless the context otherwise requires or the Act otherwise provides:

...

b) a power conferred upon the Council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the Councillors present at a meeting of the Council duly convened.

[20] For a meeting – special or otherwise – to be duly convened, notice must be given to each member of Council including the day, hour, and place of the meeting (*Procedure Regulations* 3(1), 4 and 5) (see Appendix C).

[21] Under section 31 of the *Procedure Regulations*, Council may create their own procedures which are not inconsistent with those *Procedure Regulations*. In particular, section 15 of the Council Procedures requires notice from the Peguis Chief Operating Officer of the day, hour and place of a duly convened meeting. Section 16 of the Council Procedures requires public notice on the Peguis Mall Bulletin Board at least 24 hours in advance of any special meeting (see Appendix C & D).

[22] To have a duly convened meeting the Chief and Councillors must have notice. This is to ensure that a group of Councillors cannot exclude others to ensure their interests are met (*Balfour v Norway House Cree Nation*, 2006 FC 213 at paras 49 and 52).

[23] Paragraph 9.7(b) of the SCTA directs the nominating committee to provide Council with a list of the names of not more than three nominated applicants for each of the vacancies for Community Fund Trustees and Financial Trustees positions (see Appendix B).

[24] The SCTA at paragraph 9.7(d) indicates that within 30 days after the receipt of the list from the nominating committee, that council **shall** post the list of potential candidates and conduct a vote by the members (see Appendix B).

VII. Analysis

[25] A voluminous record was submitted along with conflicting evidence on several issues. It is often difficult to unravel all of the events and sort out what is required on judicial review. For reasons already described in the introduction, the election resolution is the only issue currently under review.

[26] Unlike many matters that come before the Federal Court, each party in this case were doing what they thought was best for the Peguis First Nation they were elected to represent. However, there continues to be vacant trustee positions and therefore neither party is truly successful. The cost of an election has already been incurred and the votes are ready to be counted or destroyed depending on my decision.

[27] I have decided to grant the application, allow the votes to be counted and the results of the election to be determined. My reasons for granting this application are as follows.

[28] The Applicants argue that the meeting on February 5, 2016 was not duly convened as required by paragraph 2(3)(b) of the *Indian Act* (see paragraph 19 above). The Applicants characterize the meeting as an attempt to usurp Council and attack Chief Spence. They submit that if the Respondents were unhappy with the slate of trustee candidates that instead of proceeding as they did the Respondents could have brought a mandamus application to postpone elections or brought an application to judicially review any of the nominating committee's decisions.

[29] The Applicants submit that a requirement of a **duly convened meeting** is advance notice to all members of Council. Since no notice was given to either the Chief or Councillor Glennis Sutherland of the meeting, it was not duly convened. Therefore, any resolution passed at this meeting is null and void (*Prince v Sucker Creek First Nation #150A*, 2008 FC 1268 at para 38 (FCA appeal dismissed); *Orr v Fort McKay First Nation*, 2011 FC 37 at paras 2 and 4).

[30] To bolster their position, the Applicants put forward that even if the Respondents characterize the February 5 meeting as a special meeting of Council, it would have to be done in accordance with section 4 of the *Procedure Regulations*. This section states that only the Chief of the Band (or the Superintendent of Indian Affairs) may summon a special meeting of Council when requested to do so by a majority of the members of Council. Since neither the Chief nor the Superintendent of Indian Affairs called the meeting, it could not be a special meeting (see Appendix C).

[31] On the issue of a duly convened meeting, advance notice to Chief Spence is of central importance. The Respondents say the meeting required urgency as the election was scheduled for six days later and the Chief had not called a special meeting. I do not doubt there was urgency but there was already a meeting regularly scheduled for February 8, 2016 that included the election resolution on the agenda. The election resolution was put over from the February 4 meeting so the Chief could seek further legal advice. The minutes of the Regular General Council Meeting held February 4 show that the election resolution was mentioned as follows:

4. Letter from Councillors Wade, Darlene and Tyler regarding Trustees Election

a. Councillor Bird began discussion on this issue with Chief and other Council members

b. BCR # 91 (AANDC) and BCR # 22 (IN HOUSE) were presented to Chief Spence

*** Chief and Council had a discussion on the Trustee Election and BCRs – recorder absent she was directed by Chief Spence to do BCR 93 Regional Health Survey for review and signing today (left for about 45 mins to hour and returned at 11:16 a.m.)*

UPDATE: After returning to meeting Councillor Bird stated that Chief Spence has the two BCRs # 22-IN HOUSE and # 92-AANDC and is seeking legal advice and will discuss on Monday, February 8, 2016 with Council members.

...

6. Letter re SCT Eligibility Criteria Review and Followed by authorization to proceed for a SCT vote to fulfill vacancies and seek name for alternatives – *ON HOLD until Council meets again on Monday, February 8, 2016 in Peguis as per Chief Spence*

[Emphasis in original]

[32] There appears to be a typo in the minutes as the update says BCR 92 (AANDC) and not 91. The fact that the minutes should read BCR 91 and not BCR 92 is strengthened by the fact that in the minutes BCR 92 (PCH) was already signed off at the meeting: “BCR 92 PCH Project – Elva McCorrister; a. Presented and Signed by Chief and Council present” (Regular Council Meeting, Thursday, February 4, 2016).

[33] The Respondents all filed affidavits saying the Chief after the February 4 general meeting, took the physical copy of the election resolution to seek further legal advice or they would have signed it at that meeting. From the minutes of the meeting the minutes show there was no motion and the election resolution was not passed. As a result, the Respondents had another election resolution printed at the February 5 meeting so they could sign it.

[34] I conclude on the evidence before me that notice was not given to all the members of Council for the February 5 meeting. Nor did the Chief call any special meetings in accordance with section 4 of the *Procedure Regulations*.

[35] To make this determination, I rely on both the affidavit of Glennis Sutherland and the transcript of the February 10 hearing before Madam Justice Roussel which reads:

THE COURT: But did you give Notice of the meeting on February 5th I understand that you emailed the [election resolution]. But did you give notice to the Chief that you were going to be holding a meeting on the 5th to discuss the [election resolution] and to sign the [election resolution].

COUNCILLOR BIRD: No we did not.

[36] By coincidence Councillor Glennis Sutherland was at the band office on February 5 and was invited to join but declined as it was not a duly convened meeting. It is noted that the Chief only votes if there is a tie and even if Councillor Glennis Sutherland had attended the meeting and voted against the election resolution, the majority still would have carried. With this in mind there was absolutely no justification for the Respondents having a meeting without proper notice as it appears that the majority would have carried the vote at a duly convened meeting. The rules of notice, quorum, and recording of meetings must be respected by all members of Council as well as the Chief.

[37] Justice Rothstein in *Long Lake Cree Nation v Canada (Minister of Indian and Northern Affairs)*, [1995] FCJ No 1020, understood that conflicts often arise on Band Councils which can become personal. These conflicts can be between individuals or groups on Council. He states (at paragraph 31) that “[t]he people entrust the Councillors to make decisions on their behalf and

Councillors must carry out their responsibilities in a way that has regard for the people whose interest they have been elected to protect and represent.” In the same paragraph, he says that Councillors must operate according to the written law, customary law, the *Indian Act* or whatever law is applicable and cannot take matters into their own hands. It is for the protection of the band members and not the protection of the Chief and Council that following the rule of law is sacred.

[38] I understand the Respondents thought they were carrying out the will of the people they represent. However, by proceeding behind the Chief’s back they weakened the democratic process and band members’ trust in them. It would have been prudent and wise for the Councillors to have waited until February 8 instead of the ill-conceived meeting of February 5.

[39] On these facts, the Respondents – with the best of intentions – did not follow the rule of law. This does not mean that the laws, in this case the STCA, may need amendments to address some situations not covered in the current STCA. However, the fact remains that the law that was before them was not followed as the meeting was not a duly convened meeting.

[40] The Respondents argue that the Chief breached a number of rules leading up to the February 5 meeting. Therefore, the Court should take into consideration that she does not appear with clean hands. Without making a finding as to whether the Chief breached procedural fairness prior to the February 5 meeting, I will restate what I have just said. Namely, that in positions of trust, all members of Council as well as the Chief must follow the rules, band council guidelines

(both written and customary) and statutory laws so that the membership can see that their trust is well placed in the individuals elected to these positions.

[41] These positions must be held with honour while avoiding personal conflicts which could influence their role as Chief or Councillor. Decisions – no matter how well intended – cannot be made without an adherence to the rule of law. It is the principle of the matter on these facts and as Justice Rothstein stated, the rule of law must be followed.

[42] I found that the determinative issue was whether there was a duly convened meeting at which the election resolution was passed that purported to adjourn the election for the vacant trustee positions of the SCTA. The parties presented other issues that are not determinative though I will comment briefly on some of them.

VIII. Other Issues

A. *Council's power to postpone a SCTA election past the 30 days once the list is provided by the Trustee Nominating Committee*

[43] The Applicants rely on a legal opinion provided to Council to argue that it is outside Council's jurisdiction to postpone elections. The legal opinion, dated January 22, 2016, was asked for and provided to Chief and Council after the nominating committee had already provided their list pursuant to paragraph 9.7(d). This opinion said that the SCTA does not contemplate postponing elections. However, postponing elections is not explicitly prohibited either (see Appendix B)

[44] The SCTA states in subsections 9.1 and 9.2 that “there shall at all times be” five community fund trustees and seven financial trustees. The language under paragraph 9.7(d) is mandatory as it states that within 30 days after the receipt of the list from the nominating committee that council **shall** post the list of potential candidates and conduct a vote by the members. The Respondents argue that postponing trustee elections is within the power of Council as an extension of democratic principles. No case law is included to support this position or reference to statute provided (see Appendix B).

[45] I do not see given 9.7(d) how Council could postpone an election once the nominating committee provides them with a list. Certainly in the SCTA, before the nominating committee provides a list there is nothing that mandates when the election is to be held other than the fact there are not to be vacancies so a postponement of an election at the stage before the list is given is possible.

[46] The Respondents bolstered their position by suggesting that the nominating committee never provided a “list” of qualified candidates to Council. Their argument is based on the common definition of the word “list” which implies multiple candidates. Since only one candidate was proposed for election it could not constitute a list.

[47] I disagree that a list of candidates was not given to Council by the nominating committee. Subsection 9.7 of the STCA uses singular language of “nominee”. It states not more than three nominees and does not say “but not one”. Furthermore, in 2011 elections were held and some of the positions were not contested so there must have been a list for certain positions that only

contained one person. I see no reason that this election should fail because the list had only one eligible candidate.

[48] Further, the Respondents argue the election ballots have to be in the form of a yes or no vote. As there was only one nominee the election ballot was not in the yes or no form the Respondents say is necessary. This argument must fail. The necessity for a yes or no vote pertains to surrender or designation under the *Procedure Regulations* and not to filling a trustee vacancy under the SCTA.

[49] In conclusion, the Applicants are trying to fill vacancies on a trust that is vital to their community that have sat vacant for far too long. The Respondents are trying to ensure that meaningful elections can be held rather than acclaiming the only trustee eligible to stand. My hope is that the First Nation, Chief and Council move forward to meet both of their objectives.

[50] As there has been a breach of procedural fairness, I grant the judicial review and quash the election resolution. The ballots from the February 11, 2016 trustee election that were the subject of an injunction dated February 10, 2016 by Madam Justice Roussel are to be counted as per her order.

IX. Costs

[51] Peguis First Nation Band Council Resolution 106 states that legal counsel for both the Applicants and the Respondents will be paid for by the Peguis First Nation. With this in mind, I will not order costs to either party.

JUDGMENT**THIS COURT'S JUDGMENT is that:**

1. The style of cause is amended, with immediate effect, by removing Peguis First Nation as one of the Applicants and shall read as follows:

BETWEEN:

CYNTHIA SPENCE in her capacity as CHIEF OF PEGUIS FIRST NATION and
GLENNIS SUTHERLAND in her capacity as COUNCILLOR OF PEGUIS FIRST
NATION (Applicants)

AND

MARY TYLER BEAR, DARLENE BIRD and WADE SUTHERLAND, each in their
capacity as COUNCILLORS OF PEGUIS FIRST NATION (Respondents);

2. The Application is granted;
3. The ballots from the February 11, 2016 trustee election that were the subject of an injunction dated February 10, 2016, by Madam Justice Roussel be counted as per her order;
4. Costs are not granted.

"Glennys L. McVeigh"

Judge

APPENDIX A

Duly Convened Council Meeting – February 5, 2016 P. 1

DULY CONVENED COUNCIL MEETING

Friday, February 5, 2016

Council Chambers

Time: 2:25 p.m.

In Attendance:

Councillors: Glennis Sutherland, Darlene Bird, Tyler Bear, Wade Sutherland; Gerald McCorrister

Recorder:

Marlene Bear

Councillor Bird called the duly convened meeting to order.

- **Councillor Bird proceeded to put forward BCR #91 Surrender Claim Trust, Community Fund Trustee By-Election Postponement dated February 5, 2016 regarding the February 11, 2016 upcoming vote.**

Discussion on BCR # 91 SCT CFT By-Election Postponement dated February 5, 2016 regarding upcoming February 11, 2016 election. The following was stated:

- **Councillor Glennis Sutherland was informed that Councillors Darlene, Wade and Tyler were going ahead with BCR # 91 to be sent to Burke Ratte, Electoral Officer which states that the election to be held on February 11, 2016 be postponed**
- **There is a Council quorum here today and is seen as a governing body**
- **Stated that there is a conflict of interest with Burke Ratte on the previous FY 2015-2016-BCR # 6 Trust Nominating Committee dated November 12, 2015 which stated that Burke would assist the Trust Nominating Committee with completion of the Trust application process**
- **Stated that Councillors Darlene Bird, Wade Sutherland and Tyler Bear will be drafting a letter to rescind FY 2015-2016-BCR # 6 Trust Nominating Committee dated November 12, 2015 as it states that Burke Ratte will work with the Trust Nominating Committee to complete the Trustee application process. Councillor Bird stated this is a conflict of interest as he is also the Electoral Officer for the SCT-CFT Trustee By-Election**
- **BCR # 91 will be signed and sent to Burke today to have By-Election postponed**

Motion #1: Presented by Councillor Bird to sign FY 2015-2016-BCR # 91 Surrender Claim Trust-Community Fund Trustee By-Election Postponement dated February 5, 2016 and send to Burke Ratte, Electoral Officer by email, fax or in the mail. Send a copy of BCR # 91 to SCT trustees, TLE Trustees, TNC Committee, Lloyd Stevenson (Chair, TNC), Earl Stevenson. Send BCR # 91 today (February 5, 2016) to give Burke Ratte time to do his part re-postponing February 11, 2016 By-Election.

Seconded by: Councillor Wade Sutherland and Councillor Tyler Bear

Moved and passed by: Councillors Darlene Bird, Wade Sutherland and Tyler Bear

Duly Convened Council Meeting – February 5, 2016 P. 2

Abstained by: Councillor Glennis Sutherland

Councillor Bird:

- Stated to Councillor Glennis Sutherland to go ahead and contact the Chief to inform her regarding BCR # 91. Councillor Glennis Sutherland stated she was attempting to get in touch with Chief Spence by text message or cell phone call, however, Chief Spence was not responding to her.
- Mentioned the Councillors cannot be removed from Council for signing BCR # 91 a threat made by Earl Stevenson, Boudreau Law.
- Scan and email Chief Spence to inform that Councillors want to send and will be sending the signed BCR # 91 to Burke Ratte and SCT Trustees via Debbie McElhinney
 - Councillors: Darlene Bird, Wade Sutherland and Tyler Bear felt that they could not hold off any longer due to time constraints for Burke Ratte, Electoral Officer to do his duties regarding February 11, 2016 election. BCR # 91 will be sent to Burke Ratte and Debbie McElhinney-SCT today.

Meeting adjourned at 3:30 p.m.

APPENDIX B

PEGUIS FIRST NATION SURRENDER CLAIM TRUST AGREEMENT

9.6 Application and Assessment of Qualifications

(a) The Trustee Nominating Committee shall consider applications from Members to act either as a Community Fund Trustee or a Financial Trustee.

(b) The Trustee Nominating Committee shall have authority to recommend suitable and reasonable eligibility criteria, and to amend such criteria from time to time, to apply in the consideration of applications for election to the position of Trustee by the committee, not contrary to this Agreement. The eligibility criteria shall be set out in writing and shall be approved by Ordinary Resolution at any general meeting of Members called in accordance with Section 12.2. For greater certainty, it shall not be necessary for the eligibility criteria to be the same for both the offices of Financial Trustee and Community Fund Trustee.

9.7 Nomination and Election

(a) The Trustee Nominating Committee shall, by consensus, and failing consensus, by Ordinary Resolution, nominate for election those applicants it considers most qualified to assume the duties and responsibilities in relation to the offices of Financial Trustee or Community Fund Trustee, as the case may be, from among the applications submitted to stand for election by the Members, providing summary reasons for nomination of each candidate nominated for election, including the qualifications of each nominee.

(b) In the event of one or more vacancies or contemplated vacancies in the office of Community Fund Trustees, the Trustee Nominating Committee shall provide the Council with a list setting out the names of not more than three (3) applicants nominated for election for each vacancy in the office of Community Fund Trustees and in the event of one or more vacancies or contemplated vacancies in the office of Financial Trustees, the Trustee Nominating Committee shall provide the Council with a list setting out the names of not more than three (3) applicants nominated for election for each vacancy in the office of Financial Trustees, together with summary reasons for nomination of each candidate nominated for election.

(c) The Trustee Nominating Committee shall provide the Council with the list referred to in Paragraph 9.7(b):

(i) In the case of contemplated vacancies arising from the replacement of the initial Trustees, within six (6) months of the Members' approval of the eligibility criteria referred to in Paragraph 9.6(b); and

(ii) In all other cases, within sixty (60) days of the Members' approval of the eligibility criteria referred to in Paragraph 9.6(b).

(d) Within thirty (30) days after the receipt of the list or lists of nominations, the Council shall post such list or lists in the administrative offices of Peguis and shall conduct a vote by Members in a manner similar to the *Indian Referendum Regulations* made under the *Indian Act*, with such modifications thereto as determined by the Council to be necessary or advisable, for the election of Community Fund Trustees or Financial Trustees, or both, as the case may be, including, where applicable, the election of up to three (3) alternate Financial Trustees and up to two (2) alternate Community Fund Trustees.

(e) The Members shall cast their vote by ballot for the election of Community Fund Trustees or Financial Trustees, or both, as the case may be, and the nominee or nominees having the highest number of votes shall be elected Community Fund Trustees or Financial Trustees, as the case may be, and the nominee or nominees having the following highest number of votes shall be elected alternate Financial Trustees or alternate Community Fund Trustees (collectively the "*Alternate Elected Trustees*", and individually "*Alternate Elected Trustees*"), as the case may be. Each person elected as an Alternate Elected Trustee shall be eligible, for a period of two (2) years from the date such individual was elected as an Alternate Elected Trustee, to be appointed by Council to fill a vacancy in the office of Financial Trustee or Community Fund Trustee, as the case may be, in accordance with the provisions of Section 9.11.

(f) Notwithstanding any of the foregoing, there shall not at any time be more than three (3) Alternate Elected Trustees eligible to be appointed to the office of Financial Trustee and more than two (2) Alternate Elected Trustees eligible to be appointed to the office of Community Fund Trustee.

APPENDIX C*Indian Band Council Procedure Regulations, CRC c-950*

3(1) The first meeting of the council shall be held not later than one month after its election, on a day, hour and place to be stated in a notice given to each member of the council, and meetings shall thereafter be held on such days and at such times as may be necessary for the business of the council or the affairs of the band.

4 The chief of the band or superintendent may, at any time, summon a special meeting of the council, and shall summon a special meeting when requested to do so by a majority of the members of the council.

5 The superintendent shall notify each member of the council of the day, hour and place of the meeting.

31 The council may make such rules of procedure as are not inconsistent with these Regulations in respect of matters not specifically provided for thereby, as it may deem necessary.

3 (1) La première assemblée du conseil se tiendra dans un délai d'un mois au plus tard après l'élection, au jour, à l'heure et à l'endroit qui seront indiqués à l'avis communiqué à chacun des membres du conseil, et les assemblées subséquentes se tiendront au jour et à l'heure déterminés, selon ce que requièrent les affaires du conseil ou les intérêts de la bande.

4 Le chef de la bande ou le surintendant peut en tout temps convoquer une assemblée extraordinaire du conseil et doit convoquer une telle assemblée s'il en est requis par la majorité des membres du conseil.

5 Le surintendant doit notifier à chaque membre du conseil le jour, l'heure et l'endroit de l'assemblée.

31 Le conseil peut, s'il l'estime nécessaire, établir tout règlement interne, qui ne soit pas en contradiction au présent règlement, en ce qui concerne des points qui n'y sont pas spécifiquement prévus.

APPENDIX D*Council Procedures: Peguis First Nation*

15 The Chief Operating Officer shall notify each member of the council of the day, hour and place of the meeting.

16 The Chief Operating Officer shall give public notice of a special meeting by posting a notice at the Peguis Mall Bulletin Board at least 24 hours before the date of the meeting.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-242-16

STYLE OF CAUSE: PEGUIS FIRST NATION ET AL v COUNCILLOR
MARY TYLER BEAR ET AL

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: AUGUST 30, 2016

JUDGMENT AND REASONS: MCVEIGH J.

DATED: OCTOBER 26, 2016

APPEARANCES:

Robert A. Watchman
Karen R. Poetker

FOR THE APPLICANTS

James Beddome

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Pitblado LLP
Barristers and Solicitors
Winnipeg, Manitoba

FOR THE APPLICANTS

Michael Jerch Law Corporation
Winnipeg, Manitoba

FOR THE RESPONDENTS