

e-document		T-104-25-ID 1	
F	FEDERAL COURT		D
I	COUR FÉDÉRALE		É
L			P
E			O
D			S
		January 10, 2025	É
		10 janvier 2025	
Court File No. _____			
Chanelle Gallant			
HFX			1

FEDERAL COURT

BETWEEN:

JOANNE BARTIBOGUE

APPLICANT

-and-

ESGENOÛPETITJ FIRST NATION, ALVERY PAUL, CLARK DEDAM, JASON BARNABY, DEANNA JOE, CHRIS BONNELL, IRENE DEDAM, LEONARD SIMON, KAYLEE WILMOT-JOE, LORNA PAUL, GERONIMO SOMMERVILLE, CARRIE DEDAM, DEREK DEDAM, RITA RICHARDSON and SARAH ROSE

RESPONDENTS

APPLICATION UNDER Section 31 of the *First Nation Elections Act*, SC 2024, C 5 and Section 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at **82 Westmorland Street, Suite 100, Fredericton, New Brunswick.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated January 10, 2025

Issued by: _____
Registry Officer

Address of local office:

Federal Court of Canada
1801 Hollis Street, 17th Floor
Suite 1720
Halifax NS
B3J 1S7

TO: **ESGENOÛPETITJ FIRST NATION**
General Delivery
Esgenoûpetitj First Nation, New Brunswick

ALVERY PAUL
General Delivery
Esgenoûpetitj First Nation, New Brunswick

CLARK DEDAM
General Delivery
Esgenoûpetitj First Nation, New Brunswick

JASON BARNABY
General Delivery
Esgenoûpetitj First Nation, New Brunswick

DEANNA JOE
General Delivery
Esgenoûpetitj First Nation, New Brunswick

CHRIS BONNELL
General Delivery
Esgenoûpetitj First Nation, New Brunswick

IRENE DEDAM
General Delivery

Esgenoôpetitj First Nation, New Brunswick

LEONARD SIMON

General Delivery

Esgenoôpetitj First Nation, New Brunswick

KAYLEE WILMOT-JOE

General Delivery

Esgenoôpetitj First Nation, New Brunswick

LORNA PAUL

General Delivery

Esgenoôpetitj First Nation, New Brunswick

GERONIMO SOMERVILLE

General Delivery

Esgenoôpetitj First Nation, New Brunswick

CARRIE DEDAM

General Delivery

Esgenoôpetitj First Nation, New Brunswick

DEREK DEDAM

General Delivery

Esgenoôpetitj First Nation, New Brunswick

RITA RICHARDSON

General Delivery

Esgenoôpetitj First Nation, New Brunswick

SARAH ROSE

General Delivery

St. Mary's First Nation, New Brunswick

APPLICATION

This is an application pursuant to Section 31 of the *First Nations Elections Act*, contesting the validity of the December 10, 2024, Esgenoôpetitj First Nation elections for Chief and Council.

The Applicant makes an application for:

1. A Declaration that the December 10, 2024 election held at Esgenoôpetitj First Nation (“Esgenoôpetitj”) was not held in compliance with the *First Nation Elections Act*, SC 2014, c 5 (the “*Act*”) nor in compliance with the *First Nations Elections Regulations*, SOR/2016-264 (the “*Regulations*”).
2. A *Writ of Quo Warranto*, declaring that the personal Respondents herein do not have the authority to hold office at the Respondent Esgenoôpetitj. Specifically, that the Respondent Alvery Paul does not have the authority to hold the office of Chief, and that the remaining personal Respondents, except for Sarah Rose who was the Electoral Officer for the election, do not have the authority to hold the office of Councillor.
3. An Order that the Respondent Esgenoôpetitj conduct a new Election by April 30, 2025.
4. Costs of this Application.
5. Such further and other relief this Honourable Court may deem just.

The Grounds for the Application are as follows:

Background of the Parties

1. The Applicant, Joanne Bartibogue, is a member and ordinary resident of Esgenoôpetitj First Nation, which is located at 661 Bayview Drive, Burnt Church First Nation in the Province of New Brunswick, Canada.
2. The Respondent Esgenoôpetitj is a First Nations Band pursuant to s. 10 of the *Indian Act*, RSC, 1985, c. I-5, and is located at 661 Bayview Drive, Burnt Church First Nation in the Province of New Brunswick, Canada.
3. The Respondent Esgenoôpetitj, in accordance with subsection 3(2) of the *First Nations Elections Act*, held its first Band Election under the *Act* and the *Regulations* on November 12, 2020.
4. The Respondent Esgenoôpetitj held its second Band Election under the *Act* and the *Regulations* on December 10, 2024. The results of the December 10, 2024 Band Election were officially announced on December 11, 2024.

The December 10, 2024 Band Election

5. The Applicant says that throughout the 2024 Band Election period there were several irregularities and instances of non-compliance with the *Act* and *Regulations* including, but not limited to, vote buying and the failure to follow the applicable rules and procedures for elections held under the *Act* and *Regulations*.
6. The Respondent Alvery Paul, candidate for the position of Chief of Esgenoôpetitj First Nation, was directly involved in instances of electoral fraud related to vote buying or attempted vote buying, contrary to subsection 16(f) of the *Act*.
7. The Respondent Jason Barnaby, candidate for the position of Councillor of Esgenoôpetitj First Nation, was directly involved in instances of electoral fraud related to vote buying or attempted vote buying, contrary to subsection 16(f) of the *Act*.
8. The Respondent Electoral Officer, Sarah Rose, was directly involved in contraventions of the *Act* and *Regulations*, which included failing to provide mail-in-ballots to off-reserve band members who had provided written requests and proof of identity as required by s. 14 of the *Regulations*.

Vote Buying

9. The Applicant says that throughout the 2024 Band Election period, several candidates, including, among others, the Respondents Alvery Paul and Jason Barnaby, provided and/or attempted to provide electors with monetary payments and/or goods, including cigarettes, in exchange for their vote.
10. On or about December 10, 2024, it was witnessed by electors that the residences and/or businesses owned and operated by candidates had lineups of electors at their doors, awaiting to receive payment and/or goods in exchange for their vote.
11. In other instances, candidates attended the homes of electors to offer payment and/or goods in exchange for their vote in the election.
12. Under s.16(f) of the *Act*, a person must not, in connection with an election, offer money, goods, employment or other valuable considerations in an attempt to influence an elector to vote or refrain from voting or to vote or refrain from voting for a particular candidate.

Mail-in-ballots

13. On or about October 7, 2024, a Notice of Nomination Meeting was issued to the electors of Esgenoôpetitj.
14. Pursuant to s. 15 of the *Regulations*, an elector who wishes to receive a mail-in-ballot must make a written request to the Electoral Officer that includes a copy of their proof of identity.

15. Pursuant to s. 16(1) of the *Regulations*, no later than 30 days before the day on which the election is to be held, the electoral officer must mail to every elector who has made a written request a mail-in-ballot package.
16. The Applicant says that several registered voters residing off-reserve who had made written requests to the Respondent Sarah Rose to receive a mail-in-ballot package did not receive the requested mail-in-ballot package. As a result of not receiving the mail-in ballot package, those members living off-reserve were unable to vote.
17. Registered voters residing off-reserve who did receive their requested mail-in ballots were unable to mail their ballots because of the Canada Post strike. Despite the efforts of band members residing off-reserve to contact the Respondent Sarah Rose about this issue, these concerns were not addressed.
18. On December 10, 2024, multiple electors were not permitted by the Respondent Sarah Rose to vote in person at the designated polling station. The reason provided to those electors was that they had previously requested a mail-in-ballot package, which made them ineligible to vote in person despite the fact that these electors were unable to vote by mail.
19. Pursuant to s. 16(1) of the *Regulations*, an elector may vote in person at a polling station on the day of the election, or at an advanced polling station, in lieu of voting by mail-in-ballot. The elector is required to return the unused mail-in-ballot or provide a sworn affidavit stating that they have lost their mail-in-ballot. The Respondent Sarah Rose declined to follow the process and requirements of s. 16(1) of the *Regulations*.

Community Pick-up and drop-off

20. On or about November 25, 2024, the Esgenoôpetitj school was opened to allow electoral officers to attend and acquire mail-in-ballots for members unable to vote on the December 10, 2024, election day.
21. On that same date, it was observed that multiple members who had attended the Esgenoôpetitj school to obtain their mail-in-ballots were permitted to depart and return before closing to return their filled ballot.
22. Further on that same date, it was observed that the members who had departed the Esgenoôpetitj school were travelling directly to the residences of candidates and to businesses owned and operated by candidates.
23. It was further observed that family members of candidates and candidates themselves were bringing multiple mail-in-ballots to the Esgenoôpetitj school to be provided to the electoral officers.

Transparency of Results

24. In accordance with s. 20(5) of the *Regulations*, candidates are entitled to two (2) representatives in a polling station.
25. Pursuant to s. 23 of the *Regulations*, the electoral officer must, in the presence of the representatives, open all ballot boxes and examine the ballots, while noting any objections made by candidates or their representatives.
26. The procedure used to count the ballots was flawed. The Respondent Sarah Rose did not show the representatives the marked ballots and restricted the representatives from clearly viewing the ballots as they were being counted.
27. At the time of the final count of the ballots, all representatives were grouped and placed at separate tables where an electoral officer would read out the ballots and subsequently place the ballots face down on the table. The ballots were placed face down on the table without visual verification by the representatives.

The Applicant Seeks an Order Remedying the Deficiencies with the December 10, 2024 Election

28. The Applicant repeats the foregoing and states that the December 2024 Esgenoôpetitj election for Chief and Council was conducted in contravention of the *Act* and *Regulations*, which directly affected the result of the election.
29. The Applicant further relies on such other grounds as counsel may advise and that this Honourable Court may allow.
30. The Applicant seeks the following relief:
 - a. A Declaration that the December 10, 2024, election held at Esgenoôpetitj First Nation (“Esgenoôpetitj”) was not held in compliance with the *Act* and *Regulations*.
 - b. A Writ of *Quo Warranto*, declaring that the personal Respondents herein do not have the authority to hold office at the Respondent Esgenoôpetitj.
 - c. An Order that the Respondent Esgenoôpetitj conduct a new Election by April 30, 2025.
 - d. Costs of this Application.
 - e. Such further and other relief this Honourable Court may deem just.

This application will be supported by the following materials:

1. This Notice of Application;
2. Such affidavits of the Applicant and/or other affiants as This Honourable Court may permit;
3. Such other evidence or material as counsel may advise and this Honourable Court may allow.

DATED at Halifax, Nova Scotia this 10th day of January 2025.



Ronald A. Pink, K.C.

Dakota Bernard

Pink Larkin

Suite 201 – 1463 South Park Street

Halifax, NS B3J 3S9

Tel: (902) 423-7777

Email: rpink@pinklarkin.com

dbernard@pinklarkin.com

Solicitors for the Applicant

Joanne Bartibogue