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FEDERAL COURT

Court File No.:
T-1572-24

BETWEEN:

**VERNON WATCHMAKER, SIMON WATCHMAKER, DARLENE WATCHMAKER,
RAMONA COLLINS, GLENDA PAUL**

Applicants

- and -

**KEHEWIN CREE NATION #466, AS REPRESENTED BY ITS CHIEF AND
COUNCILLORS AND AS REPRESENTED BY ITS ELDERS ADVISORY COMMITTEE**

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT: Kehewin Nation #466 As Represented By Its Chief and Councillors and As Represented By Its Elders Advisory Committee

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants. The relief claimed by the Applicants appears on the following pages.

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 Applicants. The Applicants request that this application be heard at the Federal Court at 4th Floor, 634 – 8th Avenue SW Calgary, Alberta.

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 Applicants' solicitor or, if the Applicants are self-represented, on the Applicants, 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.

Date: June 24, 2024

Issued by: _____

(Registry Officer)

Address of local office:
Canadian Occidental Tower
4th Floor, 635 – 8th Avenue SW
Calgary Alberta T2P 3M3

TO: KEHEWIN CREE Nation #466
c/o Bailey, Wadden Duffy LLP
Barrister & Solicitors
2300, 10004 – 104 Avenue
Edmonton, Alberta T5J 0K1
Attention: Evan C. Duffy
(Counsel for the Respondent)

APPLICATION

1. This is an application for judicial review under s. 18.1 of the Federal Courts Act in respect of the decision (the "Decision") made on or about June 13, 2024 by the Elders Advisory Committee of the Kehewin Cree Nation #466 ("KCN"), supported by the KCN Chief and Council, to hold a Referendum Vote ("Referendum Vote") on proposed amendments ("Proposed Amendments") to the Kehewin Cree Nation Election Act (the "Act"). The Decision was made without following requirements in the Act that govern its amendments. Specifically, the Act requires that the amendments to the Act first be proposed by a member of the KCN, not the Elders Advisory Committee, that the Decision itself be approved by a majority vote at a general meeting of the KCN and that all KCN members be contacted via letter sent to their last known mailing address informing them where they can cast their vote.

RELIEF SOUGHT

2. The Applicants, make application for an Order:
 - (a) In the nature of certiorari declaring invalid or unlawful, or quashing and/or setting aside the Decision;
 - (b) In the nature of mandamus, directing the Respondents to hold a general meeting of the Nation seeking majority approval of the Decision to hold the Referendum Vote;
 - (c) In the alternative, an order in the nature of mandamus, directing the Respondents to provide Notice of any Referendum Vote to all members of the KCN in accordance with the requirements of the Act;
 - (d) Declaring that:
 - (i) The Respondents erred in law in making the Decision;
 - (ii) The Decision was made unlawfully, in contravention of the Act;
 - (iii) The Respondents have a public legal duty to conduct a procedurally fair process that provides adequate notice of a Referendum Vote to members of the KCN;
 - (iv) The Respondents have a public legal duty to conduct a procedurally fair process, culminating in a Referendum Vote only after a majority decision of the members of the KCN; and

- (v) The Respondents acted without jurisdiction in making the Decision;
and
- (e) An Order for costs; and
- (f) Such further and other relief as counsel may advise and this Honourable Court considers just.

GROUNDS FOR THE APPLICATION

The Parties:

3. The Applicants, Vernon Watchmaker, Simon Watchmaker, Darlene Watchmaker, Ramona Collins, Glenda Paul ("**Applicants**"), are registered members of the KCN and former Chief of the Nation from 2018-2021. Vernon Watchmaker has been a member of the KCN since 1976 and was elected Chief in 2018.
4. The Respondent Nation is a First Nation based in northeastern Alberta in Treaty 6 territory. The Nation's elections for the offices of Chief and Council occur every three (3) years and are governed by the custom election regulations of the Nation, being the Act, the most recent iteration of which came into effect in 2017 and was amended by way of referendum of the Members of the Nation.
5. The Elders Advisory Committee of the Nation is appointed by the Chief and Council of the Nation pursuant to the Act. The main task of the Elders Advisory Committee is to ensure the Kehewin Chief and Council Rules of Conduct, Chief and Council Code of Ethics and the Act are followed.
6. At all material times, the Chief and Council as well as the Elders Advisory Committee was subject to the Nation's customary laws, the Constitution Act, 1982, the Indian Act, and applicable common laws when exercising their powers and authorities of public office.
7. Both the Chief and Council and the Nation each acted in this case as a federal board, commission or other tribunal within the meaning of section 2 of the Federal Courts Act.

Background:

8. With respect to Referendum Votes:
 - (a) Section 2, paragraph D of the Act requires that for a Referendum Vote to be held, members of the KCN are to be contacted (via letter sent to their last known mailing address) and informed where they can vote. The matter is also to be announced through the internet.
 - (b) Section 16 of the Act provides that where a member of the Nation wishes to propose an amendment to the Act:
 - (i) He or she prepares and sends a written request to the Elder's Advisory Committee, (section 16(A));
 - (ii) The Elder's Advisory Committee reviews the request, (section 16(B));
 - (iii) If the member is unsatisfied with the review the proposed amendments are to be put to a majority vote at a general meeting of the KCN.
9. The Proposed Amendments, among other things, would remove from the Act provisions that prevent a KCN member from serving more than two consecutive terms as a Chief and/or Councillor and would remove the Code of Ethics governing the Chief and Council.
10. On or about June 10, 2024 a posting was made on the KCN Facebook page announcing the Referendum Vote "on the advised changes" to the Election Act. The Facebook notice provided no details of the Proposed Amendments.
11. Not all members of the KCN have Facebook accounts or even utilize the internet.
12. The Respondents have not themselves or through the membership clerk sent letters to the last known mailing address of the members of the KCN advising of the Referendum Vote and where the members could vote.
13. The KCN Elders Advisory Committee had previously tried to canvass with members of the KCN the idea of removing the prohibition in the Act that prevents members from serving more than two consecutive terms as the Chief and/or a

Councillor of the Band. In September, 2023 they purported to conduct a survey on the issue but the survey results were never announced to KCN members.

14. At a meeting of the KCN Elders Advisory Committee held on March 25 and 26, 2024, the Committee presented draft proposed amendments to the Act. However, the draft amendments were not put to a vote of the Committee and not put to a vote of the KCN general membership at any time.
15. No provision was made in the announcement for members of the KCN who live off reserve to vote, other than physically attending at the KCN reserve itself.
16. The next election of the Chief and Council will be conducted in September, 2024. The Chief and four members of Council have already served two consecutive terms and would not be permitted to stand for re-election under the current provisions of the Act.

Judicial Review Is Warranted

17. The facts support the following grounds for judicial review:
 - (a) The Respondents erred in law and acted without jurisdiction in making the Decision in contravention of specific requirements of the Act;
 - (b) Apart from the requirements of the Act, the Respondents also have a public legal duty to conduct a procedurally fair process that provides adequate notice of a Referendum Vote to all members of the Nation;
 - (c) The Referendum Vote appears intended to allow for current members of Council and the Chief to quickly amend the Act, without lawful notice to KCN members, so the Chief and members of council can stand for election again in September;
 - (d) By failing to follow the requirements of the Act, the Respondents failed to ensure that the Referendum Vote will be conducted pursuant to a procedurally fair process, culminating in a Referendum Vote only after a majority decision of the KCN members fully informed of the Proposed Amendments, to conduct the Referendum Vote; and
 - (e) The Respondents acted without jurisdiction in making the Decision.

Other Grounds for Review:

18. The Applicant will rely on such further and other grounds as counsel may advise and this Court may permit.

Rule 317 Request

19. Such further and additional materials as the Applicant may advise and this Court may allow.

20. The Applicant requests that the Respondents send to this Court and to counsel for the Applicant, pursuant to Rule 317 of the Federal Courts Rules, a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Respondents, including but not limited to:

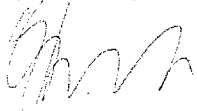
- Any document of the Respondents, Chief, Councillor, or member of the Elders Advisory Committee, officer or agent of the Respondents, which contains material relating to the Decision, including texts or instant messages, relating to the Decision;
- Any physical or electronic records of communications of Council or the Elders Advisory Committee regarding any meetings ("**Meetings**") where the Decision was discussed, including without limitation emails, memoranda, telephone records and mobile telephone
- All evidence or information relied upon in coming to the Decision;
- Any KCN Laws, Bylaws or resolutions that were relied upon or considered in relation to the Decision;
- All evidence or information that was considered in coming to the Decision;
and
- Any other materials that are relevant to the Decision.

Supporting Material

21. This Application will be supported by affidavit evidence to be sworn by one of more affiants, including the affidavit of the Applicant, Vernon Watchmaker and other members of the KCN.
22. All of which is respectfully submitted.

DATED at Calgary, Alberta this 24th day of June 2024.

DLA Piper (Canada) LLP



Per: _____

Heather Treacy, K.C./Dan Misutka
Counsel for the Applicants,
Vernon Watchmaker, Simon Watchmaker, Darlene Watchmaker, Ramona Collins,
Glenda Paul

The Applicants' Address for Service is in care of their solicitors at:

DLA Piper (Canada) LLP
Barristers & Solicitors
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