

Vancouver Registry, File No.

FEDERAL COURT OF CANADA

BETWEEN:

ERIC JOSEPH

APPLICANT

AND:

THE DZAWADA-ENUXW FIRST NATION BAND COUNCIL, THE DZAWADA'ENUXW FIRST NATION, AND DAWN NICOLSON, the DZWADA'ENUXW FIRST NATION BAND MANAGER

RESPONDENTS

NOTICE OF APPLICATION TO THE

RESPONDENTS:

Dzawada'enuxw First Nation Band Council and the Dzawada'enuxw First Nation Band, and Dawn Nicolson, Dzawada'enuw First Nation Band Manager (the "DFN FN").

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant 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 the hearing will be as requested by the applicant. The applicant requests that this application be heard at Vancouver, British Columbia.

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 prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicants **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, 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 WITHOUT FURTHER NOTICE TO YOU.

Issued by: _____ (Registry Officer)

Address of local office:

**Federal Court of Canada,
Pacific Centre
701 West Georgia Street
P.O. Box 10065
Vancouver, BC, V7Y 1R6**

Phone:

**604-
666-
3232**

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8181**

TO:

DZAWADA'ENUXW FIRST NATION BAND COUNCIL all, (Darren Lagis, Mellisa Willie, Farron Soukochoff, Julia M. Smith, Marijo Willie), and Dawn Nicolson, Band Manager for the Dzawada'enuxw First Nation

all c/o Dzawada'enuxw First Nation Band Office,
GENERAL DELIVERY KINGCOME INLET B.C. VON 2B0

APPLICATION

This is an application for judicial review in respect of:

1. The Dzawada'enuxw First Nation Election Regulations 2015, and the proposed draft replacement which was purportedly ratified on March 28, 2024, at a duly convened General Meeting in Kingcome Inlet, British Columbia.
2. A decision, order, act or proceeding of the Dzawada'enuxw First Nation Band Council (the "Council") on March 28, 2024, permitting amendment and ratification of the draft Dzawada'enuxw First Nation Custom Code (the 2024 "Code") as a 'replacement' for the 2015 *Tsawataineuk First Nations Elections Regulations* (the "2015 Code");
3. A decision, order, act or proceeding of the Council on March 28, 2024, which allowed the General Meeting to proceed despite the fact that no proper notice was given for the meeting, as the meeting time and place were not in accordance with the notice provisions under the 2015 code, and the prior practice and custom of the Dzawada'enuxw First Nation (the "DFN").
4. A decision, order, act or proceeding of the Council, the particulars of which are better known to the respondents, declaring the *Dzawada'enuxw First Nation Custom Election Code 2024*, applicable for the 2024 Elections, and scheduling a General Election communicated to members of the DFN, around June 5, 2024, by a notice letter from an Electoral Officer, and which was not communicated to the Applicants until about June 5, 2024.
5. A writ of quo warranto against the members of the Dzawada'enuxw First Nation Band Council, being Melissa Willie, Darren Lagis, Farron Soukochoff, Julia M. Smith, Marijo Willie, and DFN Band Manager, Dawn Nicolson.

(hereinafter referred to collectively as the "Decisions.")

The applicant makes application for:

1. An order in the nature of *certiorari* pursuant to s. 18.1(3)(b) of the *Federal Court Act* quashing or setting aside the Decisions or one or more of them; and
2. An order pursuant to paragraph 18.1(3)(b) of the *Federal Court Act*, or section 52 of the *Constitution Act, 1982*, or both, declaring the 2011 Dzawada'enuxw (Tsawataineuk) First Nation Custom Code (the "Custom Code") to be invalid on one or more of the following bases:

EWJ (i)

██████████ The March 28, 2024, General Meeting was not in accordance with the notice provisions in the 2015 Election Code.

- (ii) The 2024 amendment process and Code violates section 15 of the Charter and is therefore invalid to the extent that it prohibited DFN electors from participating in the amendment process set out in Part 17, of the DFN Election Code; and
- (iii) The purported 2024 amended Code was not accepted by a broad consensus of the Band membership; and
- (iv) The 2024 Code is not acceptable to a broad consensus as practiced by the membership of the Band, and the 2015, Election Code; and
- (v) The 2024 Election Code is contrary to the principles of natural justice; and
- (vi) The Band Council acted beyond their jurisdiction and denied the Applicant natural justice in the Election amendment process.

3. An injunction to restrain holding of a General Election pursuant to the 2024 Code.

4. In the alternative, an order in the nature of *mandamus* pursuant to s. 18.1(3)(a) of the *Federal Court Act*, directing the Council 'amend' the 2015 Regulations pursuant to the 2015 Regulations by a date to be set by the Court; that

(i) are in compliance with the Charter, and in particular allow members of the Dzawada'enuxw First Nation (the members of the "Band") who do not reside on any of the Bands Reserves, but who are otherwise qualified to vote in Band Elections; to participate equally in free and fair Elections and in the Election Regulation amendments process, and respect the custom and right to vote by referenda in order to reach broad consensus on amendments of the Elections Regulations; and

(ii) makes necessary changes to comply with the *Constitution Act, 1982* and, in particular, that permit members of the Band who do not reside on any of the Band Reserves, but who are otherwise qualified to vote in Band Council elections, and to vote for all positions on the Council, to stand as candidates for any and all positions on the Council, and to nominate qualified persons as candidates for any and all positions on the Council; and

(iii) are based on the custom of the band as accepted by a broad consensus of the membership of the band; and

(iv) are supervised independently from the Band Council and Band Administration;

5. An order in the nature of *mandamus* pursuant to s. 18.1(3)(a) of the *Federal Court Act* directing the Council to hold a General Election pursuant to the Band Custom 2015 Election Regulations, as amended pursuant to the custom of the Band by referenda and in accordance with paragraph (4) above, by a date to be set by the Court; and

6. An injunction enjoining the Band Council from exercising any authority or performing any duties as a Council except:

- (i) signing Band payroll cheques and accounts payables that have been already approved in annual budgeting by Council and other expenditures already approved as per 'Financial Policies' of the Band; and
- (ii) initiatives that are or may be essential to the health and safety of the Band; and
- (iii) carrying out orders from this court that pertain to the Band General Elections, amendment process and referenda;

7. An order that this court retain jurisdiction of this matter until the 2015 Regulations are amended in accordance with paragraphs (4) and (5) above and elections are enacted; and

8. Costs;

And such further and other relief as the Applicants may advise and this Honourable Court may deem just.

The grounds for the Application are:

1. The applicant is a registered member of the Dzawada'enuxw First Nation (the "Band") with a total population of approximately over 500 members, and with approximately 350 eligible voters, and whereas off reserve Band members make up approximately 85% of the eligible voters; and
2. Kingcome Inlet is a remote village approximately 3 kilometres up the Kingcome River, on the Central Coast of British Columbia with approximately 40 houses, and is only accessible by float plane or boat, and travel is difficult, dangerous and costly; and
3. The Dzawada'enuxw (Tsawataineuk) Band Council (the "Council") is a "council of the band" as defined by s. 2(1) of the *Indian Act*. The Council is to be chosen in accordance with the custom of the Band as described in paragraph (b) of the definition of "council of the band" in the *Indian Act*. The Council is responsible for the governance of the Band; and
4. There is a reasonable apprehension of bias or conflict of interest of the Band Council, and the election regulations committee, including the Band Manager, Dawn Nicolson, or members of the amendment committee formed by the Council to amend the 2015 Regulations; and
5. The 2015 Election Regulations which govern elections for the Band do not provide for the Band Council to unilaterally change the Custom of the Band. They acted beyond their jurisdiction and denied the Applicant natural justice; and
6. The applicant says that the draft 2024 Code purportedly ratified at the March 28, 2024 General Meeting is inapplicable to the 2024 elections for Band Council because:
 - (vii) The General Meeting of March 28, 2024, in Kingcome Inlet was not held in accordance with the proper Notice provisions in Part 17, of the 2015 Election Code , that should have been mailed to Band Members living off reserve; and
 - (viii) There was no quorum for the September 13, 2011 General Meeting; and
 - (ix) The 2011 Code has not been accepted by a broad consensus of the Band membership; or
 - (x) The amendment process and ratification of the draft 2024 Code was pre-determined; and
 - (xi) The amendment process to adopt the 2024 Code is contrary to the custom of the Band.
 - (xii) This application is analogous to a previous Judicial Review, File No. T-1903-11, Vancouver Registry, which the Applicant was also an applicant.

7. Further and in the alternative the applicant says that the 2024 Code is unlawful as contrary to s. 15(1) of the *Constitution Act, 1982* which reads:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.

8. Powers of the Council: as a council of the Band within the meaning of the *Indian Act*, the Council is responsible for the governance of the Band. The Council's governance responsibilities include issues that directly affect Band members who do not reside on the reserve. These issues include, for example:

- (i) the Band's participation in 'consultation and accommodation' discussions with respect to title and rights discussions and claims;
- (ii) the hiring on behalf of the Band, and the Band is the primary employer in the community;
- (iii) the entering into of interim measures agreements with the Province of British Columbia or Federal Government in respect of off-reserve land claims and land use decisions;
- (iv) consultations regarding land use decisions, negotiations and administration respecting the exercise of title and rights of the Band;
- (v) the administration and control of assets that are owned by the Band;
- (xiii) economic development initiatives;
- (xiv) developing and enforcing policy for all members, the criteria of which include eligibility considerations for all members;
- (xv) the budgeting and expenditure of band monies on the above matters.

10. The applicant pleads and relies on:

The *Federal Court Act*, RSC 1985, c F-7

The *Federal Court Rules, 1998*, SOR/98-106

The *Constitution Act, 1982*


The *Indian Act*, RSC 1985, c 1-5

This application will be supported by the following material:

1. Sworn affidavits from Eric Joseph

Dated this 5th day of July, 2024

Eric C. Joseph



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