Date: 20070720

Docket: T-1082-06

Citation: 2007 FC 765

Québec, Quebec, the 20th day of July 2007

PRESENT: THE HONOURABLE MR. JUSTICE BLAIS

BETWEEN:

MARC AWASHISH
DENIS WEIZINEAU
NOËLLA CHACHAI
NATHALIE AWASHISH
CLÉMENT CLARY

Applicants

and

OPITCIWAN ATIKAMEKW BAND COUNCIL
JEAN-PIERRE MATTAWA
FERNAND DENIS-DAMÉE
RÉGINA CHACHAI
MARTINE AWASHISH
BONIFACE AWASHISH
CHARLES JEAN-PIERRE
ANNIE CHACHAI

Respondents

and

SIMON AWASHISH

Intervener

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, by which the applicants are asking the Court to quash the elections held at Opitciwan on May 30 and 31 and June 1, 2006; to issue a writ of *quo warranto* divesting of their duties the members of the Opitciwan Band who were illegally elected to the Opitciwan Atikamekw Band Council (the Council); and ordering that new elections be held in accordance with the rules of the [TRANSLATION] *Opitciwan Atikamekw Council Electoral Code* (the Electoral Code) adopted by the Council in May 2005.

RELEVANT FACTS

[2] On September 24, 2002, the Council adopted resolution No. 2002-09-24-075, setting up a study group to review the electoral by-laws and create a proper electoral code. At that time, the members of the Opitciwan community elected their chief and Council members in accordance with customary rules, some of which were written down. This resolution also provided for the submission of a draft electoral code to the Council, its posting and publication in the community, consultation of the community on major points in the draft, and the adoption of the Electoral Code by referendum.

[3] On May 19, 2005, a special general public assembly was convened at which a proposal was made by Paul-Yves Weizineau to the Council to amend resolution No. 2002-09-24-075 by repealing the referendum procedure contemplated for adoption of the new Electoral Code. As a majority of the members present agreed, the proposal was adopted. The members present at the assembly then

recommended that the Council adopt the Electoral Code and that it come into effect as soon as approved. This proposal was unanimously adopted.

[4] The respondents alleged that another public assembly was held on May 30, 2005, at which resolutions for amendments to the Electoral Code were adopted, but the transcript of that meeting still cannot be found and the amendments were not reflected in the version adopted by the Council.

[5] On May 31, 2005, the Council adopted resolution No. 2005-05-31-016, which provided for the adoption of the Electoral Code as submitted at the assembly of May 10, 2005, and its application in the forthcoming general elections.

[6] On July 18 and 19, 2005, elections were held at Opitciwan and Jean-Pierre Mattawa, Martin Awashish, Maria Chachai, Régina Chachai, Paul Awashish, Fernand Denis-Damée and Boniface Awashish were declared elected.

[7] Following these elections five complaints were filed with the appeal board formed pursuant to section 19 of the Electoral Code. In its decision of September 15, 2005, the appeal board concluded that the elections in question should be quashed, new elections held and, in the meantime, the former Council should be responsible for governing the Band. Following this decision, a general assembly was convened by the election board on September 21, 2005, at which the members present rejected the appeal board’s decision and declared the elections of July 18 and 19 valid.

[8] On October 21, 2005, Simon Awashish, former chief of the Opitciwan Atikamekw Band defeated in the 2005 elections, filed an application for judicial review in the Federal Court (T-1846-05) from the decision of September 21, 2005, together with a motion for an order of interlocutory injunction, seeking *inter alia* a writ of *quo warranto* divesting of their duties the members of the Council elected in 2005 and conferring the duties of the Council members on the individuals who were members of the Council prior to the 2005 elections until new elections were held.

[9] In a decision dated December 16, 2005, Madam Justice Danièle Tremblay-Lamer allowed the motion, ordering *inter alia* that the status quo existing before the September 21, 2005 decision be restored and accordingly that the Council members elected on July 18 and 19, 2005, be divested of their duties and the applicant, as well as the former Council members, be reinstated until the Court ruled on the application for judicial review.

[10] On December 22, 2005, a meeting of the Grand Council of Elders of Opitciwan was held at which the Federal Court judgment and the validity of the Electoral Code were discussed. It is clear from reading the minutes of that meeting that there was some confusion among the elders, who mentioned *inter alia* the difficulty of participating in assemblies, which were held in French, when several of them did not speak the language. In the respondents' submission, and as set out in the petition discussed in the following paragraph, the elders apparently decided at that meeting that the Electoral Code should be suspended. According to the applicants' submission, however, the elders never made such a decision.

[11] The only passage from the minutes in which the Electoral Code question was raised reads as follows:

> [TRANSLATION]
>
> Elizabeth Aw. Mentioned that if you take the judgment and the code – as she has read the Electoral Code several times, and she is for the judgment as the code is authentic, then she asked why they did not want to have the Code, there was something blocking them regarding the Electoral Code, and it is true there is something blocking them.
>
> Gabriel. I also read the Code in Atikamekw and I thought the document was valid, I even think that Antoine does not know what the Code contains, I will go and see Antoine to have the Code read. They wondered why they do not want this Code.
>
> PYW. A Council of Elders should be formed, if you say it is difficult to make a decision, we should have a Council of Elders before the elections, within two months.
>
> JCH. I think that we cannot take a decision today; he asked William to leave it as such for the moment.
>
> PYW. Mentioned that the judgment is valid as there is no decision. He explained that the judgment and Code would be in suspense on January 16 at the general assembly. He asked again for a Council of Elders to be formed. Annie 32 replied how can you think that people today will listen to us when they don't want to even listen to the elders anymore.
>
> PYW. Proposed that if ever things were very bad in our community, we would organize another meeting and his proposal was accepted. Also suggested that the present situation be left as it is, and asked Simon, Jean Pierre and Paul to proceed to communicate by radio to calm tensions before the elections. If PY hears of troublemaking, he will intervene with the elders.
>
> PYW. Asked elders to think about the formation of the Council of Elders.
>
> JCH. Asked what would become of the election board and PYW replied there would be no new board and he re-read the agenda once again, explaining the procedures for the next general assembly.

> I asked PYW who the leaders would be and he replied in accordance with the court judgment.
>
> [Emphasis added.]

[12] Following this meeting, a petition was circulated and signed by over 400 members of the community. The petition supported the following proposal:

> [TRANSLATION]
>
> Pursuant to the decisions taken by the elders at their meeting on December 22, 2005.
>
> It was decided that the present Electoral Code should not be implemented for the next elections and that election procedures should follow custom.
>
> We, the members of the Opitciwan Atikamekw community, support their decisions.

[13] A series of public assemblies were held between January and May 2006 at which the Federal Court judgment, the decision of the elders, the formation of a new election board and the Electoral Code were discussed. At the same time Nicole Bérubé, now counsel for the respondents in this case, was instructed by certain members of the community to enter into negotiations with Martin Dallaire, counsel for the applicants in docket T-1846-05, with a view to resolving the political crisis in Opitciwan.

[14] On February 6, 2006, the Council adopted resolution No. 2006-02-01-001, recognizing the new election board appointed at the general assembly of January 18, 2006.

[15] At a special assembly held on February 16, 2006, the Council members reinstated by the judgment of Tremblay-Lamer J. announced their withdrawal from the Council for reasons of public and personal safety. That said, seven of the eight Council members present at the assembly later indicated that they expected to remain in their positions until the new Council was elected at a general election.

[16] On March 1, 2006, the Council adopted resolution No. 2006-03-01-008, directing the election board to convene a general assembly of members of the community to initiate the electoral process in accordance with the Electoral Code.

[17] On March 17, 2006, several members of the community sent a letter to the acting chief, asking him to suspend application of the Electoral Code for the forthcoming elections.

[18] On March 21, 2006, a public assembly was held at which suspension of the Electoral Code for the 2006 elections was proposed. The result of the vote on this proposal was as follows: 76 in favour, 3 against and 2 spoiled ballots.

[19] On April 10, 2006, the Council adopted resolution No. 2006-04-10-020, recognizing the difficulties of implementing the Electoral Code and the need to hold other elections as soon as possible. The Council thus agreed to suspend the Electoral Code and to submit to the assembly the application of certain standards for the elections, namely, the composition of an election board, the definition of eligibility for elections under clause 7.1 of the Electoral Code, the number of positions to be filled (1 chief and 6 councillors), the length of the future Council's mandate (two years), the

appointment of an arbitrator rather than an appeal board, a process for members residing outside the reserve to vote and the date of the elections.

[20] That said, this resolution was signed only by the chief and four councillors, which did not constitute a majority of the Council. It should also be noted that the resolution followed not only a series of general assemblies but also negotiations between Ms. Bérubé and Mr. Dallaire on behalf of their respective clients.

[21] On April 27, 2006, a general public assembly was held pursuant to resolution No. 2006-04-10-020. Some 180 persons were present and voted on the points raised by the resolution in question. Another general assembly was held on May 3, 2006, at which the by-laws used for the 2003 elections were reviewed and updated for the 2006 elections.

[22] On May 30 and 31 and June 1, 2006, elections were held in Opitciwan and 770 of the 1,352 electors on the electoral roll exercised their right to vote. Jean-Pierre Mattawa, Fernand Denis-Damée, Régina Chachai, Martine Awashish, Boniface Awashish, Charles Jean-Pierre and Annie Chachai were declared elected.

[23] By a letter June 15, 2006, to the Opitciwan returning officer, ten members of the community challenged the results of the elections and contended that the Electoral Code was still legally in effect and had not been observed. Receiving no reply to their complaint, the applicants filed this application for judicial review, alleging *inter alia* infringements of the Electoral Code regarding

notice of elections, the nomination process, the electoral process, voting procedures, the code of conduct of those elected and the voting process for members not residing in Opitciwan.

[24] In the proceeding at bar, the applicants are asking the Court to quash the elections held at Opitciwan on May 30 and 31 and June 1, 2006, issue a writ of *quo warranto* divesting of their duties the members of the Opitciwan Band illegally elected to the Council in the elections, issue an order of injunction directing that new elections be held consistent with the Electoral Code and ordering the provisional enforcement of the judgment to be rendered, notwithstanding appeal.

[25] On January 19, 2007, the applicants in docket T-1846-05 officially discontinued their application, following an agreement giving Simon Awashish intervener status in the case at bar.

PRELIMINARY ISSUE

[26] To begin with, I must discuss an application made by counsel for the respondents the day after the hearing held at Roberval on June 13, 2007.

[27] First, I note that the parties submitted their arguments during the day on June 13 and that the case was taken under advisement that same evening. It is unusual to ask the Court to re-open the proceeding during the advisement to hear allegedly fresh evidence.

[28] I have reviewed the correspondence received from the parties and I do not think there is any reason to re-open the argument, since the parties have a duty to ensure that all available, relevant

and probative evidence is filed with the Court at the proper time and in accordance with the rights of the other parties.

[29] Accordingly, I consider it as not consistent with the interests of justice to re-open the matter, and consequently the application to re-open the proceeding is dismissed.

ISSUES

[30] Essentially, the following issues were raised in this matter:

1. Was the adoption of the Electoral Code by the Opitciwan Atikamekw Council valid?

2. If so, was the suspension of the Electoral Code by the Opitciwan Atikamekw Council valid?

3. If the Electoral Code were still in effect, did the evidence before the Court establish that there were one or more breaches of the Electoral Code that would justify the Court quashing the 2006 elections?

ANALYSIS

(1) Was the adoption of the Electoral Code by the Opitciwan Atikamekw Council valid?

[31] The respondents submit first that the 2006 elections should not be quashed by this Court for an infringement of the Electoral Code since the Electoral Code was not and never was valid, as a result of the absence of a consensus to indicate that the Electoral Code reflected Band custom. This argument was based on the fact that the Council held no referendum, as it had initially undertaken to do, and on the absence of any evidence regarding the way in which the preparation and consultation process preceding adoption of the Electoral Code took place. The respondents further alleged that the Electoral Code was adopted in haste, since the Council's mandate was nearing its end and elections were to be held as soon as possible.

[32] The respondents object to the procedure used for adoption of the Electoral Code, when it was proposed that the Council repeal the referendum procedure initially agreed upon, it was recommended that the Council adopt the Electoral Code and the latter was in fact adopted by the Council, all at one assembly. The respondents further maintain that we cannot regard adoption of the Electoral Code by at most 30 individuals out of a possible 1,352 on the electoral roll as indicating that the Code was the subject of a broad consensus. The respondents add that no evidence was presented regarding notices convening the assembly of May 19, 2005, and if there was no reasonable notice so that members of the community could exercise their voting rights, the rules of natural justice were infringed.

[33] Finally, the respondents maintain that it is for the applicants to prove that the Electoral Code represents custom.

[34] The applicants and the intervener Simon Awashish maintain that the Electoral Code is valid, emphasizing that the Electoral Code was the result of a long process of consultation to create a structure that would enable members of the community to vote freely and in an orderly manner, consistent with established custom and practice in the community. The applicants further submit that the respondents are unfounded in law in saying that the Electoral Code does not apply because it had not been the subject of a referendum when it was adopted.

[35] The applicants further submit that this argument regarding the validity of the Electoral Code was made within a completely unreasonable period of time, and moreover by persons claiming to be elected in September 2005 following elections held under the Electoral Code.

[36] The applicants further rely on the order made by Tremblay-Lamer J. in docket T-1846-05, *Awashish v. Opitciwan Atikamekw Band*, 2005 FC 1703, in which she acknowledged the *prima facie* validity of the Electoral Code, in particular at paragraphs 6 and 7:

> Contrary to what the respondents allege, there is strong evidence showing that the Electoral Code represents the custom of the Band.
>
> ¶ 7 The applicable custom when a Band Council is to be chosen in cases not governed by section 74 of the *Indian Act, ibid.*, "must include practices for the choice of a council generally acceptable to members of the band upon which there is a broad consensus": *Bigstone v. Big Eagle* (1992), 52 F.T.R. 109; *Bone v. Indian Band No. 290 of Sioux Valley* (1996), 107 F.T.R. 133. In this case, the

> Electoral Code was validly adopted by resolution following consultations with the community on May 31, 2005.

[37] In *Bigstone v. Big Eagle* (1992), 52 F.T.R. 109, Mr. Justice Strayer noted the following:

> Unless otherwise defined in respect of a particular band, "custom" must I think include practices for the choice of a council which are generally acceptable to members of the band, upon which there is a broad consensus. . . . The real question as to the validity of the new constitution then seems to be one of political, not legal, legitimacy: is the constitution based on a majority consensus of those who, on the existing evidence, appear to be members of the Band? This is a question which a court should not seek to answer in the absence of some discernable legal criteria which it can apply. While there might be some other basis for judicial supervision if there were clear evidence of fraud or other acts on the part of the defendants which could clearly not be authorized by the *Indian Act*, there is no evidence of any such activities before me.

[38] At present, it seems clear that the Electoral Code is a matter of controversy within the Opitciwan community. However, the respondents did not establish that this was true when it was adopted in 2005. Further, although the Council had initially undertaken to proceed by referendum, and though it probably would have been better to proceed in that way in order to ensure the existence of a broader consensus before the Electoral Code was adopted, I am not persuaded that such a procedure was necessary to make adoption of the Code valid.

[39] In *Bone v. Sioux Valley Indian Band No. 290* (1996), 107 F.T.R. 133, Mr. Justice Heald adopted the analysis of Strayer J. in *Bigstone, supra*, and elaborated on certain points. He wrote the following:

> ¶ 27 In the words of Justice Strayer, a band's custom must "include practices for the choice of a council which are generally acceptable to members of the band, upon which there is a broad consensus". I agree with this characterization of a band's custom. However, determining what is generally acceptable to members of the band gives rise to difficulties, as is exemplified by this litigation. Justice Strayer further stated the validity of the constitution in that case was a question of political legitimacy, and was a question the court should not seek to answer in the absence of some "discernible legal criteria".
>
> ¶ 28 The Respondents submitted that the objective legal criteria sought by Justice Strayer could be found in subsection 2(3)(*a*) of the *Indian Act*. This section reads as follows:
>
> > 2. (3) Unless the context otherwise requires or this Act otherwise provides,
> >
> > (*a*) a power conferred on a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and . . .
>
> ¶ 29 The Respondents submitted that it is the Band that has the power to determine what the constitution, or electoral procedures, of the Band are, and that this power must be exercised in accordance with subsection 2(3)(*a*), as set out *supra*. I agree that it is the Band itself, not the Band Council, that has the power to determine what constitutes the Band's custom. However, I disagree with the Respondents' submission that this is a "power conferred on a band" as is contemplated by subsection 2(3)(*a*) of the *Indian Act*.

[40] Although Heald D.J. acknowledged that custom must be determined by the Band, not the Council, he refused to apply paragraph 2(3)(*a*) of the *Indian Act*, which provides that the consent of a majority of the electors must be obtained before proceeding. By the same logic, I do not think it was necessary for the Council to proceed by referendum in order to ensure that it had the support of a majority of the public before adopting the Electoral Code. This is not a situation in which the Electoral Code was developed and adopted in secret. The public was consulted throughout the process and the Electoral Code was adopted at a public assembly.

[41] The most persuasive aspect of the applicants' argument regarding the validity of the Electoral Code is that it was used for the 2005 elections, in which a large number of electors in the community took part, and that the Code's validity was not questioned before or during the elections. The validity of the Electoral Code was only questioned for the first time in reply to the allegations raised in connection with the application for judicial review in docket T-1845-06.

[42] In *Bone, supra*, Heald D.J. was confronted by a situation similar to the one at bar, as illustrated by the following passage from his judgment:

> ¶ 54 The next event that is relevant to the Applicant's submission that the Code reflects the Band's custom is the March 14, 1994, election itself. It is not disputed that the election was held in accordance with the Code, and following the election the Election Appeal Board was appointed in accordance with the Code and adjudicated the Applicant's appeal in a manner consistent with the Code. In fact, everything seemed to transpire in accordance with the Code until the Elections Appeal Board rendered its order, at which time the Respondents refused to comply with the order.

[43] Faced with evidence that supported "no more than a weak inference that the Code received the support of the Band membership", Heald D.J. turned to the election which followed adoption of the Code, concluding as follows at paragraphs 64 and 65 of his decision:

> I think the answer is to be found in the conduct of the Band in relation to the March 14, 1994, election and the events that followed. The Band conducted the nomination proceedings, the election and the subsequent election appeal, all in accordance with the Code. According to the Affidavit of the Respondent Hall, there were 478 votes cast for the election of the Band Chief. Although neither party led evidence as to the total number of eligible voters

> at the time of the election, the Respondent Hall deposed that at the time of the plebiscites there were 964 Band members of voting age, including non-residents. Thus, it can be said that approximately 50 % of the eligible voters participated in the March 14, 1994 election. There is no evidence that at any time before or during the election any Band member objected to the manner in which the election by Band custom was proceeding. In my view, the conduct of the Band in acquiescing in the use of the Code, is sufficient evidence to satisfy the requirement of Justice Strayer, as set out in *Bigstone*, *supra*, that it was "generally acceptable to members of the band, upon which there is a broad consensus", and therefore reflects the Band's custom.
>
> ¶ 65 Accordingly, I declare that the Code was in force as of March 14, 1994.

[44] By the same reasoning, I note that 649 electors exercised their right to vote in the first poll, and 701 electors in the second poll, out of a possible 1,352 on the electoral roll, according to the information supplied by the respondents. As noted earlier, no evidence was presented of an objection before or during the elections, except for the refusal by Fernand Denis-Damée to sign the resolution adopting the Electoral Code, because the resolution was not consistent with the resolution providing that the Code would be adopted by referendum. Accordingly, I am satisfied that the community's acquiescence in use of the Electoral Code in the 2005 elections is sufficient evidence to establish that the Electoral Code reflected "practices for the choice of a council which are generally acceptable to members of the Band, upon which there is a broad consensus" (*Bigstone*, *supra*).

(2) Was the suspension of the Electoral Code by the Opitciwan Atikamekw Council valid?

[45] As I have found that adoption of the Electoral Code in 2005 was valid, I must now consider whether the suspension of it in 2006 was as well.

[46] In support of their argument that the 2006 elections was illegal, the applicants maintain that the elections should have been held according to the procedure set out in the Electoral Code. In the event of disagreement with certain provisions of the Electoral Code, the amendment procedures set out in the Code should have been used, and this was not done. The applicants maintain that the process used to suspend the Electoral Code was unlawful and thus that the Electoral Code remained in effect for the 2006 elections.

[47] The applicants argue that the respondents manipulated members of the community by arranging a large number of assemblies and resolutions to set aside the Electoral Code and to establish an anti-democratic process that would guarantee their speedy election. The applicants contend that the respondents submitted a petition to the community to support the opinion expressed by the Council of Elders that the Electoral Code should be set aside, when the Council of Elders had said nothing of the kind. The applicants accordingly conclude that no weight should be given to this petition, since people subscribed to it spontaneously out of respect for what they thought was the opinion of the community's elders.

[48] The applicants further maintain that members of the Council, who were reinstated following the Court's order, and those of the election board elected in 2005, were gradually sidelined and that the months leading up to the 2006 elections were characterized by intimidation, pressure and verbal violence and members of the community finally voted in the greatest possible confusion.

[49] The respondents, for their part, maintain that the 2006 elections were legal since the Electoral Code had been suspended and replaced by the by-laws in effect in the 2003 elections, accompanied by certain amendments approved at general assemblies on April 27 and May 3, 2006. The respondents further contend that, as suggested by Tremblay-Lamer J. in her order, the parties had reached agreement in order to encourage a political settlement to the crisis at Opitciwan, and a board had in fact been empowered to review the Electoral Code, which would then be submitted to community members for approval by referendum.

[50] The respondents further note that the signatories of the letter of June 15, 2006, did not dispute that the Electoral Code had been sidelined once the elections in which they participated had been held.

[51] Unlike the situation when the Electoral Code was adopted, the respondents note that the decision to suspend the Electoral Code and the electoral rules adopted by the community was the subject of a broad consensus. The respondents allege that participation in the process of suspending the Electoral Code in 2006 was greater than in the process of adopting it in 2005.

[52] The respondents further submit that several of the applicants criticized the process of suspending the Electoral Code without taking part and without being aware of the efforts made to arrive at the agreement, as indicated by the examinations of the applicants Clément Cleary and Nathalie Awashish, and of the intervener Simon Awashish.

[53] Finally, the respondents argue that, pursuant to the negotiations undertaken to establish the process for the 2006 elections, the decision to suspend the Electoral Code was approved by the Council in resolution No. 2006-04-10-020.

[54] To begin with, I have considerable reservations regarding the interpretation placed by the respondents on the "so-called" decision of the Council of Elders made at the meeting of December 22, 2005. After reading the transcript of that meeting carefully, I have to say that the position taken by the Council of Elders on the question of the Electoral Code seems somewhat unclear. Reading the transcript, which was prepared in good faith and the content of which is not disputed in Court, leads me to conclude that nothing was decided by the elders at this meeting of December 22, 2005. It was instead a meeting at which participants discussed many matters, including the Electoral Code, but it appears to the Court that opinions varied and that no decision was taken on whether the Electoral Code applied. The only clear decision appears to have been to postpone the discussion to a new meeting of the Council of Elders after the holidays in early January 2006.

[55] The petition which circulated to support suspension of the Electoral Code, and the letter dated March 17, 2006, which clearly stated that it reflected the elders' position that the Electoral Code should be suspended, appear to the Court to be an inducement: that is, incorrect information was used in the wording of the petition to obtain general agreement of members of the Band that the Electoral Code should be rejected.

[56] Circulating incorrect information in order to get the support of a majority of citizens, though regrettable, is not new in aboriginal municipal politics and is not sufficient to vitiate the electoral

process. What I regard as unacceptable is making people believe that the Council of Elders, consisting in fact of the Band's elders, made a decision when that apparently was not the case.

[57] It is the Band's elders, meeting on occasion in what is called the Council of Elders, who approve the changes made from time to time to any code of conduct adopted by the Band. This procedure is not unique and is to be found in all Indian bands in Canada. In fact, younger members of the aboriginal communities feel reassured in adopting a code of conduct which has received the approval of the Council of Elders. This procedure of having major decisions affecting management of band councils approved by the elders is part of any decision-making process.

[58] In the case at bar, this approval process was clearly flouted and everyone, including the elders themselves, allowed themselves to be manipulated and ended by believing that they agreed with rejection of the Electoral Code.

[59] What member of the Band would dare to refuse to sign a petition to reject the Electoral Code when he or she believed that the elders had themselves rejected it? It was clearly the weight of the opinion of the Council of Elders which led people to sign the petition spontaneously, as it falsely claimed to be implementing the decision of elders to reject the Electoral Code.

[60] It may also fairly be assumed that the same elders who were concerned about divisions within the Band at the meeting of December 22, 2005, and hoped that some calm would prevail after the holiday period, would have been ill advised to support the Electoral Code when a majority of members appeared to reject it.

.

[61] It is also true that there were several public assemblies and that the Council adopted a resolution reflecting the apparent consensus among members of the community that the Code should be suspended. This resolution was followed by two further general assemblies at which procedures for the 2006 elections were adopted. The general elections went forward on May 30 and 31 and June 1, 2006 and 770 of the 1,352 electors on the electoral roll exercised their right to vote.

[62] I now come to the formal decision to "suspend" the Electoral Code. First, the Electoral Code exists and is valid, as discussed earlier. Accordingly, the question is whether it is possible under the same Electoral Code to suspend its application. After considering this point, I do not think that is the case.

[63] I can understand and accept that people were upset following the events that occurred in 2005 and 2006, and in particular successive elections which had a decisive effect on Band members. I also understand that members were anxious to find some stability and that the Electoral Code appeared to be causing certain problems.

[64] It appears from the evidence submitted that the effect of the Electoral Code was to prevent the Band Chief, respondent in the case at bar, from running for office in the elections in 2006 since he had been charged with a criminal offence, and this made him ineligible. Suspension of the Electoral Code accordingly allowed him to run for office, which is an important point in view of the situation which led to the "suspension" of the Electoral Code and the motivations of the parties involved.

[65] I also understand that the respondents to some extent used the Electoral Code as a “lightning rod”, holding it responsible for the Band’s problems. I am unable to see what is so dangerous in the application of the Electoral Code and what makes it so objectionable. Any electoral code is just a code which sets out rules to be followed in the electoral process.

[66] I also note that the process used in suspending the Electoral Code did not comply with the rules of the Electoral Code itself, as well as abusing the process for approval by the elders. What good can an electoral code be if its application is suspended when elections are held?

[67] I have reviewed in detail the transcripts of the meetings held between January and April 2006, and I feel that it is excessive to say the least to maintain that these meetings constituted a broad consultation on the need to suspend the Electoral Code. It was more a question of the choice of the members of the election board and the legality of replacement of individuals elected in the preceding year. There also appears to have been a wish to have elections as soon as possible. The provisions of the Electoral Code and the rules for replacing it, if necessary, were discussed very little at these meetings.

[68] Accordingly, I have no hesitation in concluding that the resolutions adopted at various times between January 18, 2006, and April 2006 did not have the effect of amending the existing Electoral Code or of suspending its application, pursuant to the existing rules of law for doing so which were set out in the Electoral Code in effect.

[69] I therefore consider that the elections held at Opitciwan on May 30 and 31 and June 1, 2006 were held illegally and should accordingly be quashed.

[70] I also feel that the members of the Council elected at these elections were illegally elected, and I issue a writ of *quo warranto* to divest of their duties the members of the Opitciwan Band elected to the Atikamekw Band Council, namely, Jean-Pierre Mattawa, Fernand Denis-Damée, Régina Chachai, Martine Awashish, Boniface Awashish, Charles Jean-Pierre and Annie Chachai.

[71] Finally, I order that new elections be held in accordance with the rules of the Electoral Code.

(3) If the Electoral Code were still in effect, did the evidence before the Court establish that there were one or more breaches of the Electoral Code that would justify the Court quashing the 2006 elections?

[72] In view of my conclusions on the foregoing points, it will not be necessary to answer this question.

[73] Having said that, I would add that, in view of the fact that a political crisis has been occurring in the Opitciwan community since 2005 and the results of the last two elections have been challenged in this Court, it would be desirable to have the controversy surrounding the Electoral Code resolved once and for all. Band members should realize that the rules of conduct governing the electoral process are only a means of ensuring a democratic election. However, those elected, whoever they may be, cannot assume the right to alter the existing rules.

[74] The applicants established that the process for adopting the Electoral Code was followed and that it is valid. The respondents, for their part, were not able to show that the Electoral Code had been legally amended or set aside.

[75] Any future attempt to amend or to substantially alter the electoral process should be made in accordance with the existing Code, and I would suggest that the process should be transparent and be the subject of broad consultation so that people know what they are voting for.

[76] Finally, although use of judicial review to ensure the legality of elections is a legitimate procedure, the fact remains that it would be desirable for the next elections to be held in a more harmonious atmosphere and to lead to results which are not challenged in this Court, so as to enable those elected to concentrate on the community's other needs.

[77] The application for judicial review at bar is accordingly allowed.

JUDGMENT

The Court orders that:

(a) the elections held at Opitciwan on May 30 and 31 and June 1, 2006 be quashed;

(b) a writ of *quo warranto* be issued divesting of their duties the members of the Opitciwan Band illegally elected to the Opitciwan Atikamekw Band Council, namely, Jean-Pierre Mattawa, Fernand Denis-Damée, Régina Chachai, Martine Awashish, Boniface Awashish, Charles Jean-Pierre and Annie Chachai;

(c) new elections be held in accordance with the Electoral Code of the Opitciwan Atikamekw Council and within the deadlines therein specified;

(d) the judgment be given effect on a provisional basis, notwithstanding appeal;

(e) with costs to the applicants against the respondents.

"Pierre Blais"

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1082-06
STYLE OF CAUSE:	MARC AWASHISH *ET AL.* v. OPITCIWAN ATIKAMEKW BAND COUNCIL *ET AL.*
PLACE OF HEARING:	Roberval
DATE OF HEARING:	June 13, 2007
REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Blais
DATED:	July 20, 2007

APPEARANCES:

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Martin Dallaire	FOR THE INTERVENER (Simon Awashish)
Nicole Bérubé	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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