

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250211

Docket: A-115-22

Citation: 2025 FCA 32

**CORAM: WEBB J.A.
ROUSSEL J.A.
BIRINGER J.A.**

BETWEEN:

**ERWIN BASTIEN and PIIKANI NATION
CHIEF AND COUNCIL on behalf of
PIIKANI NATION**

Appellants

and

BRIAN JACKSON

Respondent

Heard at Calgary, Alberta, on February 11, 2025.
Judgment delivered from the Bench at Calgary, Alberta, on February 11, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on February 11, 2025).

ROUSSEL J.A.

[1] The appellants appeal a judgment of the Federal Court (2022 FC 591) dated April 22, 2022, in Court file no. T-1224-21, which dismissed the appellants' application for judicial review of a decision by the Piikani Nation Removal Appeals Board dated July 7, 2021. The Board

dismissed a petition for the removal of the respondent as councilor for the Piikani Nation. The appellants submit that the Federal Court erred in finding that the process before the Board was procedurally fair and that the decision was reasonable.

[2] Since an election was held subsequent to the Federal Court decision and the respondent did not run in that election, counsel for the appellants concede that the appeal has become moot. They nonetheless submit that this Court should exercise its discretion to decide the merits of the appeal in any event.

[3] Having considered the relevant factors set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, we are not persuaded that it is appropriate for this Court to exercise its discretion to hear the appeal despite its mootness. The absence of a memorandum of fact and law on behalf of the respondent on the merits of the appeal is a relevant consideration (*Canada (National Revenue) v. McNally*, 2015 FCA 248 at para. 7; *Seismotech IP Holdings Inc. v. Rona Inc.*, 2024 FCA 141 at para. 2).

[4] Consequently, the appeal will be dismissed for mootness, without costs.

[5] As for the respondent's cross-appeal, we find the notice of cross-appeal is improper. Therefore, the cross-appeal will be dismissed without costs.

"Sylvie E. Roussel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-115-22

STYLE OF CAUSE:

ERWIN BASTIEN and PIIKANI
NATION CHIEF AND COUNCIL
on behalf of PIIKANI NATION v.
BRIAN JACKSON

PLACE OF HEARING:

CALGARY, ALBERTA

DATE OF HEARING:

FEBRUARY 11, 2025

**REASONS FOR JUDGMENT OF THE COURT
BY:**

WEBB J.A.
ROUSSEL J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY:

ROUSSEL J.A.

APPEARANCES:

Caireen E. Hanert
Alison J. Gray

FOR THE APPELLANTS

Brian Jackson

ON HIS OWN BEHALF

SOLICITORS OF RECORD:

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FOR THE APPELLANTS