



MITCHIKANIBIKOK INIK

Algonquins of Barriere Lake
Les Algonquins du Lac Barriere

KITIGANIK –Rapid Lake – Lac Rapide
Quebec J0W 2C0

Tel: (819) 435-2181 Fax: (819) 435-2191

WITHOUT PREJUDICE

March 25, 2008

ATTENTION:

Mitchikanibikok Inik Eligible Members
Acting Chief Benjamin Nottaway
Moise Papatie
David Wawatie
Jean Paul Ratt
Jean Maurice Matchewan
Casey Ratt
Ricky Decoursay
Donat Thusky
Roger Jerome
Wayne Papatie
Grand Chief Norman Young
Algonquin Chiefs
Regional Chief Ghislain Picard
National Chief Phil Fontaine
Honourable Chuck Strahl
Honourable Lawrence Cannon
Honourable Benoit Pelletier
Clifford Lincoln, ABL Special Representative

Re: Notice of Judicial Review Application Regarding DIA Interference with Mitchikanibikok Inik (Algonquins of Barriere Lake) Leadership Selection

Attached, please find a Notice of Application for Judicial Review. Our Elders Council has filed this Judicial Review to challenges Minister Strahl's decision of March 10, 2008 to wrongly register Casey Ratt as our Chief and other individuals as our Councillors of our First Nation.

On January 31, 2008, Casey Ratt wrote a letter to Minister Strahl on January 31, 2008, falsely claiming there was a leadership change within our First Nation on December 11, 2007. I had been approached by certain individuals from within our First Nation about a leadership review, but the process to come to a consensus amongst the Elders on the need for such a review had not reached completion.

As such, a majority of our Elders have not participated in a leadership review assembly within the meaning of section 8.11 of our *Anishinabe Onakinakewin*. Our Elders did not reach a consensus on the removal of the Customary Council on December 11, 2007, as falsely claimed by Casey Ratt. Moreover, a majority of our Elders did not participate in a leadership selection

on January 30, 2008, as falsely claimed by Casey Ratt. Therefore, the process used by Casey Ratt, and others, was not done in accordance with our *Anishinabe Onakinakewin*.

On February 4, 2008, I wrote to Minister Strahl, to inform him that there had been no new leadership selection undertaken within our First Nation, according to our *Anishinabe Onakinakewin*. Minister Strahl did not respond to my February 4, 2008, letter.

The confusion caused by the false claims made by Casey Ratt and others has been worsened by the issuance of a letter from DIA's Andre Cote, dated March 10, 2008. This letter indicated that once again, the Minister of Indian Affairs has decided to interfere in our internal affairs by registering the results of the falsely claimed leadership selection process and to conduct his relationship with our First Nation with the supposed council composed of Casey Ratt, Ricky Decoursay, Donat Thusky, Roger Jerome and Wayne Papatie.

Minister Strahl did not consult in any way with our Elders Council before making this decision. The Minister did not provide our Elders Council with any information whatsoever regarding the basis for his decision of March 10, 2008; more particularly, Minister Strahl did not provide the details upon which he based his decision, including a copy of the report by Laurier Riel who apparently witnessed the supposed leadership selection according to Casey Ratt's letter of January 31, 2008.


Minister Strahl's decision has an impact on our First Nation:

- It is being acted upon by DIAND, other government departments and the false council as if it is valid;
- Our Elders Council are negotiating with the Minister, matters which are the subject of a Judicial Review in case No. T-1514-06;
- It has effectively ignored the authority of our Elders in our role over leadership selections;
- The decision has also has fuelled dissension within our First Nation.

Because of the confusion caused by DIA's March 10, 2008 letter which registers a false Chief and Council in violation of our customs, and because of the negative impacts this has caused for our First Nation, our Elders Council commenced this legal action to protect our customs regarding our leadership selection.

We are also advising the governments of Canada and Quebec, as well as others, that Casey Ratt, Ricky Decoursay, Donat Thusky, Roger Jerome and Wayne Papatie, are not authorized representatives of our First Nation. As such, any undertakings written or oral by these individuals is not valid and will not be considered binding upon our First Nation.

Sincerely,


Harry Wawatie
Mitchikanibikok Inik
Council of Elders



File No. T-462-08

FEDERAL COURT

HARRY WAWATIE, TOBY DECOURSAY, JEANNINE MATCHEWAN AND LOUISA PAPTIE, IN THEIR CAPACITY AS MEMBERS OF THE ELDERS COUNCIL OF MITCHIKANIBIKOK INIK (also known as ALGONQUINS OF BARRIERE LAKE)

APPLICANTS

- and -

MINISTER OF INDIAN AFFAIRS AND NORTHERN
DEVELOPMENT

RESPONDENT

APPLICATION UNDER section 18.1 of the *Federal Courts Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants appears on the following page.

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 requests that this application be heard at Toronto.

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* and serve it on the applicant's solicitor, or where the applicant is self represented, on the applicants, WITHIN 10 DAYS after being served with this notice of application

Copies of the *Federal Court 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.

March 25, 2008

Issued by:  (Registry Officer)

**ABIGAIL GRIMES
REGISTRY OFFICER
AGENT DU GREFFE**

Address of local office:

180 Queen Street West
Suite 200
Toronto ON
M5V 3L6

TO:

Minister of Indian Affairs and Northern Development
Terrasses de la Chaudiere
10 Wellington Street
Hull QC K1A 0H4

AND TO:

The Attorney General of Canada
Ontario Regional Office (Toronto)
Exchange Tower 130 King Street West Suite 3400
PO Box 36 Toronto, Ontario
Canada M5X 1K6
(two copies filed with registry for service)

APPLICATION

This is an Application for Judicial Review of the decision of the Minister of Indian Affairs and Northern Development (the “Minister”) to register the results of a purported leadership selection and to conduct his relationship according to those results with a purported council composed of Chief Casey Ratt and Councillors Ricky Decoursay, Donat Thusky, Roger Jerome and Wayne Papatie for the Mitchikanibikok Inik, also known as the Algonquins of Barriere Lake (the “First Nation”).

The said decision, stated to be “effective immediately”, was communicated in a letter addressed to the above-noted purported council dated March 10, 2008, copied to the Applicant Harry Wawatie, which was signed by Andre Cote, the Regional Director General of the Department of Indian Affairs and Northern Development (“DIAND”), Quebec Region.

THE APPLICANT MAKES APPLICATION FOR:

1. An order to quash or set aside the decision of the Minister of March 10, 2008;
2. A declaration that any and all decisions made by the purported council from the effective date of the Minister’s decision are void;
3. An order for costs on a solicitor-client basis; and
4. Any other order that this Honourable Court shall deem just and appropriate.

THE GROUNDS FOR THE APPLICATION ARE:

BACKGROUND

1. The First Nation selects its leaders by its customs, as recognized under the *Indian Act*, s.2(1). These customs have been codified in a document entitled *Mitchikanibikok Anishinabe Onakinakewin* (“*Anishinabe Onakinakewin*”).
2. According to the *Anishinabe Onakinakewin*, the governing authority of the First Nation is the Customary Council, known as *Nikanikabwijik*.
3. Under the *Anishinabe Onakinakewin*, the Elders, *Ketizijik*, have a key role in the governance of the First Nation. They are the keepers of the customs and are responsible for nominating candidates for the Customary Council and for supervising the leadership selection process. As such, the Applicants are directly impacted by the decision of the Minister under judicial review.

JUDICIAL REVIEW OF MINISTER'S DECISION TO IMPOSE THIRD PARTY MANAGEMENT ON THE FIRST NATION (FILE T-1514-06)

4. The Minister decided to impose third party management ("TPM") on the First Nation in a decision communicated by letter from Andre Cote, dated July 12, 2006.
5. On August 10, 2006, the Applicants brought an Application for Judicial Review of the decision of the Minister to impose TPM on the First Nation, bearing File no. T-1514-06, alleging among other things that said decision violated the *Anishinabe Onakinakewin*; that it was a breach of fiduciary duty and of the honour of the Crown; that it was a breach of natural justice and the duty of fairness; that it raised a reasonable apprehension of bias and that it was an abuse of discretion.
6. The said Application for Judicial Review is pending in Federal Court.

NIKANIKABWIJK – CUSTOMARY COUNCIL

7. The Applicant Harry Wawatie was Chief of the Customary Council of the First Nation from 1996 until July 10, 2006. He resigned as Chief on July 10, 2006, because of the dispute with the Minister over matters involved in the decision by the Minister to impose TPM on the First Nation.
8. Former Chief Harry Wawatie's resignation precipitated a leadership selection within the First Nation, which resulted in the selection of a new Customary Council composed of Chief Jean Maurice Matchewan and Councillors Jean Paul Ratt, Benjamin Nottaway, Moise Papatie and David Wawatie ("Customary Council") in July-August 2006. The Applicants presided over this leadership selection process.

REPORT OF JUSTICE REJEAN PAUL

9. At first, the Minister refused to recognize the newly selected Customary Council of Chief Matchewan on the basis that another council was claiming leadership. That other council was made up of a minority faction, including Jules Papatie and Hector Jerome ("Papatie-Jerome Group"). This is the same group who are now supporting the purported council of Casey Ratt. In a letter signed by Pierre Nepton dated August 30, 2006, the Minister refused to conduct business with either council.
10. In an Affidavit filed by Pierre Nepton in File T-1514-06, the latter gave the lack of a recognized council as justification, *ex poste facto*, for the imposition of TPM.

11. On the recommendation of Elder Harry Wawatie made by letter dated December 19, 2006, to then Minister Prentice, the Governor in Council, by P.C. 2007-577, April 19, 2007, appointed Honourable Rejean F. Paul, Judge of the Quebec Superior Court, to act as mediator in the dispute over governance of the Algonquins of Barriere Lake First Nation, from February 1, 2007 to May 31, 2007.
12. Justice Paul was unable to mediate a resolution and instead issued a Report on May 15, 2007. Based on his interpretation of the *Anishinabe Onakinakewin*, he made the following findings:

The other group – representing a small minority at that time – met in the gymnasium. (I have identified this group using the names of two of the leaders: Jules Papapie and Hector Jerome.)

The procedure followed by the latter group was tentatively and clumsily modeled on the procedure observed by Mr. Gratton that led to the election of Chief Jean-Maurice Matchewan and his Councillors, but did not respect the Customary Governance Code. Consequently, according to my assessment of the situation, only the Matchewan group can claim to form the Band Council.
13. Acting on the Report of Justice Paul, the Minister recognized the Customary Council of Chief Matchewan, by letter dated May 29, 2007, from Andre Cote, the Regional Director General of the Quebec Region, DIAND.

RECOGNITION OF THE PURPORTED COUNCIL OF CASEY RATT

14. The Chief of the purported council, Casey Ratt, wrote to Minister Strahl on January 31, 2008 alleging that the People approached the Elders to request a leadership review on November 11, 2007; that the Elders commenced a leadership review on December 11, 2007; that the Elders obtained a consensus for the removal of the Matchewan Council; and that his purported council was selected in a new leadership selection conducted on January 30, 2008.
15. The Applicant, Elder Harry Wawatie wrote to Minister Strahl on February 4, 2008, regarding Casey Ratt's letter of January 31, 2008, to inform him that there had been no new leadership selection undertaken within the First Nation, according to the *Anishinabe Onakinakewin*.
16. Elder Harry Wawatie denies the assertions in Casey Ratt's letter of January 31, 2008. Elder Wawatie was approached by certain individuals about a leadership review, but the process for reaching a consensus amongst the Elders on the need for such a review had not been completed. Moreover, the Applicants plead:

- a. neither the Applicants nor a majority of the Elders participated in a leadership review assembly within the meaning of section 8.11 of the *Anishinabe Onakinakewin*; and
 - b. neither the Elders nor the People reached a consensus on the removal of the Customary Council on December 11, 2007, as alleged by Casey Ratt.
17. The selection of the purported council, including the alleged leadership selection assembly of January 30, 2008, was not done in accordance with the *Anishinabe Onakinakewin*.
18. In a letter from Andre Cote, dated March 10, 2008, the Minister decided to register the results of the purported leadership selection and to conduct his relationship according to those results with the purported council composed of Chief Casey Ratt and Councillors Ricky Decoursay, Donat Thusky, Roger Jerome and Wayne Papatie.
19. The Minister did not respond to the letter from Elder Harry Wawatie dated February 4, 2008; nor did he consult in any way with the Applicants prior to making his decision. The Minister did not provide the Applicants with any information whatsoever regarding the basis for his decision of March 10, 2008; more particularly, the Minister did not provide a copy of the report by Laurier Riel who apparently witnessed the leadership selection according to Casey Ratt's letter of January 31, 2008.
20. The Minister's decision has an impact on our First Nation:
- a. it is being acted upon by DIAND, other government departments and the purported council as if it is valid;
 - b. the Applicants are negotiating with the Minister matters which are the subject of the Judicial Review in T-1514-06;
 - c. it has effectively ousted the authority of the Elders in their role over leadership selections; and
 - d. the decision has also has fuelled dissension within the First Nation.

FOUNDATIONS FOR THIS JUDICIAL REVIEW

21. In light of the foregoing, the grounds for this review are as follows:
- (a) The Minister acted without jurisdiction or beyond his jurisdiction in ousting the authority of the Elders regarding leadership selection within the First Nation;
 - (b) The Minister breached the honour of the Crown in failing to properly consult with the Elders, including the Applicants, prior to making his decision of March 10, 2008;
 - (c) The Minister erred in law in misinterpreting and misapplying the *Anishinabe Onakinakewin* to recognize the purported council of Casey Ratt on March 10, 2008;

- (d) The Minister failed to observe principles of natural justice and procedural fairness, by amongst other things, not responding to Elder Harry Wawatie or consulting with the Applicants prior to making his decision of March 10, 2008; and,
- (e) The Minister based his decision of March 10, 2008, on an erroneous finding of fact that he made in a perverse or capricious manner or without regard for the material before him.

STATUTORY PROVISIONS OR RULES RELIED UPON

- 22. *The Federal Courts Act*;
- 23. *Federal Courts Rules*;
- 24. *The Indian Act*, R.S.C. 1985, as amended;
- 25. *The Department of Indian Affairs and Northern Development Act*, R.S.C. 1985, as amended;
- 26. *The Constitution Act, 1982*; and
- 27. The Principle of the honour of the Crown.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- 1. Affidavit of Elder Harry Wawatie, and exhibits thereto;
- 2. The letter from Andre Cote and dated March 10, 2008; and
- 3. Such further and other material as counsel may request.

THE APPLICANT REQUESTS THE MINISTER TO SEND A CERTIFIED COPY OF THE FOLLOWING MATERIAL THAT IS NOT IN THE POSSESSION OF THE APPLICANT BUT IS IN THE POSSESSION OF THE MINISTER, TO THE APPLICANT AND THE REGISTRY:

- 1. The "significant amount of information" referred to in Andre Cote's letter of March 10, 2008, which he claims was assessed by the Minister in arriving at his decision, including all the reports of Laurier Riel, who apparently witnessed the leadership selection of the purported council of Casey Ratt;
- 2. All correspondence and memos of communications between the Minister's officials and First Nation members regarding the decision of March 10, 2008; and

3. All memos and briefing notes written or provided by Minister's officials providing advice related to the decision of March 10, 2008.

DATED MARCH 25, 2008



for: David C. Nahwegahbow
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HARRY WAWATIE, *ET AL*
APPLICANTS

and

MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
RESPONDENT

Court File No. T-462-08

FEDERAL COURT

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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