

Federal Court



Cour fédérale

Date: 20090629

Dockets: T-1587-08
T-610-09
T-660-09

T-1587-08

BETWEEN:

**TEMAGAMI FIRST NATION, GARY POTTS, PETER MCKENZIE
ANNETTE POLSON, SHERWOOD BECKER JR. AND THOMAS FRIDAY SR.**

Applicants

and

**JOHN TURNER, JAMIE SAVILLE, ROXANE AYOTTE,
JOHN MCKENZIE, STEVEN LARONDE AND ARNOLD PAUL**

Respondents

AND BETWEEN:

T-610-09

**TEMAGAMI FIRST NATION as represented by Chief Roxane Ayotte,
Second Chief John McKenzie, and Councillors, ARNOLD PAUL, MARTY PRIDHAM,
JAMIE SAVILLE, and STEVEN LARONDE**

Applicants

- and -

**GARY POTTS, PETER MCKENZIE, ANNETTE POLSON, THOMAS FRIDAY, SR., AL
MARQUETTE, and DOUG MCKENZIE and all those purporting to be Chief, Second Chief,
and/or Councilor of Temagami First Nation**

Respondents

AND BETWEEN:

T-660-09

**TEMAGAMI FIRST NATION as represented by first chief FIRST CHIEF GARY POTTS,
SECOND CHIEF PETER MCKENZIE and COUNCILLORS ANNETTE POLSON and
THOMAS FRIDAY SR.**

Applicants

- and -

**ROXANE AYOTTE, JOHN MCKENZIE, JAMIE SAVILLE, MARTY PRIDHAM,
STEVEN LARONDE AND ARNOLD PAUL**

Respondents

JUDGMENT

ON READING the submissions of the parties as to the appropriate Judgment in these circumstances, and based on the evidence adduced at the hearing of these matters and argument of Counsel for the parties and Al Marquette,

THIS COURT ORDERS AND ADJUDGES that:

1. The election results of June 12, 2008 for First Chief and Second Chief are set aside.
2. The resolutions as were at issue and purported to have been passed by the respondents in T-1587-08 and T-660-09 and the applicants in T-610-09 and their supporters are declared to be invalid and of no force or effect.

3. A new election for First Chief and Second Chief will be called and an Electoral Officer will be appointed by Band Council as represented by First Chief Gary Potts, Second Chief Peter McKenzie and Councillors Annette Poison, Thomas Friday Sr., Al Marquette and Doug McKenzie by a majority vote of all Chiefs and Councillors at a meeting held with proper notice within ten clear days of the date of this Order. All parties shall co-operate with the Elections Officer and make available the resources necessary for the performance of his or her duties.
4. The Electoral Officer will be instructed, by Band Council as represented by First Chief Gary Potts, Second Chief Peter McKenzie and Councillors Annette Poison, Thomas Friday Sr., Al Marquette and Doug McKenzie, by a majority vote of all Chiefs and Councillors at a meeting held with proper notice to deal with election appeals as suggested in paragraphs 29 to 31 of the Reasons for Judgment in these matters dated May 27, 2009.
5. A nominations meeting will be held within seven clear days of the calling of the election and will be conducted in accordance with section 8-1 of the Tribal Constitution as it existed on June 12, 2008.
6. Voting, if required, will be held within two weeks of the nominations meeting and will be conducted in accordance with section 8-2, 8-3 and 8-4 of the Tribal Constitution as it existed on June 12, 2008.

7. Voter eligibility will be determined by the criteria in section 2 of the Tribal Constitution as it read on June 12, 2008.
8. A Council of Elders shall be appointed at least one week before the new election is called and by Band Council as represented by Chief Gary Potts, Second Chief Peter McKenzie and Councillors Annette Poison, Thomas Friday Sr., Al Marquette and Doug McKenzie by a majority vote of all Chiefs and Councillors at a meeting held with proper notice. If a Council of Elders is already in existence at that time then Band Council shall leave the existing Council of Elders in place.
9. Until the new election has been held and any election appeals have been determined, the offices of First Chief and Second Chief will be filled by Gary Potts and Peter McKenzie, respectively. During this interim period, Chief Gary Potts, Second Chief Peter McKenzie and Councillors Annette Poison, Thomas Friday Sr., Al Marquette and Doug McKenzie shall not:
 - a) Pass any resolution or transact any business except by a majority vote of all Chiefs and Councillors;
 - b) Enter into any contracts the value of which is in excess of \$50,000 save and except any agreements concerning programs for and services to

Temagami First Nation and one-time grants made available by the governments of Ontario or Canada;

- c) Hire or fire any employee of Band Council; and/or
 - d) Take any position on behalf of Temagami First Nation in representations to government or other officials concerning land claims, court actions and applications other than those involved here, contribution agreements and/or joint ventures.
10. Until the new election has been held and any election appeals have been determined, Roxane Ayotte, John Turner, Jamie Saville, John McKenzie, Steven Laronde, Arnold Paul and/or Marty Pridham and any person acting under their direction or control shall not:
- a) Occupy or attend at the Band Council Office or other Band-owned buildings except in their capacity as members of Temagami First Nation;
 - b) Hold themselves out as duly-elected Chiefs and Council; and/or
 - c) Protest Chief Gary Potts, Second Chief Peter McKenzie and Councillors Annette Poison, Thomas Friday Sr., Al Marquette and

Doug McKenzie remaining in office until the outcome of the election and any appeals have been determined.

11. The terms of office for First Chief and Second Chief elected in the new election are until June 2011, subject to any actions taken in accordance with the Tribal Constitution or custom which could have the effect of shortening or lengthening these terms.
12. The Temagami First Nation shall indemnify the Ayotte Group for their costs, including reasonable disbursements actually incurred by them in each of these proceedings, on the same basis as to the same extent as has been provided to the Potts Group.

"Roger T. Hughes"

Judge