Date: 20091211

Docket: T-368-09

Citation: 2009 FC 1270

Ottawa, Ontario, December 11, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

FRED WHITEHEAD and JIMMY BILL

Applicants

and

PELICAN LAKE FIRST NATION, CHIEF PETER BILL, GILBERT CHAMAKESE, DAVID THOMAS, ROMEO THOMAS and SYDNEY BILL

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Court acknowledges its respect for the internal procedures, customs, traditions and operations of indigenous Band Councils; and, thereby, defers to authoritative council decisions emanating from leadership of constituent indigenous communities.

II. Introduction

[2] The Court recognizes a Band Council's powers to suspend councillors for misconduct and violations of Band legislation pursuant to an inherent legal authority and customary right.

A meaningful legal right to legislate cannot exist without a legal remedy to sanction offenders. Band legislation cannot be violated with impunity.

The doctrine of necessity has been previously recognized by the Supreme Court of Canada. The Federal Court of Appeal has referred to the doctrine of necessity in *Bill v. Pelican Lake Appeal Board*, 2006 FCA 397, 154 A.C.W.S. (3d) 259:

> [8] In my view, in these circumstances, the doctrine of necessity applies. In *Sparvier v. Cowessess Indian Band*, [1993] 3 F.C. 142, at page 172-173, Rothstein J. of the Federal Court (as he then was) wrote:
>
> > The doctrine of necessity arises in cases in which, when no one else is empowered to act, otherwise disqualified tribunal members… may be qualified to hear and determine an appeal. The principle is stated in Administrative Law by Sir William Wade, 6th ed., 1988 at page 478:
> >
> > > In all the cases so far mentioned the disqualified adjudicator could be dispensed with or replaced by someone to whom the objection did not apply. But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to necessity; for otherwise there is no means of deciding and the machinery of justice or administration will break down.

III. Judicial Procedure

[3] This is an application for judicial review of four decisions made by the Chief and Council of the Pelican Lake First Nation (PLFN) to temporarily suspend Councillors Fred Whitehead and Jimmy Bill (the Applicants) from their duties without remuneration.

IV. Background

[4] On March 9, 2007, the Applicants were elected as PLFN Councillors.

[5] In July 2008, the Applicants obtained possession, the Respondents allege improperly, of confidential Band records and, the Respondents allege, improperly disseminated the information in those records to the public (Respondents' Memorandum of Fact and Law at para. 6).

[6] At the Band Council meeting of November 17-18, 2008, the Council directed the Applicants to return the records. The Respondents allege that the Applicants refused to do so, became disruptive and walked out of the meeting (Respondents' Memorandum of Fact and Law at paras. 7, 8).

[7] The Respondents allege the Applicants received notice of the Band Council meeting scheduled for December 12, 2008 and chose not to attend. At that meeting, the Chief and Council passed a Band Council Resolution (BCR) which suspended the Applicants for the month of December, without pay, and requested the assistance of the Royal Canadian Mounted Police (RCMP) to recover the missing files (Respondents' Memorandum of Fact and Law at para. 9).

[8] The RCMP took possession of the missing files in January 2009. The Applicants allege the files were voluntarily returned to the RCMP (Affidavit of Fred Whitehead at para. 11), while the Respondents claim the files were seized from the Applicants (Respondents' Memorandum of Fact and Law at para. 10).

[9] The Applicants attended the Band Council meeting on January 31, 2009. At that meeting, the Chief and Council consulted with Band Elders regarding the Applicants' suspension. The Applicants refused to participate further in the meeting and walked out. In their absence, a BCR was

passed suspending the Applicants for the month of January 2009 (Respondents' Memorandum of Fact and Law at para. 11).

[10] The next Band Council meeting was held on February 27, 2009. The Applicants were initially in attendance, but walked out after demanding payment of their monthly honoraria which were being withheld as a result of the suspensions (Respondents' Memorandum of Fact and Law at para. 12). In their absence, the Chief and Council passed a motion suspending the Applicants for the month of February 2009. A BCR to this effect was executed on March 10, 2009 (Respondents' Memorandum of Fact and Law at para. 11).

[11] The Chief and Council passed another BCR continuing the suspensions for March of 2009 (Respondents' Memorandum of Fact and Law at para. 13). The suspensions were allowed to expire in April of 2009 and the Applicants returned to Band Council meetings at that time (Respondents' Memorandum of Fact and Law at para. 14).

V. Issues

[12] (1) Does the Band Council have jurisdiction to temporarily suspend the Applicants?

(2) Is this application inconsistent with Section 18.1(2) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 and Rule 302 of the *Federal Courts Rules*, SOR/98-106?

(3) Are the remedies requested by the Applicants appropriate in an application for judicial review?

VI. Decisions under Review

[13] The Applicants seek judicial review of four Band Council Resolutions executed by the Respondents temporarily suspending the Applicants for misconduct.

VII. Analysis

[14] The Applicants submit that in order for the Band Council to be able to suspend councillors, the power to do so must be given to it in either the *Indian Band Council Procedure Regulations*, C.R.C., c. 950 (IBCPR), or in the *Pelican Lake Band Election Act* (PLEA) (Applicants' Memorandum of Fact and Law at para. 9).

[15] The Applicants submit that every Band Council is governed by the IBCPR and the IBCPR do not give Band Councils the authority to suspend councillors (Applicants' Memorandum of Fact and Law at paras. 10, 11).

[16] The Applicants anticipate the Respondents' argument that a PLFN custom exists which gives the Council the authority to suspend councillors and submit that the onus falls on the Respondents to prove that such a custom exists (Applicants' Memorandum of Fact and Law at para. 24). The Applicants submit that none of the evidence presented establishes a band custom which allows for suspensions (Applicants' Memorandum of Fact and Law at paras. 21).

[17] The Applicants submit that Regulation 31 of the IBCPR states that bands may make procedures for band council meetings as long as those procedures are not inconsistent with the IBCPR (Applicants' Memorandum of Fact and Law at para. 25). The Applicants note that

Regulation 23 states that band council meetings shall be open to all members of the band and a member can only be excluded from a single meeting if that member causes a disturbance; therefore, the Applicants' submit the Band Council cannot suspend councillors because it would be inconsistent with Regulations 31 and 23 (Applicants' Memorandum of Fact and Law at paras. 26 and 27).

[18] The Applicants submit that the Band Council does not have the power to suspend because the PLEA does not give the Band Council the jurisdiction to do so. Section 15 of the PLEA only gives the Council the power to remove a councillor and is silent on the power to suspend (Applicants' Memorandum of Fact and Law at para. 31).

[19] The Respondents submit the appropriate standard of review to determine whether the Band Council has the jurisdiction to temporarily suspend councillors is correctness; however, once the Court finds that the Council has jurisdiction, the standard of review is reasonableness (Respondents' Memorandum of Fact and Law at p. 7).

[20] The Respondents take issue with the Applicants' submissions that the powers of the Band Council must be found in legislation. The Respondents submit that the IBCPR do not apply to the PLFN Band Council because Section 2 of the IBCPR limits the application of those Regulations to band councils elected pursuant to Section 74 of the *Indian Act*, R.S.C., 1985, c. I-5, and the PLFN elects its Council pursuant to the PLEA (Respondents' Memorandum of Fact and Law at p. 8).

[21] The Respondents submit that the grounds for removal of councillors listed in Section 15 of the PLEA do not preclude the Band Council from suspending councillors (Respondents' Memorandum of Fact and Law at p. 9).

[22] The Respondents submit that that if the PLEA does not restrict the power of the Band Council, the Council retains its inherent jurisdiction to develop its own regulatory policies and procedures. The Respondents cite the cases of *Lafond v. Muskeg Lake Cree Nation*, 2008 FC 726, 330 F.T.R. 60, at paragraphs 10 and 11, and *Prince v. Sucker Creek First Nation*, 2008 FC 1268, 337 F.T.R. 1, at paragraphs 29 to 33, for the proposition that a Chief can retain customary powers and can have the authority to suspend councillors where legislation has not "covered the field".

[23] The Respondents also submit that the Chief and Council of the PLFN possess the customary authority to discipline councillors (Respondents' Memorandum of Fact and Law at p. 10). This authority is based on previous instances of the Council suspending councillors for misconduct. The Respondents submit that the legitimacy of this power was endorsed by a PLFN Committee of Elders (Respondents' Memorandum of Fact and Law at p. 11).

[24] The Respondents also submit that the Band Council has established policies and legislation, such as the *Conflict of Interest Guidelines for Chief and Council* (Guidelines), which set out acceptable behaviours for elected officials. The Respondents submit that if a government has the power to pass legislation, such as the Guidelines, then it also has the power to enforce that legislation. Also, the legislation in question does not set out sanctions for breach and, therefore, the

Guidelines leave the Band Council's disciplinary authority untouched (Respondents' Memorandum of Fact and Law at p. 11).

[25] In the alternative, the Respondents submit that if the Court does not recognize the Council's inherent powers to suspend councillors for misconduct and violations of Band legislation, such powers must exist because there is no other Band authority in a position to enforce Band policy and legislation. The Respondents cite the case of *Bill v. Pelican Lake Appeal Board*, above, where the Federal Court of Appeal recognized the Doctrine of Necessity in cases when no other body is empowered to enforce a law (Respondents' Memorandum of Fact and Law at pp. 11 and 12).

[26] The Respondents submit that the Applicants were suspended for personal misconduct, including violations of their Oaths of Office, sworn pursuant to Section 13 of the PLEA, and Disclosure, sworn pursuant to Section VI, sub-section 3 of the Guidelines, as well as behaviour contrary to principles of conduct set out in the Guidelines (Respondents' Memorandum of Fact and Law at p. 12).

[27] The Respondents submit that the Band Council found as a matter of fact that the Applicants engaged in behaviour that was inconsistent with their Oaths and PLFN legislation (Respondents' Memorandum of Fact and Law at p. 14).

[28] The Respondents submit that the remedies sought by the Applicants are improper. In regard to the Applicants' request for an award of punitive damages, the Respondents submit that this Court

has no jurisdiction to award damages in an application for judicial review (Respondents' Memorandum of Fact and Law at p. 15).

[29] The Respondents further submit that the Injunctions and Writs of Mandamus requested by the Applicants are improper, as they would engage this Court in dictating Band Council policy and procedure for the PLFN (Respondents' Memorandum of Fact and Law at p. 16).

[30] The Respondents submit that this Application violates subsection 18.1(2) of the *Federal Courts Act*, which gives a party thirty days after a decision to make an application for judicial review. The Respondents note that the Notice of Application in these proceedings is dated March 11, 2009 and seeks judicial review of a December 12, 2008 Band Council Resolution (Respondents' Memorandum of Fact and Law at p. 17).

[31] The Respondents also submit that a motion is required to obtain a time extension and none was requested in this case. Also, the Applicants have not filed materials to explain the delay in making this application (Respondents' Memorandum of Fact and Law at p. 17).

[32] The Respondents submit that this Application seeks judicial review of four Band Council Resolutions and this is inconsistent with Rule 302 of the *Federal Courts Rules*. The Federal Court in *Human Rights Institute of Canada v. Canada (Minister of Public Works & Government Services)*, [2000] 1 F.C. 475, 176 F.T.R. 225 (T.D.), held that a judicial review relates to only one decision and a party is generally required to file separate applications for each decision for which a review is sought (Respondents' Memorandum of Fact and Law at p. 18).

[33] The Respondents submit that this Application seeks judicial review of several decisions in an attempt to overcome subsection 18.1(2) of the *Federal Courts Act* and cite the case of *James Richardson Int. Ltd. v. Canada*, 2004 FC 1577, [2005] 2 F.T.R. 534, at paragraph 22, for the proposition that an Order under Rule 302 can be refused where it would allow an applicant to overcome the 30-day limitation period mandated by subsection 18.1(2). It should be noted that the Federal Court of Appeal varied *James Richardson* in the case of *James Richardson International Ltd. v. Canada*, 2006 FCA 180, [2007] 1 F.C.R. 83; however, on other grounds.

Standard of Review

[34] The Applicants allege that the Band Council does not have the jurisdiction to temporarily suspend councillors. In *Prince*, above, Justice Michael Kelen held that the standard of review on questions of Band Council jurisdiction is correctness (*Prince* at para. 21).

[35] In the case of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada held that correctness mandates the reviewing Court to undertake its own analysis of the question. The Court is not to be deferential to the agency's reasoning, but rather is to question whether the agency's decision was correct (*Dunsmuir* at para. 50).

Relevant Legislative Provisions

[36] The parties' submissions mention Section 2 of the IBCPR and Section 74 of the *Indian Act*:

2. In these Regulations,	**2.** Dans le présent règlement,
"Assistant Deputy Minister" means the Assistant Deputy Minister, Indian and Eskimo Affairs of the Department;	

(*sous-ministre adjoint*)

"council" means the council of a Band elected pursuant to section 74 of the *Indian Act*; (*conseil*)

« conseil » s'entend du conseil d'une bande élu conformément à l'article 74 de la *Loi sur les Indiens*; (*Council*)

"Department" means the Department of Indian Affairs and Northern Development; (*ministère*)

« ministère » signifie le ministère des Affaires indiennes et du Nord canadien; (*Department*)

"Minister" means the Minister of Indian Affairs and Northern Development; (*ministre*)

« ministre » désigne le ministre des Affaires indiennes et du Nord canadien; (*Minister*)

"secretary" means the person appointed by the council of a band to record the minutes of the council meetings; (*secrétaire*)

« secrétaire » s'entend de la personne désignée par le conseil d'une bande pour tenir les procès-verbaux des assemblées de Conseil; (*Secretary*)

"superintendent" means the Superintendent or Senior Field Officer of the Indian Affairs Branch in charge of the Agency, and includes the Indian Commissioner for British Columbia, all Regional Supervisors, all Assistants Indian Agency, and any other officer acting under the instructions of the Minister or the Assistant Deputy Minister. (*surintendant*)

« sous-ministre adjoint » désigne le sous-ministre adjoint (Affaires indiennes et esquimaudes) du ministère; (*Assistant Deputy Minister*)
« surintendant » signifie le surintendant ou le fonctionnaire local principal de la Division des affaires indiennes qui a la direction de l'agence, et comprend le commissaire des Indiens pour la Colombie-Britannique, tous les surveillants régionaux, tous les aides des agences indiennes et tout autre fonctionnaire agissant sous l'ordre du ministre ou du sous-ministre adjoint. (*superintendent*)

Elected councils

Conseils élus

74. (1) Whenever he deems it advisable for the good

74. (1) Lorsqu'il le juge utile à la bonne administration

government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

d'une bande, le ministre peut déclarer par arrêté qu'à compter d'un jour qu'il désigne le conseil d'une bande, comprenant un chef et des conseillers, sera constitué au moyen d'élections tenues selon la présente loi.

Composition of council

(2) Unless otherwise ordered by the Minister, the council of a band in respect of which an order has been made under subsection (1) shall consist of one chief, and one councillor for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief.

Composition du conseil

(2) Sauf si le ministre en ordonne autrement, le conseil d'une bande ayant fait l'objet d'un arrêté prévu par le paragraphe (1) se compose d'un chef, ainsi que d'un conseiller par cent membres de la bande, mais le nombre des conseillers ne peut être inférieur à deux ni supérieur à douze. Une bande ne peut avoir plus d'un chef.

Regulations

(3) The Governor in Council may, for the purposes of giving effect to subsection (1), make orders or regulations to provide

Règlements

(3) Pour l'application du paragraphe (1), le gouverneur en conseil peut prendre des décrets ou règlements prévoyant :

(*a*) that the chief of a band shall be elected by

a) que le chef d'une bande doit être élu :

(i) a majority of the votes of the electors of the band, or

(i) soit à la majorité des votes des électeurs de la bande,

(ii) a majority of the votes of the elected councillors of the band from among themselves,

(ii) soit à la majorité des votes des conseillers élus de la bande désignant un d'entre eux,

but the chief so elected shall remain a councillor; and

(*b*) that the councillors of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band.

le chef ainsi élu devant cependant demeurer conseiller;

b) que les conseillers d'une bande doivent être élus :

(i) soit à la majorité des votes des électeurs de la bande,

(ii) soit à la majorité des votes des électeurs de la bande demeurant dans la section électorale que le candidat habite et qu'il projette de représenter au conseil de la bande.

Electoral sections

(4) A reserve shall for voting purposes consist of one electoral section, except that where the majority of the electors of a band who were present and voted at a referendum or a special meeting held and called for the purpose in accordance with the regulations have decided that the reserve should for voting purposes be divided into electoral sections and the Minister so recommends, the Governor in Council may make orders or regulations to provide for the division of the reserve for voting purposes into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote and to provide for the manner in which electoral sections so

Sections électorales

(4) Aux fins de votation, une réserve se compose d'une section électorale; toutefois, lorsque la majorité des électeurs d'une bande qui étaient présents et ont voté lors d'un référendum ou à une assemblée spéciale tenue et convoquée à cette fin en conformité avec les règlements, a décidé que la réserve devrait, aux fins de votation, être divisée en sections électorales et que le ministre le recommande, le gouverneur en conseil peut prendre des décrets ou règlements stipulant qu'aux fins de votation la réserve doit être divisée en six sections électorales au plus, contenant autant que possible un nombre égal d'Indiens habilités à voter et décrétant comment les

established are to be distinguished or identified. R.S., c. I-6, s. 74.	sections électorales ainsi établies doivent se distinguer ou s'identifier. S.R., ch. I-6, art. 74.

Does this Court have jurisdiction to review the decisions of the PLFN Band Council?

[37] It is settled law that a Band Council is a federal "board, commission or other tribunal" for the purposes of Section 18 of the *Federal Courts Act* and their decisions are subject to review by this Court (*Francis v. Mohawk Council of Kanesatake*, 2003 FCT 115, 227 F.T.R. 161 at para. 16).

Issue 1: Does the Band Council have jurisdiction to temporarily suspend the Applicants?

[38] Band Councils are elected pursuant to one of two sources: the *Indian Act* and Band custom. The IBCPR apply to a Council if, and only if, the Band Council is elected pursuant to section 74 of the *Indian Act*. The PLFN does not elect its Council pursuant to section 74, but instead uses the PLEA; therefore, the IBCPR do not apply to it.

[39] The Applicants also submit the Council's authority to suspend councillors must be provided for in the PLEA or else the Council has acted *ultra vires* (Applicants' Memorandum of Fact and Law at para. 33). Section 15 of the PLEA gives the Council the power to remove councillors, but the legislation is silent on temporary suspensions. Although this power is not mentioned in the PLEA, courts have held that Chiefs and Band Councils can hold customary or inherent powers to suspend councillors.

Does a Band Custom Exist Allowing the Chief and Council to Suspend Members?

[40] The Court in *Francis*, above, held that it is incumbent upon the party claiming "custom" to establish that it exists (*Francis* at para. 21). The jurisprudence shows that "customs" are practices "which are generally acceptable to members of the band upon which there is broad consensus" (*Prince*, above, at para. 28).

[41] In the case of *Lafond*, above, a councillor was suspended by the Chief in response to the councillor's alleged misconduct. Although the Chief was not granted the power to suspend councillors in the *Act Respecting the Government Elections and Related Regulations of the Muskeg Lake Cree Nation*, the Court held the Chief retained customary powers where Band legislation had not "covered the field" (*Lafond* at para. 10). These powers were rooted in band custom to encourage harmony in the community (*Lafond* at para. 11).

[42] In *Prince*, the Court determined that a Band Council had the customary authority to suspend councilors (*Prince* at para. 25). The applicants submitted that the Council did not have the power to suspend councilors because the Council's customary election statute only made provision for the removal of councilors (*Prince* at para. 25). In reply, the respondents submitted it was the custom of the Sucker Creek Nation to allow the Chief and Council to suspend Councilors for misconduct (*Prince* at para. 27). The Court held that the Council held customary powers, such as the power to suspend councilors (*Prince* at para. 31).

[43] The reasoning in *Prince* applies to the case at bar. In this case, there is evidence before the Court showing that a councilor was suspended for misconduct at least once before (Respondents' Memorandum of Fact and Law at para. 16).

[44] In addition, the PLFN Band Council validly passed the Guidelines in the absence of an express grant of authority under the PLEA. This shows that the PLEA is not an exhaustive code. Also, the Band Council must have the inherent ability to enforce its policies, such as the Guidelines, or else the Council's power to make its own procedures would be ineffectual.

Issue 2: Is this application inconsistent with subsection 18.1(2) of the *Federal Courts Act* and Rule 302 of the *Federal Courts Rules*?

[45] Subsection 18.1(2) of the *Federal Courts Act* gives applicants thirty days after the decision was first communicated to file an application for judicial review of the decision of a federal tribunal. In the case of *Canada v. Budisukma Puncak Sendirian Berhad*, 2005 FCA 267, 141 A.C.W.S. (3d) 692, the Court held that this time limit exists to bring finality to administrative decision-making (*Berhad* at para. 60).

[46] Subsection 18.1(2) provides that a judge of the Federal Court may extend this time, either before or after the expiration of those thirty days, but in order to obtain a time extension, the Applicants have to show a continuing intention to pursue the application, that the application has some merit, that no prejudice to the respondent arises from the delay, and that a reasonable explanation for the delay exists (*Virdi v. Canada (Minister of National Revenue - M.N.R.)*, 2005 FC 529, 138 A.C.W.S. (3d) 1058 at para. 7, aff'd 2006 FCA 38, 145 A.C.W.S. (3d) 1021). In the case of *James Richardson*, above, at paragraph 33, the Federal Court of Appeal held that these four

requirements are not conjunctive, but must all be considered. The essence of the four-part test was distilled by Justice Conrad von Finckenstein in *Sander Holdings Ltd. v. Canada (Minister of Agriculture)*, 2006 FC 327, 289 F.T.R. 221, at paragraph 34, where it was held the applicant bears the burden of proving the delay was reasonable.

[47] In the case of *Hamilton-Wentworth (Regional Municipality) v. Canada (Minister of the Environment)* (2000), 187 F.T.R. 287, 96 A.C.W.S. (3d) 405, Justice Eleanor Dawson held that any issue of the application of a time bar ought to be heard at the hearing of the application (*Hamilton* at para. 39).

[48] Since this issue should be addressed by the Applicants, the only remaining comment to be made is in regard to the reasonableness of the delay. The application before the Court requests a review of four distinct decisions to suspend the Applicants. Each suspension lasted for a month, with new BCRs being executed based on the Applicants' alleged behaviour. The Applicants waited until long after the limitation period expired to bring this claim and ask for a large number of orders when they could have brought a succinct claim within the limitation period.

[49] Rule 302 of the *Federal Courts Rules* provides that an application for judicial review shall be limited to a single order of a federal tribunal, unless the Court orders otherwise.

[50] The Applicants petition this Court to review four separate orders of the PLFN Band Council. Under normal circumstances, the review of multiple decisions requires the filing of multiple applications (*Servier Canada Inc. v. Canada (Minister of Health)*, 2007 FC 196, 155 A.C.W.S. (3d)

664 at para. 12); however, courts have exercised their discretion to allow multiple orders to be reviewed under one application when the orders form part of a “continuous course of conduct” (*Servier* at para. 17).

[51] In *Servier*, the Court held the applicants were in contravention of Rule 302 because they applied for judicial review of two decisions made at different times, under different statutory regimes, relating to different factual situations and sought two different types of relief (*Servier* at para. 18). In contrast, in the case of *Truehope Nutritional Support Ltd. v. Canada (Attorney General)*, 2004 FC 658, 251 F.T.R. 155, the Court allowed a judicial review of two decisions to proceed under one application because both decisions originated from the same office, both had the same factual basis and the same allegations were made in respect of both proceedings (*Truehope* at para. 18). The Court in *Truehope* held that the similarities in the decisions outweighed their differences and, as such, it would be a waste of time and effort to require more than one judicial review (*Truehope* at para. 19).

[52] The case at bar is distinguishable from *Servier* and analogous to *Truehope* because the Applicants request relief arising out of four decisions of the same decision-maker, operating under the same statute, dealing with similar factual situations and seek similar forms of relief. In addition, the Applicants’ submissions deal solely with whether the PLFN Band Council has the jurisdiction to suspend councillors and since, in law, these four decisions are identical, the time and effort of the parties to this application and the Federal Court would be conserved by reviewing these decisions in one application.

Issue 3: Are the remedies requested by the Applicants appropriate in an application for judicial review?

[53] The Applicants make a request for an award of punitive damages (Applicants' Memorandum of Fact and Law at para. 42). It is well-known that the Federal Court has no jurisdiction to grant damages on an application for judicial review (*Al-Mahmad v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 2003 FCA 45, 120 A.C.W.S. (3d) 351 at para. 3). Accordingly, this Court rejects the Applicants' request.

VIII. Conclusion

[54] It is duly noted that the Applicants had never requested a delay beyond the time period stated in the Federal Courts Rules in respect of a request for judicial review. In *Virdi*, above, it was held that a party seeking an extension bears the burden of establishing the elements necessary for an extension. This is done by affidavit evidence sworn by the moving party; it can then be subject to cross examination. No motion or materials had been filed by the Applicants to satisfy or explain the delay.

[55] It is the Court's conclusion that the Chief and Band Council retain customary and inherent powers when legislation has not "covered the field" of legislative activity with respect to the Band. In this case, the PLEA does not mention suspensions for misconduct, but there must be a mechanism of necessity to enforce Band Council legislation. The Band Council has previously suspended a councillor for misconduct and deference must be afforded to this, although, new, yet, acknowledged custom. The Applicants have not demonstrated through evidence that the Band Council had acted in an unreasonable manner in their decisions.

[56] Although it is noted that the factual record is a veritable labyrinth, nevertheless, the evidence demonstrates misconduct by the Applicants. The Applicants in their own affidavits explicitly admit to the use of profanity and raised voices at Band Council meetings and to walking out in the middle of Band Council meetings. The Applicants' misconduct is confirmed by their own sworn admissions.

[57] Firstly, the Court finds that the resolutions were *intra vires*, the Band Council; and, secondly, no evidence has been brought before the Court that would demonstrate the Council's decisions were unreasonable.

JUDGMENT

THIS COURT ORDERS that the Application for judicial review be dismissed without costs due to the nature of the factual record as presented by both parties.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-368-09
STYLE OF CAUSE:	FRED WHITEHEAD and JIMMY BILL v. PELICAN LAKE FIRST NATION, CHIEF PETER BILL, GILBERT CHAMAKESE, DAVID THOMAS, ROMEO THOMAS and SYDNEY BILL
PLACE OF HEARING:	Saskatoon, Saskatchewan
DATE OF HEARING:	December 5, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	December 11, 2009

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