

Federal Court



Cour fédérale

**Date: 20210312**

**Docket: T-1274-20**

**Vancouver British Columbia, March 12, 2021**

**PRESENT: Case Management Judge Kathleen Ring**

**BETWEEN:**

**FLOYD BERTRAND**

**Applicant**

**and**

**ACHO DENE KOE FIRST NATION BAND COUNCIL,  
CHIEF GENE HOPE, COUNCILLOR JOE BERTRAND,  
COUNCILLOR ROGER BERTRAND,  
COUCILLOR IRENE MCLEOD,  
COUNCILLOR AGNUS CAPOT-BLANC,  
COUNCILLOR DENNIS NELSON,  
COUNCILLOR MORRIS MCLEOD,  
AND THE ATTORNEY GENERAL OF CANADA**

**Respondents**

**and**

**BAND MEMBERS ALLIANCE AND  
ADVOCACY ASSOCIATION OF CANADA**

**Intervener**

**ORDER**

**UPON MOTION** in writing dated March 5, 2021 on behalf of the proposed Intervener, Band Members Alliance and Advocacy Association of Canada [“BMAAAC”], pursuant to Rules 109 and 369 of the *Federal Courts Rules* [Rules] for an Order granting BMAAAC leave to intervene in the proceedings, on the terms set out in the draft order attached as Schedule “A” to the Notice of Motion;

**AND UPON** reading correspondence dated March 11, 2021 whereby the Respondent, Acho Dene Koe First Nation Band Council (“ADKFN”), opposes BMAAAC’s motion for leave to intervene. ADKFN submits that the timing of the intervention motion unfairly prejudices ADKFN, and BMAAAC’s submissions are not useful or distinct from what has already been set out by the Applicant;

**AND UPON** reading correspondence dated March 10, 2021 whereby the Respondent, the Attorney General of Canada (“Canada”), takes no position on the proposed intervention by BMAAAC. Canada requests the right to make written reply to the intervention submissions, if the intervention is granted. Canada requests one week from service of the intervener’s submissions to prepare and file its reply submissions;

**AND UPON** taking into account the considerations, set out in *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 13, for the exercise of the Court’s discretion whether to grant a motion to intervene pursuant to Rule 109 of the *Rules*;

**AND UPON** considering the submission of BMAAAC, which is not disputed by the parties, that these proceedings are the first time the Court will consider the *First Nations Election*

*Cancellation and Postponement Regulations (Prevention of Diseases)* SOR/2020-84 (the “*Election Postponement Regulations*”);

**AND UPON** considering that BMAAAC intends to focus on the following three issues if it is granted leave to intervene:

- 1) the *vires* and applicability of the *Election Postponement Regulations*, and whether the Governor in Council can make regulations that overrule mandated term limits;
- 2) the question as to whether a Band member has a right to be consulted prior to Council making a decision in relation to postponing an election, in accordance with the principles of procedural fairness or otherwise; and
- 3) the threshold and legal test that must be applied before a Chief and Council extend their term under the *Election Postponement Regulations*;

**AND UPON** considering that the issue on which the proposed intervention is mainly focused, namely the *vires* and applicability of the *Election Postponement Regulations*, is a matter of primary significance to Canada, and it takes no position on the motion to intervene;

**AND UPON** considering that although ADKFN asserts the timing of the intervention motion will unfairly prejudice ADKFN, it does not particularize the prejudice alleged, other than to say that it will not have an opportunity to respond to BMAAAC’s arguments through written submissions. ADKFN’s concern is attenuated by the Court imposing a short deadline on BMAAAC to serve and file its memorandum of argument, and granting leave to the existing parties to serve and file a reply memorandum of argument within the deadline prescribed by this Order;

**AND UPON** being satisfied that BMAAAC has provided a reasonable explanation why the intervention motion was filed late;

**AND UPON** being satisfied, based on the material before the Court, that BMAAAC will bring a different and useful perspective that will further the Court's determination of the legal issues raised by the parties to the proceedings;

**AND UPON** being persuaded, based on the material presented on the motion, that BMAAAC has a genuine interest in the proceeding, and that it is in the interests of justice to permit it to intervene on the terms set out in this Order;

**THIS COURT ORDERS that:**

1. BMAAAC is granted leave to intervene in this proceeding in order to make submissions on the following issues:
  - (a) the *vires* and applicability of the *Election Postponement Regulations*, and whether the Governor in Council can make regulations that overrule mandated term limits;
  - (b) the question as to whether a Band member has a right to be consulted prior to Council making a decision in relation to postponing an election, in accordance with the principles of procedural fairness or otherwise; and
  - (c) the threshold and legal test that is to be applied before a Chief and Council extend their term under the *Election Postponement Regulations*.

2. BMAAAC shall accept the record as adduced by the parties and shall not be permitted to submit any evidence.
3. BMAAAC is authorized to serve and file a single memorandum of fact and law not exceeding ten (10) pages in length with respect to the matters described in paragraph 1 of the Order.
4. The BMAAAC shall serve and electronically file its memorandum of fact and law by no later than 12:00 midnight M.S.T. on Friday, March 12, 2021.
5. The Applicant and the Respondents shall serve and file any written representations in reply by no later than close of business on March 19, 2021.
6. BMAAAC is authorized to attend the hearing of the application and make oral submissions with respect to the matters described in paragraph 1 of the Order, subject to any direction from the Application Judge.
7. The style of cause is hereby amended, with immediate effect, to read as follows:

**BETWEEN:**

**FLOYD BERTRAND**

**Applicant**

**and**

**ACHO DENE KOE FIRST NATION BAND COUNCIL,  
CHIEF GENE HOPE, COUNCILLOR JOE BERTRAND,  
COUNCILLOR ROGER BERTRAND,  
COUCILLOR IRENE MCLEOD,  
COUNCILLOR AGNUS CAPOT-BLANC,  
COUNCILLOR DENNIS NELSON,  
COUNCILLOR MORRIS MCLEOD,  
AND THE ATTORNEY GENERAL OF CANADA**

**Respondents**

and

**BAND MEMBERS ALLIANCE  
AND ADVOCACY ASSOCIATION OF CANADA**

**Intervener**

8. BMAAAC shall cooperate with the parties to expedite the hearing and avoid duplication.
9. BMAAAC shall be served with all materials filed and to be filed by the parties.
10. BMAAAC shall not have any appeal rights in respect of the decision of the Court on the application for judicial review.
11. Costs shall not be payable in BMAAAC's favour or against it, arising from this motion or from the application.

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"Kathleen M. Ring"  
Case Management Judge