



COURT NO. T-1241-21

**IN THE FEDERAL COURT OF CANADA**

**FLOYD BERTRAND**

**Applicant**

**AND:**

**ACHO DENE KOE FIRST NATION**

**Respondent**

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant 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 Applicant. The Applicant requests that this application be heard at Edmonton, Alberta, or as may be subsequently determined given the exigencies of the matter.

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 Applicant, 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.

August 9, 2021

**ORIGINAL SIGNED BY  
JENNIFER SORVISTO  
A SIGNÉ L'ORIGINAL**

Issued by: \_\_\_\_\_  
(Registry Officer)

HEREBY CERTIFY that the above document is a true copy of  
the original issued out of \_\_\_\_\_ filed in the Court on the

**AUG 09 2021**

day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of **AUG 09 2021**

**JENNIFER SORVISTO  
REGISTRY OFFICER  
AGENT DU GREFFE**

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TO: The Attorney General of Canada  
c/o Edmonton Registry

AND TO: Madelaine Mackenzie  
POWER LAW  
Counsel for ACHO DENE KOE FIRST NATION

## **APPLICATION**

**THIS IS AN APPLICATION IN RESPECT OF** Sections 18.1 and 18(1) of the *Federal Courts Act* for an order of *mandamus*, compelling the Respondent to comply with the public duty to follow the Order of the Election Appeal Committee dated June 22, 2021.

### **THE APPLICANT MAKES THIS APPLICATION FOR THE FOLLOWING RELIEF:**

- a) An Order in the nature of *mandamus* compelling the Respondent to comply with the Order to call a new election and appoint a new Electoral Officer;
- b) An Order that the application raises an issue of public importance to the Acho Dene Koe First Nation and thus for costs on a solicitor-client basis and/or party and party costs in any event of the outcome;
- c) In the alternative, an Order of costs based on the Respondent's conduct in refusing to comply in bad faith with an Order of the Acho Dene Koe's tribunal;
- d) Such further and other relief that this Court deems just.

### **THE GROUNDS FOR THE APPLICATION ARE:**

1. The Applicant, Floyd Bertrand is a member of Acho Dene Koe. Acho Dene Koe hold elections for Chief and Council pursuant to their own custom. However, no ratified and written custom election law exists.
2. Acho Dene Koe has 3 year fixed terms of office. Notwithstanding this, the outgoing Council extended their term in office from April 2020 until April 2021 without any customary authority.
3. On April 26, 2021, Acho Dene Koe held an election. Bertrand's nomination was refused by the Electoral Officer, Mary Beckett. He challenged this refusal in Federal Court file T-391-21. The Federal Court refused an injunction and directed Bertrand to seek a remedy from an Acho Dene Koe First Nation tribunal, the Election Appeal Committee.
4. The election on April 26, 2021 had many irregularities, including the discounting of mail-in-ballots received after the election date and the disallowance of voters online. These irregularities affected the outcome of the Chief's election.
5. The incumbent, Gene Hope, won the election by only 3 ballots over the challenger, James Duntra. At least 3 ballots were improperly excluded from the final results.
6. Therefore by May 6, 2021, as required, Duntra and Bertrand filed appeals of the election, in addition to Bertrand's nomination appeal.
7. Gene Hope requested and received two adjournments of the election appeal.

8. An appeal hearing was held on June 12, 2021.
9. The Election Appeal Committee issued an Order on June 22, 2021, ordering:
  - a. A new election with a new electoral officer;
  - b. That Floyd Bertrand be added to the ballot for Chief.
10. The Order was issued in advance of the reasons to avoid further delay and a further governance crisis at Acho Dene Koe. Indeed, this Court found in T-1274-20 that the outgoing Council was improperly in office for any entire year beyond the Acho Dene Koe's fixed term in office.
11. Since June 22, 2021, the Council has taken no steps to comply with the Order. Council has a duty to comply with an Order of the Acho Dene Koe's tribunal.
12. On July 22, 2021, the Applicant demanded the Council comply with their duty. Council has not substantively responded to or complied with this demand. The time to comply with this demand has passed.
13. Rather than perform their duty, the Council filed an application in this Court to challenge that Order (T-1178-21). The Council has further acted in conflict by consulting with Boyd Clarke, the outgoing Chief Hope's advisor, in refusing to comply with the Order.
14. The Respondent has not moved in a timely manner. Nor has the Respondent sought a stay of the Order in T-1178-21.
15. The Applicant seeks an Order in the nature of *mandamus* directing the Respondent to comply with the Order, perform its duty, call a new election and appoint a new Electoral Officer.
16. An Order of *mandamus* should issue
  - a. There is a non-discretionary public legal duty to act;
  - b. The duty is owed to the Applicant, as a member of Acho Dene Koe;
  - c. There is a clear right to the performance of the duty;
  - d. No other adequate remedy is available to the applicant;
  - e. The order sought will be of some practical value or effect;
  - f. No equitable bar exists;
  - g. There has been an unreasonable delay in complying with the duty.
17. The Applicant will be requesting that this matter be expedited so that it may be heard in a timely way in order that the relief sought is capable of being effective.
18. The Applicant may also seek interim injunctive relief.

19. *Federal Courts Act*, RSC 1985 c F-7, ss. 18(1), 18.1, 18.2.

20. Such further grounds as counsel may request and this Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

The affidavit evidence to be filed by the Applicant and such further and other material as counsel may advise and this Court may permit

- The Applicant requests, pursuant to Rule 317 of the *Federal Courts Rules*, that the Respondent transmit a certified copy of all material relied on or considered by the Election Appeal Committee in coming to the Order.

Dated: August 9, 2021



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