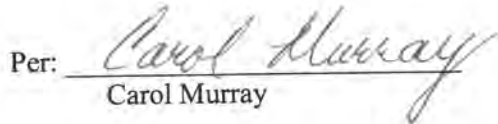
In The Matter of the Petition of Councillor Fabian North Peigan for the Removal of Chief Gayle Strikes With A Gun as Chief of the Piikani Nation

Decision of the Piikani Nation Removal Appeals Board

Per: ____________________
Jack Royal, Chair

Per: ____________________
Roy Fox



Per: ____________________
Carol Murray

December 11, 2013

1. Further to the Petition of Councillor Fabian North Peigan (the "Petitioner") that Chief Gayle Strikes With A Gun (the "Respondent") be declared ineligible to continue to hold office as the Chief and to remove the Respondent from the office of Chief of the Piikani Nation the Piikani Nation Removal Appeals Board (the "Appeals Board") conducted a Hearing on November 29, 2013 (the "Hearing").

2. At the hearing on November 29, 2013, the Appeals Board heard sworn testimony from the Petitioner, the Respondent and the Respondent's witness, Pam Wolf Tail.

Preamble

3. Pursuant to Band Council Resolutions 2013-01-08-01 and 2013-0508-01 the Piikani Nation Council made a recommendation to the Piikani Nation Removal Appeals Board that a proceeding be conducted to determine whether the Respondent should be declared ineligible to continue to hold office as the Chief and to remove the Respondent from the office of Chief of the Piikani Nation.

4. In recognition of *Piikanissini* the Removal Appeals Board divided the Hearing into 2 sections, the first being the Blackfoot traditional reconciliation and reintegration circle (the "Healing Circle") and the second being the formal proceedings (the "Formal Proceedings"). Attendance at the Healing Circle portion of the Hearing was voluntary.

5. The Respondent agreed to participate in the Healing Circle, but the Petitioner did not wish to participate and so the process proceeded to the Formal Proceedings held on November 29, 2013, which has resulted in this decision.

6. At the commencement of the Formal Proceedings, the Respondent took the position on record that the Appeals Board did not have jurisdiction to hear the matter and invited the Appeals Board to decline jurisdiction and refer the matter to the Federal Court. The matter of jurisdiction was argued at the pre-hearing application held on November 20, 2013 and the Appeals Board rendered its decision on November 22, 2013 stating, inter alia, that the Appeals Board had jurisdiction to hear this matter. A copy of the pre-hearing decision of November 22, 2013 is attached as Schedule "A" to this decision.

7. The Appeals Board is cognizant of its duty to apply the principles of *Piikanissini* which reflects the tradition and custom of the Piikani Nation, which is part of the Blackfoot Confederacy. This tradition and custom is included as part of the statutory law or the common law when dealing with issues such as the *Piikani Nation Election Bylaw, 2002* (the "Election Bylaw"). The Election Bylaw incorporates *Piikanissini* into the Piikani Nation elections and removals regulatory regime as it refers to *Piikanissini* in both its chapeau and its body (s. 11.06) which requires the Appeals Board to consider and apply the principles of *Piikanissini* in reaching its decision.

8. The Election Bylaw sets out the qualifications for members of the Appeals Board, one qualification of which is that the individual must not be a member of the Piikani Nation, but must be of Blackfoot origin. The requirement to be of Blackfoot origin provides the Appeals Board with a unique perspective to interpret and apply Piikanisinni since the Siksikatsiitapiwa people (comprised of the Kainaiwa or Blood Nation, the Siksikawa or Siksika Nation and Piikaniwa, which is comprised of the North Piikani Nation and South Piikani Nation) are "integrated … through stories, songs and ceremonies; and as a people, collaborated to maintain a distinct language, spirituality and culture, as

well as familial, economic, social and governmental relationships." Both parties argued for the applicability of *Piikanissini* and the Appeals Board has used the principles of *Piikanissini* throughout its deliberations to arrive at this decision which reflects the principles of *Piikanissini*.

9. Both the Petitioner and the Respondent addressed the Appeals Board by using Blackfoot during their submissions and testimony at the Formal Proceedings. The Appeals Board instructed both parties that if they used Blackfoot, they needed to immediately translate what they said into English with only the English translation being considered by the Appeals Board.

10. The Appeals Board provided the opportunity to the Petitioner to translate into the English language the portion of the reasons for decision to remove, which portion was an alphabet transliteration of the Blackfoot language (Exhibit 39 to the Affidavit of Doane Crow Shoe). The Petitioner did not provide an English language translation of that Blackfoot language transliteration and the Appeals Board advised that the Blackfoot language transliteration did not form part of the record before the Appeals Board.

11. The Appeals Board notes that the onus of proof is on the Petitioner to prove his case to justify removal of the Respondent as Chief of the Piikani Nation. There is no onus on the Respondent to prove or disprove any fact or allegation since if the Petitioner does not successfully justify his case for removal, the Petition will fail.

12. The Appeals Board has restricted its review of the evidence it has relied upon to that exchanged by the parties themselves pursuant to the Hearing Rules set by the Appeals Board, and the testimony given by the three witnesses at the Formal Proceedings held on November 29, 2013.

Background

13. The Board wishes to summarise the evidence before it to establish the context of the situation leading up to the Piikani Nation Band Council's recommendation for removal of the Respondent on January 8, 2013.

14. The Appeals Board had the opportunity to see the Petitioner, Respondent and Pam Wolf Tail while giving sworn testimony at the Formal Proceedings, and in doing so, the Appeals Board had the opportunity and ability to assess the witness, their demeanour, frankness, readiness to answer, coherence and consistency. Based on that opportunity, the Appeals Board is setting out herein its findings of fact and reliance it will place on the sworn testimony given by these witnesses at the Formal Proceedings.

15. The Respondent's sister, Pam Wolf Tail, has run a medical transportation business, known as Peigan Taxi, on the Piikani Nation Reservation for approximately 23 years. Peigan Taxi had a contract with Health Canada to provide the services until approximately 2011. Health Canada did not renew the contract and began providing the Piikani Nation Health Department with a fixed amount for medical transportation that was less than the amount Peigan Taxi had previously received directly from Health Canada. The Piikani Nation and Peigan Taxi attempted to negotiate a contract for these services although a formal contract was never entered into.

16. On August 23, 2012 Bridget Kenna, CFO and Acting CEO, called a meeting with the Health Director and Pam Wolf Tail, to discuss Peigan Taxi. Pam Wolf Tail's husband also attended the meeting. Pam Wolf Tail asked that the Respondent be conferenced in on the meeting. Ms. Kenna moved Pam Wolf Tail and her husband into Council Chambers and telephoned the Respondent from her office. After indicating to the Respondent that she believed it was a conflict of interest Ms. Kenna teleconferenced

the Respondent in to the meeting of Pam Wolf Tail, her husband, the Health Director and some Council members in Council Chambers. The Respondent spoke to the Council members and then hung up.

17. Later that day Ms. Kenna received an email from the Respondent which stated:

    Bridgett, you did not take my directions seriously today and I am very disappointed with regard to my phone call today. I am the Chief of the Nation and you do not have the right to tell me that I cannot sit in on this or any meeting. You need to know your place and I will not allow for this to happen. If it happens again, I will dismiss you. So, I am reiterating, I am instructing you to pay Peigan Taxi next week at $9367.00. The taxi contract is NOT going out for bids. I am instructing you to work on a contract with Peigan Taxi immediately. You will also begin to work on releasing Acting Director at the time Lorelai North Peigan immediately due to insubordination. There will be no further discussion on this.

18. On August 28, 2012 the Council passed the following two motions:

    Motion 2012-0828-13

    Based on events at the meeting on August 23, 2012, the council suspends the chief from all business involving Peigan Taxi as a result of the correspondence, conflict of interest and nepotism.

    ...

    Motion 2012-0828-14

    Chief and Council direct Chief Gayle Strikes With A Gun, shall no longer provide direction to any manager; she requires a quorum of seven to make any Administrative and/or financial decisions.

19. At the end of August 2012 the Health Department prepared a cheque requisition and issued a cheque to Peigan Taxi. Cheques needed to be signed by the Piikani Nation's co-manager, MNP LLP, and a designated Councillor. Ms. Kenna indicated in her affidavit that she signed the cheque requisition and proceeded to obtain the necessary signatures with the intention of not releasing the cheque until the funds were available. At that time there was not enough money in the account to cover the cheque. MNP LLP signed the cheque, but the designated Councillor refused to sign it.

20. On August 29, 2012 the Respondent directed Ms. Kenna to prepare a letter terminating or suspending the Health Director immediately. Ms. Kenna refused, indicating to the Respondent that she required a quorum of seven Councillors.

21. At the Formal Proceedings, the Respondent gave the following sworn testimony:

    a. As Chief, she was bound to follow the policies and governing documents of the Piikani Nation;
    b. The position as a fiduciary of the Piikani Nation did not change the governing structure of the Piikani Nation;

c. The administration policy of the Piikani Nation (Exhibit 8 to the Affidavit of Eloise Provost, herein referred to as the "Administration Policy") requires that directions to the Chief Executive Officer (the "CEO") requires approval by the Chief and Council;
d. The Administration Policy (page 24 of the policy) requires several steps to be taken such as an oral warning and a second warning, prior to the suspension of an employee;
e. The Respondent directed that the acting CEO, Bridget Kenna be fined or suspended without a quorum of Band Council, and without following the Administration Policy;
f. During the first suspension commencing on September 5 to October 5, 2012, the Respondent carried on Band business both before and after the mandatory injunction granted by the Alberta Court of Queen's Bench on September 27, 2012;
g. The Respondent did not feel that the Alberta Court of Queen's Bench had jurisdiction over her;
h. The Respondent alleged that she was following the directive of the Petitioner to issue the cheque to Peigan Taxi, but admitted in testimony that she was unable to contact the Petitioner on August 31, 2012 and other than relying on the statement of her sister, Pam Wolf Tail, the Respondent could not say whether the Petitioner had actually given that directive.
i. The Respondent testified that she did not intimidate the Elders on November 20, 2012;
j. At the three previous reintegration meetings relating to the suspension of Councillors at which the Respondent presided, *Piikanissini* was observed, but the process used for the reintegration meeting held on November 16, 2012 for the Respondent's reintegration was different from the previous reintegration meetings at which the Respondent presided. All Councillors in the previous reintegration meetings accepted their suspension and complied with the terms thereof; and
k. When the Respondent became Chief she felt she became the mother of all the members of the Piikani Nation.

22. In accordance with paragraph 14 above, in assessing the testimony given by Chief Gayle Strikes With A Gun while giving her sworn testimony, the Appeals Board finds that although there were some issues of frankness and readiness to answer questions on other testimony given by Chief Gayle Strikes With A Gun, the Appeals Board finds that the testimony set out in paragraph 21 above given by the Respondent is factual and relies thereon.

23. August 30, 2012, while Ms. Kenna was meeting with the Health Director the Respondent asked Ms. Kenna if she had drafted the letter regarding the Health Director, and Ms. Kenna replied she had not because she only took direction from a quorum of seven Councillors. The Respondent then told the Health Director that she was suspended and told Ms. Kenna that she needed to leave. The Respondent told them both that they needed to gather their things and leave the Administration Building immediately or she would call the police.

24. Ms. Kenna went to Council Chambers and advised the Councillors that were present of the situation. The Respondent came into Chambers and said that she had told Ms. Kenna to leave or she would "call the cops". Ms. Kenna left the building and did not feel safe to return that day.

25. Pam Wolf Tail testified at the Formal Proceedings that on August 31, 2012 she telephoned Marie Crow Shoe, Finance Clerk at the Health Department, at 9:00 a.m. and Ms. Crow Shoe told her that the money had come in so her cheque would clear that day. In her Witness Statement Pam Wolf Tail said that Ms. Crow Shoe told her same, but also added that it was out of her hands because the cheque had been sent to the Band office for signatures.

26. At 12:00 p.m. Ms. Crow Shoe referred Pam Wolf Tail to Tanya Potts at the Band office. When Pam Wolf Tail stopped at the Band office she was told by Rita Morning Bull, Band secretary, that she would have to come back to pick up her cheque because Ms. Potts had to telephone Ms. Kenna first.

27. According to her Witness Statement when Pam Wolf Tail returned just after 1:00 p.m. she was told that Ms. Kenna's orders were that the cheque would not be released until Tuesday, September 4, 2012.

28. Pam Wolf Tail stated in her Witness Statement and at the Hearing that she and her husband then drove to Fabian North Peigan's sister's home, where he was living at the time to ask him if the cheque was going to be released. She gave testimony at the Formal Proceedings that after he spoke to them and called Ms. Kenna on his cell phone he told them they could go pick up the cheque.

29. In his Reply Statement the Petitioner stated that during his discussion with Ms. Kenna she stated there were insufficient funds to cover the cheque, but she would double check. He told the Wolf Tails that Ms. Kenna was going to double check if there were funds to cover the cheque and they could go to the Band office to confirm with Ms. Kenna. He disputes that he told them they could "go pick up the cheque".

30. In accordance with paragraph 14 above, in assessing the testimony given by Pam Wolf Tail while giving her sworn testimony, the Appeals Board finds that where there is any inconsistency or conflict between the testimony of Pam Wolf Tail and the other evidence before the Appeals Board, in particular as it relates to the issue surrounding the cheque for payment to Peigan Taxi in August of 2012, the Appeals Board accepts and relies upon the other evidence before it to the extent required to render its decision herein.

31. Ms. Kenna did not attend at the Piikani Nation on Fridays. Later on, Friday, August 31, 2012 Ms. Kenna received a telephone call from Tanya Potts, Finance Controller, that the Respondent had demanded the cheque to pay Peigan Taxi. When Ms. Potts refused to produce the cheque the Respondent told her to leave the building. Ms. Potts locked the cheque in the vault and left the building.

32. Ms. Kenna then received a telephone call from someone at MNP LLP saying that the Respondent had a new cheque and was asking for a signature, but he was not available to sign it. Ms. Kenna was later advised by the Health Finance Clerk that the Respondent went to the Health Department in a separate building and required the Finance Clerk to issue a new cheque.

33. Ms. Kenna worked from home from September 4 to 6, 2012 because she did not feel secure in returning to work at the Piikani Nation.

34. On September 5, 2012 the Council met to discuss the incidents of August 23 and 31, 2012 and through Motion 2012-0905-03 suspended the Chief for her conduct for a period of 30 days. Council's reasons for the suspension were not provided to the Respondent until September 21, 2012.

35. On September 6, 2012, despite her suspension, the Respondent attended Council Chambers and refused to leave. Council adjourned the meeting and reconvened in Lethbridge to complete the meeting.

36. On September 6, 2012 the Council passed Band Council Resolution 2012-0906-01:

1. The Piikani Nation Council reaffirms that Chief Gayle Strikes With A Gun has been suspended from Council for a period of 30 days commencing September 5, 2012 with pay.

2. During the term of the suspension Chief Gayle Strikes With A Gun shall not attempt to give directions to Administrative staff or otherwise conduct the business of the Piikani Nation, nor shall she attend at the Administration Office other than for personal business.

37. On September 12 and 13, 2012 the Respondent and her supporters attended at the Administration Office and interrupted the staff. The Respondent's supporters verbally addressed staff members in a tone and fashion that was inappropriate. The Respondent also told Ms. Kenna on September 13, 2012 that Ms. Kenna was suspended and needed to leave the building.

38. On September 13, 2012 Elder Geoffrey Crow Eagle came into the Administration Office and upon seeing people discussing the suspension of the Respondent he told them that it was an internal matter that needed to be settled and suggested that Council needed to settle it in Council Chambers. He was invited by the Respondent to help with the discussion so he went with the Council and the Respondent into Council Chambers. He spoke to them about their customs and traditions and how this matter was causing turmoil for the Nation. He said a prayer for them and left them to work on the issue.

39. At about 6:00 p.m. Elder Geoffrey Crow Eagle returned to the Administration Offices and Councillor Fabian North Peigan came out from Chambers and said, "The Chief is still the Chief". Elder Crow Eagle advised the Respondent and Council to go on a retreat and meet away from Council Chambers to work on their healing. He again said a prayer.

40. On September 14, 2012 the Council and the Respondent went to Head Smashed In Buffalo Jump to reintegrate the Respondent. During that retreat, the Respondent attempted to chair a meeting of other Piikani Nation business without addressing any issues of her conduct. Given the Respondent's failure to cooperate the Council continued with her suspension.

41. The Respondent and the Respondent's supporters again attended at the Administration Office on September 17, 2012 and disrupted staff. The Respondent again instructed Ms. Kenna to leave the building and brought the media through the back offices of Administration, disrupting staff. Some of the Respondent's supporters also entered the back offices and interrupted staff.

42. On September 27, 2012 Justice Macleod of the Court of Queen's Bench of Alberta granted a mandatory injunction prohibiting the Respondent from attending at the Piikani Government premises for the duration of her suspension, ending October 5, 2012 and to otherwise respect and act in accordance with the terms of her suspension.

43. In her oral testimony the Respondent said she complied with the injunction to stay away from the Piikani government buildings, but admitted she continued to see people in her home regarding Piikani Nation business because she felt she could not tell people she could not talk to them.

44. The Respondent's suspension ended on October 5, 2012, but she did not attend work on October 6, 2012 or contact the office. Over the weekend one of the Respondent's family members passed away and so she did not attend work on Monday, October 9, 2012. The Acting Chief wrote to the Respondent advising they had set aside either October 12 or 15 for her reconciliation meeting with

Council. On October 10, 2012 Administration received a copy of a doctor's note indicating the Respondent was ill and unable to work until November 5, 2012.

45. The acting Chief wrote to the Respondent on October 10, 2012 asking if the Respondent would like Council to adjourn the reconciliation meeting to November 6, 2012. The Respondent did not respond to either of the Band Council's letters.

46. On October 29, 2012 because November 6 was no longer available due to a meeting in Calgary the Band Council set aside two more dates for the reconciliation meeting, November 2 and 16, 2012. The Acting Chief wrote a letter advising of same to the Respondent, but the letter was not delivered to the Respondent until November 5, 2012.

47. On November 5, 2012 the Respondent returned to work. On that day she received a briefing from Piikani Nation's in-house legal counsel, Michael Pflueger, relating to legal matters including insolvency proceedings involving Piikani Investment Corporation ("PIC"), a corporation that approves loans from the Piikani Trust.

48. The relevant information regarding the insolvency proceedings is that PIC and its subsidiary Piikani Energy Corporation ("PEC") borrowed $14.25 million from the Piikani Trust. The loans have not been repaid and most have been in default for 5 or 6 years. The Piikani Nation sued Dale McMullen, Edwin Yellow Horn and Kerry Scott for the lost monies in Court of Queen's Bench Action No. 1001-10326. Insolvency proceedings were also brought by the Piikani Nation against PIC and PEC.

49. The Piikani Nation was involved in negotiations with the Trustee in Bankruptcy of PIC and PEC, CICB Trust Corporation, for over a year to make a Proposal to Creditors under the *Bankruptcy and Insolvency Act* in order to address PIC's debt situation (the "PIC Proposal").

50. On October 11, 2012 the Council authorized an application to the Court for the appointment of a liquidator for the purpose of making the PIC Proposal. The application was adjourned to November 15, 2012.

51. As part of her briefing Mr. Pflueger provided the Respondent with a copy of the PIC Proposal. As negotiations were not complete and were without prejudice not every member of Council was given a copy of the proposal. Those that did receive one were given a copy that had been watermarked with the recipient's name.

52. After receiving the PIC Proposal on November 5, 2012 the Respondent directed Mr. Pflueger to adjourn the application notwithstanding the instructions of Council. Mr. Pflueger refused the direction.

53. Later on November 5, 2012 Councillors Maurice Little Wolf, Eloise Provost and Doane Crow Shoe met with the Respondent and gave her a copy of the October 29, 2012 letter regarding the reconciliation meeting. The Respondent agreed to meet with Council the next day in Calgary. However, later that afternoon the Respondent emailed Council that she was unable to travel to Calgary and asked to meet on November 16, 2012.

54. Council met on November 6, 2012 and allowed an adjournment of the reconciliation meeting to November 8, 2012 in Calgary. They advised the Respondent via email that they were authorizing a travel claim so she could attend on that date. The Respondent did not respond to that email, attend the November 8, 2012 meeting or answer a telephone call from Council during that meeting. Council adjourned the meeting to November 16, 2012.

55. The Respondent attended the November 15, 2012 court application to appoint a liquidator. She presented an affidavit sworn by her and sought an adjournment of the application contrary to the wishes of Council. She purported to be acting in her official capacity as Chief.

56. On November 16, 2012 the Respondent attended at the reconciliation meeting. After reviewing all the relevant evidence before it, the Appeals Board finds that this meeting differed from previous reconciliation meetings for suspended Councillors at which the Respondent had presided. The Appeals Board finds that such previous reconciliations meetings observed *Piikanissini* with the Councillors being allowed to engage in a dialogue rather than simply answer prepared questions. Council prepared its questions in advance and conducted the meeting on the record when the Respondent was reluctant to engage in the discussion. The Respondent refused to answer the Council's list of 15 questions and in her testimony said she copied them down in her notebook as best she could. The Respondent provided written answers to these questions on or about December 20, 2012.

57. On November 19, 2012 the Council agreed on Motion 2012-1119-02 suspending the Respondent for 30 days with honoraria and directing her to meet with them on December 19, 2012 for another reconciliation meeting. The reconciliation meeting was later adjourned to December 20, 2012.

58. On November 20, 2012 the Respondent, her common law partner Larry Provost, her sister Pam Wolf Tail and her father attended the Mary Ann McDougall Elders Centre. The evidence is not clear as to who did what at the meeting, but an inappropriate verbal exchange occurred, the Appeals Board finds that the Respondent did not herself engage in an inappropriate verbal exchange. The Petitioner has produced letters from Elder Rose Pard, Gertrude Smith and Daniel Jason Pard alleging the Elders felt abused during a heated discussion that occurred that day between some of the Elders and the Respondent's family.

59. On December 13, 2012 the Respondent commenced Court of Queen's Bench Action No. 1201-15897 in her own name and on behalf of the Piikani Nation against the Piikani Nation Council, CIBC Trust Corporation (Trustee in Bankruptcy), Bruce Alger and Grant Thorton Alger Inc. (the court appointed liquidator), and Michael Pflueger (the in-house lawyer for the Piikani Nation) ("Action 1").

60. On the same day the Respondent also filed an affidavit in the insolvency proceedings opposing the PIC Proposal. The affidavit attached a number of letters written by the Piikani Nation's lawyers to the Piikani Nation. The Piikani Nation considers those documents to be solicitor-client privileged. At the Formal Proceedings, counsel for the Petitioner advised the Appeals Board that an application had been granted to remove the privileged documents. However, the Appeals Board only has documentary evidence of an application to protect privileged documents attached to Dale McMullen's affidavit sworn on February 21, 2013 and filed in the Alberta Court of Appeal. The Appeals Board finds that there is insufficient evidence before it to reach any conclusion of the facts regarding whether there was any resolution of the matter related to privileged documents. However, there is evidence before the Appeals Board which shows that the Respondent included in her affidavit several pieces of correspondence from legal counsel to the Chief and Council.

61. On December 18, 2012 Councillor Fabian North Peigan sent a Petition to the chief executive officer (the "CEO") for the removal of the Respondent from the office of Chief pursuant to sections 10.01 through 11.08 of the *Piikani Nation Election Bylaw, 2002* (the "Election Bylaw"). The Petition was placed on the agenda for December 20, 2012 and the Respondent was provided with a copy of the Petition and advised of the meeting date.

62. The Respondent attended the December 20, 2012 Council meeting and provided written responses to the questions that were asked on November 16, 2012. The Council further questioned the Respondent on her responses and she left the meeting. The Council adjourned the Petition matter to January 8, 2013.

63. On December 21, 2012 the Respondent commenced Court of Queen's Bench Action No. 1201-16383 (Action #2) against Heenan Blaikie LLP, JSS Barristers LLP and Walsh Wilkins LLP, six individual lawyers and one provincial court judge, all of whom had provided or were providing legal services to the Piikani Nation. The Respondent sued not just on her own behalf, but on behalf of the Piikani Nation. Most of the lawyers and law firms were placed in a conflict of interest which affected ongoing lawsuits.

64. On January 4, 2013 Associate Chief Justice J.D. Rooke of the Alberta Court of Queen's Bench pronounced the following order in Action #2:
    a. The Court was satisfied that the Respondent did not have proper authority to commence an action in the name of the Piikani Nation and ordered that the claim, insofar as it purported to be a claim by, in the name of or on behalf of the Piikani Nation, was immediately struck as against all defendants in the claim, with leave given to the Respondent to apply within 30 days for a reconsideration of this portion of the order;
    b. The balance of the Respondent's claim was stayed on the Court's own motion as it constituted an abuse of process, pending further order of the Case Management Judge, Associate Chief Justice J.D. Rooke.

65. There is no evidence before the Appeals Board that the Respondent made any further applications to the Alberta Court of Queen's Bench to establish proper authority for the Chief to bring court actions in the name of the Piikani Nation unilaterally without Band Council approval.

66. Band Council heard the Petition on January 8, 2013. The Respondent made submissions, but left before Councillor Fabian North Peigan made his rebuttal. Three members of Council, Casey Scott, Wesley Provost and Willard Yellow Face, were absent due to illness. Councillor Fabian North Peigan did not take part in the deliberations or decision regarding the Petition. Therefore, 8 members of the Council signed Band Council Resolution 2013-0108-01 referring the Petition to the Piikani Nation Removal Appeals Board and suspending the Respondent without honoraria until the Appeals Board rendered its decision.

67. Band Council prepared Reasons for the January 8, 2013 decision on April 25, 2013. The Respondent in argument in the Formal Proceedings advised that this list was not received by the Respondent until April 26, 2013. The first page contained Blackfoot and the subsequent pages contained 160 paragraphs written in English. The Appeals Board requested the Petitioner provide a translation of the Blackfoot writing by November 12, 2013 as the Petitioner had submitted this document to the Appeals Board as evidence under the Hearing Rules of Conduct. No translation was received and the Appeals Board advised the parties at the Formal Proceeding that it would not be considering the Blackfoot writing on the first page of the document in its decision.

68. The Petitioner provided evidence of further conduct by the Respondent in regards to potential grounds for removal that occurred after January 8, 2013. As this conduct relates to a potential basis for removal which arose after the referral of the Petition to the Appeals Board it is not necessary to detail those matters.

69. On May 1, 2013 the Appeals Board sent a letter to the parties raising the issue of the January 8, 2013 Band Council Resolution and section 10.05 of the *Piikani Nation Election Bylaw*, 2002. The Appeals Board suggested that as a matter of administrative procedure, the issue could be dealt with by having either the Piikani Nation Council confirm that as at January 8, 2013, the Council unanimously consented to the recommendation for removal set out in the January 8, 2013 Band Council Resolution. Alternatively, the Petitioner could file an appeal in accordance with s. 10.07 of the Election Bylaws. The Appeals Board suggested that as a way to keep costs to a minimum, these suggestions could be raised by counsel for the Piikani Nation Council at the same Federal Court hearing scheduled by the Respondent regarding the validity of the jurisdiction of the Appeals Board. The evidence does not indicate whether this matter was argued before the Federal Court.

70. On May 8, 2013 the Council passed Band Council Resolution 2013-0508-01, signed by all 12 Councillors, ratifying and reaffirming the recommendation to the Piikani Nation Removal Appeals Board that proceedings be conducted to determine whether the Respondent should be declared ineligible to hold the office of Chief, and to remove the Respondent from office. As well, the Petitioner provided an appeal on July 9, 2013, to the Appeals Board.

71. This matter of jurisdiction was dealt with at the November 20, 2013 pre-hearing application and the decision regarding jurisdiction is attached hereto as Schedule "A".

72. At the Formal Proceedings, the Petitioner gave the following sworn testimony:

   a. The delay in the Removal Appeals Board hearing was not a benefit to the Piikani Nation or the Petitioner but rather a detriment;
   b. The Chief's role is to set the agenda for Council meetings, preside over the meetings and direct Council to make a decision. The Chief does not vote unless there is a tie: The role of Chief does not come with special authoritative powers, just privileges.
   c. The Chief and Council have only one employee, the CEO, and that is the only person they can articulate concerns to about the administrative staff. The Council makes a decision and gives an action item to the CEO who takes the action;
   d. The 3 strike rule is used for the discipline of staff and it is done according to the Policies by the staff member's manager, not by Council.
   e. When Council questioned the Respondent about the alleged conflict of interest in regards to her actions with Peigan Taxi the Respondent was steadfast in her reply that it is was not a conflict of interest;
   f. When the issue of Health Canada and Peigan Taxi arose it was immediately an agenda item because of the Chief. The Respondent tasked the Council with making an interim agreement with Peigan Taxi and told Council they could not put position out for tender;
   g. There was no signed agreement with Peigan Taxi. The negotiators butted heads and so they walked away from negotiations;
   h. The Petitioner recognizes that the governance of the Piikani Nation is a work in progress;
   i. Piikani customary law is the document entitled *Piikanissini*. It is the Peigan way of life, how they live on a daily basis. What they do and do not do. They are to respect their Elders and not argue, they are to help those less fortunate and gather to honour and make tribute, not to fight. What is not customary is the "White" way of life with legislation. The Chief and Band Council practice customary law, but as a government they must follow the rules and regulations;

j. The Petitioner prepared the Petition on his own without help from a lawyer in order to save resources;
k. All of the Respondent's conduct that the Petitioner questions is in the Petitioner's evidence before the Appeals Board; and
l. The Petitioner discussed the Petition with Band Council prior to January 8, 2013 to ascertain whether he had the support of Council before acting as the Petitioner and bringing the Petition.

73. There was not in evidence a copy of the July 31, 2012 Motion of Band Council that the services of Peigan Taxi would continue. However, both parties presented argument as to the effect of this Motion and the Appeals Board accepts that this Motion was passed by Band Council. The Band Council approved the continuation of services so that a contract could be negotiated and signed;

Legal Analysis

74. Pursuant to section 21.05 of the Regulations and 11.06 of the Election Bylaw, the Appeals Board is responsible for conducting, hearing and determining in accordance with the grounds in section 10.05 and the principles of *Piikanissini* whether the Respondent is ineligible to continue to hold the office of Chief.

75. The Petition cites sections 10.05.02 (a), (c), (d), and (e) of the Election Bylaw as the grounds for removal of the Respondent. Section 10.05.02 reads:

> the person has failed to maintain a standard of conduct expected of a member of the Piikani Nation Council and without limiting the generality of the foregoing, does any of the following:
>
> (a) accepted or offered a bribe, forged a Piikani Nation document or was otherwise dishonest in his official role;
>
> ...
>
> (c) conducted a corrupt practice as determined by the principles of *PIIKANISSINI*;
>
> (d) abused his office such that the conduct negatively affected the dignity and integrity of the Piikani Nation or the Piikani Nation Council; and
>
> (e) such other conduct as shall be determined by the Piikani Nation Council to be of such a serious nature that removal from office is necessary and appropriate.

76. The Appeals Board notes that subsections a), c), d) and e) do not form an exhaustive list, with the standard that the Petitioner must meet being set out in the first part of Section 10.05.02.

77. *Piikanissini* is referred to in a document by previous Chief and Council and an unsigned Band Council Resolution was submitted as evidence in this matter by the Respondent. Other references to *Piikanissini* were also in evidence such as the affidavit of Geoffrey Crow Eagle submitted by the Respondent and by the Respondent and Petitioner during testimony. *Piikanissini* is the way of life of the Piikani and sets out the inherent values of the Ancient Piikani people.

78. The Respondent has raised several legal arguments challenging the validity of the proceedings or parts thereof. Although these legal arguments do not directly affect the consideration of *Piikanissini*, the Appeals Board will analyse these legal arguments as applicable in its alternative findings for its decision.

Double Jeopardy or Cause of Action Estoppel

79. Cause of action estoppel is a concept in the civil context whereas double jeopardy is a reference to the criminal context. We are dealing with the civil context so all references will be to cause of action estoppel despite the reference by counsel for the parties to double jeopardy.

80. Cause of action estoppel is an assertion that the cause of action in a current proceeding is the same as the cause of action in a proceeding previously litigated. (R. v. Mahalingan, [2008] 3 S.C.R. 316 at paragraph 15) by a court of competent jurisdiction (Angle v. Canada (Minister of National Revenue – MNR), [1975] 2 S.C.R. 248 Quicklaw at pages 4 and 5) .

81. The Respondent has argued that the matters arising from the 2 prior suspensions of the Respondent are not properly before the Appeals Board due to the operation of cause of action estoppel. The Appeals Board finds that the cause of action in the suspension matters related to a temporary suspension whereas the cause of action in the current hearing relate to a permanent removal from office. In addition, the Appeals Board finds that the suspension proceedings were not before a court or tribunal of competent jurisdiction. Accordingly cause of action estoppel does not apply to prevent the Appeals Board from considering the conduct of the Respondent arising from either of the first 2 suspension matters.

Issue Estoppel

82. Issue Estoppel is a public policy doctrine designed to advance the interests of justice. The preconditions to the operation of issue estoppel are threefold:
    a. That the same question has been decided in earlier proceedings;
    b. That the earlier judicial decision was final; and
    c. That the parties to that decision or their privies are the same in both the proceedings.

    If the moving party (in this case the Respondent) successfully establishes these preconditions, a court or tribunal must still determine whether, as a matter of discretion, issue estoppel ought to be applied. (Danyluk v. Ainsworth Technologies Inc., [2001] 2 S.C.R. 460)

83. The Appeals Board has reviewed the evidence before it and finds that the suspension matter related to a temporary suspension and was not an earlier judicial decision which was final. Accordingly, issue estoppel does not apply to prevent the Appeals Board from considering the conduct of the Respondent arising from either of the first 2 suspension matters and it is not necessary for the Appeals Board to consider whether the other two preconditions were met.

84. However, even if the decision of the Piikani Nations Band Council could be considered to be a final judicial decision, the Appeals Board would exercise its discretion to not apply issue estoppel in this matter. To exclude the matter of the suspension hearings, would in future make Band Councils or the Chief reluctant to attempt reconciliation or reintegration steps for fear of damaging a case to remove the Councillor or Chief. From a practical perspective, it is not in the best interests of the Piikani Nation for this Appeals Board to make a ruling that would create an incentive for future Band

Councils and Chiefs to refrain from taking reconciliation or reintegration steps, which are not part of the regulatory regime set out in the Election Bylaws, for fear of jeopardising a potential removal application, which are part of the regime set by the Election Bylaws.

85. In addition, the process of reconciliation and reintegration is one that both parties have participated in and have agreed to, although whether certain meetings were done appropriately or not is a matter of contention. By agreeing to the process, it is difficult to see how either party can take the position that it was in their reasonable expectation that the suspension hearings would be conclusive of all their respective rights in the civil context since to have such an expectation would result in the potential problems set out in paragraph 84 above. Both parties have stated that they are acting in the best interests of the Piikani Nation. For these reasons, the Appeals Board finds that neither party had the reasonable expectation that the suspension matters would be conclusive of all issues raised therein for purposes of this removal hearing. (Penner v. Niagara (Regional Police Services Board), 2013 SCC 19 (Can LII)). Accordingly, this is one more reason that the Appeals Board is not prevented from considering the matters arising from the 2 previous suspensions.

Case To Be Met

86. The Respondent has argued that the Petitioner did not set out the case that the Respondent needed to meet with sufficient clarity as to allow the Respondent the opportunity to fully respond to the case.

87. This matter requires a chronological review of the evidence before this Appeals Board:

    a. December 13, 2012 – Respondent files Action #1 (Alberta Queen's Bench Action No. 1201-15897) bringing action against Piikani Nation Council, CIBC Trust Corporation, Bruce Alger, Grant Thornton Alger In.c and Michael Pflueger with action brought in personal name of Respondent and in the name of the Piikani Nation;
    b. December 18, 2012 – Petition is submitted to Band Council;
    c. December 20, 2012 - Council meeting to discuss Petition attended by Respondent;
    d. December 21, 2102 – Respondent files Action #2 (Alberta Queen's Bench Action No. 1201-16383) suing several lawyers (one of whom was then a Provincial Court Judge), and law firms with action brought in personal name of Respondent and in the name of the Piikani Nation;
    e. January 8, 2013 – Band Council recommends Petition be heard by Appeals Board (Band Council Resolution # 2013 - 0108-01
    f. January 30, 2013 – Appeals Board members appointed;
    g. February 8, 2013 – Respondent files Federal Court application, Action No. T-2224-12 for judicial review of January 8, 2013 decision of Piikani Nation council to refer matter to the Appeals Board;
    h. April 26, 2013 – Respondent receives Reasons for Decision of the Piikani Nation Council in respect of the January 8, 2013 Petition;
    i. May 13, 2013 – Piikani Nation Band Council (all 12 Councillors) signs Band Council Resolution # 2013 – 0508 – 01 ratifying and affirming BCR # 2013 - 0108-01;
    j. July 17, 2013 – Councillor Doane Crow Shoe swears affidavit in Federal Court Action No. T – 2224 – 12 (Document "C" to documents submitted by Petitioner for the matter before the Appeals Board)
    k. November 4, 2013 – Petitioner provides all witness statements and documents to support Petitioner's case. Hearing Rules set by Appeals Board set date for Petitioner to provide such evidence by November 1, 2013 but late filing allowed;

l. November 7, 2013 – Respondent provides all witness statements and documents to support Respondent's case. Hearing Rules set by Appeals Board set date for November 6, 2013 but time for filing extended to November 7 at request of Respondent;
m. November 20, 2013 – Pre-hearing matters heard by Appeals Board;
n. November 29, 2013 – Hearing of the Petitioner's request for removal of the Respondent as Chief of the Piikani Nation.

88. The issue of the "case to be met" arises from the duty of procedural fairness in the administrative context. The law in this regard is set out in May v. Ferndale Institution 2005 CarswellBC 3037, 2005 SCC 82 as follows:

> "In the administrative context, the duty of procedural fairness generally requires that the decision-maker disclose the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, the decision is void for lack of jurisdiction." (at pages 7 and 8)

89. What is required in order to allow the Respondent to know the "case to be met" is that all evidence that is being relied upon by the Appeals Board has been disclosed to the Respondent. Unlike the situation in the May case, the Appeals Board has not relied on any evidence that has not been disclosed to the Respondent. As stated above, the onus is on the Petitioner to prove the case that there is sufficient evidence to warrant the removal of the Respondent as Chief of the Piikani Nation. If the Petitioner failed to provide sufficient evidence to prove its case, the Petition would be dismissed.

90. The Petitioner has also brought to the attention of the Appeals Board the decision of Sheriff v. Canada (Attorney General), 2006 CarswellNat 1223, 2006 FCA 139. The Appeals Board notes that, unlike a professional disciplinary body, the Appeals Board did not engage in any preparation or acquisition of evidence for the hearing. All evidence before the Appeals Board was provided by the parties themselves, full disclosure of all the evidence considered by the Appeals Board was provided to both of the parties before the Hearing, and the Respondent was given an opportunity both before, during and after the Hearing (through supplemental briefs) to respond to the evidence being relied upon for the recommendation to remove the Respondent as Chief.

91. Although all the evidence relied upon by the Appeals Board was disclosed to both parties, there is a further issue of when the evidence was provided. The decision to recommend removal proceedings be commenced occurred on January 8, 2013 (Band Council Resolution # 2013 - 0108-01). The Band Council subsequently ratified and confirmed its previous BCR of January 8, 2013 by Band Council Resolution # 2013 – 0508 – 01. This latter BCR was signed on May 8, 2013 by all 12 of the Band Council members, but not by the Respondent. The Appeals Board finds that the effect of Band Council Resolution # 2013 – 0508 – 01 was to correct an administrative defect in the January 8, 2013 BCR, but did not have the effect of raising new grounds for removal to be considered by the Appeals Board in this Hearing.

92. The Appeals Board finds that only grounds that existed on or before January 8, 2013 are properly before the Appeals Board to be considered in the Hearing.

93. A corollary issue also arises in this regard since evidence was provided by the Petitioner after January 8, 2013. The issue that the Appeals Board needs to consider is whether evidence submitted after January 8, 2013 should form part of the evidentiary record which is properly before the Appeals Board in its considerations. Section 11.02 of the Election Bylaws states that once the Petitioner (or

appeal in the event of a rejection of the Petition) has been served upon the Appeals Board, the Appeals Board:

> "shall thereupon set a date for the hearing and give at least fourteen (14) days written notice of the date, time and place of the hearing to the Piikani Nation Council, to the Chief or Councillor who is subject to the recommendation or appeal, and to the Petitioner."

94. The Appeals Board notes that the drafters of the Election Bylaws considered a time as short as 14 days as being sufficient for the parties to prepare their cases, since any Appeals Board could give written notice on the same date that it has been served with the recommendation for removal. If this time frame is considered to be too short, that is a matter for future Chief and Council to determine and deal with by way of an amendment to the Election Bylaws.

95. Both parties share some responsibility for the delay in having the Hearing set almost 1 year after the original Petition was considered by Band Council with the Respondent present.

96. The issue to be determined is whether the date at which the evidence was provided to the Respondent prejudiced her position to such an extent as to result in the Respondent being unable to know the case to be met, as is argued by the Respondent.

97. Although the original BCR recommending removal was signed on January 8, 2013, the reasons for this decision were not provided to the Respondent until approximately April 26, 2013, as set out in argument by the Respondent. These reasons are some 160 paragraphs long and set out in some detail the reasons for the recommendation to remove the Respondent as Chief of the Piikani Nation. Although these reasons were not provided to the Respondent until over 3 months after the original BCR was signed, they were provided over 7 months prior to the actual Formal Proceeding on November 29, 2013. Although the reasons were provided late, the Appeals Board finds that they were provided to the Respondent in sufficient time for the Respondent to know what the reasons of the Band Council were for recommending removal, such that the Respondent was not prejudiced by the timing of when these reasons were provided to her.

98. The Petitioner provided its evidence to the Respondent on November 4, 2013 pursuant to the Hearing Rules of Conduct set by the Appeals Board which was 25 days prior to the Formal Proceeedings. Again, if this time frame is considered to be too short, then that is a matter for future Chief and Council to deal with.

99. The Appeals Board notes that much of the evidence submitted by the Petitioner arises from the affidavit of Doane Crow Shoe sworn on July 17, 2013. This affidavit was sworn in Federal Court Action No. T-2224-12 which was an action commenced by the Respondent. This Federal Court action commenced by the Respondent was specifically related to the matter to be heard by the Appeals Board. The Respondent cannot now argue that she was unaware of the evidence contained in an affidavit filed in a Federal Court action which she commenced and upon which the Respondent cross examined.

100. The Appeals Board finds the following:

    a. all evidence considered by the Appeals Board was limited to the evidence provided by the parties and both parties received this evidence;

b. although there were some delays in when the Respondent received some of the evidence, the delay was not sufficient to create a breach of natural justice such that the Respondent did not know the case to be met; and

c. the Formal Proceeding held on November 29, 2013 gave both parties the opportunity to present their case.

101. Accordingly, the Appeals Board did not consider any grounds potentially supporting the application for removal that arose subsequent to the January 8, 2013 Petition, but did consider evidence submitted to the Appeals Board in accordance with its Hearing Rules including the testimony of the three witnesses given on November 29, 2013, provided such evidence related to any potential grounds for removal which arose on or prior to January 8, 2013.

Abuse of Authority and Her Position as Chief

102. The Appeals Board has considered the context of the matter before this Appeals Board. The Appeals Board finds that there was a conflict of interest with regard to the Respondent's involvement with the meeting regarding Peigan Taxi on August 23, 2012 and attempting to procure a cheque to pay Peigan Taxi on August 31, 2012. The charge of nepotism is dismissed as there was insufficient evidence for the Appeals Board to reach a conclusion in that regard.

103. The Appeals Board finds that the Respondent treated the administrative staff including Bridget Kenna, Tanya Potts, the Health Director and the Health Finance Clerk in a fashion which was contrary to that expected of a member of the Piikani Nation Council. It was inappropriate for the Respondent to direct Ms. Kenna to fire another employee without a quorum of seven Councillors as required by the Council's Motion, and as admitted by the Respondent's own evidence was contrary to the policies required to discipline, suspend and dismiss employees, policies that the Respondent admits she was required to observe. It was also inappropriate for the Respondent to direct and order Ms. Potts to produce the cheque and then direct her to leave the building because she refused to do so. Further, it was against policy and inappropriate for the Respondent to direct and order the Health Finance Clerk to issue a new cheque. All of these actions, taken together, is a failure by the Respondent to maintain a standard of conduct expected of a member of the Piikani Nation Council.

104. The Respondent, by her own testimony, admitted to continuing to conduct business and represent the Piikani Nation while she was suspended in September 2012, contrary to the terms of her suspension and the court injunction. Irrespective of the validity of the suspension (which this Appeals Board is not determining) and as much as the Respondent may disagree with her suspension, the disregard of a court injunction tends to negatively affect the dignity and integrity of the Piikani Nation. *Piikanissini* requires that the Piikani Nation strive to maintain a stable relationship with the other orders of government. Disregarding an order of injunction issued by the judiciary of one of the other orders of government is not in keeping with the Respondent's duty to comply with *Piikanissini*. The testimony of the Respondent that she did not recognise the jurisdiction of the Alberta Court of Queen's Bench over her is a further aggravating factor. To disagree with an order of court is the right of any individual, including the Respondent. However, as the leader of the Piikani Nation, to refuse to recognise the jurisdiction of the judiciary over her personal matters, other than through the normal judicial steps, sets a precedent which is not in keeping with the Respondent's position as Chief. If the Chief of the Piikani Nation refuses to recognise the jurisdiction of the courts, the example being set for the membership of the Piikani Nation is contrary to the obligations pursuant to *Piikanissini* of the Respondent as Chief. This incident and the breach of *Piikanissini* adds to the overall conduct of the Respondent which leads the Appeals Board to its decision for removal.

105. Further, during September 2012 the Respondent allowed her supporters to treat the Piikani Nation Administration and Council in an inappropriate fashion. The Appeals Board recognizes that no person has control over other individuals, but the Chief did not uphold the values, principles and integrity of the Piikani pursuant to *Piikanissini* because she stood by silently and failed to stop her supporters from what has been described in the evidence as verbally abusing and intimidating Administrative Staff and members of Council. The Appeals Board finds that *Piikanissini* requires the Chief to intervene to stop these types of confrontations: when the Chief becomes Chief, all of the members of the Band become their children. Even without relying on this interpretation of *Piikanissini*, *Piikanissini* stands for many things, including striving for the betterment of all members of the Piikani Nation, to strive to maintain family and social relationships and to protect the inherent values and principles of the Piikani people. This incident and the breach of *Piikanissini* adds further to the overall conduct of the Respondent which leads the Appeals Board to its decision for removal.

106. The Respondent also interrupted Piikani Nation Administration and business by attending at the Administration Office in September 2012 and taking the media through the back offices on September 17, 2012.

107. The Appeals Board finds that the evidence is not clear as to who was involved in inappropriate behaviour at the Elders Center on November 20, 2012, although the Appeals Board finds that there is no evidence to show that the Respondent herself intimidated or disrespected any Elders. However, the inappropriate conduct occurred indirectly through the Respondent's family who attended with the Respondent. Under *Piikanissini* the Piikani Nation continually strives to maintain social relationships, this includes relationships between the Chief and the Elders of the community. It was incumbent upon the Respondent, as Chief, to intervene to maintain these social relationships which she failed to do. This incident and the breach of *Piikanissini* adds to the overall conduct of the Respondent which leads the Appeals Board to its decision for removal.

108. The Appeals Board finds that the Respondent did not refuse to participate in reconciliation and reintegration meetings or try to reintegrate into her role as Chief and work with Council. She attended the reintegration meeting on September 14, 2012 and the reconciliation meeting on November 16, 2012. She provided written answers on December 20, 2012 to Council's questions asked at the November 16, 2012 reconciliation meeting. Further, she agreed to participate in the Healing Circle as part of the Removal Appeals Board proceedings. However, as participation in a Healing Circle is voluntary under *Piikanissini*, the refusal of the Petitioner to participate is not indicative of any wrongful action by the Petitioner pursuant to *Piikanissini*.

109. The Appeals Board finds that the Respondent gave unilateral instructions without a quorum of Council to the Piikani Nation lawyer to adjourn a court proceeding (Alberta Court of Queen's Bench Action No. 0901-15297) that the Band Council had originally ordered.

110. Pursuant to section 6.7(b) of the Peigan Nation Financial Administration Code, included in the Respondent's evidence C.1 attached as an exhibit to Edwin Yellow Horn's Witness Statement (herein referred to as the "Financial Code") the Finance Committee is responsible for the management and control of the expenditures and disbursements of the Peigan Nation Funds. Although the Chief is a member ex-officio of the Finance Committee pursuant to section 6.5 of the Financial Code her presence does not count towards the quorum of 5 members required for a meeting. This means that the Chief could not make unilateral decisions about disbursement of Peigan Nation Funds.

111. Further, pursuant to section 6.12 of the Financial Code the members of the Finance Committee shall not communicate or consult with any Department, Program, Business Entity or person concerning matters of a financial nature affecting the Piikani Nation unless mandated to do so by the Finance Committee or directed by the Chairperson. There is no evidence before the Appeals Board to show that the Respondent was directed to communicate with anyone regarding the payment of Peigan Taxi.

112. Although the Respondent's conduct on August 31, 2012 was a breach of the Financial Code the Appeals Board does not rely on this conduct in isolation in reaching its decision, but does find that it adds to the overall conduct of the Respondent which leads to the decision of the Appeals Board to order the removal of the Respondent as Chief.

A. Analysis of Conduct Raised in Paragraphs 102 to 112 Above

113. Finding Pursuant to *Piikanissini*: The Appeals Board has considered the Respondent's conduct as set out in paragraphs 102 to 112 above pursuant to the Respondent's obligations under *Piikanissi*. The Appeals Board finds that each incident, viewed individually, may not be sufficient to warrant removal as Chief, but when viewed as a whole, was a breach of *Piikanissini* sufficient to warrant the removal of the Respondent from the position of Chief of the Piikani Nation. Pursuant to the principles of *Piikanissini*, it is incumbent upon the Chief to continually strive to maintain the spirituality and culture distinct to the Piikani, including the family and social relationship, and traditional governmental systems. The Respondent has failed in her obligations pursuant to *Piikanissini* in this regard.

114. The Appeals Board also notes that *Piikanissini* requires an individual in the Respondent's position to protect the traditional family and social relationships and traditional governmental systems of the Piikani Nation. This responsibility mandated by *Piikanissini* can only be satisfied through continual dialogue and progressive discussions between interested parties when a dispute arises such as in this case. The relationships to be protected by *Piikanissini* must be assiduously fostered in an effort by all parties to resolve disputes in a progressive fashion rather than rushing to final resolution by alternate, non-traditional means. The progressive steps taken by the Band Council which includes the suspensions and attempts at reintegration of the Respondent, although perhaps not executed perfectly well, did follow the process required by *Piikanissini*. When those progressive steps and attempts at reintegration did not result in a reconciliation and reintegration with and of the Respondent, then the final step of recommending removal, which is the matter before this Appeals Board, was taken. Pursuant to the principles of *Piikanissini*, the Appeals Board takes into account the conduct of the Respondent as set out in paragraphs 102 to 112 above in reaching its decision. To refuse to take this conduct into account, taken as a whole, the Appeals Board would be stating that the parties should have refrained from taking progressive steps to resolve the dispute and rather should have waited until the situation had become so untenable as to warrant an application for removal. Such a position would result in the maximum amount of damage to the Piikani Nation and would be in breach of the principles of *Piikanissini*. The Appeals Board finds that such an interpretation of *Piikanissini* would be contrary to the true spirit and intent of *Piikanissini* and would also set a dangerous precedent for any future disputes which may arise between Chief and Council of the Piikani Nation. Accordingly, the Appeals Board finds that pursuant to the principles of *Piikanissini*, it is not prevented from considering the conduct of Respondent set out in paragraphs 102 to 112 above, which includes the matters related to the 2 previous suspension.

115. The Appeals Board makes no findings regarding whether the suspension hearings themselves were properly conducted or not. However, the Appeals Board has considered the evidence arising from such suspension hearings in reaching its decision in the hearing before the Appeals Board.

116. The Appeals Board notes it recommended a traditional Healing Circle as part of the hearing process. The Respondent agreed to attend the traditional Healing Circle but the Petitioner did not. As stated above, since attendance at the traditional Healing Circle is voluntary, the conduct of the Petitioner does not raise an issue or adverse inference to be considered by the Appeals Board.

117. Accordingly, the Appeals Board finds that the Respondent's conduct as set out in paragraphs 102 to 112 above is a failure by the Respondent to fulfill her obligations pursuant to *Piikanissini* and therefore is also conduct by which the Respondent has failed to maintain a standard or conduct expected of a member of the Piikani Nation Council which is sufficiently grave so as to warrant removal as Chief.

118. Alternate Finding Pursuant to Common Law: In the alternative, the Appeals Board finds that the conduct as set out in paragraphs 102 to 112 above was an abuse of authority and conflict of interest sufficient to warrant the removal of the Respondent from the position of Chief of the Piikani Nation. The Appeals Board notes that the Respondent has stated in sworn testimony that she stands in a fiduciary position with the Piikani Nation and its peoples. The Respondent attempted to personally benefit by accompanying her supporters and her family when these incidents occurred, which is contrary to her fiduciary duty to all the people of the Piikani Nation.

B. Abuse of Authority and Position as Chief

119. Finding Pursuant to *Piikanissini* - The Respondent in her capacity of Chief of the Piikani Nation is obligated to ensure the values, principles and integrity of the Piikani are upheld in the governance of the Piikani. The actions commenced by the Respondent on December 13, 2012 naming inter alia CIBC Trust ("Action #1") and December 21, 2012 suing several lawyers, law firms and a Provincial Court Judge ("Action #2), and in particular Action #2 were a breach of the Respondent's obligations pursuant to *Piikanissini*.

120. Unilaterally bringing a court action in the name of the Piikani Nation that is subsequently struck as not being properly authorised with the remainder of the action stayed as an abuse of process degrades the values, principles and integrity of the Piikani Nation. For the Piikani Nation to strive to maintain a stable relationship with the Provincial and Federal governments, one that is based on principles of mutual respect, the representatives of the Piikani Nation, of which the Respondent is one, must ensure that the internal governance policies and procedures of the Piikani Nation are followed rather than acting unilaterally. It is the failure of the Respondent to follow the principles of *Piikanissini* which resulted in the Piikani Nation name being used without proper authority and the judicial arm of the Provincial government ruling that the action was an abuse of process.

121. Alternate Finding Pursuant to Common Law: The Appeals Board considers the conduct of the Respondent in bringing Action #1 and Action #2 to be an abuse of her authority. In both actions the Respondent misused her position as Chief of the Piikani Nation to justify unilaterally taking legal action. The Chief and the Councillors must work together to govern the Piikani Nation for to condone unilateral action such as that taken by the Respondent would result in anarchy. The best interests of the Piikani Nation are not served by allowing anarchy to rule the day. As stated by the Petitioner, the governance structure of the Piikani Nation is a work in progress. It is the desire of this Appeals Board that its decision provide some guidance to future Chief and Council of the Piikani Nation, at least to stand for the proposition that Chief and Council must work together and avoid any of the

members of Chief and Council taking unilateral action purportedly in the name of the Piikani Nation. The governance policies and procedures of the Piikani Nation must be followed as they develop over time.

C. Disrupting conduct of Piikani Nation Administration and business, including while on suspension

122. Finding Pursuant to Common Law - The legal proceedings commenced by the Respondent disrupted the ability of the Piikani Nation to conduct business due to delay and expenditure of resources caused by the unilateral actions of the Respondent. Action #2 put the lawyers and law firms acting for the Piikani Nation in a conflict of interest and affected ongoing litigation involving the Piikani Nation. The Respondent unilaterally attempted to delay or even stop legal proceedings commenced by the Piikani Nation, some of which were commenced by the Chief and Council prior to the Respondent becoming Chief. The Respondent interpreted her position as Chief as providing the right to unilaterally ignore the wishes of both current Band Council and previous Chief and Council. By doing so, the Respondent failed to maintain a standard of conduct expected of a member of the Piikani Nation Council.

123. Alternate Findings Pursuant to *Piikanissini*: As discussed in paragraphs 119 and 120 above, pursuant to the principles of *Piikanissini*, the Respondent must ensure that the internal governance policies and procedures of the Piikani Nation are followed rather than acting unilaterally, which the Respondent failed to do.

D. Disclosing privileged Piikani Nation documents

124. Finding Pursuant to *Piikanissini* - Although solicitor-client privilege does not form a part of *Piikanissini*, the conduct of the Respondent in potentially waiving solicitor-client privilege by attaching privileged documents to her affidavit engages the obligation of the Respondent to ensure the values, principles and integrity of the Piikani by upholding the governance of the Piikani. It would be contrary to upholding the governance of the Piikani and therefore contrary to the obligation to ensure the value, principles and integrity of the Piikani are protected, if any member of Chief and Council were allowed to use privileged or confidential information, which comes into their possession by virtue of their position as Chief or Councillor, for their own purposes. Such a situation does not result in governance for the Piikani Nation, it would result in anarchy. Accordingly, the Appeals Board finds that the Respondent has failed in her obligations pursuant to *Piikanissini*.

125. Alternate Finding Pursuant to Common Law: The Respondent attached documents that were subject to solicitor-client privilege to her affidavit filed on December 13, 2012 in the insolvency proceedings. The Respondent had access to these documents by virtue of her position as Chief, which is a fiduciary position. The affidavit was filed by the Respondent without the approval of the Piikani Band Council and was in various capacities, including as a beneficiary of the Piikani Investment Corporation. The conduct of the Respondent to unilaterally disclose solicitor-client privileged documents (thereby potentially waiving privilege) which she had access to by virtue of her position as Chief is conduct which fails to maintain the standard of conduct expected of a member of the Piikani Nation Council, including an abuse of office that negatively affected the Piikani Nation.

Decision

126. The Appeals Board has reviewed all the evidence before it and the weight to be given to such evidence. Based on that review as set out above, the Appeals Board finds that the Respondent failed to maintain a standard of conduct expected of a member of the Piikani Nation Council, as set out in the Election Bylaws and in keeping with the principles of *Piikanissini*.

127. The Appeals Board finds this conduct of the Respondent to be of such a serious nature that removal from the office of Chief of the Piikani Nation is necessary and appropriate.

128. Accordingly, the Appeals Board orders that the Respondent, Chief Gayle Strikes With A Gun be removed as Chief of the Piikani Nation, effective immediately.

129. The Appeals Board notes that it does not have the jurisdiction to order the Piikani Nation Band Council to pay honoraria to the Respondent. The issue of honoraria is outside the scope of these Formal Proceedings and is a matter between the Respondent and Piikani Nation Band Council.

Schedule "A"
Pre-Hearing Decision of Appeals Board Dated November 22, 2013

SCHEDULE "A"

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November 22, 2013

Further to the Pre-hearing applications on November 20, 2013 the Board has come to a decision on the 4 issues raised.

1. **Respondent's Request for Legal Fees**

   The Board is established by the *Piikani Nation Election Bylaw, 2002* Regulations (the "Election Bylaw") to hear an appeal resulting from a petition to remove the Chief or a Councillor from office. The Board takes its authority from the Election Bylaw. The Election Bylaw does not contain any right or power of the Appeals Board to grant solicitor and client legal costs to any of the parties.

   The Board was provided with a copy of the Piikani Nation Council Band Council Resolution 2013-1114-01 denying the Respondent's request for legal fees. Both parties acknowledged that they had received a copy of this Band Council Resolution.

   In the face of this Band Council Resolution, what the Respondent is arguing is for an order by the Board compelling the Piikani Nation Council to grant solicitor and client legal costs. Such an order would be akin to a mandatory injunction. Mandatory injunctions are remedies which, in the absence of clear statutory authority to do so, only superior courts may grant pursuant to their plenary powers.

   Under sections 96 – 100 of the *Constitution Act* a court of plenary jurisdiction has the power to grant relief such as a mandatory injunction. The Board is a tribunal not a court of plenary jurisdiction and thus does not have plenary power to grant the relief requested by the Respondent.

   Since the Election Bylaw does not give the statutory authority for the Board to grant solicitor and client costs and the Board is not a tribunal of plenary jurisdiction, the Board cannot grant the Respondent's request for solicitor and client costs.

   Even if this power does reside in the Board, the Board has already set out in the Rules of Conduct that each party will bear its own costs and accordingly, the Board would in any event decline to exercise whatever discretion that it might have to order solicitor and client costs be payable to the Respondent.

   The issue of an Okanagan Order was not argued by either counsel and the Board has no comment thereon.

2. Allegations of Reasonable Apprehension of Bias

   The Respondent raised 3 issues with respect to the allegations of reasonable apprehension of bias:

   I. Gilbert Eagle Bear, Sr.;

   II. Providing unsolicited advice; and

   III. Setting new hearing dates.

   The test for reasonable apprehension of bias is as quoted by the parties from *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at para 40.

I. Gilbert Eagle Bear, Sr.

As per counsel for the Respondent's November 21, 2013 email the Respondent withdrew her allegation of bias or reasonable apprehension of bias as against Mr. Gilbert Eagle Bear, Sr.

Accordingly this argument is dismissed.

II. Providing unsolicited advice

The Respondent alleged that the Board is biased because of inappropriate words or behaviour related to the May 1, 2013 letter from the Board to both parties requesting that, since applications had already been set before the Federal Court, in the interests of reducing costs for all parties to advise the Federal Court that the Board would be relying on the *Knight v. Indian Head*, [1990] 1 SCR 653 case of the Supreme Court of Canada to ensure the administrative process proceeded in a fair and timely fashion by making any decision of the Board conditional upon either the Piikani Nation Band Council confirming that as at January 8, 2013, the Piikani Nation Council unanimously consented to the recommendation for the removal of the Respondent as Chief, and/or having the Petitioner file an appeal in accordance with s. 10.07 of the Election Bylaw. The Respondent alleged that this letter, addressing the issue of Band Council Resolution dated January 8, 2013 (the "January BCR") which recommended that the issue of the removal of the Respondent as Chief be submitted to the Board, was inappropriate because it gave legal advice as to how the rectify the situation.

What the Respondent is arguing is that the process which commenced in 2012 be set back to square one due to an administrative procedural issue which does not prejudice the Respondent since either the Piikani Nation Band Council or the Petitioner could simply restart the process. No benefit would be garnered by accepting the relief requested by the Respondent. Rather, the only result would be delay and added expense, which prejudices both parties.

The Board finds that "an informed person, viewing the matter realistically and practically – and having thought the matter through" would not reach the conclusion that there is a reasonable apprehension of bias for or against one party or the other.

Accordingly, this argument is dismissed.

III. Setting new hearing dates

The Respondent also alleged the Board engaged in inappropriate behaviour by setting a new hearing date in July, 2013 when the parties had agreed to adjourn the June 6, 2013 hearing to await the decision of the Federal Court on injunctive relief. The Board granted the adjournment on the condition that the Federal Court motion would be heard on June 24, 2013 and when that condition was not met it exercised its powers under section 11.05 of the Bylaw to set a new hearing date.

The Board is created under the Bylaw and Regulations to conduct removal appeals proceedings and it has the power to determine the rules for conduct of the hearing. Setting a hearing date does not raise a reasonable apprehension of bias, particularly in light of the order of the Federal Court directing that this matter first be heard by this Board. A reasonable and right minded person would not conclude that setting a new hearing date raised a reasonable apprehension of bias against either party.

Accordingly this argument is dismissed.

3. Jurisdiction of the Board

The Respondent raised two issues with regard to the jurisdiction of the Board:

I. The decisions of the Piikani Nation Council to suspend the Respondent leading up to and including the referral of the Petition to the Board; and

II. The Piikani Nation Council's compliance with the requirements of sections 10.05 and 10.04.02 of the *Piikani Nation Election Bylaw, 2002*.

I. With respect to the first issue, the Board cannot rule on matters outside of its jurisdiction. The decisions of the Piikani Nation Council to suspend the Respondent in September and November 2012 are not reviewable by the Piikani Nation Removal Appeals Board and do not affect whether a matter of removal of a Chief or a Councillor is properly before the Board.

The ultimate issue to be decided by the Board is whether there is sufficient evidence to support the Petition to remove the Respondent as Chief. If any of these issues raised by the Respondent are relevant to the ultimate issue, the Hearing is the forum for those issues to be argued and the Respondent is free to do so. The Board has the competence to rule on its own jurisdiction (*Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 SCR 3). This first issue raised by the Respondent is contained in the Respondent's documents filed with the Board so is available for argument by the parties at the Hearing.

The Board finds that this first issue does not affect the jurisdiction of the Board to continue to the Hearing.

II. With regard to the second issue raised by the Respondent: *Piikani Nation Election Bylaw, 2002* there are two ways the Board may receive a Petition for removal of a Chief or Councillor – recommendation of the Band Council through a Band Council Resolution (section 10.04.02) or an appeal of a Petitioner where a Petition has been refused (section 10.07).

The Respondent argued sections 10.05 and 10.04.02 were not complied with because the Band Council Resolution 2013-0108-01 dated January 8, 2013 (the "January BCR") was not unanimous as stated in *Piikani Nation Election Bylaw, 2002*:

> 10.05 The Piikani Nation Council may, by unanimous consent as evidenced by a Band Council Resolution and in accordance with subsection 10.04.02, recommend that a person be declared ineligible to continue to hold the office of Chief or Councillor if...

The Respondent argued that "unanimous" required the signature of each of the 12 Councillors and the Chief on the Band Council Resolution and the January BCR only contains 8 signatures.

Following the argument of the Respondent to its logical legal conclusion, to interpret the phrase "unanimous consent" so as to require the Respondent to sign the Band Council Resolution recommending she be declared ineligible to continue to hold office would lead to a legal absurdity. It is a common legal principle that where a statutory provision can be read 2 ways, one of which leads to a legal absurdity, the reading which does not lead to the legal absurdity is the meaning to be used. A reading of this section of the Election Bylaw which requires the agreement of the Chief or Councillor who is the subject of the removal proceedings would render this section meaningless.

The Respondent also argued that she was not consulted on the composition of the Board. S. 21.03 of the Regulations included in the Election Bylaw sets out the qualifications for the Board members and there is no requirement for consultation with the party who is the subject of the Petition. The Board finds no merit in this argument.

Accordingly, the Board does not agree with the Respondent's argument on the definition of "unanimous" in this context.

The Piikani Nation Council passed Band Council Resolution 2013-0508-01 dated May 8, 2013 ratifying and reaffirming the January BCR. This Band Council Resolution was signed by all 12 Councillors. In addition, the Petitioner has filed an appeal pursuant to s. 10.07 of the Election Bylaw.

As discussed under the heading of "Reasonable Apprehension of Bias" above, pursuant to *Knight v Indian Head*, technical errors in procedural administrative matters will not invalidate the process if they would do no more than to impose a purely procedural requirement which is at odds with the principles of flexibility of administrative procedure. Accepting the argument of the Respondent for the Board to decline to take jurisdiction would serve no purpose other than to cause further delay and added costs to the entire process, thereby creating prejudice to both parties, which is contrary to the proper administration of the administrative process.

The Board can determine its own jurisdiction according to *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 SCR 3, and the Board has determined that the decisions of the Piikani Nation Council regarding the suspension of the Respondent do not affect the jurisdiction of the Board in this matter and the requirements of section 10.05 and 10.04.02 of the *Piikani Nation Election Bylaw, 2002* were met to properly constitute the Board. In addition, the Board notes that the Petitioner filed an appeal pursuant to s. 10.07 of the Election Bylaw. Although these actions were taken late, the practical effect of them was to put the matter before the Board in accordance with the spirit and intent of the Election Bylaw. As discussed above, the alternative is to restart the process which only results in delay, additional costs and therefore prejudice to both parties.

The Board therefore has the jurisdiction to conduct, hear and determine the matter of whether the Respondent is ineligible to continue to hold the office of Chief.

The Board recommends that the Piikani Nation amend its Election Bylaw to clarify that "unanimous" does not include the Chief or Councillor who is the subject of the Petition since an interpretation that "unanimous" requires the signature of the individual against whom removal is sought would render this portion of the Election Bylaw meaningless.

4. Unsolicited Submissions of the Respondent

The Petitioner argued that the letter of November 12, 2013 from the Respondent to the Board which was submitted after the Petitioner's written rebuttal statements and documents should not be considered by the Board.

Paragraph 4 of the Hearing Rules of Conduct does not allow for the Respondent to make a rebuttal to the Petitioner's written rebuttal statements and documents. During submissions, the Respondent advised the Board that the letter of November 12, 2013 was not an attempt to introduce new evidence or to make argument, rather it was only to set out the position of the Respondent on these issues. The Board accepts these submissions of the Respondent.

The Board determines that it will disregard the November 12, 2013 letter and will rely only on the evidence properly before it and argument of respective counsel at the Hearing.

Conclusion

In conclusion:

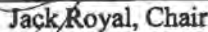
1) The Board declines to make an order with respect to the Respondent's legal fees;

2) The Board finds that there are no grounds to find a reasonable apprehension of bias of the Board;

3) The Board is properly constituted and has the jurisdiction to hear the Petition; and

4) The Board will not consider the November 12, 2013 letter from Ms. Whyte.

Piikani Nation Removal Appeals Board

Per: 

Jack Royal, Chair