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ABORIGINAL PEOPLES

ELECTIONS

Judicial review of decision by Chief and Council of Chippewas of the Thames First Nation (Council) removing applicant from her position as elected councillor of Chippewas of the Thames First Nation — Applicant member of Council — Elected as councillor for three consecutive terms, most recently by way of election held on July 28, 2021 — Respondent's elections governed by *Indian Act,* R.S.C., 1985, c. I-5 — At May 3, 2022, special council meeting, motion passed by other members of Council directing that applicant be removed from elected office for remainder of 2021-2023 council term — Decision stated to have been made having considered workplace violence complaints received from staff members, applicant's aggressive, disrespectful, violent conduct at Council table, contravening Council's Code of Conduct and Oath of Office, impacting Council's ability to govern — Applicant disputing allegations against her, not accepting conclusions of Council — Asserting that Council lacking jurisdiction, authority to remove her from elected office — Whether Council having jurisdiction or authority to remove applicant from her elected position as councillor — In this matter, respondent has not enacted custom election code or opted into *First Nations Election Act,* S.C. 2014, c. 5 — Thus, legislative authority for removal of councillor from office stemming from *Indian Act* — Council not having authority by motion to "direct" that applicant be removed from office — This was determinative — *Indian Act*, s. 78(2)(a) stating that office of chief or councillor becoming vacant when person holding that office convicted of indictable offence; dies or resigns from office; or becomes ineligible to hold office by virtue of *Indian Act* — No evidence that applicant falling into any of those categories — Power to remove applicant from office conferred upon Minister pursuant to s. 78(2)(b) — This precluding Council from exercising that authority — To extent that Council relying on "inherent" authority to remove applicant from office, onus on Council to establish that custom afforded Council such authority — Here, respondent offered no evidence of custom that would support removal of a councillor from elected office by Council — Respondent not addressing how ancillary powers doctrine having application in this matter, appearing to conflate that doctrine with doctrine of jurisdiction by necessary implication — Legislature clearly put its mind to removal of elected councillors from office, including circumstances warranting that action, who has authority to make that determination — By restricting circumstances in which an office will become vacant, legislature determined perimeters for removal — Doctrine of jurisdiction by necessary implication having no application in these circumstances — That finding determinative — Nothing in *Indian Band Council Procedure Regulations*, C.R.C., c. 950 providing First Nation councils with any jurisdiction or authority to remove chief or councillors from elected office — Respondent's Leadership Manual not supplementing existing legislative regime such that Council afforded authority to remove councillors from elected office by way of Leadership Manual — In any event, Leadership Manual dealing with disqualification from office in specified circumstances, but not authorizing Chief, Council to remove councillor from office — Applicant's conduct not, in and of itself, affording Council jurisdiction to remove applicant from elected office — Council decision removing applicant from office made without jurisdiction, quashed — Applicant entitled to receive any

remuneration that she would have received but for unlawful removal from office — Application allowed.

BEESWAX V. CHIPPEWAS OF THE THAMES FIRST NATION (T-1144-22, 2023 FC 767, Strickland J., reasons for judgment dated June 1, 2023, 64 pp.)