

PRAIRIE ISLAND  
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COMMUNITY  
TRIBAL COURTIN THE TRIBAL COURT OF THE  
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PRAIRIE ISLAND INDIAN RESERVATION

STATE OF MINNESOTA

In Re the Complaint for Removal of  
Community Council Member  
Mason Pacini,

Case No. CIV-482-02

**ORDER****INTRODUCTION**

This matter was heard on November 20, 2002 by the undersigned appellate panel for a hearing on the Petitioners' Complaint for Removal of Community Council Vice President Mason Pacini, filed with the Court on May 13, 2002. Nancy Wiltgen and Mary Schwind appeared on behalf of the Petitioners. Steven Sandven appeared on behalf of Respondent Pacini, who was also present for the hearing. The following people testified at the hearing: Darelynn Lehto, Community Council Secretary; JoDee Gamst, former director of the Family Services & Child Welfare Office; Doreen Hagen, former Community Council Secretary; Lucy Taylor, former Community Council member; Freeman Johnson, former Community Council member; Dan Sine, former Tribal Administrator; Tom Gnotke, current director of finance for the government; Shelly Buck-Yeager, Community member; Sven Baker, Community member and Mason Pacini, Vice President of the Community Council.

The following Exhibits were offered and received without objection: P-13 August 9, 2001 Doreen Hagen Motion; P-15 Tribal Council Meeting Minutes-April 3, 2002; P-16 Tribal Council Meeting Minutes-April 8, 2002; P-17 Statement of Darelynn Lehto-January 14, 2002; P-18 E-mail to Tribal Council from Darelynn Lehto regarding Tribal member's requests; P-19 E-mail to Tribal Council from Darelynn Lehto to Audrey Bennett and Mason Pacini regarding trip reports; P-20 Memorandum to

Darelynn Lehto from Cindy Flemke regarding Motions passed on January 31, 2002; P-21 Memorandum to Tribal Council from Tom Gnotke regarding depreciation transfers subject to IGRA?; P-22 Tribal Council Meeting Minutes-March 6, 2002; P-24 Memorandum to Karen Defoe from Tribal Council regarding revolving loan program-February 21, 2002; P-25 Memorandum to Tribal Council from Diane McCoy regarding Excerpt from January 10, 2002 Minutes- Dan Sine- January 11, 2002; P-27 Memorandum to Tribal Council from Diane McCoy regarding Excerpt from January 10, 2002 Minutes- JoDee Gamst and Calvin Campbell- January 11, 2002; P-28 Tribal Council Meeting Minutes - December 20, 2001; P-30 Tribal Council Meeting Minutes- January 31, 2002; P-36 Facsimile from Tribal Court on November 19, 2002 and minutes submitted by Respondent's counsel and P-38 Resolution 6-10-94-95. Additionally, the Court allowed counsel to submit portions of the transcript of the hearing for Community President, Audrey Bennett, held on November 13, 2002, for the Court's consideration.

The Complaint for Removal filed against Vice President Mason Pacini alleged seven violations:

- 1) Violating Community Council Resolution 93-168, Code of Ethics, by failing to devote the time to the duties and responsibilities required of a Council member by repeatedly failing to attend scheduled meetings with the business community, tribal employees, and tribal committees;
- 2) Violating Community Council resolutions requiring that personnel matters be addressed through the channels set forth in the Employment Policies and Procedures, and violating Community Council Resolution 93-168, Code of Ethics, by improperly terminating employees rather than relying on administrators, management, and professional staff to handle employment disputes, and misconduct;
- 3) Violating the Bylaws of the Prairie Island Indian Community in the State of Minnesota by failing to provide proper written notice of all



Council meetings to all Council members, and failing to hold Council meetings that are open and public to all members of the Community;

- 4) Violating Community Council Resolution 93-168, Code of Ethics, by failing to approve Council minutes in order to allow members access to all information necessary to understand the workings of the Council and Community;
- 5) Improperly disseminating misleading, inaccurate, and patently false statements regarding Council members and Council business and discussion to create Community hostility toward the Council and certain Council members and to foster internal conflict;
- 6) Generally violating his duty to safeguard the Community's economic interests by permitting the improper expenditure of funds, including scheduling unnecessary travel and unwarranted cancellation of official travel without obtaining refunds; and
- 7) Violating the Constitution and Bylaws of the Prairie Island Indian Community in the State of Minnesota.

Prior to the hearing on November 20, 2002, Respondent's counsel filed the following: Motion in Limine to Strike Petitioner's Seventh Cause; Respondent's Motion in Limine to Exclude Evidence Expected to be Offered at Trial and Respondent's Motion to Dismiss. The Court, at the hearing, denied both Respondent's Motion to Dismiss and Respondent's Motion in Limine to Strike Petitioner's Seventh Cause. The Court rendered the Respondent's Motion in Limine to Exclude Evidence Expected to be Offered at Trial as unnecessary by clarifying the time periods relevant to the complaint against the Vice President.

The Court examined all of the evidence proffered as it applies to the minimal standards established in its October 28, 2002 Order, and, in the identical manner it used in the Bennett removal hearing, determined whether each of the requisite burdens was met by Petitioners in their complaint against the Vice President.

The Court previously held in President Bennett's removal hearing that the uncontested evidence "makes it sufficiently clear to this Court that real difficulties exist in the functioning of the government- to the point that requirements that do not exist in the Community's Bylaws have been imposed on members' access to the official records that the Secretary is required to keep". The uncontested evidence in the Vice President's removal hearing does not in any way change the Court's view. The Vice President also readily testified that the actions of members of the Community Council at meetings, which this Court has held were not called in a manner compliant with the Constitution and Bylaws, were, with very few exceptions, undertaken without appropriate consideration or advice.

This Court laid out very clearly the burden of proof necessary to require the removal of an elected member of the Tribal Council. It appears to the Court that the application of the test was not yet clear to the parties at the removal hearing of the Vice President. This Court requires that clear and convincing evidence of misconduct or neglect of duty or conflict of interest or ethics violations that inhibit the Tribe from governing itself as required by the Constitution or that inhibit the Tribe from executing any of the enumerated powers of the Constitution be shown before this Court decides removal must happen pursuant to Article VII of the Community's Constitution and Bylaws. The Court explained that the actions that it found to constitute clear and convincing evidence of misconduct or neglect of duties or ethics violations may have partially inhibited the Tribe in both instances, but there had been no evidence of inter-governmental and intra-governmental inability to function evidenced in losses of the Community's sovereignty.



In hearing the Petition/Complaint brought to this Court against the Vice President, the Court again found unequivocal evidence of misconduct demonstrated by the Vice President's repeated participation in meetings that were not properly noticed pursuant to Article IV, Sec. 1 of the Bylaws, and were not open to Community members pursuant to Article IV, Sec. 4 of the Bylaws. The Court heard evidence of some of the matters undertaken by the elected Council members who participated in these improperly called meetings: employment terminations; conversion of the depreciation fund into distribution into the requisite IGRA accounts; and creation of a tax loan program for Community members who were delinquent in their individual taxable capacities. This Court stated very clearly its view of such actions in the context of a removal hearing.<sup>1</sup> In the matter of the Vice President, this Court also heard allegations of improperly interposing his position as an elected Council member.

The Court heard no evidence of inter-governmental agreements that were invalidated by federal or state governments because of the manner in which they were Tribally approved. Neither did the Court hear testimony that any proposed laws forwarded to the Secretary of Interior for her approval pursuant to the Community's own Constitution were rejected based on the method of approval within the Community. The increase in the amount of per capita payments from

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<sup>1</sup> The Court also notes that in 1995 the Community Council undertook an admirable effort to try to insure that *major projects and issues which significantly affect or may affect the Community* may be amenable to a referendum process separate and apart from the referendum process referenced in the Community Constitution. We would note that the conduct of the Community Council indisputably established in each of the first two removal hearings that few, if any, meetings were called with the requisite notice per the Constitution and Bylaws. Such conduct absolutely prohibits the opportunity made available by Resolution 6-10-94-95 (Exhibit P-38) because the 1995 measure requires that such action be taken *at a duly held meeting of the Community Council with a quorum present*. That cannot happen when a meeting is not properly called. The entire intent of the Resolution is frustrated.

the conversion of the depreciation fund was not determined to be violative of IGRA by any federal department or commission based on the method of approval by the Community.

Even though the Community to date has avoided such serious consequences which could very well result from the members of the Tribal Council failing to abide by their own Constitution and Bylaws, if such actions continue after this Court has concluded that such actions are in violation of the Constitution and Bylaws, the Community may be much closer to suffering consequences that it has, as of yet, avoided. This Court has already advised the Community that because nearly all of the meetings in question were not called in compliance with the Constitution and Bylaws, ratification of any previous action by a quorum of the Council at a properly called meeting is an immediate need facing the Community. As the Court stated in its earlier removal decision, it was not reluctant in its ultimate conclusion but was clearly disturbed by the "potential disruption that this method of governance can produce". The Court concludes again that Respondent's individual misconduct did not inhibit the Tribe from governing itself as required by the Constitution. But this Court feels greatly that the continuation of such conduct will unavoidably imperil the Community in the exercise of its sovereign powers.

#### DECISION

The matters proven by clear and convincing evidence at the Vice President's hearing, while deeply troubling, did not fully meet the second portion of the requirements set by this Court: the actions complained of did not inhibit the Tribe from governing itself as required by the Constitution or inhibit the Tribe from executing any of the enumerated powers of the Constitution. The conduct, proven



by clear and convincing evidence, defied the Constitution and Bylaws, the Code of Ethics, Resolution 6-10-94-95, and the August 9, 2001 action passed by the Community Council prohibiting interference in personnel matters. However, as we have previously held, *they did not do so to the degree necessary for this Court to remove the Vice President.*

The first charge (Charge 1), alleged that Respondent failed to devote time to the duties and responsibilities required of a Council member. The testimony was that the Vice President missed the March quarterly meeting, the meeting with the Tribal Court to discuss permanency timelines and a meeting with employees regarding their concerns about the hiring freeze and suspension of some of the tools with which they completed their assigned tasks. It was not established that such meetings required the Vice President's attendance. Community members have a justifiable expectation that Council members will fully take part in quarterly meetings.

The meetings referenced with the Tribal Court and the employees regarding the hiring freeze and other matters affecting them were not attempts to call Community Council meetings but were duties attendant to the Community Council. Each was an important meeting; however, absence from those two meetings more involves an absence of leadership rather than an ethical violation or misconduct or neglect of duty. But those failures on his part clearly did not bring the government to a point that it could not function as required by the Constitution.

The second charge (Charge 2) was supported by clear and convincing evidence that both the Council's own resolutions as well as the Code of Ethics were violated when significant numbers of tribal government and casino employees were

terminated without notice. The Court fully adopts its reasoning and findings and conclusions in the removal matter of President Bennett as appropriate and applicable to the decision regarding the Vice President:

Resolution 93-168, Code of Ethics, required that tribal personnel matters should be addressed through the procedures set in place by the tribal government and it can be fairly read to discourage unilateral Community Council action in the termination of employees. There was substantial disagreement between the parties as to whether or not the abrupt actions of the Community Council to terminate employees mattered since all employees are categorized as *at will*. However, that discussion misses the mark in terms of the Community Council's direct interference in personnel matters. Its own resolution of August 9, 2001, some six years after the promulgation of the Code of Ethics, demonstrates that the Community Council understood clearly that it should not extend its reach into such matters. The evidence showed unequivocally that it did so several times in a wholesale manner. However, no evidence was provided that those actions by the Community Council inhibited the Tribe to such an extent that it was unable to govern itself or execute the enumerated powers of the Constitution.

The third charge (Charge 3) declares that the Vice President failed to provide proper written notice of all Council meetings to all Council members and failed to hold Council meetings that were open and public to all members of the Community. The evidence is undisputed that such meetings were held over and over and that the vast majority were not open and public to all members of the Community. It does not appear from the organic documents, however, that the Vice President had a direct duty to provide proper written notice of all Council meetings to all Council members or to members of the Community. As we held previously, it is the President's duty to provide the requisite notice but the evidence is undisputed that the Vice President actively attempted to exercise enumerated powers: the exhibits, without objection, demonstrated that the Vice President not only attended but moved matters that affected the entire Community. The Vice President has a duty to attend meetings that are properly called pursuant to the Bylaws. The Vice President



also has a duty to ensure that meetings that are not properly called do not include any attempts to exercise any of the enumerated powers delegated to the Community Council. The record is clear that the Vice President acted beyond the scope of his authority participating in the votes that are documented on the record before this Court. Respondent did not provide an explanation for his conduct. As we previously held, Article IV of the Bylaws, Sec. 1 is unequivocal and inflexible: three days notice of called meetings shall be given to Council members. The Vice President's repeated active participation in these meetings in direct violation of the Bylaws qualifies as misconduct. As we indicated earlier in this decision, however, Respondent's individual misconduct did not, though, inhibit the Tribe from governing itself as required by the Constitution.

The fourth charge (Charge 4) alleged that the Code of Ethics was violated by failing to approve minutes so that Council action was available to all Community members. Respondent did not dispute that during the period in question, meeting minutes were not approved. Counsel for Respondent produced what were described as minutes at the time of the hearing for President Bennett and no explanation was offered as to when such minutes were approved, if ever, and if they actually constitute approved minutes. While the status of these documents produced at hearing is somewhat confusing, it has not yet been disputed that minutes were not approved as charged in the complaint.

Respondent's explanation for his failure to work for approval of the minutes in a timely manner was simply that he did not trust Council member Lehto, the Secretary of the Council. He stated that he would not approve something that was inaccurate. His testimony rings quite hollow with this Court. It is clear that even

minimal effort on his part would have allowed for corrections to be made to the minutes before they were approved in a properly called meeting. He did not testify that he put forth such effort. The effect of that action not only frustrates the mandate of Article I, Sec. 3 of the Bylaws, but it deprives all Community members from being informed citizens of this Community because all official records, which include minutes of meetings, cannot then be "[o]pen to inspection to members of the Community at all reasonable times."

The Vice President clearly neglected his duty: however common it is among governments to fail to timely approve the record of their deliberations, the real effect here is the deprivation to Community members. This violation did not inhibit the Tribe from governing itself as required by the Constitution or inhibit the Tribe from executing the enumerated powers of the Constitution. The Vice President should not interpret this conclusion by the Court as giving him license to casually carry out his responsibilities. While the Tribe can function for a period of time without approved minutes and can function even without member access to those minutes, it should not have to.

The fifth charge (Charge 5) alleges that the Vice President disseminated misleading, inaccurate and patently false information regarding Council members, business and discussions. No violation of the Constitution, Bylaws, Code of Ethics or other standard of conduct was alleged with this charge. Be that as it may, the Vice President testified, as did Petitioners' witness, that Respondent apologized for the conduct that was alleged to have been misleading, inaccurate or patently false and Petitioners' witness agreed that she had accepted the apology. In the other instance raised before the Court in support of Charge 5, it was alleged that the Vice



President had told a Community member that she was in peril of having her children removed from her by the Family Services Director. The Vice President flatly denied the charge. Unfortunately, the Community member allegedly involved in this matter was unavailable due to health reasons and the Court was left with no substantiation for either the charge or the denial. The Court cannot apply this charge to a consideration of something so serious as a constitutional removal matter without more substantive development of evidence. Charge 5 is denied.

The sixth charge (Charge 6) is relatively easier to determine. Petitioners presented to the Court that Respondent had either scheduled unnecessary travel or carelessly cancelled official travel without obtaining refunds. Petitioners were unable to demonstrate to the Court that the alleged conduct had occurred more than one or two times. Respondent fully explained one matter that was identified by both parties and the explanation was uncontested. The Court finds that the Respondent's explanation was quite reasonable. He also explained that it was his understanding that when flights were cancelled there is a minimal \$25.00 fee that the Tribe incurs for preserving the flight for a later time. The Court does not believe that *any* evidence was presented that would show misconduct or neglect of duty, and much less, inhibit the Tribe from governing itself as required by the Constitution or inhibit the Tribe from executing the enumerated powers of the Constitution.

The last charge (Charge 7) is a general charge of violation of the Constitution and Bylaws. No other specific allegation was made with the charge and the Court has already ruled on any extant matters involving the Constitution and Bylaws. Charge 7 is subsumed in those treatments and does here not require individual analysis by the Court.

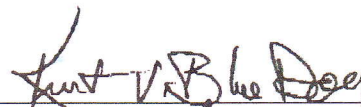
## CONCLUSION

The Court has no reason to differently articulate its discouragement with what has become indisputably clear how the government is functioning at this time. However, the Court believes that the conclusion it has previously provided is appropriate to the matter of the complaint for removal of the Vice President.

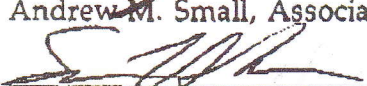
"It is a leadership decision whether to abide by the self-imposed Code of Ethics and the August 9, 2001, Resolution which preclude Community Council interference in personnel matters, the responsibility for which has been delegated to tribal administrators. Furthermore, it is a leadership choice to honor the Constitution and Bylaws and make official records of the Secretary open to inspection to the members of the Community at all reasonable times. It is a critical leadership decision to explicitly abide by the Constitution and Bylaws and, without fail, provide the requisite three days written notice of called meetings and make all meetings of the Community Council public to all members of the Community except for executive sessions. There is no exception for following a practice that has become routine but is still contrary to these tribal mandates."

As indicated above, the Court concludes that the Complaint charges levied against the Vice President, Mason Pacini, do not rise to the requisite level to warrant his removal from office.

Dated: November 22, 2002

  
Kurt V. BlueDog, Chief Justice

  
Andrew M. Small, Associate Justice

  
Susan L. Allen, Associate Justice