



NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

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SUPREME COURT CASE No. 21-181-APP

TRIBAL COURT CASE No. 21-151-AMA/ELE

PETITIONER/APPELLEE

RESPONDENT/APPELLANT

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v.

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**OPINION OF THE SUPREME COURT FOR THE
NOTTAWASEPPI HURON BAND OF THE POTAWATOMI**

Before:

Hon. Gregory D. Smith, Chief Justice, Presiding

Hon. Holly T. Bird, Associate Justice

Hon. Matthew L.M. Fletcher, Associate Justice

Opinion by Bird, J.

Argued January 27, 2022

Decided January 27, 2022

SYNOPSIS

This is the second in a series of election campaign dispute appeals related to the April 24, 2021 Tribal Council elections for the Nottawaseppi Huron Band of Potawatomi (*hereinafter* “NHBP”). On April 24, 2021, there was an election to fill three Tribal Council seats. Appellant, Jeff Tenbrink, lost the election by two votes. Appellant then filed an election challenge alleging violations of the NHBP Election Code when Tribal Council Chair, Jamie Stuck, made statements during two Tribal Council meetings that he believes affected the vote, as well as the fairness of the election. The Election Board had a hearing and ordered a new election, although it made no finding of voter fraud or irregularities under the Election Code. Appellees, Rios and Smit, winners of the original election, filed suit with the Tribal Court asking to set aside the Election Board decision. The Tribal Court found that the Election Board erred in its decision and ordered

the original election to stand. Appellant, TenBrink, then filed this matter before the NHBP Supreme Court for review. This case involves an analysis of: 1) the sufficiency of evidence to prove that the Chairman's statement influenced the integrity and outcome of the election process; 2) whether there was a violation of due process in the election board hearing; and 3) whether the Tribal Court was in error when it did not remand the matter back to the Election Board. In addition, the concepts of *Mno-Bmadzewen* are discussed in relation to all participants of the Tribal election process.

HELD

The decision of the Tribal Court is hereby AFFIRMED and the validation and certification of the results of the April 24, 2021 Tribal Council Election are hereby AFFIRMED.

OPINION

To begin, we first respectfully acknowledge our gratitude for being given the responsibility of helping to make decisions for the people of NHBP. We also recognize our solemn duty to continue *Gaagige-inaakonigewin*,¹ or Anishinaabe law, for the future of all generations. By doing so, we uplift the concepts of achieving harmony and living in balance with all of creation under the principles of *Mno-Bmadzewen*. Through this we hope to bring forth that which defines the people of the Tribe as Anishinaabe and achieve justice under the law as rooted in Anishinaabe ways of thinking and being.

¹ Anishinaabe law encompasses *gaagige inaaakonigewin* and is defined as “the rights and responsibilities intrinsic to the belief systems of the Anishinaabeg.” Courchene, Darren. “Anishinaabe ji-dibenjigaadeg (ownership) and ganawenindiwin (protection)” in *Indigenous Notions of Ownership & Libraries, Archives, and Museums*. Camille Callison, Loriene Roy, Gretchen Alice Lecheminant (eds.), Berlin: Walter de Gruyter, 2016; at 78.

Procedural History and Summary of Relevant Facts

On April 22, 2021 at a Tribal Council Business Meeting, Chairman Jamie Stuck made comments related to a motion to approve the December 10, 2020 Special Tribal Council Closed Session minutes that referred to an investigation being initiated in 2020 with respect to the conduct of NHBP Election Board members. He further elaborated about the investigation later in the meeting about the “burying” of the investigative report. On April 24, 2021, Chairman Stuck brought up the investigative report at the Tribal Membership Meeting again and thanked two Tribal members for their “bravery” in speaking up during the meeting on the subject. In addition, several Tribal members made statements at the Membership Meeting about the investigation brought up by Chairman Stuck. The comments were comprehensively explored by the Tribal Court as they were provided within the record of each meeting. In none of the statements made by Chairman Stuck, were any candidates for the Tribal Council election mentioned.

On April 24, 2021 there was an election held for the purpose of filling three (3) Tribal Council seats. Rios and Smit were elected to seats on the Tribal Council. TenBrink was not elected, losing by two (2) votes. On April 26, 2021, TenBrink filed an election challenge which alleged that Chairman Stuck violated eleven sections of the NHBP Election Code² due to his comments at the April 22nd and April 24th, meetings. He further alleged that the comments caused more people to vote for Rios and Smit, thereby creating a substantial unfairness and loss of integrity in the election process.

² For reference *see* Title III, Ch. 1, of the Nottawaseppi Huron Band of Potawatomi Tribal Code: Elections.

On May 17, 2021, the NHBP Election Board held a hearing on TenBrink's challenge, predicated by notice to all of the parties. On May 31, 2021, the NHBP Election Board issued its decision upholding TenBrink's election challenge and ordered a new election. It should be noted that despite finding no evidence or allegations of voter fraud or irregularities in the process, the Election Board found that the election had been influenced by Chairman Stuck's comments because seventeen (17) Tribal Members had never voted before. It should also be noted that TenBrink brought no additional evidence to the hearing to support his allegations. The Election Board did not allow counsel for Rios and Smit to cross-examine witnesses during the hearing. Further, the Election Board itself brought its own evidence in the form of personal knowledge and social media posts, that was used in the decision. On June 9, 2021, Rios and Smit filed their Request for Expedited Review of the NHBP Election Board decision alleging there was not clear and convincing evidence that Chairman's Stucks comments improperly influenced voters in their favor; that the decision of the Election Board, without sufficient evidence, was arbitrary and capricious; and that the decision of the Election Board violated basic election principles as well as their due process rights.

The Tribal Court heard the case on June 21, 2021 and issued its opinion on July 6, 2021. In its decision, the Court found that: 1) TenBrink failed to provide clear and convincing evidence that Chairm Stuck's comments, along with the comments by Tribal Citizens regarding the Election Board at the April 22, 2021 Tribal Council Business Meeting and April 24, 2021 Annual Meeting constituted campaigning for Rios and Smit; 2) The Election Board's finding that Chairman Stuck's comments were campaigning to the extent that it brought the outcome of the election into question violated the due process rights of Rios and Smit where the issue was

beyond the scope of TenBrink’s challenge and therefore, not noticed by the Election Board prior to the hearing; and 3) The Election Board violated Rios and Smit’s due process rights when it considered evidence not presented at hearing with sworn testimony (Tribal citizen comments made to Election Board members and social media posts); In addition, the Tribal Court ordered that the NHBP Election Board must provide notice of all issues to be considered at hearing during an Election challenge. Thus, the Tribal Court reversed the decision of the Election Board and upheld the Tribal Council Election results of April 24, 2021.

TenBrink filed a Notice of Appeal of the Tribal Court’s decision on August 3, 2021, but did not file an appellate brief. The NHBP Election Board filed a Notice of Appeal on August 3, 2021 and an Amended Notice of Appeal on August 5, 2021, along with an appellate brief on October 4, 2021. Appellees Rios and Smit followed suit by filing their Response to Election Board Brief in Chief on November 15, 2021. Finally, the NHBP Election Board filed their Reply Brief in response to the Appellees’ on November 17, 2021. After sending out the appropriate notice, this Court held a hearing over Zoom on January 27, 2022 to hear the parties’ oral arguments in the matter.

Jurisdiction and Standard of Review

Article XI of the NHBP Constitution, section 3-C grants the Tribal Court the authority to hear “all civil and criminal cases arising under this Constitution, all legislative enactments of the Band, including codes, statutes, ordinances, regulations, all resolutions, agreements, and contracts to which the Band or any of its entities is a party, and the judicial decisions of the

Tribal Court system.”³ Further, Article XI of the NHBP Constitution § 3(c) and (d) give the Tribal Supreme Court the authority to “review a final judgment, order or decree of the Tribal Court as provided in appellate rules adopted by the Tribal Judiciary or as prescribed by applicable Tribal law.”⁴ In addition, the rulings of this Court are “final and binding and cannot be appealed to the Tribal Council, General Membership or any other jurisdiction.”⁵

The jurisdiction of the NHBP Tribal Court over election disputes as well as the standard of review are defined as:

“§ 3.1-41 Expedited review by NHBP Court.

A. Any aggrieved candidate or eligible voter may seek expedited judicial review of any final decision of the Election Board by filing a petition for review in NHBP Court.

B. The petition for review shall be filed within ten (10) calendar days of the final decision of the Election Board.

C. The NHBP Court shall hold unlawful and set aside any Election Board final decision that the Court finds, based on clear and convincing evidence, to be:

- (1) Arbitrary, capricious, or an abuse of discretion;
- (2) Contrary to a constitutional or statutory right or privilege;
- (3) Without observance of procedure required by law;
- (4) Unsupported by substantial evidence; or
- (5) Lacking in fundamental fairness.

D. The petitioner shall bear the burden of showing that the final decision must be set aside.

³ See the Nottawaseppi Huron Band of Potawatomi Tribe Constitution, Article XI § 3-C(a), <https://ecode360.com/34044560>.

⁴ See Nottawaseppi Huron Band of Potawatomi Tribe Constitution, Article XI § 3-C(c), <https://ecode360.com/34044560>.

⁵ See Nottawaseppi Huron Band of Potawatomi Tribe Constitution, Article XI § 3-C(d), <https://ecode360.com/34044560>.

E. The NHBP Court shall ordinarily schedule a hearing no later than seven (7) business days after the petition is filed, and render a decision within ten (10) business days of the hearing. The NHBP Court shall take all reasonable efforts to ensure that the hearing and decision be issued before the election, if any, to which the final decision relates. Further, any Election Board decision and/or scheduled election or reelection shall be stayed pending the outcome of an appeal of an Election Board decision that is filed with the NHBP Court.

F. Upon setting aside an Election Board final decision, the NHBP Court shall remand the matter to the Election Board for further proceedings.

G. A NHBP Court decision on a petition for review is subject to review in the Supreme Court.”⁶

The present case involves analysis of the NHBP Tribal Court’s decision after hearing Dorie Rios & Nancy Smit v. NHBP Election Board, Case No. 21-151-AMA/ELE. This Court, therefore, has jurisdiction over this matter pursuant to the Constitution and laws of the NHBP.

Discussion

We humbly begin our discussion with reference to the principles that guide NHBP in addressing difficult matters such as those before us. Our relatives have determined that all parties and entities involved in these matters are to follow *Noeg Meshomsenanek Kenomagewenen*, the Seven Grandfather Teachings. Article III of the NHBP Code § 7.4-6 provides:

“In carrying out the powers of self-government in a manner that promotes and preserves our Bode’wadmi values and traditions, the Tribe strives to be guided by the Seven Grandfather Teachings in its deliberations and decisions. The rights and limitations contained in this code are intended to reflect the values in the Seven Grandfather Teachings to ensure that persons within the jurisdiction of the Tribe will be guided by the Seven Grandfather Teachings:

Bwakawen — Wisdom
Debanawen — Love
Kejitwawenindowen — Respect
Wedasewen — Bravery
Gwekwadzewen — Honesty
Edbesendowen — Humility

⁶ See 3 NHBPTC § 3.1-41, <https://ecode360.com/34044560>.

This court deeply respects these teachings and endeavors to act in accordance with them. As before, we are guided by the principles laid out before us by the NHBP. We are saddened that interpersonal conflicts within functions affecting the whole of the Tribe can rise to the level requiring judicial intervention. We perform this duty with humility and with the greatest respect for all the persons involved.⁸

It should be noted that the issues of party standing, good-faith immunity, legislative immunity and court jurisdiction over the matter were either disposed of in an earlier opinion involving this case or not disputed in these appeals, either in writing or by arguments.⁹

1. We find no clear error of fact by the NHBP Tribal Court when it determined that TenBrink failed to present clear and convincing evidence that Chairman Stuck’s statements or statements of other Tribal Members influenced the election to the benefit of Rios or Smit.

In Anishinaabe systems of justice, Tribal courts have uniformly adopted a clear error standard of review of a trial court’s findings of fact. *Harrington v. Little Traverse Bay Bands of Odawa Indians Election Board*, 13 Am. Tribal Law 123, 126 (Little Traverse Bay Bands of Odawa Indians Appellate Court 2012); *De Young v. Southbird*, No. 99-11-568-CV-SC, 2001 WL 36194388, at *2 (Grand Traverse Band Court of Appeals, March 6, 2001). *Cf. Morgan v. Blakely*, 2008 WL 8565282, at *1 (Leech Lake Band of Ojibwe Appellate Court 2008) (“abuse of discretion”). *Spurr v. Spurr*, NHBP Sup. Ct. No. 17-287-APP, 24 (2017). Trial judges are

⁷ See 3 NHBPTC § 7.4-6, <https://ecode360.com/29878122>. See also *Spurr v. Tribal Council*, No. 12-005APP, at 4-6 (2012).

⁸ This writer thanks Hon. Matthew L.M. Fletcher for so eloquently introducing these words and concepts in *Spurr v. Spurr*, No. 17-287-APP at 8 (2017).

⁹ *Specifically*, In re NHBP Election Board Decision - Dispute No. 2021-2, NHBP Sup. Ct. No. 21-111-AP (October 21, 2021).

afforded great deference by appellate judges reviewing specific and important aspects of their work. In matters where the trial judge is the finder of fact, or performs any fact finding function, trial judges are present in the courtroom when witnesses testify. *Spurr v. Spurr*, NHBP Sup. Ct. No. 17-287-APP, 23 (2017). As such, trial judges can more easily assess how witnesses present via their voice and body language. Further, a witness's credibility may be ascertained with any supporting or contradictory evidence. We as appellate judges reviewing a cold transcript of trial level hearings may misinterpret speakers' intent when discerning the meaning of the words spoken, just as anyone who has misinterpreted a text message or email or had one of their texts or emails misinterpreted. *Id.* Therefore, this Court grants the same level of review to the NHBP Tribal Court.

Here, the Tribal Court was comprehensive when it came to detailing the facts of this case. Specifically, the Tribal Court offered very detailed portions of the record that it relied on when making its decision, quoting directly from recordings of the Tribal Council Meetings as well as corresponding witness testimony. At no time did it appear that the Tribal Court made an error in quoting the facts it relied on. In addition, the accuracy of the Tribal Court's fact-finding process has not been brought to issue here.

The Tribal Court also provided a lengthy analysis as to the meaning and possible conjecture of Chairman Stuck's words said at two separate Tribal Council meetings, as well as the words of other Tribal Members. In that analysis, the Tribal Court acknowledged that there was clear and convincing evidence that Chairman Stuck's comments affected Tribal members' views of the 2021 election. However, after analyzing the evidence present - the statements of

witnesses, the record, and the number of voters and votes cast, the Tribal Court also found that there was not any evidence to show that Chairman Stuck's comments affected the vote itself. The Tribal Court even considered the size of the voting population, the election process, and entertained the "underlying allegation" that voters knew who Chairman Stuck supported as candidates. The Tribal Court even brought up the premise that had there been evidence or testimony of individuals who heard Chairman Stuck's comments and interpreted them as supporting a specific candidate, thereby causing them to vote in a certain way, then the burden of clear and convincing evidence might be met in this case. However, no evidence to this effect was ever presented by any party. We agree.

The Appellant TenBrink's burden in the case below was to show, by clear and convincing evidence, that Chairman Stuck's statements or statements of other Tribal Members influenced the election to the benefit of Rios and Smit. The definition of "clear and convincing evidence" was thoughtfully provided by the Tribal Court as "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 ND 399, 410 (1995). Evidence is clear and convincing when it "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Id.* Evidence "may be uncontroverted, and yet not be clear and convincing ... Conversely, evidence may be clear and convincing despite the fact that it has been contradicted." *Id.* "Elections are the means provided by law for the expression of the will of the people. To set them aside unnecessarily would be to destroy that confidence in them which is essential." *Skain v. Milward*, 138 Ky. 200, 127 S.W. 773, 778-79 (1910). "Consequently, the

evidentiary bar is high for a successful election challenge.” *Hamilton v. Election Commission*, 5:17-CV-01048-PRW, 3; Cheyenne-Arapaho Tribal Supreme Court (December 28, 2017). “While a causal nexus between an election law violation and an election result need not be proven to a mathematical certainty, the showing must be one of probability rather than possibility.” *Id.* A high burden of proof is essential because “undoing an election is an extraordinary act and must be avoided as much as possible. It is therefore only appropriate that the challenger in an election dispute prove a violation by a higher standard than by preponderance of the evidence.” *Visintin v. Ho-Chunk Nation Election Board*, 7 Am. Tribal Law 280, 289 (Ho-Chunk Nation Trial Court 2008). The Tribal Court applied the correct standard and thoroughly explained it relative to the facts of this case. We see neither an error of fact or an error in the Tribal Court’s analysis of the facts under this standard. There was no evidence presented to show a nexus between Chairman Stuck’s and Tribal members’ statements, and the outcome of the vote. Appellant TenBrink failed to meet their burden of proof in this case.

2. The Tribal Court did not err when it found that the NHBP Election Board violated Rios and Smit’s due process rights when they a) did not give Rios and Smit appropriate notice of the issues considered at hearing and b) considered social media and other statements made outside of the hearing. In addition, the Election Board violated procedural due process when it did not allow counsel for Rios and Smit to cross-examine witnesses at the Election Board hearing.

Article VII of the NHBP Constitution § 1 (a.)(8) states:

“The Band, in exercising the powers of self-government, shall not:...
...Deny to any person within its jurisdiction the equal protection of its laws or
deprive any person of liberty or property without due process of law;”¹⁰

¹⁰Nottawaseppi Huron Band of Potawatomi Tribe Constitution, Article VII § 1 (a.)(8), <https://ecode360.com/29874410?highlight=due%20process.process&searchId=6163787138828569#29874410>

In adopting the individual right to due process in its Constitution, NHBP assures all who enter its jurisdiction will receive the protections of due process of law. This premise is uncontroverted.

The Tribal Court provided an analysis of the Election Board's finding that Chairman Stuck's comments made at the April 22, 2021 and April 24, 2021 meetings that were critical of the Election Board "affected the fairness and integrity of the election process and rendered the results of the election uncertain."¹¹ In that analysis the Tribal Court was to determine whether the Election Board's decision was arbitrary, capricious, or an abuse of discretion; contrary to a constitutional or statutory right or privilege; without observance of procedure required by law; unsupported by substantial evidence; or lacking in fundamental fairness. The Tribal Court found that Rios and Smits had their due process rights violated in several ways. We agree with the Tribal Court.

First, the Election Board conducted its own analysis of Chairman Stuck's statements, aside and apart from that alleged by TenBrink. As the Tribal Court noted, this analysis "... was not [part of] the challenge filed by Candidate TenBrink nor the issue articulated in the notice sent to the candidates, and Tribal citizens, as the purpose of the May 17, 2021 Election Board hearing."¹² In essence, the Election Board acted as its own petitioner *in addition to* TenBrink. By bringing its own evidence and analysis to the case, but without noticing the parties of the case prior to the hearing, the Election Board deprived the parties of the ability to properly prepare for the hearing. The Election Board cannot and should not become a challenger along with or in a

¹¹Rios & Smit v. NHBP Election Board; 21-151-AMA/ELE and NHBP Tribal Council, Chairman Stuck, & Stuck as Individual Tribal Citizen v. NHBP Election Board; 21-152-AMA/ELE – Opinion After Oral Arguments, 6 (July 6, 2021).

¹² *Id.* at 39.

challenger's stead. By doing so in this case, the Election Board violated procedural due process of the parties, contrary to a constitutional or statutory right or privilege.

Second, in making its decision to overturn the election, the Election Board allowed statements that weren't presented at the Hearing to be used as evidence. Specifically mentioned were "verbal feedback from some Tribal members"¹³ made to members of the Election Board and social media posts by Tribal members regarding the comments made by Chairman Stuck and others at the April 22nd and April 24th meetings. Some of the core tenets of due process are that parties in a hearing get the opportunity to know about allegations ahead of time; get to examine witnesses; get to examine evidence; and make arguments therein. In this case, the parties got to do none of these things in relation to evidence that wasn't presented at hearing through sworn testimony. Therefore, the procedural due process of the parties was violated again, contrary to a constitutional or statutory right or privilege.

Another important point that was noted by this Court is that during the hearing conducted on *Election Challenge 2021-A*, counsel for Rios and Smit was not allowed to cross-examine witnesses on their testimony or evidence presented. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Oglala Sioux Tribe vs. Luann Van Hunnik* at 21, CIV.13-5020-JLV (D.S.D. Sept 30, 2014), citing *Goldberg*, 397 U.S. at 269; see also *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). "It is fundamental to a full and fair review required by the due process clause that a litigant have an opportunity to be confronted with all adverse evidence

¹³ *Id.*

and to have the right to cross-examine available witnesses.” Oglala Sioux Tribe vs. Luann Van Hunnik at 21, CIV.13-5020-JLV (D.S.D. Sept 30, 2014) citing *Nevels v. Hanlon*, 656 F.2d 372, 376 (8th Cir. 1981) Case 5:13-cv-05020-JLV Document 136 Filed 09/30/14 Page 21 of 35 PageID #: 3710 22 (citing *Greene v. McElroy*, 360 U.S. 474, 496-97 (1959)). Where parties were denied the opportunity to cross-examine witnesses, there is a violation of due process. Oglala Sioux Tribe vs. Luann Van Hunnik, 22, CIV.13-5020-JLV (D.S.D. Sept 30, 2014). In this case, although not specifically pointed out by the Tribal Court, there was a violation of due process where counsel for Rios and Smit was not allowed to cross-examine witnesses at the Election Board hearing.

“Many, if not the vast majority, of American Indian tribal courts have recognized as a matter of common law that the notion of “fundamental fairness” applies to tribal elections. For example, the three Michigan Odawa tribal courts have all referred to fundamental fairness in various ways, but most especially in the context of tribal elections. *Spurr v. Spurr*, NHBP Sup. Ct. No. 17-287-APP, 7 (2017) *citing* *Crampton v. Election Board*, 8 Am. Tribal Law 295, 296 (Little River Band of Ottawa Indians Tribal Court, May 8, 2009); *Bailey v. Grand Traverse Band Election Board*, No. 2008-1031-CV-CV, 2008 WL 6196206, at * 9, 11 (Grand Traverse Band of Ottawa and Chippewa Indians Tribal Judiciary, Aug. 8, 2008) (en banc); *Deckrow v. Little Traverse Bay Bands of Odawa Indians*, No. C-006-0398, 1999 WL 35000425, at * 2 (Little Traverse Bay Bands of Odawa Indians Tribal Court, Sept. 30, 1999).” It is especially important for people in positions of power or authority over others to strictly ensure that fundamental fairness occurs in all of its interactions with the members of the Tribal public. The Election Board, in violating the due process rights of Rios and Smits during the Election Board hearing of

May 17, 2021 created a process that was lacking in fundamental fairness. Therefore, per the law mandated under 3 NHBPTC Art. XV § 3.1-41(C)(5)¹⁴, the Tribal Court was correct when it ruled against *Election Board Decision – Election Challenge 2021-A*.

3. The NHBPTC Tribal Court did not err by not remanding the case back to the Election Board.

Citing 3 NHBPTC Art. XV § 3.1-41 (F):

“Upon setting aside an Election Board final decision, the NHBPTC shall remand the matter to the Election Board for further proceedings.”¹⁵

Appellants contend that the Tribal Court erred by not remanding the case back to the Election Board for further hearing on the matter. However, the ruling made by the Tribal Court rendered this action moot. In making its decision to overturn the decision of the Election Board, the Tribal Court upheld the election, which occurred nearly one year ago and had been fully implemented. The Tribal Court also found that TenBrink failed to bring sufficient evidence to prevail in *Election Challenge 2021-A*. The Election Board itself had recounted the vote and found no allegations of voter fraud or irregularities in the election process. There was nothing left for the Election Board to reconsider or rehear in the matter. Therefore, the Tribal Court was correct in not remanding the case back to the Election Board for rehearing.

¹⁴3 NHBPTC Art. XV § 3.1-41 (C)(5), <https://ecode360.com/34044559>.

¹⁵ 3 NHBPTC Art. XV § 3.1-41 (F), <https://ecode360.com/34044559>.

4. Mno-Bmadzwen and Tribal Elections

The world around us is in a state of stress and unrest. We live in a time when our *penojen* (children) are growing up with the fear of uncertainty that comes with a pandemic, climate change, political unrest, and war. These times have come and gone for our Indigenous people throughout our time here on *Segmekwé*, our Mother Earth. Through it all we have been resilient and adaptive. We also carry trauma and huge scars that sometimes feed our fears and reactions. It is more important than ever that we provide a structure and way of life for our *penojen* that reflect who we are and who we want to be as Indigenous people. The values of *mno-bmadzwen* are more than just words that we post on our websites or on paper. Or that we speak about when calling out another person. “For the Anishinaabe, the concept of achieving harmony in life, to live in balance with all of creation is expressed by the term mino-bimaadiziwin.” *Cholewka v. Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council*, No. 2013- 16-AP (Grand Traverse Band of Ottawa and Chippewa Indians App. Ct. 2014) *Mno-bmadzwen* reflects a way of living and how we treat one another so that we may all live in harmony together. It is a uniquely tribal concept that considers the individual as no different from the whole, and the whole as no different from the Universe. How each individual community chooses to create lifeways based on *mno-bmadzwen* is important to their future as Indigenous people and to all that feel its effect.

Tribal elections are a messy process, made more complicated by personal emotion, motive, and lack of reason. The people of NHBP are all relatives so the ramifications of conflict can be far-reaching and damaging to the entire Tribe. We have all seen how our Tribal elections have largely followed the processes mandated by the larger U.S. society that surrounds us. There

are some good things about the process, and also some things that don't work for our Indigenous nations and ways of being. As we figure out what processes work best for our people in our adaptation to modern Tribal governance, it is important that our leaders and potential leaders provide an example of how to treat one another so that *mno-bmadzwen* is present for all. "The principles of mino-bimaadiziwin should be utilized to interpret and develop Anishinaabe-inaakonigewin."¹⁶ "The principles of mino-bimaadiziwin as a fundamental law of the Anishinaabe are achieved through the application of the seven sacred laws of creation—the Seven Grandfather Teachings."¹⁷ This has been further recognized as a central tenet of NHBP governance in Article 3 of the NHBP code § 7.3-4:

Custom and tradition policy:

Bode'wadmi traditions and values recognize the interconnectedness of every person and everything in this world and that the actions of one individual, or of a group of individuals, will have an impact on the whole of our community. In all things we do as a government, it is our obligation to promote Bode'wadmi traditions and values by seeking consensus so that decisions that are made will benefit the whole of our community for this and the next seven generations.¹⁸

Moving further into what it means to act as an individual or group of individuals, we must examine the principle of *kejitwawenindowen*, "to act in a certain manner with thoughts of respect and honor upon it, to act in certain manner with the perception of respectful thoughts upon it, and act in certain manner with the feeling of respect in the mind." *Zephier v. Walters*, No. 15A06 (Cheyenne River Sioux Tribal Ct. of App. 2017). "We are taught that each and every

¹⁶Kekek Jason Stark, *Anishinaabe Inaakonigewin: Principle for Intergenerational Preservation of Mino-Bimaadiziwin*, 82 Mont.L.Rev. 293, 95 (2021).

¹⁷ *Id.* at 13, *citing* *Restoule v. Canada*, 2018 ONSC 7701, Elder Kelly Tr., Vol. 21 at R 2866–67, 2934 (Nov. 1, 2017) (stating that "[a]ccording to Elder Fred Kelly, two of the organizing principles of Anishinaabe law and systems of governance were pimaatiziwin (life), where everything is alive and everything is sacred, and gizhewaadiziwin (the way of the Creator), which encompasses the seven grandfather teachings or seven sacred laws of creation").

¹⁸ 3 NHBPTC § 7.3-4, <https://ecode360.com/29878121>.

one of us would not exist on this Earth without a power or spirit watching over us. We are told to be mindful of this and to treat each other respectfully, because to do damage to another person would be comparable to doing direct damage to the power or spirit watching over that person.”¹⁹ *Kejitwawenindowen* by its nature requires reciprocity or mutuality - i.e./ “they respect each other.”²⁰

The principle of *kejitwawenindowen*, or respect, should form the basis for the way that Tribal relatives treat one another in nearly all matters, but particularly where one is leading or governing. Words, tones, context, body language, timing, action and intent all play a part in how one gives or perceives respect. Different people may have different understandings of what this means. However, it is usually clear to most when *kejitwawenindowen* isn’t being given. Harsh words, gossip, and fighting over election processes that are non-Bode'wadmi inspired means that the individuals, groups, and/or process are stressed by something that is not being carried out with *kejitwawenindowen* as well as other Grandfather Teachings, thereby not allowing *mno-bmadzewen* to flourish. It is up to the individuals to look at themselves and their conduct first, then the group together, and finally, the process itself. Is this working for the people of NHBP? Is this the way the people want to move together into the future?

It is not for this Court to teach the people of NHBP what *mno-bmadzewen* or the Seven Grandfather Teachers are, only to carry out the concepts as provided to us by the Elders of NHBP. We humbly and respectfully remind all to turn to those that do teach these lifeways to

¹⁹ Kekek Jason Stark, *Anishinaabe Inaakonigewin: Principle for Intergenerational Preservation of Mino-Bimaadiziwin*, 82 Mont.L.Rev. 293, 95 (2021) quoting Lee Obizaan Staples, *Spirituality From An Anishinaabe Perspective* 1–2 (2009); see also Zhawenim, *Ojibwe People's Dictionary*, <https://perma.cc/W54F-XHR9> (visited May 20, 2021).

²⁰ *Id.* at 20.

review your process of governance as well as your individual behavior with one another. Every day that we wake with gratitude for living within *Segmekwé* as Indigenous people is another day to create and live in *mno-bimadzwen* for us and our future generations.

Respectfully Signed:

March 3, 2022
Date

March 1, 2022
Date

March 3, 2022
Date

Gregory D. Smith
Hon. Gregory D. Smith, Chief Justice *with permission HLC*

Holly T. Bird
Hon. Holly T. Bird, Associate Justice

Matthew L.M. Fletcher
Hon. Matthew L.M. Fletcher, Associate Justice *with permission HLC*