Federal Court  Cour fédérale

Date: 20160408

Docket: T-1095-15

Citation: 2016 FC 385

Ottawa, Ontario, April 8, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SHANE CRAWLER

Applicant

and

WESLEY FIRST NATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [Act] for judicial review of Council Resolution No. 2015-021 [Resolution 2015-021], passed on June 3, 2015 by Chief and Council of the Wesley First Nation [Chief and Council].

II. BACKGROUND

[2] The Respondent, Wesley First Nation [WFN], is one of three separate first nations which make up Stoney First Nation, an Indian band under the *Indian Act*, RDC 1985, c 1-5.

[3] The Applicant is a former member of the Chief and Council. Chief and Council are responsible for the governance of all matters relating to the WFN and its members.

[4] Chief and Council members receive bi-weekly remuneration and are also reimbursed for expenses incurred when fulfilling their duties and obligations owed to the WFN, including travel expenses to attend Chief and Council meetings.

[5] On December 8, 2014, the Applicant was re-elected to the Chief and Council as a Councillor.

[6] On January 19, 2015, Resolution No. 2015-001 [Resolution 2015-001] was passed by Chief and Council which prohibited the Applicant from acting, or voting, on matters dealing with assets, finances or budgeting issues. Resolution 2015-001 was a consequence of the Applicant's having been charged with an indictable offence under s 380(1) of the *Criminal Code*, for allegedly defrauding the WFN of the sum of $25,600.00 by deceit, falsehood or other fraudulent means. Resolution 2015-001 was the subject of a separate judicial review (T-193-15) and was declared invalid by Justice Harrington on November 16, 2015: *Crawler v Wesley First Nation*, 2015 FC 1271.

[7] According to the Respondent, notice of Chief and Council meetings is customarily sent by email, text message or both. Members unable to attend a scheduled meeting are to advise the WFN Chief Executive Officer and the Chief. Valid reasons for absences have been limited to medical reasons, attending to other WFN business matters, or mechanical failure of a vehicle while in transit to a meeting.

[8] Chief and Council meetings are routinely held at the Calgary law firm of Rae and Company. Legal counsel does not attend unless specifically requested to provide legal advice on a specific matter.

[9] On May 22, 2015 and May 23, 2015, text messages and emails containing a meeting agenda were sent advising all Chief and Council members that a meeting was scheduled for May 26, 2015. On May 25, 2015, the Applicant confirmed by text message that he would be attending the meeting with his lawyer. The Applicant did not attend the meeting.

[10] On May 27, 2015, notice of a meeting scheduled for May 29, 2015 was issued to all Chief and Council members. On May 28, 2015, the Applicant confirmed his attendance by text message. Again, the Applicant did not attend the meeting.

[11] On May 31, 2015 and June 1, 2015, notice of a meeting scheduled for June 3, 2015 was issued to all Chief and Council members. On June 1, 2015, the Applicant confirmed his attendance by email. In the same email, he stated to Norma Jean Roberts, Acting Chief Executive

Officer, that he had been unable to attend the previous meeting of May 29, 2015 as he "could not get gas funds to get to the meeting." The Applicant did not attend the June 3, 2015 meeting.

[12] Contrary to WFN practices, the Applicant did not contact Ms. Roberts or Chief Wesley prior to the missed meetings to: provide reason for his absences; request that the meetings be either rescheduled or relocated; or request that Chief and Council exercise their discretion to authorize his absence.

[13] On June 3, 2015, Resolution 2015-021 was passed and the Applicant's disqualification from office as a result of missing three (3) consecutive meetings was confirmed and formalized.

[14] On July 16, 2015, a by-election was held to fill the position made vacant by the Applicant's removal. The Applicant did not stand as a candidate in the by-election and did not protest any nomination or appeal the results.

III. DECISION UNDER REVIEW

[15] Resolution 2015-021 held, pursuant to s 17.1 of the Wesley Nation Council Resolution BCR 312, that because of his absence without valid reason or authorization at three (3) consecutive meetings of the Chief and Council, the Applicant was disqualified from the office of Councillor of the Wesley First Nation and ceased to hold his position as of 5:30 PM on June 3, 2015.

IV. ISSUES

[16] The submissions of the Applicant suggest that the following is the principal issue before me in this application:

- Was the Applicant denied procedural fairness by the process and events that led to the passing of Resolution 2015-021?

V. STANDARD OF REVIEW

[17] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[18] The Court has recognized the knowledge of chiefs and band councils on matters related to custom and factual determinations and has found that this expertise should be shown deference. Therefore, band council decisions are to be reviewed on the standard of reasonableness and will be upheld unless they fall outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Martselos v Salt River Nation 195*, 2008 FCA 221 at para 30; *Hill v Oneida Nation of the Thames Band Council*, 2014 FC 796 at

para 46 [*Oneida Nation*]. However, deference is only owed where the principles of procedural fairness and natural justice have been observed: *Shotclose v Stoney First Nation*, 2011 FC 750 [*Shotclose*] at paras 58-59. As stated by Justice Mosley in *Shotclose*:

> [60] Where procedural fairness is in issue, the question is not whether the decisions made by the Chief and Council or the actions taken by them were "correct" but whether the procedure used was fair. See*: Ontario (Commissioner Provincial Police) v. MacDonald*, 2009 ONCA 805, 3 Admin L.R. (5th) 278 at para. 37 and *Bowater Mersey Paper Co. v. Communications, Energy and Paperworkers Union of Canada, Local 141*, 2010 NSCA 19, 3 Admin L.R. (5th) 261 at paras. 30-32.

[19] The jurisprudence of this Court demonstrates that whether a band council has breached a duty of procedural fairness is to be reviewed on a correctness standard. Therefore, correctness will apply to the principal issue in this case.

VI. STATUTORY PROVISIONS

[20] The following provision of the Wesley First Nation Custom Election Regulations [Election Regulations] is relevant in this proceeding:

> 17.1 Disqualification from office shall occur in the following circumstances:
>
> …
>
> (b) Any Council member who has been absent from meetings of the Wesley Nation Council for three (3) consecutive meetings, without valid reasons or authorization as determined by the Wesley Nation Council in its sole discretion, shall cease to hold that office.

[21] The following provision of the Act is relevant in this proceeding:

Extraordinary remedies, federal tribunals	**Recours extraordinaires : office fédéraux**
18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction	18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :
(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and	(a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;
(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.	(b) connaître de toute demande de réparation de la nature visée par l'alinéa (a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

VII. ARGUMENTS

A. *Applicant*

[22] The Applicant submits that because he was prohibited from acting or voting on matters dealing with "assets, finances or budgeting matters" on January 19, 2015 by Resolution 2015-001, he had a valid reason for not attending the Chief and Council meetings held on May 26, 2015, May 29, 2015 and June 3, 2015.

[23] The Applicant argues that nowhere in the notice sent to members of Council regarding the meeting of June 3, 2015 was it indicated that Chief and Council were considering the passing of a resolution that would disqualify the Applicant from being a member. He says that, given the nature of the allegations against him that were scheduled to be discussed at the meeting, this lack of notice constitutes a breach of procedural fairness and as a result, Resolution 2015-021 should be set aside in its entirety.

[24] The Applicant also submits that it was inappropriate for Chief and Council to request the Applicant attend meetings in the offices of its solicitor who was representing a party in proceedings adverse in interest to the Applicant (T-193-15), in order to discuss an ongoing criminal matter in which the Applicant was the accused. The Applicant says that this was highly inappropriate and an abuse of procedural fairness, as well as another valid reason for the Applicant's failure to attend the May 26, 2015 and June 3, 2015 Chief and Council meetings.

B. *Respondent*

[25] The Respondent points out that the language of s 17.1(b) of the Election Regulations holds that a Council member "shall" cease to hold office if they have been absent for three (3) consecutive meetings without valid reasons or authorization. As a result, the Respondent submits that Resolution 2015-021 did not represent an exercise of discretion on the part of Chief and Council. Rather, it simply formalized the automatic and mandatory disqualification of the Applicant under s 17.1(b) of the Election Regulations. The Respondent asserts that were Chief and Council to refuse or fail to enforce a mandatory provision of the Election Regulations, it would result in a breach of the fiduciary duty owed by Council to the members of the WFN.

[26] After applying the factors identified in *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], which have been found to be applicable to the review of decisions of band councils (see *Oneida Nation*, above, at para 71), the Respondent further submits that if there was a duty owed by Chief and Council to the Applicant with respect to whether the Applicant had a valid reason or authorization for being absent, then it falls on the lower end of the spectrum of procedural fairness. Further, Chief and Council fulfilled any duty of procedural fairness owed here to the Applicant, and the process undertaken by Chief and Council was in accordance with the Election Regulations and the WFN's customs and practices.

[27] The Respondent further submits that none of the Applicant's stated reasons for missing the three meetings in question constitute a valid reason for Chief and Council to authorize the Applicant's absence. The Respondent submits that the Applicant's assertion that it was an abuse of procedural fairness to conduct the meetings at Rae and Company when counsel there was the Respondent's representative in an ongoing criminal matter against the Applicant is unfounded and unreasonable. The Applicant had long attended Chief and Council meetings at the law firm and there is no evidence that the Applicant raised any concerns about this location. Furthermore, it was appropriate for Chief and Council to request an update from the Applicant on the status of his criminal proceedings given the potential the proceedings had to create delays in relation to Resolution 2015-001 which was conditional on whether the Applicant was convicted or acquitted.

[28] Resolution 2015-001, according to the Respondent, only placed temporary limits on the Applicant's powers related to financial matters; it did not suspend him as a member of Chief and

Council, nor prohibit him from attending meetings. His submission that he did not need to attend Chief and Council meetings because of the reduction of his responsibilities is not supported by the evidence.

[29] The Applicant alleges a lack of notice that Chief and Council were proposing to pass a resolution that would remove him from office. However, the Respondent submits that the notice that was required to be given to the Applicant was notice of the time and place of the meetings – the receipt of which the Applicant has made no attempt to refute. The explanations of the Applicant for his absences do not fall within the range of acceptable reasons for absence customarily held to be valid. The evidence before the Court is that the Applicant had proper notice of the time and place of the meetings (even going so far as to confirm his intention to attend) and chose not to follow the customary process for requesting that any of the meetings be rescheduled or that his absence be authorized.

VIII. ANALYSIS

[30] WFN elections are based upon the WFN's custom as set out in the Election Regulations passed by Band Council Resolution on October 15, 2014.

[31] Subsection 17.1(b) of the Election Regulations provides that a Council member "shall cease to hold…office" if he or she "has been absent form meetings of the Wesley Nation Council for three (3) consecutive meetings." The only way for a Council member to avoid this consequence is to provide a valid reason for an absence or obtain the authorization of WFN's Council.

[32] The Applicant absented himself from three (3) consecutive meetings of Chief and Council. This meant that, by the time of the third consecutive meeting on June 3, 2015, he ceased to hold office by virtue of s 17.1(b) unless he had provided a valid reason or secured Council's authorization to absent himself from at least one of the three meetings.

[33] There is nothing before me to suggest that the Applicant takes issue with the constitutional validity of s 17.1(b) of the Election Regulations. Nor is there any suggestion that s 17.1(b) and/or the WFN custom it embodies is procedurally unfair in any way.

[34] The evidence is clear that the Applicant received full notice of the three consecutive Chief and Council meetings (May 26, 2015; May 29, 2015; and June 3, 2015) and a copy of the agenda for each. The evidence is also clear that the Applicant confirmed he would attend each of the meetings but, in fact, he attended none of them.

[35] There is no evidence before me to suggest that the Applicant was not aware of s 17.1(b) of the Election Regulations or that he took issue (or takes issue) with the validity of that provision, or that he did not appreciate the consequences of failing to attend three consecutive Chief and Council meetings.

[36] As regards availing himself of the exemption of a "valid reason" or an authorization as determined by the Council in its sole discretion, the Applicant did no more than suggest in a June 1, 2015 email to Ms. Norma Jean Roberts – who was both the Acting Chief Executive Officer and Chief Financial Officer of WFN at the time – that his failure or refusal to attend the

May 29, 2015 Chief and Council meeting was that he did not have enough money to pay for gas and his lawyer told him not to come to the May 26, 2015 meeting. He never provided any reason for his failure to attend the June 3, 2015 meeting prior to s 17.1(b) taking effect on June 3, 2015.

[37] The Minutes of the June 3, 2015 Council meeting show that Chief and Council were alerted at that meeting to the Applicant's three consecutive absences and the consequences of s 17.1(b). Chief Ernest Wesley asked at the meeting if the Applicant had given a reason for his failure to attend. Ms. Roberts reported to Council as follows:

> [H]e emailed, text and called. He said he was coming for sure. The reason why he did not come to the meeting last time was because he did not have enough fuel. The first time he says his lawyer told him not to attend.

[38] Chief Wesley then raised the question of whether this was a valid reason. The Minutes show that Council considered what would qualify as a valid reason, and looked at examples such as "sickness and medical reasons, attending band business, mechanical failures on route to the meeting." Council also noted that "Chief and Council is usually notified before a meeting about an absence and is pre-approved." The facts in the present case are clear that the Applicant never provided notification before any of the three consecutive meetings and that, in fact, he confirmed on each occasion that he would be present and just failed to show up.

[39] On these facts, it is more than apparent as to why Chief and Council decided that the Applicant had not provided a valid reason for any of his absences and that it should not exempt the Applicant from the automatic consequences of s 17.1(b). The Resolution cannot be called

unreasonable on these facts and the Applicant has not argued that it was unreasonable. He simply argues that it was procedurally unfair.

[40] For the purposes of this application, the Applicant raises three issues and/or puts forward three arguments:

(a) As a result of the January 19, 2015 resolution that prohibited the Applicant from acting on any of the matters referred to in the Notices for the meetings of May 26, May 29 and June 3, the Applicant had a valid reason for not attending any of the three meetings;

(b) The Notice for the June 3, 2015 meeting does not say that Council was preparing to pass a resolution disqualifying the Applicant from being a member of Council, and nowhere is the Applicant advised that Council believed he had no valid reason for failing to attend any of the three meetings, notwithstanding the prohibition contained in the Resolution of January 19, 2015. This amounts to a breach of procedural fairness that renders the decision invalid;

(c) The Applicant should not have been required to attend a meeting in the offices of the solicitor who was adverse in interest because he represented the opposing party in Federal Court Action T-193-15. This is because the Applicant would have been subjected to questioning by either members of Council or the Respondent's lawyer in an ongoing criminal matter.

[41] In reviewing these grounds, it has to be kept in mind that the Applicant at no time believed that there were any grounds for his not attending any of the three meetings. This is clear because he confirmed without reservation that he would be attending each meeting. All of the reasons for his lack of attendance have been raised *ex post facto*. In other words, they are raised after the fact for purposes of this application. His confirmation that he would attend each of the three meetings is clear evidence that (a) and (c) above are bogus.

[42] There are no grounds for considering that (a) and (c) above are anything more than an attempted rationalization after the fact. Nor does the Applicant argue in this application that his

"couldn't afford the gas" excuse for not attending the meeting on May 29 was not reasonably rejected by Council. There is no evidence before the Court that the Applicant had any concerns about the location of any of the three meetings or that he would have been subjected to unwanted questioning. Furthermore, the evidence before me is clear that the three meetings in question dealt with business that the Applicant was not disqualified from dealing with by virtue of Resolution 2015-001, which only placed temporary limits upon the Applicant's powers on Council.

[43] Similarly, with the Applicant's *ex post facto* excuse that his lawyer told him not to go to the meeting of May 26, 2015. If this was a concern then the Applicant would not have confirmed that he would attend that meeting and/or he would have notified Council that he had changed his mind upon advice from his lawyer. The Applicant confirmed he would attend the meeting with his lawyer and then just failed to show up.

[44] If the Applicant had thought it was inappropriate to attend meetings at the offices of Rae and Company, then he would not have attended meetings there in the past and he would not have confirmed that he would be attending meetings there on each of May 26, May 29 and June 3.

[45] So the single arguable ground before me in this application, as counsel conceded at the hearing, is ground (b), above: whether it was procedurally unfair for Council to pass the June 3, 2015 Council Resolution without giving the Applicant a further opportunity to provide reasons for his absences.

[46] As Chief Wesley makes clear in his affidavit:

> 9. It is the custom and practice of the Wesley First Nation that any member of Chief and Council that is unable or unavailable to attend a scheduled Chief and Council meeting will, prior to the meeting, advise both the Chief Executive Officer (or Acting Chief Executive Officer) of the Wesley First Nation administration and the Chief of the Wesley First Nation of their ability or unavailability to attend the Chief and Council meeting.
>
> 10. In appropriate circumstances the Chief and Council meeting can be rescheduled, or, at the individuals (*sic*) request Chief and Council may consider whether it is appropriate for Chief and Council to exercise its discretion to authorize the absence for the purpose of section 17.1(b) of the Election Regulations.
>
> 11. To the best of my knowledge and recollection, valid reasons or authorizations for not attending a Chief and Council meeting, pursuant to Wesley First Nation custom and practice, have been limited to absences due to: medical reasons; and individual attending to other Wesley First Nation business matters; or, in very rare instances, due to mechanical failure of a vehicle which in transit to a Chief and Council meeting.
>
> 12. The Applicant did not contact either Ms. Roberts or me to request that any of the three Chief and Council meetings, at issue, be rescheduled.
>
> 13. The Applicant did not contact either Ms. Roberts or me to request that Chief and Council exercise its discretion to authorize the Applicant's absence, from any of the three Chief and Council meetings at issue, under section 17.1(b) of the Election Regulations.
>
> 14. To the best of my knowledge and recollection, pursuant to Wesley First Nation custom and practice Chief and Council has never considered the lack of money for gas to be either a valid reason or an authorized reason to be absent from a Chief and Council meeting.
>
> 15. Members of Chief and Council are compensated to allow Chief and Council to fulfill their duties and obligations to the Wesley First Nation, which duties include travel to Chief and Council meetings.
>
> 16. In addition to the compensation paid to Chief and Council, Chief and Council are also reimbursed for travel expenses for each

> Chief and Council meeting that is attended. However, pursuant to the custom and practice of the Wesley First Nation, in order to ensure that travel expenses are properly and correctly reimbursed, only those members of Chief and Council that attend at Chief and Council meetings are entitled to receive reimbursement for travel at the end of each Chief and Council meeting.
>
> 17. To the best of my knowledge and information, members of Chief and Council have not been reimbursed for travel expenses to a Chief and Council meeting before a Chief and Council meeting.
>
> 18. In any event, the Applicant refused or failed to request that Chief and Council exercise its discretion to authorize the Applicant's absence from three consecutive Chief and Council meetings.
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> 19. On June 3, 2015, as the Applicant was absent from three consecutive Chief and Council meetings without valid reasons or authorization, the Applicant was automatically, and mandatorily, disqualified from his office as Councillor of the Wesley First Nation pursuant to section 17.1(b) of the Election Regulations.
>
> 20. While Wesley First Nation Council Resolution No. 2015-021, dated June 3, 2015, and attached as Exhibit "F" to the Affidavit of Ms. Roberts, formalized the Applicant's disqualification from the office of Councillor, this resolution was not an exercise of Chief and Council's discretionary powers since the Applicant's disqualification from office was automatic and mandatory.

[47] The Applicant does not challenge this evidence in any way. He does not say that he was unaware of this customary practice or that he did not understand it. He does not say that he does not approve of it, nor that he had any expectation that he would be treated otherwise than in accordance with the process that Chief Wesley says is used to deal with absentee Council members. He simply alleges that he was not treated in a procedurally fair manner in this case. However, he was treated in accordance with the customary process described by Chief Wesley, and this means that the Applicant should have provided reasons for his absences and sought any authorizations he needed before the meetings in question. So is this process procedurally unfair?

[48] As *Baker*, above, makes clear the duty of procedural fairness is flexible, variable, and depends on an appreciation of the particular rights affected. The factors in *Baker* are not exhaustive but I think the following are important in this case:

(a) The customary procedure at WFN allows any Councillor, including the Applicant, to provide reasons and seek authorization not to attend Chief and Council meetings. Requiring Council members to do this prior to any meeting is fair and efficient and it keeps Council members honest. No one is prevented from seeking a discretionary exemption from the mandatory impact of s 17.1(b) of the Election Regulations. They are simply required to do it prior to the meeting in question for obvious reasons of efficiency and honesty. A decision on such issues is a simple administrative act. It is not disciplinary in nature even though the failure to give reasons or seek authorization may lead to serious consequences under the mandatory aspect of s 17.1(b). If there is some reason why reasons or authorization cannot be sought in advance, then Council can deal with it at subsequent meetings. In the present case, the Applicant has not even suggested that he could not have followed the process described by Chief Wesley, or that he had any reason for not following it. In fact, the Applicant confirmed that he would attend all three meetings, but simply did not show up. He suggested to Ms. Roberts that he could not afford gas for the May 26, 2015 meeting and that his counsel advised him not to attend. The gas reason was dealt with by Council on June 3, 2015. The counsel's advice issue simply makes no sense. The Applicant advised that he would attend the meeting with his own counsel (to which no one seems to have objected) and then didn't show up. So, as the record stands, the Applicant did not ask for authorization to miss any of the

three meetings, and the only reason he suggested for one of the meetings (unable to afford gas) was acknowledged and dealt with. Procedural fairness does not require that the Applicant be given some further opportunity to think up and submit reasons for non-attendance that he did not raise at the material time. In fact, no further reasons existed because the Applicant confirmed he would attend all three meetings and he has never explained why he didn't come forward later and ask for authorization if he had been unable to attend for some reasons that occurred between confirming his attendance and his failure to attend;

(b) The Election Regulations themselves make it clear that WFN, as a custom election band, has the discretionary powers to organize and legislate its own elections process and to control Chief and Council meetings for legitimate purposes. Subsection 17.1(b) is an essential part of that governance process and should not be subjected to modification by the Court unless there is real unfairness;

(c) The Applicant has expressed no legitimate expectations that he should not behave in accordance with WFN custom or the process for dealing with absentee Councillors outlined by Chief Wesley in his evidence for this application. In fact, there is no real evidence before the Court that the Applicant requested, or even wanted, Chief or Council to authorize his absences or to consider any reasons he might wish to raise to excuse them; and

(d) As the Respondent points out

> Chief and Council, pursuant to its customs and practices, has a procedure to deal with absences from Chief and Council meetings. The procedure allows Chief and Council to efficiently conduct meetings, ensure attendance of elected officials at Chief and Council meetings, and to reschedule or relocate Chief and Council meetings. Chief and Council possess expertise in conducting Chief and Council meetings and authorizing any absences therefrom. The Applicant was a member of Chief and Council for over four years and was elected pursuant to the Election Regulations. Thus, the Applicant knew or ought to have known that it was the custom and practice of the WFN that prior authorization for any absences from Chief and Council meetings be requested. This factor also attracts a lower content of procedural fairness.

[49] By requiring the Applicant to observe the customary process, and to face the consequences of disqualification if he did not, the Applicant was merely required to follow a process that was clear, open, predictable, not onerous in any way, efficient and fair. He has provided no convincing reason as to why he did not follow that process.

[50] As the Supreme Court of Canada pointed out in *Knight v Indian Head School Division No 19*, 1990 CarswellSask 146 at para 53:

> It must not be forgotten that every administrative body is the master of its own procedure and need not assume the trappings of a court. The object is not to import into administrative proceedings the rigidity of all the requirements of natural justice that must be observed by a court, but rather to allow administrative bodies to work out a system that is flexible, adapted to their needs and fair. As pointed out by de Smith (Judicial Review of Administrative Action, 4th ed. (1980), at p. 240), the aim is not to create "procedural perfection" but to achieve a certain balance between the need for fairness, efficiency and predictability of outcome.

[51] It seems to me that the appropriate balance is struck by the Election Regulations in this case. Absentee Councillors are given every opportunity to provide reasons or seek authorizations

if they need to absent themselves from Council meetings, and if they fail to do so, and the automatic disqualification embodied in s 17.1(b) takes effect, then procedural fairness does not require another opportunity for the Applicant, or any other Councillor, to provide what they have chosen not to provide in the way, and at the time, required by the Election Regulations and WFN custom.

[52] So my conclusion is that a breach of procedural fairness has not occurred in this case and the application must be dismissed.

[53] As discussed at the hearing of this application, even if I had found a breach of procedural fairness this would not necessarily mean that I could have granted the relief requested. The remedies requested are discretionary and there are many factors that would have to be considered and weighed. The Applicant is, in effect, asking the Court to reinstate him as Councillor after a by-election that had replaced him with another incumbent. The Applicant did not participate in this by-election or object to the present incumbent's nomination or protest or appeal the election in any way that was open to him. Hence, the intervention of third-party rights that the Applicant has not brought before the Court in the proper way, as well as the general public interest of WFN, would be thrown into chaos if the Court were to now assert that the Applicant has not been disqualified from Chief and Council at the same time as he has been replaced by someone else whose election he did not contest, protest or appeal. Fortunately, the Court does not need to address these extremely complex issues.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed with costs to the Respondent.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1095-15
STYLE OF CAUSE:	SHANE CRAWLER v WESLEY FIRST NATION
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	MARCH 15, 2016
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	APRIL 8, 2016

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W. Tibor Osvath	FOR THE RESPONDENT

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