

Federal Court



Cour fédérale

Date: 20170412

Docket: T-978-16

Citation: 2017 FC 364

Ottawa, Ontario, April 12, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

**ERIC SHIRT, SHANNON HOULE, VALERIE
STEINHAUER, AND GREG CARDINAL**

Applicants

and

**SADDLE LAKE CREE NATION, SADDLE
LAKE CREE NATION APPEAL
COMMITTEE AND RON LAMEMAN,
ELECTORAL OFFICER FOR SADDLE LAKE
CREE NATION**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] Eric Shirt, Shannon Houle, Valerie Steinhauer and Greg Cardinal [the Applicants], challenge a decision by the Saddle Lake Cree Nation [SLCN] which removed each of the

Applicants' nomination for Chief and Council of the SLCN. For the reasons that follow. I am granting the application and sending their eligibility determinations back to be re-determined.

II. Background

[2] The SLCN is a "band" as defined by the *Indian Act*, RSC 1985, c I-5 [*Indian Act*]. It is a Treaty 6 nation, located in eastern Alberta. Their official language is Cree and their elections are carried out in accordance with the Saddle Lake Tribal Custom Elections Regulations [the Election Regulations]. The Election Regulations were taken from band meetings held in 1955 and 1960.

[3] This Court would prefer not to interfere with the democratic process of the SLCN out of respect for their right to determine their own elections. However, sometimes it is necessary and it can be helpful to hear what you already know. The Election Regulations have not changed since 1960 and though they may have been sufficient at the time, they are certainly lacking now.

[4] The Federal Court has supervisory jurisdiction over the election process including electoral bodies such as an appeal committee and electoral officers (*Algonquins of Barriere Lake v Algonquins of Barriere Lake (Council)*, 2010 FC 160 at paras 105-106).

[5] On March 8, 2016, an "election committee" was appointed by then Chief Leonard Jackson. On or about March 15, 2016, SLCN Chief and Council contracted Ron Lameman of Beaver Lake Cree Nation to act as electoral officer for the 2016 election. The election committee

was selected to assist him in the 2016 election. Notice of a nomination meeting was made and then held on June 1, 2016, overseen by Ron Lameman.

[6] After the nomination meeting, a deadline for submitting eligibility protests was set for June 7, 2016. Several written protests were submitted relating to nominated candidates who allegedly did not meet the requirements of the Election Regulations. The written protests were all given to the election committee. Despite being the electoral officer in charge, Ron Lameman took no part in deciding candidate eligibility.

[7] The election committee met on June 6 and 7, deciding to remove the Applicants from the official candidates list. The Applicants allegedly failed to meet residency requirements or were in a common-law marriage in contravention of the Election Regulations. No decision or reasons were provided to the candidates. The official candidates list (without the names of the Applicants) was posted later in the day on June 9, 2016.

[8] The election committee met with Greg Cardinal, but his submissions were not considered as the official candidates list had already been sent to the printers. Eric Shirt wrote a letter to Chief, Council and the election committee which was dated June 10 and emailed on June 13, 2016. He did not receive a reply. Shannon Houle, who was running for re-election, protested her removal from the list as well. Her nominator, Dr. James Makokis, wrote asking for an explanation on June 9, 2015. No consideration was given to these submissions as the official candidates list was already sent for printing.

[9] The responses from Ron Lameman uniformly stated that any questions should be addressed and directed to the election committee. He provided Cora Houle, Carl Cardinal and Lena Cardinal's contact information to anyone that had inquired or protested.

[10] Elections were held for the positions of Councillor on June 15, 2016, and election for Chief was held on June 22, 2016.

III. Issues

[11] The points in issue as presented by the parties are as follows:

- A. Were the decisions of the election committee procedurally fair?
- B. Was the election committee properly appointed and did it have authority to make nomination eligibility decisions?
- C. Were the decisions of the election committee reasonable?

[12] If the answer is yes to both, I will then determine if the decisions to remove the Applicants from the election list were reasonable.

IV. Standard of Review

[13] The procedural fairness and constitution of the election committee issues will be reviewed on a correctness standard as they involve questions of law, jurisdiction and procedural fairness (*Weekusk v Thunderchild First Nation Band Council*, 2014 FC 845 at para 10; *Felix v*

Sturgeon Lake First Nation, 2014 FC 911 at para 35 [*Felix*]). The decisions to remove the Applicants from the electoral list will be reviewed on a reasonableness standard.

V. Analysis

[14] The Election Regulations are very short; consisting of only three sections (see Appendix A). The Election Regulations do not address many election issues before the Court including the formation of an election committee, appointment of an electoral officer or what to do if there is a protest of the nominations or election results.

[15] The Applicants argue that there is no provision for an election committee in the Election Regulations and that a Chief cannot appoint a committee on their own. Further, the Applicants submit that the Chief appointed the individuals to the election committee without any criteria or mandate. The election committee then removed nominees – including the Applicants – from the nomination list making it a reviewable matter.

[16] The Applicants say that even if the Chief could appoint an election committee the committee members when making their determinations only relied on information from family members and neighbours while ignoring statutory declarations, all of which makes their decisions reviewable. Further contentions are that it was the electoral officer's obligation to take the nominations and determine their validity. The Applicants suggest the electoral officer took no steps to address any of the nomination complaints; instead, forwarding them to the election committee.

[17] As well, the Applicants argue – as they attempted to do before the election committee – that they could not be removed from candidacy on the basis of residence since this was found to be unconstitutional by the Supreme Court of Canada (*Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203). It was equally advanced that the bar on common-law relationships is a Charter breach and therefore cannot be used to make a candidate ineligible.

[18] The Election Regulations indicate that anything not covered by the regulations is governed by sections 74-78 (formally ss. 73-78 of RSC 1952) of the *Indian Act*. Therefore, the Applicants argue that under “Special Nomination Meeting Procedures” of the *Indian Band Election Regulations*, CRC c 952, which is expressly included in section 75(1) of the *Indian Act*, their nominations were valid and improperly removed.

[19] The Applicants submit that they were eligible since Shannon Houle was a Councillor from the previous term and swore a statutory declaration that she was a resident. Despite this, the decision makers failed to contact Ms. Houle and removed her name without further evidence. Similarly, an allegation was made that Valerie Steinhauer was in a common-law marriage contrary to the Election Regulations and that the electoral committee failed to contact Ms. Steinhauer. The only evidence presented to validate the allegation against her was an unidentified man who answered the door of her residence and a comment from Ms. Steinhauer’s mother from the patio next door stating “I told her not to run”.

[20] The Respondents counter that it has been longstanding custom that the sitting Chief and Council appoint electoral officials. Further, they say that the election committee has evolved out

of necessity to deal with nomination protests since as early as 1984 when Canada advised SLCN that election disputes had to be resolved internally. The Respondents argue the current custom is that an election committee decides whether nominees meet the qualifications in the Election Regulations. They argue this custom was established in the 2010 election.

[21] The Respondents submitted that the situation is analogous to *Simon v Samson Cree Nation*, 2001 FCT 467, in which a nominee was removed from the candidates list despite no procedure existing to do so. The consequence of allowing the judicial review, they say, is to allow ineligible nominees to stand without any recourse for their removal.

[22] The Respondents' position was that any reference in the Election Regulations to section 75(1) of the *Indian Act* has no authority. Rather, the band's own custom is the final authority on how band elections are held.

[23] The Respondents' argument is that no objections were made during the nomination meeting indicating that the nomination process was held in conformity with their custom. Furthermore, the Respondents declared it was not open to the sitting Chief and Council to postpone the election or extend their time in office as the Applicants requested. There had to be a method of dealing with nomination protests; the method they chose was through the election committee and their decisions were reasonable.

[24] According to the Respondents, the election committee attempted to contact each of the named Applicants upon receiving letters of protest against them. Two of the Applicants

(Shannon Houle and Valerie Steinhauer) were given notice. The other two Applicants (Eric Shirt and Greg Cardinal) were made aware of the eligibility requirements and that nominations may be subject to protest.

[25] The Respondents advise the Court that all of the Applicants were given the opportunity to speak with the election committee regarding their respective protest. They refused to avail themselves of this opportunity. The position of the Respondents is that when procedural fairness is offered but refused, it cannot then be later claimed as unfair. The election committee sought out and obtained information confirming the protests against Eric Shirt, Greg Cardinal, and Valerie Steinhauer, making their decisions reasonable.

A. *Do the Indian Band Election Regulations apply to this band?*

[26] When Indian and Northern Affairs Canada [INAC] was contacted regarding the SLCN election they wrote back in a letter dated June 1, 2016. INAC indicated that their only role regarding the custom band's elections was the recording of the successful candidates. The last paragraph reads: "when a dispute arises concerning a community or custom election process, it must be resolved in accordance with the related provisions in a community's election code, or by the courts."

[27] I acknowledge that this band has had election regulations governing elections of Chief and Council for a significant length of time. Section 74 of the *Indian Act* and the *Indian Band Election Regulations* therefore do not apply (*Bone v Sioux Valley Indian Band No 290*, [1996] FCJ No 150, 107 FTR 133 at para 103 [*Bone*]).

B. *Unwritten election customs*

[28] The parties agree that there is no provision under the Election Regulations for the appointment of an election committee or how criteria of how they operate. Neither is there a provision for the roles and responsibilities of an electoral officer. The parties further agree that the band election customs have never been passed by a Band Council Resolution [BCR] or a majority of the members.

[29] The Court was provided evidence that the band has formed an electoral reform committee in the past to amend the Election Regulations. To date no amendments have successfully been passed by the band membership.

[30] Past jurisprudence has confirmed that band custom regarding band elections do not always have to be in writing. The *Indian Act* “gives no guidance as to how that custom is to be identified” (Heald DJ. in *Bone*, above, at para 27, quoting Strayer J. in *Bigstone v Big Eagle*, [1992] FCJ No 16, 52 FTR 109).

[31] Madam Justice Strickland has addressed on in two recent decisions what is required to establish unwritten band customs. She concluded that the establishment of band customs requires evidence demonstrating that the action was “firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a broad consensus” (*Gadwa v Kehewin First Nation*, 2016 FC 597 at para 62; *Beardy v Beardy*, 2016 FC 383 at para 97 [*Beardy*], citing *Francis v Mohawk Council of Kanesatake*, 2003 FCT 115 at

paras 21-30; *Prince v Sucker Creek First Nation #150A*, 2008 FC 1268 at para 28; *Metansinine v Animbiigoo Zaagi'igan Anishinaabek First Nation*, 2011 FC 17 at para 28; *Joseph v Yekooche First Nation*, 2012 FC 1153 at paras 36-39).

[32] In *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, it was held that a First Nation can elect leaders according to custom but it must meet certain fundamental requirements. For example, a majority of a band's members must recognize the custom, not just Chief and Council. The band members must not only agree as a community to the new custom, the community must know they have agreed. In this case the majority of the membership would have had to agree that the Chief, acting alone, would appoint three people to an appeal committee that would determine whether nominees met the nomination criteria.

[33] Further, a majority of the membership would have had to agree that deliberation on the nominees' qualifications would not be shared with the nominees, they would not be allowed to respond to the allegations against them, and they would not receive reasons as to why they were removed from the nomination list.

[34] The Respondents suggest that an unwritten custom can be established if the band has conducted itself in the same way over several elections. I agree with the proposition that a custom can be unwritten-but I do not agree that the SLCN election committee is a custom. Using the two components described in *McLeod Lake Indian Band v Chingee*, [1998] FCJ 1185, 153 FTR 257 [*McLeod*], the SLCN election committee has not been repetitively created nor was it adopted through a single act (like through amendment of the Election Regulations).

[35] The affidavit of Finlay Moses, including a 2010 nomination meeting agenda, was submitted as evidence that the election committee is an established custom. The agenda states that “[p]rotests on the question of candidates being allowed to run should be presented in writing and in person.” The minutes from the 2013 nomination meeting state that the Election Regulations from 1955/1960 are still followed. It goes on to state the following:

Any protests to any candidate if any protest of any band member must be in writing and delivered in person and any protest on any candidate that letter must be submitted no later than Friday, May 31, 2013. Submit to the office in envelope sealed with their name on it. Any candidates running must bring in to any of the electoral team, Clifford, Dean and Finlay. Criminal record check to be handed in no later than Friday at 3:00 p.m. On Election day on the counting of ballots must be done by hand.

[36] A detailed letter, marked “Urgent”, was sent on June 13, 2016, regarding the irregularities in the Election Regulations. It states in the first paragraph:

We, as united nêhiyawak relations, bring an urgent matter to your attention to ensure that major issues in the Tribal Customs Election be immediately addressed. Procedural unfairness in the current election has created ambiguity. There is an urgent need to address these major issues to ensure transparency and accountability. This letter spells out these irregularities and provides compelling recommendations for resolution.

[37] This is the latest of a number of documents regarding band membership meetings and awareness that the Election Regulations need to be updated. Filed as evidence are minutes of a meeting dated September 20, 1984, where the interpretation of eligibility to be nominated was in question even then as well as other election related uses.

[38] Evidence is in the Certified Tribunal Record [CTR] that an Elections Law Committee meeting was held on October 25, 2012. Many considerations were discussed on how to move forward but the one that is important to the matter at hand is the section headed "Appeals". It records as follows:

- Do we have an appeals Tribunal?
- Do we put a price tag on appeals? It is quite a costly process
- Legal council must be sought
- For example: at Samson Cree Nation they had an appeal that cost \$750,000.00.

[39] The evidence in the above paragraphs proves that the band is aware and discussing election criteria which the band needs. Further records discuss whether the SLCN should extend the duration of election terms from three to four year and how to set criteria for the positions of Chief and Council. The minutes include a survey questionnaire for the members in order to update their election laws. Further notes, minutes and notices indicate the elections committee continued discussions but no record was presented of any change to the Election Regulations as a result.

[40] All of this demonstrates that the band does not have a generally accepted custom supported by a majority of the members. The evidence shows the band is trying to develop election regulations that reflects what the members want but that they are not there yet.

[41] I have insufficient proof that what occurred in this election was custom as set out in the jurisprudence. What I do have is evidence that the election reform committee could not reach agreement on many issues including the formation of an election committee.

[42] Even if the Respondents prove that the election committee has been created for several elections (which is contradicted by the meeting minutes of the electoral reform committee mentioned in Finlay Moses' affidavit), it fails on the second, subjective component from *McLeod*. The subjective component relies on a band meeting or other means to demonstrate that there is consensus on the new custom. There is no evidence that the SLCN membership approved of the election committee structure used in this election. The Respondents point to a lack of objections at the nomination meeting as a sign of implicit approval. It is possible that the SLCN membership didn't know what procedures were in place to resolve nominee disputes. The meeting minutes from the nominee meeting provide no information to confirm that protest procedures were presented to the membership or discussed.

C. *How the appeal committee was appointed*

[43] In a letter dated June 29, 2016, the Chief wrote "As Chief of Saddle Lake Cree nation. I did reply to a text from Shannon Houle, as per following. 'I appointed the committee not Sheila cuz it was hard to get approved by council as we always ran into difficulty getting a quorum.'" Following the letter is a hand written note dated Moi (possibly May or March) 23, 2016 which says the acting Chief Lenny J Jackson appointed Lena Cardinal to be a member of the election committee. Councillor George Cardinal named Carl H Cardinal to be a member. Cora Houle was appointed to the election committee at a March 8, 2016 band council meeting. The CTR contains

oaths of confidentiality signed by each of the election committee members dated June 3, 2016.

The oaths were witnessed by Ron Lameman.

[44] The evidence before the Court is the Chief alone doing the appointing of Carl and Lena Cardinal with no direction for minimum requirements of the board's composition (such as how many members, requirements of an elder, etc.). On these facts there is not even any public notice of what their role is or how they are to function or operate.

[45] The appointment of the individuals to an election committee by the Chief alone cannot be seen as band custom. The fact it was done in the 2010 and 2013 elections and no one complained may be evidence of moving towards a custom but is not a definitive answer. A majority of the band membership must agree for there to be a new custom and the membership must know about it. I have an affidavit from Finlay Moses who says this is SLCN custom. Again, this is insufficient evidence that a majority of the membership approved and knew of this custom.

[46] There is no provision in the Election Regulations for a "protest" of a candidate's nomination no less the creation of an election committee. Band members were entitled to know the criteria, role, and process for the appointment of an election committee.

[47] I find that the 2016 SLCN election did not follow a custom approved by the majority of band members who knew of the new custom. In fact the evidence is that there is no consensus of how the elections should be governed.

[48] The resulting situation is unfortunate as everyone was trying to do the best for their nation. The problem is that the Election Regulations from 1955 and 1960 are inadequate and the alleged election customs have not developed with the support and approval of the community at large.

[49] Even if I am wrong in the above analysis, there were breaches of procedural fairness which I will now address.

D. *Procedural fairness*

[50] In *Desnomie v Peepeekisis First Nation*, 2007 FC 426 at paragraph 19, Justice Blais had a matter where the First Nation election code did not “offer any guidance as to how such a Council of Elders ought to have been formed, so that it cannot be determined whether the procedure followed was in accordance with the legislation.” He went on to find that “we must look to principles of procedural fairness to determine whether the applicant’s rights were violated by the Council of Elders, and whether the process followed to create the Council of Elders raises a reasonable apprehension of bias.”

[51] Decisions that are administrative in nature and affect “the rights, privileges or interests of an individual” will trigger the application of the duty of fairness (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at p 836 [*Baker*], referencing *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at p 653). This case involved a final administrative decision having significant impact on rights, privileges and interests, thus procedural fairness was required (*Foster v Canada (Attorney General)*, 2015 FC 1065 at paras

28 and 30). The parties do not dispute that the Applicants were owed a duty of procedural fairness; the question is the content of that duty.

[52] To determine what procedural fairness is necessary in this situation I could apply the factors set out in *Baker*, above, at paragraphs 23-27. However, I do not believe a comprehensive *Baker* analysis is required as the Federal Court of Appeal [FCA] provided guidance in *Samson Indian Band v Bruno*, 2006 FCA 249 [*Samson*], which is applicable to the facts before me.

[53] In *Samson*, above, the trial judge concluded that a disqualified nominee for band Council was denied natural justice since the appeal board denied them the opportunity to be heard. The FCA agreed that at a minimum the board should have given the nominee an opportunity to make submissions given the importance of a negative decision to the individual. In that case it did not mean the applicant was entitled to a full oral hearing. However, they should have been provided an opportunity to know the case against them and make submissions so that the board's determination would be based on a full and fair consideration of the record.

[54] The law is well established that custom cannot ignore or trump principles of natural justice or the duty of fairness (*Beardy*, above, at para 126; *Felix*, above, at para 76). However, the content of this duty is context specific and should include judicial respect for relevant custom (*Samson*, at para 20).

[55] As noted above, I do not have sufficient evidence to determine that the appointment process of two election committee members by Chief alone is custom. Even if it is custom,

appointments made without transparency or procedure for the committee to follow were procedurally unfair.

[56] This applies equally to the procedure followed by the electoral officer. His role was set out in a contract but had not been agreed upon by the membership. The contract itself clearly points out that it is the electoral officer's role to determine who meets eligibility qualifications in the election code. Yet the evidence is he had nothing to do with nomination determinations as he merely forwarded all protests and concerns to the election committee.

[57] Just as in *Samson*, the Applicants here were affected personally by the decision to refuse their nomination for Chief or Council. The Applicants were entitled as a minimum to notice, an opportunity to make submissions and a full and fair consideration of those submissions.

[58] Cora Houle's evidence is that according to SLCN custom the protest letters are kept secret and not shared with anyone outside the committee. She says that if a protested nominee could be contacted "[a]n opportunity was given to meet in person with the Committee to address the grounds of protest." She also says that the committee made efforts to verify the protested nominees' eligibility by contacting other members of the community.

[59] Cora Houle indicates that the decision to remove the protested nominees' names was unanimously made at meetings held June 6 and 7 at the SLCN administration building. The decisions to remove Eric Shirt, Shannon Houle, Valerie Steinhauer and Greg Cardinal were

made on June 7, 2016 shortly after noon. The official candidates list without the Applicants was posted on June 9, 2016.

[60] Cora Houle's evidence is that they did not contact Eric Shirt because they had no contact information to reach him. Cora Houle spoke to her own sister to determine that he does "not have a house in Saddle Lake to run his business out of".

[61] A number of protest letters were submitted against Shannon Houle. Cora Houle's evidence is that the election committee told Shannon Houle in person on June 6, 2016 that "the committee needed to discuss her nomination." Cora Houle's evidence is that Shannon Houle said she would be right there but never appeared. Her office was locked and she refused to meet the committee.

[62] Greg Cardinal was not contacted as they had no contact information for him. Cora Houle indicated that another individual knew he did not live in Saddle Lake and that she spoke to a neighbour of Greg Cardinal's sister. The neighbour allegedly confirmed he did not live with his sister and so they removed his name. After the decision was made the committee met with Greg Cardinal on June 9, 2016 and listened to his explanation. However, since the official candidates list was already at the printers without his name, his representations were not fairly considered.

[63] Protests were submitted against Valerie Steinhauer for being in a common law marriage. Cora Houle's evidence is that she and Carl Cardinal went to Valerie Steinhauer's house on June 7, 2016 but she was not at home. They left a message with a man who answered the door that

Valerie Steinhauer should call them. She called the election committee and was told that her common-law spouse was at home when they visited. Valerie Steinhauer then hung-up the phone.

[64] In each of the four cases, the election committee abdicated any alleged responsibility in favour of bare accusations. Issues such as an inability to reach candidates can be easily fixed moving forward to avoid some of the issues identified. When the parties are nominated they should provide their contact information including phone, email, address or other methods of contacting them as part of their nomination.

[65] The election committee's procedures for determining the residency of Eric Shirt, Shannon Houle, and Greg Cardinal did not meet the minimum requirements of notice, opportunity to make submissions and a full and fair consideration of those submissions. This is a breach of natural justice given the importance of the decision to each of the Applicants. The ineligibility of Valerie Steinhauer was based on her common-law relationship which I find was procedurally unfair for the same reasons as the other three Applicants. However, she also objects to the common law requirement as a breach of her section 15 Charter rights which I will address below.

[66] Even if I am wrong in this, the election committee's complete lack of reasons leads me to believe that their negative determinations were unreasonable. The reasons included in affidavit evidence are so arbitrary and vague as to be meaningless.

E. *Charter*

[67] There was no evidence produced concerning whether the Election Regulations are Charter compliant. I do not need to make that determination as I have already found that the determinations were not procedurally fair. I will only observe that a provision preventing nomination for election based on marital status alone would seem to be a discriminatory practice and unconstitutional.

[68] Nor will I address the other issues raised by the parties since I am granting the application.

VI. Conclusion

[69] This Court does not wish to interfere in leadership determinations of any First Nation out of respect for their right to govern their own elections. However, if a band has exhausted all internal opportunities for a remedy, the Federal Court remains ready to assist in a final determination.

[70] Recognition of new customs through membership consensus or amendment of the Election Regulations is required. The membership must know how Chief and Council are elected.

[71] I was asked by the Respondents whether I would stay my determination until the next band election in 2019 should the application be granted. There remains an underlying belief by

the Respondents that the same problems will occur if I send the application back for a new election. I disagree. I have faith in the Saddle Lake Cree Nation that they will craft and implement a transparent, procedurally fair, and unbiased nomination and election process given their experience overseeing their own elections for more than 60 years.

[72] The decision to remove the Applicants from the official candidates list is quashed. Because the integrity of the nominee process was undermined, their eligibility must be properly determined. If any of the Applicants are deemed eligible, a new election must be held.

[73] I observe that an electoral officer has been hired as the designated person overseeing band elections and his contract of employment specifies he is to determine eligibility of nominees. A strong case would be made that the electoral officer could make eligibility decisions as was the outcome of *Samson*. I would suggest that it could be reasonably open to the Chief and Council to have the electoral officer determine disputes. If this is the case, the electoral officer's authority to do so should be explicitly contained in meeting minutes and/or a BCR with the entire membership knowing the procedures and his role and responsibilities.

[74] In the alternative – and much more reliably – the band by majority can decide on criteria for the composition of an election committee including how they are appointed, by whom, for how long, their duties, and a procedure to follow regarding nomination disputes as well as other electoral disputes. Then notice of the procedure to be followed must be given to the band members.

[75] I am not directing how the election regulations are to be structured and these are only guiding principles for the membership that will determine the way to hold their election.

[76] If a new election must be held, it must be done in accordance with the Election Regulations and/or a custom that has the support of the majority of band members. Any process chosen by the band must be procedurally fair including a transparent process known to all members. If a nominee is protested they must be notified and given an opportunity to respond. Any decision to remove a nominee due to a protest must be made by an unbiased decision maker(s) who gives full and fair consideration to the protest and nominee's submissions. Since none of these processes are currently defined in the Election Regulations they must either be amended to reflect the above or a custom must be approved by a majority of the band membership. The current Chief and Council will remain in place until and if the new election is needed to be held because one or more of the applicants become eligible.

[77] Both parties sought costs. The Respondents provided me another election case where costs in the amount of \$10,000.00 were awarded on the basis that it was in the public interest. The Applicants strenuously disagree that \$10,000.00 was appropriate given there has never been a challenge to the Election Regulations before and to award that amount would be inequitable.

[78] I will award a lump sum of costs. It is remarkable that for as long as the Election Regulations have been used that this is the first dispute that could not be resolved by the SLCN. That bodes well for the future of the band coming to an agreement on new election regulations. This was a matter of public interest but the Applicants had costs to bring the matter forward and

their costs were not reimbursed by the band. I will award costs in the total amount of \$2,000.00.

The total costs (\$2,000.00) are to be divided in equal shares to each of the Applicants and are to be payable forthwith by the respondent to each Applicant separately.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is granted. The decision of the committee to remove the nominees from the Nomination list is quashed;
2. The candidates removed must be subject to a new process to determine their eligibility and if any are found eligible then a new election must be held;
3. Costs are awarded in the lump sum amount of \$2,000.00. That total amount is to be divided equally among the Applicants and is to be paid forthwith to each individual applicant by the Respondents.

"Glennys L. McVeigh"

Judge

APPENDIX A

SADDLE LAKE TRIBAL CUSTOMS

THE FOLLOWING HAS BEEN TAKEN FROM THE MINUTES OF THE BAND MEETINGS HELD ON THE SADDLE LAKE RESERVE IN 1955 AND 1960. ALL AREAS NOT COVERED BY THE OUTLINE HEREIN SHALL BE COVERED UNDER THE INDIAN ACT, AS SPELLED OUT IN SECTION 73 TO 78.

Section (1):

Eligibility for Nomination:

- (a) No person who is a Civil Servant shall be eligible to be nominated.
- (b) No person can be nominated for an election if absent, unless he/she has signified in writing his/her acceptance of the nomination.
- (c) No person living in a Common Law marriage shall be eligible for nomination.
- (d) No person who maintains his/her home off the Reserve shall be eligible for nomination. (If he/she has his/her main place of residence or his/her family on the Reserve and works off the Reserve, he/she shall become eligible. However, he/she is allowed to miss only one regular meeting except for illness.
- (e) No person convicted under the Criminal Code of Canada shall be eligible for nomination.
- (f) No person under the age of 21, as of the day of the nomination, shall be eligible to nominate or be nominated.
- (g) No nomination is valid without a seconder.

Section (2):

Voting Regulations:

- (a) Any Band member, over the age of 21 years, on the day of the election, whether living on the Reserve or not, shall be eligible to cast a vote; with the exception of Red Ticket Indians.
- (b) Residents of the Goodfish Lake Reserve shall not be allowed to vote for Chief or Councillor on the Saddle Lake Reserve.

(c) Residents of the Saddle Lake Reserve shall not be allowed to vote for Chief or Councillor on the Goodfish Lake Reserve.

(d) A person who is not a resident of either Reserve, but who is a member of the Band, may vote once on the Reserve of his/her choice.

Section (3):

Election Procedural Regulations:

(a) Chief and Councillor are elected for a three-year term.

(b) There shall be nine Councillors for the Saddle Lake Reserve.

(c) There shall be four Councillors for the Goodfish Lake Reserve.

(d) The election of the Chief shall be held pursuant to the election of the Councillors and the Chief shall come from among the elected Councillors.

(e) There shall be an interpreter* (one for the Saddle Lake Reserve and one for the Goodfish Lake Reserve) appointed at a Band meeting for both the nomination and election days.

(f) A Councillor or Chief guilty of improper conduct who has had a petition requesting his/her removal, signed by 60% of the resident members of the Reserve, shall be so dismissed by the Incumbent Electoral Officer and a bi-election shall be called to fill the vacancy.

(g) The District Supervisor is the permanent Electoral Officer and it shall be his responsibility for the calling of elections at the end of each three-year term. His method of conducting nomination meetings (except for the closing of it), the secret ballot, the opening, closing, and counting of the ballots shall be the same as set forth in the Band Election Act, Section 73, of the Indian Act, as long as they do not conflict with any regulations, rules or ordinances passed by the Band. The Electoral Officer is authorized to appoint Poll Clerks, and authorized to pay the cost of the election from Band funds after the count has been submitted to Council and approved.

* Interpreter: shall be a person who can effectively interpret from the Cree language into English language and from the English language into the Cree language. This person shall not be a member of the Saddle Lake Band. He/She shall be paid at a rate set by the Band Council.

Special Nomination Meeting Procedures

No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council. Indian Act, Section 75, sub, "1".

No person may be a candidate for election as chief or councillor unless his name is set in nomination and seconded by persons who are themselves eligible to be nominated. *Indian Act Section 75, sub "2", R.S., c 149, s 74.

FEDERAL COURT
SOLICITORS OF RECORD

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ET AL

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