Federal Court  Cour fédérale

Date: 20170626

Docket: T-322-17

Citation: 2017 FC 559

Ottawa, Ontario, June 26, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HENRY MCKENZIE, DAVID RATT, MELISSA COOK, GEORGINA CHARLES, JEANNIE OLSEN, KEITH OLSEN, AND THOMAS RATT

Applicants

and

LAC LA RONGE INDIAN BAND COUNCIL, AS REPERSENTED BY TAMMY COOK-SEARSON (IN HER CAPACITY AS CHIEF, LEON CHARLES, LINDA CHARLES, MCIVOR ENINEW, LAWRENCE HALKATT, IVWIN HENNIE, LARRY MCKENZIE, KEITH MIRASTY, ANN RATT, BERNICE ROBERTS, JOHN ROBERTS, SAM ROBERTS, CHERYLINE VENNE, (IN THEIR CAPACITY AS COUNCILLORS) AND THE LAC LA RONGE INDIAN BAND CHIEF ELECTORAL OFFICER, MILTON BURNS

Respondents

AMENDED ORDER AND REASONS

[1] This is an application for judicial review (the "Application") of the decision by the Lac La Ronge Indian Band (the "Band") to use the 2016 version of the *Lac La Ronge Indian Band #353 Election Act*, Band 12, Treaty 6 (the "*Election Act*" or the "Act") and the associated regulations, the *New Election Regulations,* in the Band election, held March 31, 2017; and the decision by the Band Council to appoint Milton Burns ("Mr. Burns") as the Electoral Officer.

I. Background

[2] The Applicants in the Application, who are also the respondents in a motion to strike filed in respect of this judicial review, are Henry McKenzie, David Ratt, Melissa Cook, Georgina Charles, Jeannie Olsen, Keith Olsen, and Thomas Ratt (the "Applicants"). The Applicants are all members of the Band.

[3] The Respondents in the Application, who are the applicants in the motion to strike, are the Band and Mr. Burns (collectively, the "Respondents"). The Band is a band as defined by section 2(1)(c) of the *Indian Act*, RSC 1985, c I-5. Mr. Burns is the Electoral Officer, appointed pursuant to section 4 of the *Election Act*, who conducted the Band election held on March 31, 2017.

[4] The Band conducts its elections by way of Band custom and the *Election Act*. By Band Council Resolution ("BCR") it does not adhere to the *First Nations Elections Act*, SC 2014, c 5 and the *First Nations Elections Regulations*, SOR/2015-86.

[5] The *Election Act* was originally passed in 2001. It was updated in 2016 to reflect corrections to typographical and printing errors. No substantive changes were made to the *Election Act* between the 2001 version of the Act (the "2001 *Election Act*") and the 2016 version of the Act (the "2016 *Election Act*").

[6] On or around February 13, 2017, the Chief and Council approved the *Election Regulations* (the "*New Election Regulations*"), which were made pursuant to section 64(b) of the 2016 *Election Act*. The *New Election Regulations* established procedures, forms, and other administrative rules for Band elections.

[7] In early 2017, the Chief and Council appointed Mr. Burns as the Electoral Officer for the 2017 Band elections. On February 28, 2017, the Chief and Council recused itself from office and fixed March 10, 2017, as the nomination day for all six of the Lac La Ronge Indian Band Reserves. Advanced polls were held on March 24, 2017, and the final voting day was March 31, 2017. Tammy Cook-Searson was elected chief, along with twelve Councillors.

II. Issues

A. *Preliminary Motion*

[8] The Respondents filed a motion to strike the Application for failing to follow proper process and procedure as required by the *Federal Courts Act*, RSC 1985, c F-7 and the *Federal Courts Rules*, SOR/98-106. This motion was heard contemporaneously to the hearing for the Application.

[9] The motion to strike was dealt with as a preliminary matter to the Application. The issues in the motion to strike are as follows:

1) Whether the Application should be struck because the affidavit of Henry McKenzie, sworn April 28, 2017 (the "Second McKenzie Affidavit") was served contrary to Rule 306 of the *Federal Courts Rules*; and because the Second McKenzie Affidavit and the affidavits of Keith Olsen (the "Olsen Affidavit"), David Ratt (the "D. Ratt Affidavit"), and Thomas Ratt (the "T. Ratt Affidavit") are not in compliance with Rules 80 and 81 of the *Federal Courts Rules*.
2) Whether the Application should be struck because the Applicants failed to comply with section 57 of the *Federal Courts Act*, requiring notice to be served upon the Attorney Generals of Canada and the Provinces at least ten days prior to a hearing involving a constitutional question.
3) Whether the Application should be struck for mootness.

(1) The Affidavits

[10] I have considered the contents of the impugned affidavits, the governing principles on striking affidavits, as set out in the *Federal Courts Rules*, and the relevant jurisprudence. I find that the following paragraphs of the affidavits tendered by the Applicants should be struck, as being improper opinion, argument, and/or legal conclusions, as discussed in the analysis below:

1) Second McKenzie Affidavit – the whole affidavit, as being not served in compliance with Rule 306 and/or being not in compliance with Rules 80(3) and 81(1);
2) Olsen Affidavit – paragraphs 10 and 11;
3) D. Ratt Affidavit – paragraphs 7 to 11, 13 to 15, 18 and 19;
4) T. Ratt Affidavit – paragraphs 11, and 13 to 16.

(2) The Constitutional Argument

[11] I find that there is no constitutional question in issue; therefore, the notice provisions in section 57 of the *Federal Courts Act* are not triggered.

[12] The Respondents argue that the Applicants' challenge to the use of both the 2016 *Elections Act* and the *New Elections Regulations* is in essence a constitutional challenge to the legislation. They cite *Montgrand v Birch Narrows Dene Nation and Kathy Maurice*, 2012 FC 1428 (unpublished) [*Montgrand*], for the proposition that challenges to the validity of First Nations elections legislation and regulations raise a constitutional question that requires notice to the Federal and Provincial Attorney Generals, pursuant to section 57 of the *Federal Courts Act*.

[13] The Applicants' arguments, in this case, question whether the Chief and Council have (1) the jurisdiction to correct typographical errors in the 2001 *Election Act*, without following the revision and amendment process outlined in section 64(a) of the 2001 *Election Act;* and (2) the jurisdiction to enact regulations, such as the *New Election Regulations*. These questions are questions involving the proper administration of the 2001 and 2016 *Election Act* and the *New Election Regulations*, and exercise of jurisdiction in that regard, not constitutional issues.

[14] Moreover, this case is distinguishable from *Montgrand*, above. The applicant in *Montgrand* challenged the election legislation of the Birch Narrows Dene Nation on the basis that it infringed section 15 of the *Charter*. Here, although arguments are made in the D. Ratt and T. Ratt Affidavits that the *New Election Regulations* infringe Band members' *Charter* rights, no *Charter* issues have been raised before the Court. Therefore, in this case, section 57 of the *Federal Courts Act* is not triggered.

(3) Mootness

[15] Finally, although the relief requested by the Applicants in the Application has been rendered moot, I find that it is appropriate for the Court to exercise its discretion to hear certain issues for the reasons outlined below.

B. *The Application*

[16] Given my findings regarding the motion to strike, I would re-characterize the issues in the Application as follows:

1) Whether the 2016 *Election Act* is validly enacted legislation and is the appropriate legislation to use in future Band elections;
2) Whether the *New Election Regulations* are validly enacted legislation;
3) Whether the Electoral Officer must be a former chief or current chief of a Saskatchewan Indian Band.

C. *Conclusions*

[17] Based upon the agreement of counsel at the hearing, the validity of the 2016 *Election Act* is not in issue, as it was agreed that the amendments made to the 2001 *Election Act* were clerical in nature and not controversial. As such, the Parties agree that the 2016 *Election Act* is not in dispute.

[18] I find that the *New Election Regulations* are valid, because both the 2001 *Election Act* and the 2016 *Election Act* entitled the Chief and Council to enact regulations for the better administration of the Act, pursuant to section 64(b) of the Act. Finally, I find that the Electoral Officer does not need to be a former or current chief of a Saskatchewan Indian Band.

III. Analysis – Preliminary Issues

A. *Should the Affidavits be struck?*

[19] The Respondents allege that the Second McKenzie Affidavit was not served, contrary to Rule 306, and is also not in compliance with Rules 80(3) and 81(1) of the *Federal Courts Rules*. The Respondents further assert that the Olsen Affidavit, the D. Ratt Affidavit, and the T. Ratt Affidavit do not comply with Rule 81(1) of the *Federal Courts Rules*, because they improperly contain opinion, argument, and legal conclusions.

(1) The Second McKenzie Affidavit

[20] Rule 306 of the *Federal Courts Rules* states:

306. Within 30 days after issuance of a notice of application, an applicant shall serve its supporting affidavits and documentary exhibits and file proof of service. The affidavits and exhibits are deemed to be filed when the proof of service is filed in the Registry.	306 Dans les trente jours suivant la délivrance de l'avis de demande, le demandeur signifie les affidavits et pièces documentaires qu'il entend utiliser à l'appui de la demande et dépose la preuve de signification. Ces affidavits et pièces sont dès lors réputés avoir été déposés au greffe.

[21] In *Blank v Canada (Minister of Justice)*, 2016 FCA 189 at paragraph 28, the Federal Court of Appeal stated that affidavits in support of an application for judicial review must be filed within 30 days of the date the notice of application was filed, as made clear in Rule 306, or with leave of the Court, pursuant to Rule 312. Leave to file affidavits is at the discretion of the Court, which is exercised on the basis of the evidence before the Court and whether the granting of an order under Rule 312 is in the interest of justice, taking into account the following

questions (*Forest Ethics Advocacy Assn v Canada (National Energy Board)*, 2014 FCA 88 at para 6 [*Forest Ethics*]):

> a) Was the evidence sought to be adduced available when the party filed its affidavits under Rule 306 or 308, as the case may be, or could it have been available with the exercise of due diligence?
>
> b) Will the evidence assist the Court, in the sense that it is relevant to an issue to be determined and sufficiently probative that it could affect the result?
>
> c) Will the evidence cause substantial or serious prejudice to the other party?

[22] In this case, the Applicants did not request leave to file the Second McKenzie Affidavit, which was sworn April 28, 2017, and there is no record of service. The only mention in the record of an affidavit sworn by Henry McKenzie is of an earlier affidavit sworn before April 13, 2017, which is referenced in the affidavit of Melissa Brietkope.

[23] Additionally, Beryl Macsymic, legal assistant for the Respondents' counsel, attests that her searches of the firm's records show that the Second McKenzie Affidavit was not served upon the Respondents. It would appear, therefore, that the Respondents only became aware of the Second McKenzie Affidavit due to its inclusion in the Applicants' Record, served and filed May 4, 2017.

[24] The Applicants argue that the Second McKenzie Affidavit was served along with the Applicants' Record and should be considered to have been served within Rule 306 timelines, despite the fact that it was served a week late. The Applicants bear the burden of convincing the Court that it should exercise its discretion in favour of granting an order under Rule 312 (*Forest*

Ethics, above, at paras 4 to 5). There is no reasonable excuse for the delay in filing and serving the Second McKenzie Affidavit and, in any event, I find that the affidavit evidence of Keith McKenzie does not assist the Court, in that it is not sufficiently probative of the only issues before the Court to be effective in helping the Court decide the merits of this judicial review.

(2) The Olsen, D. Ratt, and T. Ratt Affidavits

[25] Rule 81 of the *Federal Court Rules* states:

81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.	81 (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.
(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.	(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

[26] Rule 81 codifies the well-established principle that the purpose of an affidavit is to adduce facts relevant to the dispute without gloss or explanation, unless the affidavit is from a person who has been qualified to give expert opinion evidence (*Boulerice v Canada (Attorney General)*, 2017 FCA 43 at paras 16 to 17 [*Boulerice*]). The Court may "strike affidavits, or portions of them, where they are abusive or clearly irrelevant, where they contain opinion, argument, or legal conclusions …" (*Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18). However, the discretion to strike an affidavit or part of it should be exercised sparingly

and only in exceptional circumstances: that is, when it is the interest of justice to do so, where a party would be materially prejudiced, or where not striking would impair the orderly hearing of the application (*Boulerice*, above, at para 29).

[27] The Olsen Affidavit contains facts outside Keith Olsen's personal knowledge, opinions, argument, and/or legal conclusions at paragraphs 4, 10 and 11. Similarly, the D. Ratt Affidavit contains facts outside David Ratt's personal knowledge, opinion, argument, and/or legal conclusions at paragraphs 7 to 11, 13, 15, 18 and 19. Finally, the T. Ratt Affidavit contains facts outside Thomas Ratt's personal knowledge, opinion, argument, and/or legal conclusions at paragraphs 11 and 13 to 16. While other paragraphs in the Olsen and both Ratt Affidavits are of limited value and weight, I am not persuaded they should be struck.

[28] For example, in the Olsen Affidavit at paragraph 10, Mr. Olsen states that the Chief and Council's purpose in passing the *New Election Regulations* was to eliminate any competition to their elected positions. Further, in both the D. Ratt Affidavit and the T. Ratt Affidavit, legal conclusions as to what comprises Band custom are expressed (paragraphs 13 and 15, respectively). Similarly, at paragraph 8 of the T. Ratt Affidavit, Mr. Ratt argues that the *New Election Regulations* violate his *Charter* rights.

[29] The Olsen, D. Ratt, and T. Ratt Affidavits are not in the nature of factual statements confined to the personal knowledge of the affiants; all three affidavits go in part beyond the scope of what is admissible under Rule 81(1). In particular, they are riddled with legal arguments.

[30] In *Armstrong v Canada (Attorney General)*, 2005 FC 1013 at paragraphs 42 to 43, Justice François Lemieux held that, although certain paragraphs of the applicant's affidavit were improper, they did not need to be struck because leaving those paragraphs intact resulted in no prejudice to the respondent, as the legal arguments could be reproduced in the respondent's memorandum of fact and law. In this case, a number of the arguments in the impugned paragraphs in the Olsen, D. Ratt, and T. Ratt Affidavits are of a similar nature and, while of limited weight, are not prejudicial to the Respondents and should not be struck. However, certain paragraphs, which contain statements that are prejudicial, will be struck:

1) Olsen Affidavit – paragraphs 10 and 11;
2) D. Ratt Affidavit – paragraphs 7 to 11, 13 to 15, 18 and 19;
3) T. Ratt Affidavit – paragraphs 11, and 13 to 16.

B. *Mootness*

[31] The Respondents argue that all of the relief requested by the Applicants is moot because the Band elections were conducted on March 31, 2017. On account of the lack of tangible dispute, they assert that the entire Application should be struck.

[32] In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 324 [*Borowski*], the Supreme Court of Canada outlined a two-step analysis for determining mootness:

1) whether the required tangible and concrete dispute has disappeared and the issues have become academic; and
2) whether, if the response to the first question is affirmative, the court should exercise its discretion to hear the case.

[33] The Applicants request the following relief in the Application:

1) a declaration that the 2001 *Election Act*, and not the 2016 *Election Act*, is the appropriate legislation to govern the 2017 Band election (now abandoned as an issue);

2) a declaration that the *New Election Regulations* are of no force and effect for the 2017 Band elections;
3) an interim and interlocutory injunction directing the Band to appoint a qualified and certified Chief Electoral Officer;
4) an interim and interlocutory injunction prohibiting and enjoining the Chief Electoral Officer from disqualifying Band members from nomination, according to the *New Election Regulations*;
5) an interim and interlocutory injunction to restrain or prohibit the Chief Electoral Officer from disqualifying potential candidates based on a declaration that they are in conflict of interest, as set out in the *New Election Regulations*; and
6) costs.

[34] To determine whether or not the Court should exercise its discretion to hear a moot issue three factors are taken into consideration (*Amgen Canada Inc v Apotex Inc*, 2016 FCA 196 at para 16):

> 1) *The absence of adversarial parties.* If there are no longer parties on opposing sides that are keen to advocate their positions, the Court will be less willing to hear the matter.
>
> 2) *Lack of practicality; wasteful use of resources.* If a proceeding will not have any practical effect upon the rights of the parties, it has lost its primary purpose. The parties and the Court should no longer devote scarce resources to it. Here, the concern is judicial economy. However, in exceptionally rare cases, the need to settle uncertain jurisprudence can assume such great practical importance that a court may nevertheless exercise its discretion to hear a moot appeal.
>
> 3) *The court exceeding its proper role.* In some cases, pronouncing law in a moot appeal in the absence of a real dispute is tantamount to making law in the abstract, a task reserved for the legislative branch of government not the judicial branch.
>
> [emphasis in original, citations omitted]

[35] In *Borowski*, above, the Supreme Court stated that, in the absence of a live controversy, there may be collateral consequences of the outcome of a decision that will provide the necessary adversarial context. The Supreme Court used the case *Vic Restaurant Inc v City of Montreal*

(1958), 17 DLR (2d) 81 [*Vic Restaurant*] at 359, as an example of where a collateral consequence made it appropriate for the Court to make a judgment on the issues of the case, despite their mootness:

> The restaurant, for which a renewal of permits to sell liquor and operate a restaurant was sought, had been sold and therefore no mandamus for a licence could be given. Nevertheless, there were prosecutions outstanding against the appellant for violation of the municipal by-law which was the subject of the legal challenge. Determination of the validity of this by-law was a collateral consequence which provided the appellant with a necessary interest which otherwise would have been lacking.

[36] The Court's decision on the issue of the efficacy of the *New Election Regulations* will have a practical effect on the parties, notwithstanding that the original controversy is decided. Outside of the context of an upcoming election, Band members have an interest in knowing that the *New Election Regulations* are validly enacted. Therefore, I find that the collateral consequence of determining the validity of the *New Election Regulations* supports the Court exercising its discretion to hear the issues in the Application. Moreover, as stated above, counsel for the Respondents agreed that, notwithstanding an absence of any evidence showing that the *New Election Regulations* either resulted in any disqualification of applicants for Chief or Council, or that any appeal was undertaken under section 58 of the *Election Act*, the issue of the efficacy and legitimacy of the *New Election Regulations* was reasonable and helpful to the parties for the Court to adjudicate.

[37] As the motion to strike was heard at the same time as the Application, there is no waste of Court resources. Moreover, the issues raised here are of public importance to the Band: this is

a case where the economics of judicial involvement, as weighed against the social cost of continued uncertainty in the law, favour the application of judicial discretion (*Borowski* at 361).

[38] Therefore, despite the fact that all of the relief requested is focused towards the 2017 Band election, which has already taken place, and there no longer exists a tangible and concrete dispute, given the Applicants' focus on the validity of the *New Elections Regulations,* which is an issue that could arise in future Band elections, I find that the Court should exercise its discretion to hear the case. Moreover, as stated above, the Parties agreed at the hearing that a decision on this issue would be helpful to the Parties moving forward.

IV. Analysis – Application

A. *Standard of Review*

[39] In *Johnson v Tait*, 2015 FCA 247 at paragraph 28, the Federal Court of Appeal stated the standard of review applicable to the decisions of band councils interpreting their customary election codes is reasonableness. However, Justice Stratas in *Orr v Fort McKay First Nation*, 2012 FCA 269 at paragraph 11, noted that the reasonableness standard, in this type of review, is similar to the correctness standard and that the decision must be supported by the words of the election legislation, or another source of power.

B. *Are the Election Regulations validly enacted legislation?*

[40] Counsel for the Parties agreed, at the hearing, that the only substantive issue for review is whether the Chief and Council have the authority to enact the *New Election Regulations,* without

providing notice to all of the families in which one or more electors reside. The Applicants argue that the 2016 *Election Act* and the *New Election Regulations* form a single piece of legislation, which they call the 2016 *Custom Act* in their memorandum of fact and law. They also assert that the Band Council cannot change the qualifications for Council eligibility without consultation with the Band.

[41] The Applicants' interpretation of how the Act and the *New Election Regulations* should be regarded, as one and the same with or part of the *Election Act*, is mistaken. The *New Election Regulations* are subordinate legislation, separate and apart from both the 2001 *Election Act* and the 2016 *Election Act*. Section 64(a) of the 2001 and 2016 *Election Act* refers only to changes made to the Act. Enacting regulations is not a change to the Act and, as such, the Band Council is not mandated to follow the notice process in section 64(a). The question of whether the *New Election Regulations* are valid is, in fact, a question of whether the *Election Act* conveyed upon the Chief and Council the authority to enact regulations. The entitlement of the Chief and Council to make regulations is rooted in section 64(b) of the 2001 or 2016 *Election Act* which states:

> The CHIEF AND COUNCIL may approve by Band Council Resolution (BCR) Regulations establishing the procedures, forms and other administrative rules for administration of this Act.
>
> [emphasis mine]

[42] The result of a purposive construction of this provision of the 2001 or 2016 *Election Act* is that the Chief and Council are entitled to make regulations for the administration of the Act, without consulting the members of the Band. A rule establishing who is qualified to run in an

election and the procedure to determine when a candidate has a conflict of interest is a reasonable interpretation of the definition of "procedures and other administrative rules".

[43] The facts in this case are distinguishable from those in *Joseph v Schielke*, 2012 FC 1153, where the Yekooche First Nation added "Recall Rules", providing for the recall and two-year disqualification of any councillor by 40% of eligible voters, via regulation. Justice Phelan noted that the Recall Rules fundamentally altered the Yekooche Election Code by depriving a duly elected person the right to hold office and to seek office for two years (*Joseph*, above, at para 26). In this case, the addition of a conflict of interest provision, which requires a nominated candidate to settle indebtedness to the Band, does not fundamentally alter the *Election Act*. Further, the Christiansen Affidavit states that nominees who were indebted to the Band at the date of their nomination did, in fact, run as candidates.

[44] Whether or not indebtedness is an appropriate criterion for qualification to hold a Band Council position is an internal administrative question for the duly elected Chief and Council and it is not the role of the Court to interfere with this administrative decision, absent an argument that it violates the *Charter*. Moreover, whether or not the procedures used in the March 31, 2017 election were procedurally fair is not an issue before the Court.

[45] Based upon the analysis above, I find that the *New Election Regulations* are valid legislation and are appropriate for use in Band elections.

C. *Does the Electoral Officer need to be a chief or a former chief of a Saskatchewan Indian Band?*

[46] While neither Party raised this issue during the hearing, the Applicants submit in their application that the traditional practice of the Band is to appoint a Chief Electoral Officer who has been a chief or a current chief, and state that it was incorrect for the Chief and Council to appoint Mr. Burns as the Chief Electoral Officer, because he has never been and is not currently a chief of a Saskatchewan Indian Band.

[47] The Respondents contend that the Applicants are confusing the positions of Electoral Officer and Electoral Appeal Officer, and that it has never been Band custom to appoint a chief or former chief to the position of Electoral Officer. The Respondents also suggest that the Applicants may be confused, such that they believe that the Band must comply with the requirements of the *First Nations Elections Regulations*, which mandate that the electoral officer be a former or current chief.

[48] I agree with the Respondents that the Applicants are conflating the positions of Electoral Officer and Electoral Appeal Officer, and/or are conflating the requirements in the 2016 *Election Act* with the *First Nations Elections Regulations*. There is no position called the Chief Electoral Officer within the scheme of the 2016 *Election Act*. Pursuant to section 2 of the 2016 *Election Act*, the Electoral Officer is:

> … the officer appointed pursuant to the provisions of this Act to carry out the duties and responsibilities as may be delegated to administer this Act pursuant to section 4 hereof;

[49] Section 4 of the 2016 *Election Act* states:

> The Council of the Band may authorize the Electoral Officer to perform and exercise any of the duties, powers and functions that may be or are required to be performed or exercised by the Council of the Band under this Act.

[50] In contrast, the Electoral Appeal Officer is the officer appointed by the Chief and Council pursuant to section 60, which states:

> From time to time the Chief and Band Council shall appoint an Electoral Appeal Officer to hear appeals pursuant to section 59. The Electoral Appeal Officer shall be an individual who has been duly elected as Chief of another Saskatchewan Indian Band…

[51] There is nothing in the 2016 *Election Act* that supports the view that the Electoral Officer and the Electoral Appeals Officer is the same person, or that the Electoral Officer needs to have similar qualifications as the Electoral Appeals Officer. Further, the Christiansen Affidavit states that it has not been the practice of the Band to have chiefs or former chiefs as the Electoral Officer. Although the D. Ratt and the T. Ratt Affidavits state otherwise, I prefer the evidence of Ms. Christiansen, as it is provided in a more cogent manner.

[52] Therefore, I find that the decision of the Chief and Council, determining that the appointed Electoral Officer does not need to be a chief or a former chief, is reasonable.

V. Costs

[53] Although there was a public interest in deciding the issue of whether the *New Election Regulations* were validly enacted, at the hearing, counsel for the Applicants agreed that all of the

other the issues in the Application were no longer in contention. As such, the Respondents shall have their costs for the motion to strike and the Application, to be assessed according to Column III of the Tariff B.

JUDGMENT

THIS COURT ORDERS that:

1) The *New Election Regulations* were validly enacted by the Chief and Council.

2) It is reasonable for the Chief and Council to decide that the Electoral Officer does not have to be a former or current chief of a Saskatchewan Indian Band.

3) The Applicants shall pay to the Respondents their costs for the motion to strike and the Application, to be assessed according to Column III of the Tariff B.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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