Federal Court  Cour fédérale

Date: 20180321

Docket: T-1856-16

Citation: 2018 FC 325

Ottawa, Ontario, March 21, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

CLARENCE PAPEQUASH, CLINTON KEY AND GLENN PAPEQUASH

Applicants

and

RODNEY BRASS, DAVID COTE, MYRNA O'SOUP, COLLEEN BRASS, DALE BRASS, FERLYN BRASS, JESSE BRASS, JOSEPH BRASS, MELODY BRASS, ROBERT BRASS, SHANNON BRASS, SHIRLEY BRASS, ANGELA DESJARLAIS, GILDA DOKUCHIE-CRANE, KENNETH HATHER, SIDNEY KESHANE, ALLAN O'SOUP, FERNIE O'SOUP, GLEN O'SOUP, IVY O'SOUP, MARLENE BRASS, PERCY O'SOUP, MARCELLA PELLETIER, BURKE RATTE AND KEY FIRST NATION

Respondents

JUDGMENT AND REASONS

[1] This application is brought under sections 31 and 35 of the *First Nations Elections Act*, SC 2014, c 5, seeking to set aside the election of the Chief and Band Councillors of the Key First Nation conducted on October 1, 2016. The Applicants' central allegations involve widespread unethical election practices including the misuse of Band funds to purchase votes or to persuade candidates not to run for the election. Allegations initially made against the Electoral Officer were subsequently withdrawn. Also at issue in the proceeding is an appeal by the Respondents from an Order of Case Management Prothonotary Martha Milczynski dated August 21, 2017. In that Order, Prothonotary Milczynski struck out the affidavits of the Respondents, Rodney Brass, Sidney Keshane, Glen O'Soup, and Angela Desjarlais. The Respondents seek to have those affidavits reinstated to their application record because, in their absence, the Respondents have no material evidence with which to challenge the underlying application.

[2] At the heart of these proceedings is an extremely acrimonious dispute between the Applicants and the Respondents. The conduct of the parties and their respective legal counsel during these proceedings leaves much to be desired and, in a number of aspects, is deserving of censure. It should be specifically noted that the content of the affidavits filed by both sides and the correspondence between counsel all too frequently contained scurrilous, irrelevant, and non-factual allegations that have no place in litigation. It is also appropriate to observe that it is not counsel's role in cases like this to deliberately aggravate already strained relationships in the community. Where possible, counsel should aim to resolve disagreements, particularly with respect to unnecessary procedural disputes. Further, counsel should always bear in mind that it

is ultimately the members of the Band who pay the legal bills for their litigation choices and recommendations. I also question whether the Key First Nation should have been represented in this proceeding by the same legal counsel as the other named Respondents. Given the allegations of misconduct directed at some of those Respondents, the Band should undoubtedly have been represented by separate, independent counsel whose sole mandate would be to advocate for the best interests of the First Nation and its members.

I. The Appeal

[3] The Respondents challenge the Prothonotary's Order largely on the strength of what took place after her Order was issued. To advance that case, they have tendered affidavits detailing their efforts to overcome the procedural lapses at the root of the Prothonotary's Order. They contend that the appeal should be allowed on the strength of this new evidence and because of the extreme prejudice they will suffer if their affidavits are not reinstated. Needless to say, the Applicants oppose the admission of this new evidence because, they say, the Respondents are unable to satisfy the test for its admissibility and because the evidence is not relevant to the determination of whether the Prothonotary made a palpable and overriding error in striking the Respondents' affidavits.

II. Procedural Background

[4] Much of the procedural history relevant to the Prothonotary's Order is contained within her corresponding reasons. It is worth noting that this proceeding was under very active case

management from the Prothonotary's appointment on December 19, 2016 to the date of her challenged Order, which was issued more than eight [8] months later.

[5] The record discloses that Prothonotary Milczynski was privy to numerous hearings and motions and issued several Directions and Orders. The Prothonotary was deeply immersed in the proceeding and well aware of the procedural lapses that led to the Order under appeal. That appreciation is reflected in the following narrative from Prothonotary Milczynski's Order:

> This proceeding has been delayed and has not progressed to the completion of cross-examinations due to the inability or failure on the part of the Respondents Rodney Brass, Sidney Keshane, Glen O'Soup and Angela Desjarlais, each of whom swore or affirmed affidavits in the within application, to comply with directions to attend. The directions were properly served on or about March 1, 2017 and required each of the affiants to produce certain documents at or prior to their cross examination. Some documents have been produced, but the bulk of them, those listed in the Applicants' notice of motion have not. Those documents (bank statements and banking documents) are relevant; they go to the heart of the matter that is in issue in this proceeding, namely whether there was vote buying in the October 1, 2016 election for Chief and Council of the Key First Nation. In that respect, I refer to paragraphs 9-18 of the Applicants' written representations as to what the allegations of vote buying are as they relate to the documents that are sought.
>
> The matter of these productions has been the subject of numerous case management teleconferences and motions. Initially there was agreement that the documents would be provided. That agreement was then resiled from and their provision was the subject of a motion for relief from production pursuant to Rule 94(2) of the *Federal Courts Rules*. That motion was heard and dismissed in April, 2017 on the grounds that there was little or no evidence in the record that the documents sought did not exist, could not be obtained, were onerous to obtain, or were irrelevant. Subsequently, deadlines for the production of these documents came and went and there appeared to be some misunderstanding regarding the obligation to make some effort to obtain the documents if they were readily available (such as requesting copies of them from a financial institution). Some productions were made in drips and drabs.

In response, the Applicants brought a motion for a show cause order, alleging contempt on the part of the Respondents for their failure to provide the documents as ordered, so as to proceed to cross-examinations. On that motion, representations were made regarding some uncertainty and confusion on the part of the Respondents and counsel about what was being requested, how some documents could be obtained but that there was no deliberate effort to ignore the order or thwart the proceeding and that further efforts were being made. The Court was advised that the documents could be and would be provided soon. There were vague assertions regarding fishing expeditions but again there was no evidence filed that would assist the Court in any finding that what was being requested was irrelevant, unreasonable or not available. Nonetheless given the Respondents' assurances about the continued efforts, the Court gave the Respondents some benefit of the doubt and the motion was accordingly dismissed, without prejudice. Further deadlines were set for production and the completion of cross-examinations. There were also further case management teleconferences regarding the subsequent delays.

Consequently on this motion, the Applicants seek to strike the affidavits of those persons who have failed to comply with the directions to attend. The Respondents again, have not filed evidence to properly explain the delay. Counsel for the Respondents made representations (in response to questions from the Court) that suggested continued efforts were beings made, further documents were ready to be sent, but also that there might be other roadblocks. This information was not in the record, however, and there was no request made to adjourn the hearing of the motion, or any undertaking given as to when there would finally be compliance with the directions to attend.

The Court is thus left in a difficult position and with few options. This application was commenced almost 10 months ago, and has not progressed to even the conclusion of cross-examinations. Case management has failed to keep this proceeding on track, despite many case management teleconferences, directions, deadlines and attendances on motions. There have been approximately 15 teleconferences or attendances on motions.

Accordingly, the Applicants seek an order pursuant to Rule 97, that where a person fails, *inter alia*, to produce a document, the Court may strike all or part of the person's evidence, including an affidavit made by the person. This is a rare and severe step for the Court to take. Many factors must be taken into account - in this case: the slow progress of the proceeding, fairness to the parties, the conduct of the parties, the many opportunities given to comply

> or to provide an explanation on the record and the failure to provide a concrete plan and keep to it. In the circumstances, I am satisfied that the relief sought should be granted.

[6] The Respondents contend that Prothonotary Milczynski erred by failing to appreciate all of the behind-the-scenes efforts they had made to comply with her several Directions. They also allege that they were unsure of the scope of information they were obliged to produce to the Applicants.

[7] There are at least two fundamental problems with the Respondents' excuses. The first is that, as the Prothonotary duly noted, the Respondents adduced no affidavit evidence of the efforts they had supposedly made to comply. The second is that those efforts were minimal at best. Indeed, on July 24, 2017, Prothonotary Milczynski issued a Direction that chided the Respondents' counsel for late correspondence and ordered that production of documents "shall be made forthwith". On July 26, 2017, the Prothonotary issued an Order dismissing, without prejudice, a motion by the Applicants for contempt. In her corresponding reasons, the Prothonotary admonished both counsel for failing to adhere to deadlines and for their disregard for the case management process. Prothonotary Milczynski also noted that the Respondents had failed to adduce evidence to "allow the Court to determine whether the documents were not available or irrelevant or why otherwise, the Respondents should be relieved from producing them". The motion was ultimately dismissed because the Prothonotary was not convinced that the Respondents were, at that point, deliberately flouting the Court's Order to produce. She also advised both counsel to make an effort to communicate with each other in a more constructive way.

[8] The record before me indicates that the Respondents made little effort to comply with their long outstanding disclosure obligations until early August. It was only at that point that the Respondents formally requested many of their banking records [see AMR0047, 0048, 0049] and even then "substantial deficiencies" remained [see AMR0053]. It is also troubling that the Respondents' affiant, Melissa Brietkopf, had sworn a misleading affidavit to the effect that all the requested documents had been produced when she had no factual basis to make that assertion [see AMR0074 et seq.]. The Respondents' counsel must have been aware of that misstatement when the affidavit was tendered.

[9] On the record before me, I can identify no error in Prothonotary Milczynski's Order striking the Respondents' affidavits. With or without the "new evidence", the Respondents were at best indifferent to their obligations to produce. Indeed, it appears more likely that they were deliberately delaying and frustrating the litigation by failing to comply with the Prothonotary's Directions.

[10] As for the Respondents' new evidence, it is clearly irrelevant to the appeal and does not meet the test for admissibility. A party cannot withhold evidence in the first instance and later seek to have it introduced on appeal: see *Shire Canada Inc v Apotex*, 2011 FCA 10 at paras 17-18, 414 NR 270, and *Shaw v Canada*, 2010 FC 577 at paras 8-9, [2010] FCJ No 684 (QL).

[11] The Respondents must accordingly live with their failure to produce a meaningful evidentiary record before the Prothonotary and with their markedly deficient efforts to comply with their production obligations over a period of many months.

[12] The Respondents' appeal is accordingly dismissed.

[13] In the face of the Prothonotary's decision to strike the Respondents' affidavits, almost all that remains in evidence before me on the application to set aside the October 1, 2016 Key First Nation Band election are the Applicants' affidavits. Set out below are the material factual assertions contained in those affidavits.

III. Affidavit of Clarence Papequash

[14] Clarence Papequash was elected as a Band Councillor in the impugned election. Notwithstanding his successful candidacy, Mr. Papequash has challenged the election.

[15] Mr. Papequash's affidavit of December 3, 2016 speaks to the following matters of particular concern:

(a) On September 24, 2016 at the advance poll conducted at the Ramada Hotel in Regina, he witnessed Rodney Brass pay an elector $300 to purchase his vote.

(b) On September 23, 2016 at a meeting with Glen O'Soup in Regina, Mr. Papequash was offered $5,000 to withdraw from the election and to help solicit votes for Rodney Brass and his team of candidates.

IV. Affidavit of Esther Papequash

[16] Esther Papequash is a member of the Key First Nation and was a scrutineer in the Band election. Her affidavit, sworn on December 4, 2016, attests to certain irregularities in the voting processes and to being offered Band employment by Rodney Brass if he was elected as Chief.

V. Affidavit of Kristin Raphael

[17] Kristin Raphael is a member of the Key First Nation and a voter in the Band election. Her affidavit of December 4, 2016 asserts that at the Regina advance poll on September 24, 2016, Rodney Brass paid her $100 in cash without solicitation or explanation. She also states that on September 30, 2016, she witnessed a similar payment from Mr. Brass to her grandmother. On October 1, 2016, she reports a $40 cash payment from Mr. Brass ostensibly for "gas".

VI. Affidavit of Vanessa Brass

[18] Vanessa Brass is a member of the Key First Nation. Her affidavit, sworn on December 13, 2016, includes the following assertions:

(a) A few days before the Band election, Rodney Brass and Colleen Brass attended unannounced at her residence on the Cote First Nation. She had no prior contact with either of them. They were campaigning for the election as Chief and Band Councillor, respectively. Mr. Brass gave $60 in cash to Ms. Brass "to help with transportation and meals".

(b) On the date of the election, Ms. Brass met with Angela Desjarlais (a candidate running for election as Councillor). Ms. Desjarlais asked for votes for Rodney Brass and herself and gave Ms. Brass an unsolicited cash payment of $100. Ms. Desjarlais then directed Ms. Brass to her brother's (Sidney Keshane) residence where, in the presence of Rodney Brass, she was given a further $300 in cash in return for her votes.

VII. Affidavit of Myrna O'Soup

[19] Myrna O'Soup is a member of the Key First Nation. She was also an unsuccessful candidate for Chief in the Band election. Her affidavit, sworn on December 14, 2016, indicates

that on August 25, 2016, Glen O'Soup, Sidney Keshane, and Rodney Brass arrived uninvited at her brother's residence on the Key First Nation reserve. In the presence of Ms. O'Soup's brothers, Mr. O'Soup offered her employment with the Band if she withdrew her candidacy. She declined the offer.

VIII. Affidavit of William Papequash

[20] William Papequash is a member of the Key First Nation. His affidavit of February 2, 2017 states that when he attended the advance poll at the Regina Ramada Hotel in September 2016, Rodney Brass gave him $60 to solicit his vote.

IX. Affidavit of Clinton Key

[21] Clinton Key is a member and Band Councillor of the Key First Nation and one of the Applicants in this proceeding. He was elected in the 2016 Band election as an unaffiliated candidate. His affidavit of February 20, 2017 states that when he was present at the Edmonton Band election poll he observed Rodney Brass, Sidney Keshane, and Glen O'Soup give cash payments of $100 and $200 to approximately 30 Band members in return for their promises of electoral support.

[22] After the close of the Edmonton polling station, Mr. Key received a call from Rodney Brass reporting that Mr. Brass had obtained 73 to 75 votes and had "cleaned up in Edmonton".

[23] According to Mr. Key, he observed a similar pattern of vote buying in Regina where Rodney Brass and Glen O'Soup made cash payments to approximately 10 Band members in advance of their votes. On October 1, 2016, Mr. Key observed Angela Desjarlais pay $40 to an elector who was looking to sell his vote.

X. Affidavit of Desiree Brass

[24] Desiree Brass is a member of the Key First Nation. Her affidavit of February 27, 2017 states that Sidney Keshane offered her $300 for her Band election vote. On the day of the election at the Key polling station, she received $200 in cash from Sidney Keshane and was told to vote for the slate of Rodney Brass, Angela Desjarlais, Melody Brass, Glen O'Soup, and Sidney Keshane. At the same time, she observed Rodney Brass interacting suspiciously with other Band members before the members cast their votes.

XI. Affidavit of Maria Diamond

[25] Maria Diamond is an elder of the Key First Nation. On September 26, 2016, Ms. Diamond and several other electors were invited to a dinner at Lee's Buffet in Brandon, Manitoba to discuss the pending Band election. During the meal, Mr. Brass told those present that Band members would each receive a $1,000 Christmas bonus if he was elected. Notwithstanding Mr. Brass' election as Chief, the promised payments were never made.

XII. Affidavit of Marcella Pelletier

[26] Marcella Pelletier is a member of Key First Nation who sought election as Band Councillor in the October 1, 2016 election. Her affidavit states that on September 21, 2016 at Edmonton she witnessed Rodney Brass instruct Glen O'Soup to pay $100 to Gabe Brass in return for his vote. On September 24, 2016, Ms. Pelletier also overheard Rodney Brass promise e-transfer payments of $200 to each of seven Band members in attendance at a home in Regina all for the stated purpose of buying their votes for a designated slate of candidates.

XIII. Supplementary Affidavits of Clarence Papequash, Clinton Key, and Glenn Papequash

[27] Clarence Papequash, Clinton Key, and Glenn Papequash swore supplementary affidavits on April 22, 2017. Each of these affidavits deals with Rodney Brass' attempts to bring an end to this litigation in return for substantial cash payments.

[28] According to Clarence Papequash, Mr. Brass offered to pay him $25,000 in each of the following four years ostensibly for the provision of Elder Advisory Services. That proposal is corroborated by a cheque written on the account of the Key Band Trust payable to Clarence Papequash in the amount of $25,000 and two so-called Renewal Agreements which confirmed four annual payments to be "made on condition that confirmation has been received by the Chief from the Federal Court, that the Application of Appeal is withdrawn". The Agreements were executed by Rodney Brass and Clarence Papequash on March 16, 2017.

[29] According to Clinton Key's affidavit, Rodney Brass offered to pay $10,000 to Mr. Key's company (Key Skid Steer & Trucking) and to arrange contracts for work in return for dropping this litigation. Mr. Key's affidavit also corroborates Clarence Papequash's evidence concerning their meeting with Rodney Brass on March 16, 2017 when Mr. Brass offered money to each of them to drop their election appeal. Mr. Key's evidence is corroborated by a cheque drawn on the account of Key Band Trust payable to Key Skid Steer & Trucking in the amount of $10,000.

[30] Glenn Papequash's affidavit relates a similar history to that provided by the other Applicants. According to Glenn Papequash, during a meeting in Saskatoon on March 16, 2017, Rodney Brass offered to pay him $5,000 to give 10 guitar lessons on the Key First Nation in return for dropping the election appeal.

[31] During a later meeting with Rodney Brass and Clarence Papequash on March 18, 2017, Glenn Papequash was given a cheque for $5,000 written on the account of Key Band Trust and a so-called Contract Renewal Agreement providing for three annual payments in that amount for music lessons. These payments are stated to be conditional on the withdrawal of the election appeal. Copies of the cheque and the Agreement executed by Glenn Papequash and Rodney Brass are exhibited to Mr. Papequash's affidavit.

XIV. The Law

[32] The Applicants challenge the Key First Nation Band election held on October 1, 2016 under sections 31 and 35(1) of the *First Nations Elections Act*, above. Those provisions authorize the Court to set aside a band election provided that there is satisfactory proof of the

contravention of the Act or the regulations that is likely to have affected the election result.

Included among the prohibitions listed in section 16 of the Act is the following:

16 A person must not, in connection with an election,	16 Nul ne peut, relativement à une élection :
(a) vote or attempt to vote knowing that they are not entitled to vote;	a) voter ou tenter de voter sachant qu'il est inhabile à voter;
(b) attempt to influence another person to vote knowing that the other person is not entitled to do so;	b) inciter une autre personne à voter sachant que celle-ci est inhabile à voter;
(c) knowingly use a forged ballot;	c) faire sciemment usage d'un faux bulletin de vote;
(d) put a ballot into a ballot box knowing that they are not authorized to do so under the regulations;	d) déposer dans une urne un bulletin de vote sachant qu'il n'y est pas autorisé par règlement;
(e) by intimidation or duress, attempt to influence another person to vote or refrain from voting or to vote or refrain from voting for a particular candidate; or	e) par intimidation ou par la contrainte, inciter une autre personne à voter ou à s'abstenir de voter, ou encore à voter ou à s'abstenir de voter pour un candidat donné;
(f) offer money, goods, employment or other valuable consideration in an attempt to influence an elector to vote or refrain from voting or to vote or refrain from voting for a particular candidate.	f) offrir de l'argent, des biens, un emploi ou toute autre contrepartie valable en vue d'inciter un électeur à voter ou à s'abstenir de voter, ou encore à voter ou à s'abstenir de voter pour un candidat donné.
[Emphasis added.]	[Je souligne]

[33] The Applicants carry the burden of proof of establishing, on a balance of probabilities, that a contravention of the Act has occurred that is likely to have affected the election results: see *McNabb v Cyr*, 2017 SKCA 27 at para 36, [2017] SJ No 132. Where sufficient evidence of corruption is adduced, the evidentiary burden may shift to the Respondents.

[34] Not every contravention of the Act or regulations will justify the annulment of a band election. A distinction is not infrequently made between cases involving technical procedural irregularities and those involving fraud or corruption. In the former situation, a careful mathematical approach (eg reverse magic number test) may be called for to establish the likelihood of a different outcome. However, where an election has been corrupted by fraud such that the integrity of the electoral process is in question, an annulment may be justified regardless of the proven number of invalid votes. One reason for adopting a stricter approach in cases of electoral corruption is that the true extent of the misconduct may be impossible to ascertain or the conduct may be mischaracterized. This is particularly the case where allegations of vote buying are raised and where both parties to the transaction are culpable and often prone to secrecy: see *Gadwa v Kehewin First Nation*, 2016 FC 597, [2016] FCJ No 569 (QL).

[35] In *Opitz v Wrzesnewskyj*, 2012 SCC 55, 351 DLR (4th) 579, the Court considered language in the *Canada Elections Act*, SC 2000, c 9 that closely mirrors that found in section 31 of the *First Nations Elections Act*, above. In describing the basis for the exercise of judicial discretion in cases involving procedural irregularities or fraud, the Court had this to say:

> [22] Under those provisions, if the grounds in para. *(a)* of s. 524(1) are established (the elected candidate was ineligible), then a court must declare the election null and void. In such circumstances it is as if no election was held. By contrast, if the

> grounds in para. *(b)* are established (there were irregularities, fraud or corrupt or illegal practices that affected the result of the election), a court *may* annul the election. Under these circumstances, a court must decide whether the election held was compromised in such a way as to justify its annulment.
>
> [23] In deciding whether to annul an election, an important consideration is whether the number of impugned votes is sufficient to cast doubt on the true winner of the election or whether the irregularities are such as to call into question the integrity of the electoral process. Since voting is conducted by secret ballot in Canada, this assessment cannot involve an investigation into voters' actual choices. If a court is satisfied that, because of the rejection of certain votes, the winner is in doubt, it would be unreasonable for the court not to annul the election.

[36] In light of the above statement, the idea that serious electoral fraud can vitiate an election result cannot be seriously doubted. What must not be overlooked, however, is the Court's admonition that a reviewing court retains a discretion to decline to annul an election even in situations involving fraud or other forms of corruption. This was a point more recently noted in *McEwing v Canada (Attorney General)*, 2013 FC 525, [2013] 4 FCR 63, where Justice Richard Mosley stated:

> [81] What may constitute a corrosive effect on the integrity of the electoral process will depend on the facts of each case. I do not read the comments of the majority in paragraph 43 of *Opitz* as providing authority for the proposition that the Court may overturn election results in every case in which electoral fraud, corruption or illegal practices have been demonstrated. In that paragraph, the Supreme Court cited *Cusimano v Toronto (City)*, 2011 ONSC 7271, [2011] OJ No 5986 (QL) at para 62: "An election will only be set aside where the irregularity either violates a fundamental democratic principle or calls into question whether the tabulated vote actually reflects the will of the electorate."
>
> [82] At paragraph 48 of *Opitz*, the majority cautioned that annulling an election would disenfranchise not only those persons whose votes were disqualified (in the context of an irregularities case) but every elector who voted in the riding. That suggests, in my view, that the Court should only exercise its discretion to annul

> when there is serious reason to believe that the results would have been different but for the fraud or when an electoral candidate or agent is directly involved in the fraud.

[37] Justice Mosley's remark that electoral corruption conducted by a candidate or agent ought generally to be treated more strictly is also reflected in the following passage from Justice Cecily Y. Strickland's decision in *Gadwa v Kehewin First Nation*, above:

> [88] It must first be stated that a candidate who engages in vote buying is attempting to corrupt the election process. Therefore, regardless of the number of votes that the candidate purchased, or attempted to purchase, and regardless of whether the candidate wins the election by a greater margin than the number of votes that were purchased, this cannot save the candidate and his or her election must still be vitiated. Fraud, corruption and illegal election practices are serious (*Opitz* at para 43).

[38] What can be taken from the relevant authorities is that attempts by electoral candidates or their agents to purchase the votes of constituents are an insidious practice that corrodes and undermines the integrity of any electoral process.

[39] In this case, there is clear evidence of widespread and openly conducted vote buying activity carried out by Rodney Brass, Glen O'Soup, Sidney Keshane, and Angela Desjarlais. None of the several affiants who witnessed these events was cross-examined and their evidence stands unchallenged. It is also of some significance that Rodney Brass attempted to buy-off the Applicants from proceeding further with this application by offering each of them substantial sums of money in return for dubious offers of work. Those actions arose after the election and are not directly relevant to the issues raised on this application. This evidence is, however, relevant to Mr. Brass' credibility. It is also corroborated by documentation signed by him.

[40] I am satisfied on the evidence before me that the integrity of the Key First Nation Band election conducted on October 1, 2016 was sufficiently corrupted by the misconduct of Rodney Brass, Glen O'Soup, Sidney Keshane, and Angela Desjarlais that the election must be annulled and a new election conducted. I would add that the corrupt practices employed by several of the Respondents during the 2016 Band election appear to reflect a long-standing tradition and acceptance by some members of vote buying and other dishonest attempts to influence electoral outcomes. These practices appear to be sufficiently entrenched that, in the election to follow, rigorous efforts will be required to ensure the integrity of the process.

[41] The Applicants are seeking costs at the solicitor-client level. I will reserve on this issue pending the receipt of further written submissions from the parties not to exceed ten [10] pages in length. The Applicants' submissions shall be filed within ten [10] days of this Judgment. The Respondents will have seven [7] days thereafter to reply.

[42] In accordance with subsection 35(2) of the *First Nations Elections Act*, above, the Court will send a copy of this decision to the Minister of Indian Affairs and Northern Development.

JUDGMENT IN T-1856-16

THIS COURT'S JUDGMENT is that:

1. The Respondents' appeal of the Order of Prothonotary Martha Milczynski dated August 21, 2017 is dismissed.

2. This application is allowed and the Key First Nation Band election held on October 1, 2016 is set aside and annulled.

3. A copy of this decision will be sent to the Minister of Indian Affairs and Northern Development.

4. The issue of costs is reserved pending the receipt of further submissions in writing from the parties.

"R.L. Barnes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1856-16
STYLE OF CAUSE:	CLARENCE PAPEQUASH, CLINTON KEY AND GLENN PAPEQUASH v RODNEY BRASS, DAVID COTE, MYRNA O'SOUP, COLLEEN BRASS, DALE BRASS, FERLYN BRASS, JESSE BRASS, JOSEPH BRASS, MELODY BRASS, ROBERT BRASS, SHANNON BRASS, SHIRLEY BRASS, ANGELA DESJARLAIS, GILDA DOKUCHIE-CRANE, KENNETH HATHER, SIDNEY KESHANE, ALLAN O'SOUP, FERNIE O'SOUP, GLEN O'SOUP, IVY O'SOUP, MARLENE BRASS, PERCY O'SOUP, MARCELLA PELLETIER, BURKE RATTE AND KEY FIRST NATION
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