Federal Court Cour fédérale

Date: 20191213

Docket: T-625-18

Citation: 2019 FC 1487

Ottawa, Ontario, December 13, 2019

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

**GARY W. PELLETIER AND
GORDON D. LERAT**

Applicants

and

**CADMUS DELORME, CURTIS LERAT,
CAROL LAVALLEE, BONNIE LAVALLEE,
LIONEL SPARVIER, RICHARD AISCAICAN,
PATRICIA SPARVIER, MALCOLM
DELORME, AND JONATHAN Z. LERAT**

Respondents

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] of two decisions [the Decisions] made by Cowessess First Nation [CFN] represented by the Respondents, the elected band council. First, band council resolution #2017/2018-114, adopted July 13, 2017 [BCR], introduces the use of agricultural

permits on CFN reserve lands pursuant to subsection 28(2) of the *Indian Act,* RSC 1985, c I-5 [*Indian Act*]. Second, an October 3, 2017 Motion #2017/201/-175 [Motion] establishes a monetary compensation amount—$20 per acre—for people affected by changes to the land management regime.

[2] In their Notice of Application filed on March 29, 2018, the Applicants seek various declarations and orders from this Court. They ask this Court to quash the BCR and the Motion or, alternatively, remit the matter back to CFN's band council with directions. They also seek costs of the application.

[3] The Respondents take issue with the timeliness of the application. I must address this argument before considering the application on its merits.

[4] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[5] As a preliminary matter, I find that this application is made against CFN as represented by the named members of the band council. I note that the Notice of Application lists the individual band council members as the Respondents and it was issued to both the band council of CFN and the individual band council members. The wording of the Notice of Application and the Applicants' legal arguments refer to the CFN band council. Therefore, I consider the application to be made against CFN as represented by the named members of the band council.

[6] The responsible federal department administering matters under the *Indian Act* was formerly the Department of Indian Affairs and Northern Development [Department]. The Department has undergone various name changes over the years; however, I will simply use the term “the Department.”

[7] This matter involves a disagreement as to whether CFN band council has the authority to determine how reserve lands are administered for CFN’s benefit. The Applicants state at paragraph 19 of their Memorandum of Argument:

> The Applicants submit that what is at issue in this matter is not whether the Home Reserve Lands of the Cowessess First Nation (CFN) need to be managed, but in how the alleged land management system has been developed and implemented.

[8] In their Notice of Application, the Applicants describe the issue as follows:

> The Chief and Council do not have lawful authority to remove traditional land holders from their lands, nor do they have authority to make payments to traditional land holders for their lands, as there is no criteria to do so.

[9] The Respondents state in paragraph 2 of their Memorandum of Argument:

> This case concerns land tenure on reserve and the jurisdiction of Chief and Council to administer unallocated reserve lands within the Cowessess First Nation. Clearly, under the provisions of the *Indian Act* and the cases interpreting the *Act*, Chief and Council possess that jurisdiction.

[10] This proceeding was case managed in accordance with the *Federal Courts Rules*, SOR/98-106. On July 13, 2018, Prothonotary Aylen ordered the admission into evidence of the affidavit of Terrance Lavallee. In addition, the parties consented to the admission of the affidavit of William Tanner. Both are summarized in the “Evidence” section of these reasons, below.

[11] CFN and its members are descendants of the original signatories to Treaty 4 in southeastern Saskatchewan. CFN has approximately 4,259 registered band members and approximately 839 residing on the CFN reserve. The CFN reserve land base consists of approximately 98,000 acres of land with approximately 28,000 acres of land being on the original CFN reserve [Original Reserve Lands].

[12] CFN was able to expand its reserve land base beyond the Original Reserve Lands as a result of settling an outstanding legal obligation related to its Treaty Land Entitlement [TLE] claim with the Governments of Canada and Saskatchewan. As a result of the TLE settlement, most, if not all, of the lands purchased by CFN have been converted to reserve land status in accordance with the *Indian Act* [TLE Reserve Lands].

[13] Legal title to CFN reserve lands, including the Original Reserve Lands and the TLE Reserve Lands, is held by Her Majesty the Queen in Right of Canada [Canada] in trust for the CFN membership. These reserve lands are subject to the *Indian Act*'s land management regime. A large majority of the Original Reserve Lands and the TLE Reserve Lands consist of agricultural lands.

[14] Over the years, CFN's administration of the Original Reserve Lands varied in formality. Certain land decisions were made in accordance with the *Indian Act* land management regime, while certain other land decisions were undertaken in accordance with what can best be described as informal practice that fell outside of the *Indian Act* land management regime.

[15] On the Original Reserve Lands, there are currently approximately 27 CFN members who claim what is described as a customary or traditional interest over certain lands. The parties differ on the appropriate terminology to be ascribed to these 27 CFN members. There are references to the terms “buckshee’ers” and “traditional landholders”. I will use the neutral term “land occupants” for convenience. The interests dealt with in this proceeding involve only the Original Reserve Lands. This proceeding does not involve the Applicants’ homes or residences.

[16] These interests were purportedly created in a number of ways – some of them through recognition by the CFN band council or the Department; some of them by way of band council resolutions; some of them through Department-approved wills, which are discussed below. For the band council resolutions, their terms are long expired. For the wills, it is the descendants who now claim that the interest is continued.

[17] The validity and the extent of the interests held by the land occupants have been the source of some conflict within CFN over the years. There have been attempts to reform the land tenure system but they have not been successful. For a recent example, CFN is an adherent to the Framework Agreement on First Nations Land Management, which has been formalized under the *First Nations Land Management Act* S.C. 1999, c.24 [*FNLMA*]; however, CFN has been unable to adopt a land code under this new regime. Accordingly, the *Indian Act* continues to apply.

[18] Land occupants who do not directly farm these reserve lands allow non-CFN members to farm them. The land occupants receive the fees or rents for the use of the lands directly from the

non-CFN members. CFN receives no fees from these arrangements. There is no written agreement by which either CFN or the Department are named as parties. These are referred to in the evidence and in the record as "buckshee" arrangements. These arrangements have gone on for several decades.

[19] The CFN band council decided to utilize the *Indian Act* land management regime over the Original Reserve Lands by becoming involved in the Reserve Land Environmental Management Program [RLEMP], which is administered by the Department. RLEMP provides funding to First Nations to develop the capacity to manage and exercise increased responsibility over reserve lands pursuant to the Indian Act. For CFN, this required establishing a system of permitting reserve land in accordance with subsection 28(2) of the *Indian Act* and considering the issue of compensation for land occupants affected by this new land management regime. The band council did so by passing the BCR and then by passing the Motion. This inevitably involved addressing the long-standing and long unresolved issue of land tenure on CFN. The Applicants objected to this action and initiated these proceedings.

III. Evidence

[20] The following paragraphs summarize the parties' evidence.

A. *The Applicants*

(1) Gary Pelletier

[21] Gary Pelletier [Mr. Pelletier], one of the Applicants, lays claim to four quarters of Original Reserve Lands that were initially "leased" by his father pursuant to a band council

resolution in 1975. That band council resolution set out a 15-year term within nominal payments (which does not clarify to whom the payments are to be made). Mr. Pelletier describes the pattern of allocating reserve lands on CFN over the years. He states that his father farmed the land until 1985 after which the lands were put to grass for haying. He states that in 1992 he took over his father's hay production. He also states that his father verbally bequeathed the lands to him prior to his death.

[22] Mr. Pelletier attached a November 18, 1992 letter from former Chief Terrance Lavallee (who also swore an affidavit in support of the Applicants) that purports to communicate a band council motion to the effect that:

> all land [BCRs], whether they are expired or not, will retain their interests in the land noted on Individual BCRs, until such time as a Land Use Policy is in place…
>
> 7 in Favor, 1 Opposed, 3 Abstain, 1 Absent

[23] Mr. Pelletier provides another letter dated June 9, 1998, addressed to his father that provides: "Moved by Chester Agecoutay that Chief and Council agree to continue with the same practice and recognize the interests behind the letter from the Chief dated November 18, 1992". The letter is from William Tanner, Chair of the Lands Committee (who provided an affidavit in support of the Applicants) and it is copied to the Chief and Council, the Lands Committee and Gordon D. Lerat (the other Applicant). Chester Agecoutay also provided an affidavit in support of the Applicants.

[24] Mr. Pelletier provides an October 2012 form letter from the former Chief Grady Lerat (who provided an affidavit in support of the Applicants) which states, in part:

> Please accept this letter as confirmation that the Traditional Landholders on Cowessess First Nation have ability to engage in contracts to use the land for farming purposes. A precedence on land tenure has been set decades ago to enable the Traditional Landholders to use the land as a means of revenue for their benefit. Our First Nation is in the process of engaging the Traditional Landholders and until we come to an agreement on the land tenure for Cowessess First Nation, all agreements with outside agencies will be in full force and effect.

[25] Mr. Pelletier states that the January 20, 2017 letter from Chief Delorme, which contained an invitation to discuss the land issues on February 16, 2017, was sent to all land occupants. Though he did not attend the February 16, 2017 meeting, Mr. Pelletier was informed of the discussion by another CFN member. Mr. Pelletier did attend the March, 2017 meeting where the land issue was again discussed. Mr. Pelletier states that he heard nothing more until an October 10, 2017 letter from Chief Delorme was posted on a Facebook page. This letter gave notice of the BCR and the Motion and that the new land management regime would start January 1, 2018. Counsel's submissions state that this letter did not state "anything specific about the surrender of traditionally held land holdings to the Band". Mr. Pelletier also refers to the November 2017 meeting notice, which was posted on the same Facebook page as the previous notice. Again, this letter made reference to the BCR and the Motion. Mr. Pelletier was at the November 27, 2017 meeting and states that the Chief had difficulty getting through the meeting due to opposition from the floor. Mr. Pelletier also refers to a lands forum meeting notice posted in February 2018 relating to a meeting to be held on February 26, 2018 to review a land use plan and a zoning bylaw.

(2) Gordon D. Lerat

[26] The second Applicant, Gordon D. Lerat [Mr. Lerat], shares a similar story. Mr. Lerat states that he and his five siblings lay claim to approximately four quarters of the Original Reserve Lands. These same lands were previously assigned to his father by a 1973 band council resolution for a term expiring December 31, 1983 with a nominal rent provision. He states that his father started preparing the land for farming in 1959. Mr. Lerat provided a last will and testament of his father, approved by the Department, which provides, among other things, “To grant leases and surrenders of leases on Cowessess Indian Reserve lands which I possess with the rent to form part of the rest and residue of my estate and be dealt with accordingly. The terms of such leases are to be as my Trustee may see fit”. There is a handwritten codicil that provides “Land on Reserve to be shared equally by my children”.

[27] Mr. Lerat also provides records where his father “bought land and improvements” from other CFN members including a certificate of possession. He goes on to describe his own farming practice over the years that also resulted in Mr. Lerat obtaining certificates related to the agriculture industry. Prior to his father’s death in 2001, the lands were leased to non-CFN members. He indicates that he had a plan to farm in the future but then decided to pursue a trucking career in 2013.

[28] Mr. Lerat also sets out the same timeline of events as referenced by Mr. Pelletier. He also provided a supplementary affidavit to describe his application for a permit from CFN.

(3) Terrance Lavallee

[29] Terrence W. Lavallee [Mr. Lavallee] is not an Applicant but his affidavit was admitted by Prothonotary Aylen, as referenced above. Mr. Lavallee lays claim to sixteen quarters of Original Reserve Lands. Mr. Lavallee describes that his great-grandfather originally held the lands and that it is his understanding that his great-grandfather received a Ticket of Occupancy. These same lands were passed down through the generations all the way to Mr. Lavallee.

[30] Mr. Lavallee provides an identical letter referred to in Mr. Pelletier's affidavit from then-Chief Grady Lerat. He states that he and his father farmed the land together, amassed farm equipment, and became the biggest farmers in the region. When his father died in 1986, he passed the land to his wife, Mr. Lavallee's mother, and she in turn bequeathed the land to Mr. Lavallee and his three siblings.

[31] Mr. Lavallee also describes events in May 2018 where he discovered a non-CFN member seeding about 600 acres of his land without him being informed. He then describes a meeting that followed this discovery where Loretta Delorme, Christopher Lerat, two band council members, and another unidentified individual came to talk to him at his residence. He describes being intimidated by this encounter until his son arrived and joined it. He states that Ms. Delorme invited him to the band office to talk and he accepted the invitation. He states that Ms. Delorme told him about the permitting of lands to non-CFN farmers and he states that he never received any notice about what was going on.

[32] Mr. Lavallee states that Ms. Delorme provided him with papers including an application to lease, an October 10, 2017 letter from Chief Delorme, a report of a meeting and the plan developed by Chief Delorme and the band council. He states that all of his land has been leased out by CFN, which has resulted in him being deprived of a significant portion of his livelihood. He states he never received any notice that he was being removed from his land or that his land was going to be leased out.

(4) Grady Lerat

[33] Grady Lerat [Mr. G. Lerat], who is not an Applicant, lays claim to two quarters of the Original Reserve Lands. One quarter was assigned to his father by a band council resolution in 1946 as a returning war veteran. He does not possess any documents for the other quarter. Respecting the lands for his father's military service, Mr. G. Lerat provides a 1969 letter from the Department which states, in part:

> In spite of the fact that no title has been issued for the quarter section which you have farmed, you are considered to be in lawful occupation of the land. You may not be dispossessed from this land by the Band Council without compensation for the permanent improvements which have been made.

[34] Mr. G. Lerat also provides a last will and testament for his father, also approved by the Department, which states, in part:

> TO GIVE, deliver and transfer to my son, GRADY LERAT, for his own use and benefit absolutely; subject to any approvals as may be required from the Council of the Cowessess First Nation, my homestead lands […] and veteran land entitlement land located adjacent to my homestead lands which I have occupied on the Cowessess Indian Reserve comprising the sum of 340 acres.

[35] Mr. G. Lerat began “leasing” the lands to a non-CFN member in 1997 for approximately $8000 per year for a 5-year term. He now has “leased” the lands by a verbal agreement since 2002 and continues to do so. Mr. G. Lerat was chief in 2012 when he issued the letter described by Mr. Pelletier.

[36] Mr. G. Lerat also sets out a timeline of events similar to the one described by the Applicants.

(5) Hugh Lerat

[37] Hugh Lerat [Mr. H. Lerat], who is not an applicant, lays claim to five quarters of Original Reserve Lands. These lands were originally allocated to his father in 1938 by way of a “location ticket”. Mr. H. Lerat did not have a copy of this location ticket. He provided a copy of a 1969 band council resolution granting the lands to his father for a 10-year term with no reference to any lease payments. He also provided a certificate of right of use and occupation for loan purposes which indicated that his father:

> […] has the right of use and occupation of the following land for a period of at least 11 years from the 1 day of January 1969 namely […] per BCR dated January 1969 and according to Lease dated June 16, 1969 as registered in the Indian Land Registry Cowessess Indian Reserve No.73

[38] Mr. H. Lerat claims that he possesses permits for the sale of grain from the land created by his father, as well as payments he made to the Department in 1997 for improvements to his deceased brother’s lands. These records were not included in his affidavit.

[39] Mr. H. Lerat also describes the permit application process.

(6) Chester Agecoutay

[40] Chester Agecoutay [Mr. Agecoutay] lays claim to one quarter of the Original Reserve Lands. These lands were purchased by his father from another CFN member in the 1950's for $850. He states that his father indicated his intentions to have the lands stay within the family by bequeathing it to his spouse; but he did not provide a copy of the will. Mr. Agecoutay did however provide a copy of his mother's will, the relevant portion of which provides:

> I GIVE all my interests, right to use and possession to SW 4-19A-5 W2nd on Cowessess Indian Reserve #73 to my sons, CHESTER AGECOUTAY and CURTIS MARK AGECOUTAY, for their own use and benefit absolutely.

[41] Mr. Agecoutay states that his mother had a verbal "lease" agreement with a farmer for $20 per acre. He and his brother honoured the agreement, but they did not renew it in light of the CFN process.

[42] Mr. Agecoutay also describes the permit application process.

(7) Dodie Ferguson

[43] Dodie Ferguson [Ms. Ferguson] is a former member of the CFN lands committee [Lands Committee]. She is not a land occupant. Ms. Ferguson sets out the interactions between the Lands Committee and the CFN band council as well as the same timeline of events as the other affiants. She provided copies of the presentations of the band council and described the correspondence she had with members of the Lands Committee and the band council.

[44] Ms. Ferguson describes a July 2017 Lands Committee meeting where they discussed not being able to move forward with drafting a land transition plan (as they were requested to do by the band council) until their questions concerning the land occupants were answered by the band council. She also refers to the 2012 land designation process, which was not successful, and is of the view that the band council should have followed a similar process for developing the land management regime in 2017.

(8) William Tanner

[45] William Tanner [Mr. Tanner] is a former band councillor who has a certificate of possession on a quarter section of the Original Reserve Lands. He states that the Applicants' legal counsel informed him in January 2019 that his parcel of land was permitted to a non-CFN member. He states that he was never informed that this parcel was going to be permitted to anyone.

B. *The Respondents*

(1) Cadmus Delorme

[46] Chief Cadmus Delorme [Chief Delorme] led the communication of the land administration initiative on behalf of the band council. He stated that his father was a land occupant and that the family decided not to claim any interest to their father's claimed lands. He described the various methods of communicating with the large CFN membership such as by social media and by livestreaming meetings.

[47] Chief Delorme described the method of land management through subsection 28(2) *Indian Act* permits for TLE Reserve Lands. Chief Delorme also described the "informal" land occupation of Original Reserve Lands by CFN members through band council resolutions and the absence of allotments under s. 20 of the *Indian Act*. He states that any such previous band council resolutions did not create a right to occupy these lands permanently. He refers to the terms of Treaty 4, which confirmed the collective interest of reserve lands. Chief Delorme states that there are currently two CFN members who possess a certificate of possession and one of them is William Tanner. He confirms that the new land regime will not affect holders of certificates of possession. He also states that only two land occupants are presently farming the Original Reserve Lands but their respective portions of land are relatively small.

[48] Chief Delorme disagrees that any CFN members were bequeathed any lands on the Original Reserve Lands, since no individual can own reserve lands.

[49] He also describes the "leasing" out of Original Reserve Lands by various CFN members over the years once the original assignees of lands ceased farming. He states that CFN has not received rent from these arrangements. He describes that having all lands under a subsection 28(2) permit regime will bring revenue to CFN to assist with programs and services.

[50] Chief Delorme explains that the Applicants and the affiants have all served on the band council and are aware that land tenure has been an issue over the years. He provided excerpts of some minutes of band council and land committee meetings starting in 1992 to show that the lands issue has been outstanding for a long time and to show that the Applicants and the other

affiants have been aware of the lands issues while they served as band council members or on the lands committee.

[51] Chief Delorme describes beginning the new land management regime process with discussions with the elders in 2016. He also explained the timeline of events in 2017 as set out by the Applicants. The dates are essentially the same but his version differs from the Applicants in terms of the content and scope of the discussions and he also describes a series of other meetings with the band council. Specifically, he refers to a March 21, 2017 band council meeting where they ultimately decided to postpone the rolling out of the land regime due to the approach of the April 2017 crop insurance deadline. He also explains that, in March 2017, the Lands Department notified the non-CFN members of the plan to implement the new land regime in 2018.

[52] A major part of Chief Delorme's and others' evidence involves the "Cowessess First Nation Original Land Empowerment and Transition Plan" [Draft Plan] that Chief Delorme prepared and presented to the band council on March 21, 2017. The band council decided not to adopt the Draft Plan. Instead, they passed a motion requiring that CFN's Lands and Resources Committee [Land Committee] review and revise it within six months. The motion also states that the *status quo* is to remain in place for that year.

[53] The Draft Plan reads, "Individuals and families seeking to be entrepreneurs with their land base will be empowered to do so and individuals and families not seeking to be

entrepreneurs will be provided a transition out”. It notes that, “Today, all land is farmed by non-band members”.

[54] It also says that the five non-member farmers currently farming CFN homeland will be subject to a permit regime. It goes to state that they have agreed to receive a three-year permit under subsection 28(2) of the *Indian Act* priced at $30/acre. Indeed, on March 1, 2017, Chief Delorme and Lands Department staff held a meeting with the non-CFN members.

[55] The Draft Plan explains that RLEMP, which already governs TLE land, will be applied to all reserve land.

[56] As for CFN’s 27 land occupants, the Draft Plan states that they may choose between four options. They will transition out: (1) with no payment, (2) with one year at $30/acre, (3) with two years at $20/acre, or (4) with three years at $15/acre. It states that, “If no option is chosen, Option Three will be implemented”. There is no indication of a deadline or a procedure for choosing one of these options.

[57] The Draft Plan refers to a Motion that will be presented at a Chief and Council meeting held March 21, 2017. According to the Draft Plan, the motion is said to read as follows:

> 1. That effective March 21st, 2017, all lands on the Cowessess First Nation which are being utilized for agricultural and ranching purposes will be required to be entered into directly with the First Nation’s lands department utilizing section 28(2) agricultural permits as entered into between Her Majesty the Queen in Right of Canada and the proposed permittee.
>
> 2. That the First Nation’s lands department and administration be directed to work with individual band members who have

> previously engaged in farming operations on the reserve to assist such individuals in developing business plans and opportunities for such individuals to move forward with the obtaining from the First Nation and Canada of their own section 28(2) agricultural permits or other leasing initiatives.

[58] The Draft Plan describes land occupant compensation as follows:

> Subject to approval by Canada and the First Nation, arrangements will be made to have a set amount of the proceeds received from the agricultural permits which are paid into the First Nation's Revenue Trust Account in Ottawa drawn down by the First Nation and directed towards paying the individuals out for any improvements they may have made to the lands which they can establish or, alternatively, establishing for example agricultural programs designed to assist band members in pursuing individual entrepreneurship operations.

[59] The Draft Plan was made public on or around March 21, 2017. It was posted on a bulletin board and on the CFN Facebook page called "Cowessess First Nation #73". Copies were also produced upon request.

[60] Chief Delorme also states that the Lands Committee was given six months from March 16, 2017 to provide input into a draft plan that he had taken the initiative to develop. In July 2017, the Lands Committee asked for additional time to review it; but at a council meeting on July 13, 2017, the band council declined that request. It was on this date, due to the passage of time, that the band council passed the BCR and the Lands Department was tasked with working with the land occupants to develop agricultural plans if they wanted to start farming or ranching. On October 3, 2017, the band council then passed the Motion approving the payment of the final land improvement fee. On October 11, 2017, the band council notified the land occupiers that the new regime was rolling out in January 2018 and that administration of the lands would fall to the

Lands Department though subsection 28(2) permits. A similar letter was also placed on the CFN website, bulletin boards, and a Facebook page.

[61] On November 27, 2017, there was another community meeting where it was again communicated that the new land regime was taking effect in 2018. It was reiterated that anyone wanting to use the Original Reserve Lands for farming purposes had to apply for a permit.

[62] In general, Chief Delorme states that there was community support for the land management transition and that there was no lack of clarity. He also described the permitting process and the interactions with the Lands Committee. In addition, he provided copies of his presentations to the CFN membership. Chief Delorme also confirms that letters and cheques for the final land improvement fee were received by all land occupants in June 2018.

(2) Loretta Delorme

[63] Loretta Delorme [Ms. Delorme] is the lands and resources manager for CFN. She oversees and manages the lands department including the administration of subsection 28(2) permits. She describes that the Applicants and others came into possession of the Original Reserve Lands through various informal means, “none of which conferred any legal interest or ownership rights”. Ms. Delorme states that the original assignees did farm the lands, but, once they retired, their families ceased farming and “leased” out the subject lands to non-CFN members.

[64] Ms. Delorme describes the band council process to address the land tenure issues as well as the permitting process.

[65] Ms. Delorme also responded to Mr. Tanner's affidavit by providing a supplemental affidavit where she clarified that the information from the Department contained an error. Ms. Delorme contacted the Department officials and they confirmed the error in the land description. The error has since been rectified and Ms. Delorme confirmed that no permits have been issued respecting the lands identified by Mr. Tanner.

(3) Christopher Lerat

[66] Christopher Lerat [Mr. C. Lerat] works with Ms. Delorme in the lands department as a leasing officer. He sets out the permitting process for Mr. Lerat and others. He also addressed the allegations made by Mr. Lavallee. He also describes that the land tenure issue has been challenging, including some overlapping claims of CFN members against one another.

(4) Harold Lerat

[67] Herald Lloyd Lerat [Mr. H.L. Lerat] describes receiving a subsection 28(2) permit which enabled him to farm for the first time. His father was also a land occupant but he was not able to receive the lands to farm. He served on the band council with the Applicants and the other affiants. He states that the land tenure was always an issue when he served on the band council and efforts to do something about it were "tabled" due to the fact that the other members on council, as land occupants, did not wish to change the system.

[68] Mr. H.L. Lerat outlines his attendance at the meetings and states that the band council advised that the buckshee leasing system (the customary landholding system) on the Original Reserve Lands was going to end and that the money was now going to go to CFN. He also states that there was no disagreement that everyone should benefit from the Original Reserve Lands. He also states that it was made clear that CFN members would be charged a lower permit fee to encourage entrepreneurship within the community. At this meeting, the land occupants indicated they wanted to be compensated for any improvements they made to the lands.

(5) Dennis Delorme

[69] Dennis Delorme [Mr. Delorme] is one of the oldest living members of CFN. After living sporadically in CFN in his early years, he moved to CFN on a permanent basis in the early 1980s. Mr. Delorme states that the lands issue has been the subject of debate for many years. He describes that few of the CFN members have claimed exclusive possession over the Original Reserve Lands and have been making money without paying anything to CFN. He states that no occupancy was never meant to be permanent and it did not give anyone rights to ownership. He states that no one can claim ownership to the Original Reserve Lands as they are held in trust by Canada for the benefit of CFN.

[70] Mr. Delorme states that the descendants of the original CFN farmers have not continued farming but have rented the lands out and have kept the fees for themselves. His view is that these fees should be going to the First Nation for programs and services.

[71] Mr. Delorme has served on the band council and he describes that the land occupants were such a problem that it limited where CFN could build homes since the land occupants occupied much of the land. Mr. Delorme confirms that the elders of CFN support addressing the land issue. He states that he and other elders indicated that the buckshee renting arrangements needed to end and that they did not want this land issue to be passed on to the next generation of CFN members. He states that successive band councils kept putting off any work in addressing this land issue because of its difficulty.

C. *Overview*

[72] The January 20, 2017 and the October 11, 2017 letters are appended to this decision.

[73] The evidence in this case indicates that CFN did not have a clearly articulated process for land allotments over the years. The evidence also indicates that the ancestors of the Applicants farmed the lands and had received band council resolutions (that have since expired) or in the odd case, a certificate of possession or a veteran land allotment. The evidence also indicates that the Applicants themselves have not been issued any band council resolutions. The evidence shows that there was no precise characterization of the specific type of interest that these original grantees obtained. The evidence indicates that the ancestors of these grantees have issued letters or band council motions, while they were band council members, which attempted to continue with the informal process that had developed over the years.

[74] What this disagreement boils down to is: whether the ad-hoc, informal process that has developed over the years has created legal rights in favour of the two Applicants; and, if so,

whether they prevent the CFN band council from administering the Original Reserve Lands and collecting revenue from the farming occurring on those lands.

IV. Issues

[75] In their memorandum of argument, the Applicants submit that the following questions are at issue:

> A. Did the Respondents formally enact a land management system for the Cowessess Home Reserve Lands?
>
> B. Did the Respondents discharge their duty of procedural fairness and fiduciary obligation to the Applicants?

[76] The Respondents submit that the issues should be defined as follows:

> A. Are the Decisions reviewable?
>
> B. Is the application out of time? If so, should the Court exercise its discretion to extend time for review?
>
> C. Do the Respondents have jurisdiction to make the Decisions currently under review?
>
> D. Are the Applicants entitled to raise new arguments that were not before the Respondents at the time the Decisions under review were made?
>
> E. If so, were the Decisions under review made in a manner consistent with the requirements of procedural fairness?

[77] Based on my review of the submissions and the Notice of Application, I characterize the issues as follows:

> A. Is the application time barred?
>
> B. Do the Respondents have jurisdiction to make the Decisions?
>
> C. Were the Applicants’ rights to procedural fairness breached?
>
> D. Were the Decisions Reasonable?

V. Standard of Review

[78] The parties did not make written submissions on this issue. At the hearing, the Applicants submitted that the standard of review for the Decisions of the Chief and Council was reasonableness.

[79] A standard of review analysis does not need to be conducted in every instance (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]). If the standard of review has been settled by previous jurisprudence, the Court may adopt that standard.

[80] Questions of whether a band council has acted without jurisdiction or beyond its jurisdiction or whether the band council had a reasonable apprehension of bias are reviewed on the correctness standard (*Hill v Oneida Nation*, 2014 FC 796 at para 45 [*Hill*]; *Prince v Sucker Creek First Nation No 150A*, 2008 FC 1268 at para 21 [*Prince*]).

[81] In *Hill*, at paragraphs 42 and 43, Justice Strickland also reviewed previous cases considering the standard of review of band council decisions and found the following at para 46:

> …this Court has recognized that chiefs and band councils have expertise on matters such as band custom and factual determinations and should be shown deference. Thus band council decisions are to be reviewed on the standard of reasonableness and will be upheld if they fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Shotclose*, above at para 58-59; *Parker*, above at para 38-40; *Dunsmuir*, above).

[82] I agree. The Decisions will be reviewed on the reasonableness standard.

[83] The exercise of reviewing a decision for procedural fairness issues is best reflected in the correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General),* 2018 FCA 69 at para 54; *Prince* at 23; *Parker v Okanagan Indian Band Council*, 2010 FC 1218 at para 4 [*Parker*]). In reviewing on this standard the Court should not ask, “whether the decision was ‘correct’, but rather whether, taking into account the particular context and circumstances at issue, the process followed by the decision-maker was fair and offered to the affected parties a right to be heard and the opportunity to know and respond to the case against them” (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 17).

VI. Legislation

[84] The following provisions of the *Indian Act* are relevant in this proceeding:

20 (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.	**20 (1)** Un Indien n’est légalement en possession d’une terre dans une réserve que si, avec l’approbation du ministre, possession de la terre lui a été accordée par le conseil de la bande.
23 An Indian who is lawfully removed from lands in a reserve on which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.	**23** Un Indien qui est légalement retiré de terres situées dans une réserve et sur lesquelles il a fait des améliorations permanentes peut, si le ministre l’ordonne, recevoir à cet égard une indemnité d’un montant que le ministre détermine, soit de la personne qui entre en possession, soit sur les fonds de la bande, à la discrétion du ministre.
28 (1) Subject to subsection (2), any deed, lease, contract, instrument, document or	**28 (1)** Sous réserve du paragraphe (2), est nul un acte, bail, contrat, instrument,

agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

document ou accord de toute nature, écrit ou oral, par lequel une bande ou un membre d'une bande est censé permettre à une personne, autre qu'un membre de cette bande, d'occuper ou utiliser une réserve ou de résider ou autrement exercer des droits sur une réserve.

(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

(2) Le ministre peut, au moyen d'un permis par écrit, autoriser toute personne, pour une période maximale d'un an, ou, avec le consentement du conseil de la bande, pour toute période plus longue, à occuper ou utiliser une réserve, ou à résider ou autrement exercer des droits sur une réserve.

[85] The following provision of the *Federal Courts Act* is also relevant:

18.1(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

18.1(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

VII. Analysis

A. *Preliminary Matters*

[86] The Respondents raise two preliminary issues. The first issue is whether the Decision is amenable to judicial review. They argue that the decisions were legislative decisions and, therefore, cannot be judicially reviewed. The second issue is that the application was not brought in time.

(1) Legislative Decision

[87] The Respondents submit that the Decisions do not lend themselves to judicial review because they are “broad statements of Policy of the Chief and Council”. The Decisions, they say, are more akin to legislative decisions than to administrative ones. The Respondents note that “[i]t is fundamental to the function of government and its relationship to the judiciary that questions of government policy are not subject to judicial review” (*Hayes and Jacobs v Smallwood et al,* 2000 BCSC 1665 at para 18).

[88] The Applicants argue that the Decisions are indeed amenable to judicial review. They argue that the Federal Court of Appeal in *Horseman v Horse Lake First Nation*, 2013 FCA 159 confirms that a band council is a federal board for the purposes of the *Federal Courts Act*. They also argue that, “[j]udicial review is directed at the legality, reasonableness, and fairness of the procedures employed and actions taken by government decision makers. It is designed to enforce the rule of law and adherence to the Constitution” (*Canada (Attorney General) v TeleZone Inc,* 2010 SCC 62 at para 24).

[89] The Applicants also point to case law that illustrates that judicial review is appropriate for administrative decisions (*Maloney v Shubenacadie First Nation,* 2014 FC 129 at paras 21-41 [*Maloney*]). The Applicants submit that the Decisions may be judicially reviewed because they werre made pursuant to powers granted under the *Indian Act.* They argue that another factor that favors characterizing the decisions under review as administrative is their importance to the Applicants. When "an individual's livelihood is at issue, […] affected individuals are entitled to notice and to an opportunity to make submissions before a decision affecting them is made" (*Maloney* at para 47).

[90] I am persuaded by Applicants' arguments. I find that the Decisions are subject to judicial review for two reasons. First, the Decisions are public in nature; and, second, a band council has been determined to be a federal board, tribunal or undertaking within the meaning of the *Federal Courts Act*. Recently, Justice Pentney in *Crowchild v Tsuu T'ina Nation* 2017 FC 861 [*Crowchild*] summarized the law in this regard at para 27:

> It is now trite law that this Court has jurisdiction to deal with matters arising from the decisions of First Nations' Chief and Council where the issue concerns a matter of a "public" nature, regardless of whether the decision was taken pursuant to the *Indian Act*, a Band by-law or involves the application of a custom or practice of the First Nation: see *Vollant v Sioui,* 2006 FC 487 at para 25 [*Vollant*]; *Hill v Oneida Nation of the Thames Band Council*, 2014 FC 796 at paras 37-38 [*Hill*].

[91] I am therefore able to review the Decisions of the CFN band council.

(2) Is the application time barred?

[92] According to subsection 18.1(2) of the *Federal Courts Act*, the Applicants were required to submit their application for judicial review within 30 days after the impugned Decisions were first communicated to them or within another period fixed or allowed by a Federal Court judge. The Applicants did not address this argument in written argument but replied to the Respondents' argument at the hearing.

[93] The Applicants submit that to calculate this 30-day limitation period, the Court should rely on the date that invoices about leasing reserve land were issued to non-CFN farmers, being approximately March 1, 2018. According to the Applicants, this is when the Decisions were implemented.

[94] The Respondents submit that the Court should use the dates when the Decisions under review were made: July 13, 2017 and October 3, 2017. The application for judicial review concerns the Decisions, not the invoice, and is therefore time barred pursuant to *Federal Courts Act* subsection 18.1(2).

[95] The Respondents submit that the proper test for determining whether an extension of time should be granted is outlined in *Canada (Attorney General) v Hennelly,* 1999 CanLII 8190 (FCA), 167 FTR 158 [*Hennelly*]. Four factors must be satisfied: there must be a continuing intention to pursue the application, the application must have some merit, no prejudice to the Respondent must arise as a result of the delay, and there must be a reasonable explanation for the delay (*Hennelly* at para 3). The Respondents argue that only the first criterion—"a continuing intention to pursue his or her application"—is met.

[96] The Respondents say that the application does not have any merit, so the second factor is not met. According to the Respondents, the fairness of the Decisions is self-evident.

[97] The Respondents also argue that the third factor—"that no prejudice to the respondent arises from the delay"—is not satisfied. Not only does CFN stand to earn a considerable amount of money from the new permits, many of which have already been issued, CFN is to receive an additional sum of $283,285.00 from the Department for participating in RLEMP. Many of the permits have already been issued, so chaos would ensue if an extension of time were granted.

[98] The fourth and final condition for an extension of time is whether there is a reasonable explanation for the delay. The Respondents argue that this factor is not met and that the Applicants could have judicially reviewed the Decisions shortly after they were made. In any event, they all received the October 10, 2017 letter and that is when the time should begin running.

[99] The Applicants argued that there was a continuing course of conduct on the part of the Respondents that makes the 30-day time limit inapplicable to their situation. The Applicants also referred to the July 13, 2018 Order made by Prothonotary Aylen, which allowed the admission of Mr. Lavallee's affidavit. The relevant portion of the July Order is reproduced below:

> CONSIDERING that the Court is satisfied, having regard to the notice of application, that the evidence contained in the proposed affidavit is both admissible and relevant to an issue that is properly before the Court, as it provides background information as to the manner in which the Respondents are implementing the decision at issue. The conduct of the Respondents in implementing the decisions is, in effect a continuation of the decisions themselves, which the Applicants allege were made without consultation of the

> Applicants and thus, allegedly in breach of the Respondents' obligations to afford the Applicants procedural fairness.

[100] The Applicants argue that the Respondents did not appeal this Order and therefore the "implementation" of the Decisions allowed for the application to be brought outside of the 30-day period.

[101] Although I was not asked directly to rule on this matter, I find that the BCR and the Motion should be considered as one decision even though the parties referred to them as the "Decisions". They refer to the same facts, the same parties and they involve the same consideration of the results of adopting the *Indian Act* land management regime. Accordingly, I find that the 30-day period for the purposes of section 18.1 of the *Federal Courts Act* runs from the date of the last aspect of the Decisions (the Motion of October 3, 2017) communicated to the Applicants on October 11, 2017.

[102] Turning now to whether the application is time-barred, I find that it is for the following reasons. First, I am persuaded by the argument of the Respondents that, other than the first *Hennelly* factor, the Applicants have failed to establish that they should be granted an extension of time. Even this finding is generous when considering the record. Once the Applicants initiated this proceeding (albeit over five months after October 10, 2017 or when they received the letter on October 11, 2017) they did continue with the application.

[103] I also find that the Respondents would suffer significant prejudice if the 30-day period was not enforced. As referenced by Chief Delorme, CFN is presently engaged in RLEMP, which

entitles it to not only considerable funding from the Department, but also considerable revenue from the receipt of permit fees going forward.

[104] Further, I also find that even after the Motion was communicated to the CFN members and the Applicants on or around October 11, 2017, there was no timely application brought to challenge the Decisions. In *Crowchild*, Justice Pentney stated at paragraph 14:

> Waiting for full particulars of a decision is not sufficient to obtain an extension, and, the time limit begins to run once the individual is informed of the substance of the decision even if they do not know all of the particulars or details: Canada (AG) v Hennelly (1999) 244 NR 399 (FCA) at para 3; Forster v Canada (AG) (1999), 247 NR 300, 1999 CanLII 8762 (FCA) at paras 3 and 6; Goodwin v Canada (AG), 2005 FC 1185 at paras 33-35.

[105] The Applicants both acknowledged the October 11, 2017 letter from the Chief in their affidavits. They further acknowledged the permitting process that was available to them and others by the new regime for the 2018 year. This information was also set out in the October 11, 2017 letter, at a November 27, 2017 community meeting and in a further notice dated December 31, 2017. Rather than immediately challenge these Decisions or voice their concerns in writing or verbally they allowed the process to unfold. They initiated this application on March 29, 2018. There is no reasonable explanation for the delay in bringing this application.

[106] Lastly, I find that the Order of Prothonotary Aylen did not establish that the Applicants were granted an extension or exemption from the 30-day time limit. The Order does not displace the general rule that the applications judge is the one to assess the merits of whether an application or an action is barred from proceeding due to non-compliance with the 30-day timeframe. As stated by Justice Pinard in *Apotex v Canada (Health)* 2010 FC 1310 at para 12:

> The serious question of whether the proper approach is to view the underlying application for judicial review as directed to a "matter" or a continuing course of conduct to which the 30-day time limit imposed by subsection 18.1(2) of the Federal Courts Act should apply ought to be determined by the application judge.
>
> (Emphasis added)

[107] Notwithstanding that judicial review of this decision is time-barred, for the sake of completeness, I will address the issues as I have rephrased them above.

B. *Do the Respondents have jurisdiction to make the Decisions?*

[108] As stated above, this proceeding requires determining whether the ad hoc or informal process of land administration over the years displaces the *Indian Act* land management regime and the responsibility of a band council to administer such lands for the collective benefit of CFN members. The Applicants assert that there has been a practice or custom of respecting customary rights to land that has even been acknowledged by Chief Delorme in a meeting notice. The wording of that notice says, in part, "customary rights are recognized and respected in by the community".

[109] In the Notice of Application, the Applicants argue that the Chief and Council do not have lawful authority to remove the Applicants from their lands, nor do they have authority to make payments to the Applicants for their lands, as there are no criteria or authority to do so. The Applicants also submit that the compensation paid by CFN was not made in accordance with section 23 of the *Indian Act*. Incidentally, at the hearing counsel for the Applicants acknowledged that the Applicants accepted the first part of the payment from CFN.

[110] The Applicants do not provide any legal authority for the argument that the band council does not have the legal authority to make the Decisions. The majority of the Applicants' submissions referred to their procedural fairness arguments. I will deal with those arguments later in my analysis.

[111] The Respondents submit that legal title of reserve lands is vested in the Crown for the use and benefit of CFN. The role of the CFN band council is to exercise control and authority over these lands for the benefit of its membership. The CFN members who are allowed to use and benefit from reserve lands are not entitled to a right to possess any of the land, except with approval from the band council and the Minister in accordance with subsection 20(1) of the *Indian Act* (*Squamish Indian Band v Findlay,* [1980] BCJ No 1530, 109 DLR (3d) 747 at paras 47-49, affirmed in *Joe et al v Findlay and the Attorney General of Canada,* [1981] 3 CNLR 58 (CA)). The Saskatchewan Court of Queen's Bench recently reiterated these principles (*Wood Mountain Lakota v Goodtrack,* 2018 SKQB 230 at para 84 [*Wood Mountain*]). The Respondents plead that strict adherence to both of these two requirements is necessary to satisfy subsection 20(1) (*Nicola Band et al v Trans-can Displays Ltd,* 2000 BCSC 1209 at paras 131, 133 [*Nicola Band*]; *Leonard v Gottfriedson,* [1982] 1 CNLR 60, [1980] BCJ No 551 at para 68; *Cooper v Tsartlip Indian Band,* [1997] 1 CNLR 45, [1996] FCJ No 826 at paras 12-13).

[112] The Respondents submit that, without the approval of both band council and the Minister, section 24 of the *Indian Act,* which concerns the subsequent transfer of the land to another member, is also inapplicable (*Joe et al v Findlay and the Attorney General of Canada,* [1981] 3 CNLR 58 (CA) at para 9). In other words, they say that the Applicants do not have the

right to “lease” reserve land to non-CFN members, as they have not themselves obtained a legal interest in the particular Original Reserve Lands.

[113] According to the Respondents, recognition of any interest not in conformity with the *Indian Act* cannot override section 20 of the *Indian Act*. This would be contrary to a band council’s fiduciary duty to manage reserve lands in the best interests of all its band members (*Nicola Band* at para 151). In addition, a regime based on adverse possession is incompatible with the *Indian Act* (*Bradfield v Canada (Indigenous and Northern Affairs),* 2018 FC 682 at para 45 [*Bradfield*]).

[114] The Respondents note that the Applicants, and their supporting affiants, claim to have inherited their lands from their fathers or from other relatives, but none of them obtained a formal allotment from the Minister. Although the Department approved some of the affiants’ parents’ wills, this is insufficient to satisfy section 24 because Ministerial approval in a testamentary context is strictly limited to testamentary matters. The Respondents argue that, until the Minister’s approval of a formal land allotment is obtained, these transfers are not effective, according to section 24 of the *Indian Act*. The Respondents argue that it would be absurd if the Minister’s approval of a testament could give an heir more rights than the deceased had or could have obtained (*Bradfield* at para 49).

[115] The Respondents also submit that the Applicants’ expectation to be compensated pursuant section 23 of the *Indian Act* is also unfounded. Given that section 23 must be read in light of section 18 (*Songhees Indian Band v Canada (Minister of Indian Affairs & Northern*

Development), 2006 FC 1009 at para 29 [*Songhee*]), the Respondents argue that section 23 does not apply to Indians who are not lawfully in possession of the land which is improved. The Respondents also submit that it would be contrary to the intent of the *Indian Act* to confer a compensable interest upon individuals when the reserve lands are meant for the collective (*Bradfield* at para 44). The final land improvement payments made by CFN are therefore unrelated to section 23.

[116] I am persuaded by the arguments of the Respondents that the CFN band council had the jurisdiction to make the Decisions in question. First, the Original Reserve Lands were set apart pursuant to Treaty 4 for the collective use and benefit of all members of CFN. Second, the Decisions are consistent with their responsibility to administer and manage lands in accordance with the *Indian Act*. Third, it is settled law that band councils have a fiduciary duty to their membership to manage and safeguard the First Nation's assets. Agricultural lands of the Original Reserve Lands surely qualify as such an asset as the evidence indicates. Fourth, in exercising their authority to manage assets of the First Nation, band councils have the discretion to grant or deny allotments. Moreover, when doing so, they are not bound by a particular process. As a result, band councils may proceed as they see fit (*Parker* at para 43).

[117] Band councils are entitled to make decisions about the management of reserve land. The CFN band council has chosen to enforce and respect the collective nature of the Original Reserve Lands to be consistent with the manner in which it administers and manages the TLE Reserve Lands. I accept the evidence that the informal or ad hoc arrangements caused rifts or disputes within the community and even within families. These issues are reflected in some of the

minutes attached to Chief Delorme's affidavit, for example in the October 1, 2001 minutes. There is evidence in the June 18 and 19, 2001 minutes that there were even some overlapping claims by CFN members.

[118] I also accept that the Respondents were motivated by a desire to create a system of land management that respected the collective interests of the CFN membership. These sentiments were also reflected in the various minutes Chief Delorme provided; however, prior band councils were not able to move forward with enforcing the band council's authority to manage the Original Reserve Lands through the *Indian Act* permitting regime.

[119] I am also in agreement with the Respondent's interpretation of s 20 of the *Indian Act*: an Indian must obtain approval from both the band council and from the Minister in order to legally possess reserve land. Furthermore, if an Indian does not legally possess reserve land, he or she may not transfer the land to another member pursuant to section 24 of the *Indian Act*. In fact, none of the Applicants or the supporting affiants possess a band council resolution like their fathers or grandfathers possessed. All that they have attached to their affidavits are expired band council resolutions issued to their fathers or grandfathers. The band council of the day in 1998 even commissioned a legal opinion to assess the validity of any asserted claims and the legal requirements for possession of reserve lands.

[120] Turning now to the custom which the Applicants suggest provides them with legal rights, I find that the fact that the Applicants do not point to any existing and current band council resolutions as a significant factor. The Applicants rely on the issuance of band council

resolutions to their fathers and or grandfathers, which have long since expired, for the establishment of a custom. On the evidence, they have not taken any steps to create a more formal and secure method to be in possession of reserve lands whether by the past practice or the new system adopted by CFN. There is a reference to a request for a band council resolution by Gary Pelletier in the July 14, 1992 minutes, but apparently, it could not be addressed "until a fair and equitable Land Use Policy is in place".

[121] The evidence indicates that the Department has not made the land tenure system any clearer for the parties despite having clear responsibilities under the *Indian Act*. On one hand, it has issued letters confirming some measure of protection of lands for veterans as indicated in Mr. G. Lerat's affidavit. On the other hand, there are letters approving wills of CFN members without any notice of the precarious nature of the interest identified in the bequest. One will approved by the Department provided by Mr. Lerat referenced that the bequest permitted the trustees to "grant leases and surrenders of leases" on CFN. Another will approved by the Department, provided by Mr. G. Lerat, referenced that the bequest was subject to any approvals as may be required by the band council while the other will (without a letter from the Department) presented by Mr. Agecoutay referred to the limited nature of the bequest (i.e. to use and occupy). There is no evidence that any of these approvals were assented to by the band councils of the day. There is also no indication that the Department alerted any of the parties' ancestors about the limited scope of the bequests. The February 18, 2003 minutes reflect the frustration the band council had with the Department over the land management regime.

C. *Were the Applicants' rights to procedural fairness breached?*

[122] Although the Notice of Application does not explicitly allege breaches of procedural fairness, when one reads paragraphs 18 and 34 of the Notice of Application with paragraphs 21, 22 and 26, there are references to lack of notice. For this reason, I will address the argument of the Applicants.

[123] The Applicants point out, "[t]he fact that a decision is administrative and affects 'the rights, privileges or interests of an individual' is sufficient to trigger the application of the duty of fairness" (*Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 at para 20 [*Baker*]).

[124] The Applicants argue that they are entitled to procedural fairness because their livelihood is at issue and because they were not provided with adequate notice of the ramifications of the Decisions or to make representations. The Applicants also allege that whatever notice or information may have been provided, it was rife with misleading information. In addition, the Applicants argue that the band council have a fiduciary obligation to their members. They argue that a meaningful consultation process involves "timely and ample notification so that meaningful deliberations [can] take place" (*Klahoose First Nation v Cortes Ecoforestry Society,* 2003 BCSC 430 at para 48 [*Klahoose First Nation*]).

[125] The Applicants also argue that the decision to revoke land holdings from customary landholders was made without providing affected individuals with adequate notice or an opportunity to make submissions before a decision was rendered. Only the January 20, 2017

letter was mailed out to individual land occupants. Notice for the February, March and November 2017 meetings were posted on the CFN Facebook group less than 30 days prior. They also claim that the non-CFN farmers were just as confused but there is no evidence from these non-CFN farmers to that effect.

[126] In addition to *Maloney* and *Baker*, the Applicants rely on *Crowchild* in relation to "how the alleged Respondents' land management system was developed and implemented". In addition to citing the general principles of procedural fairness in these legal authorities, the Applicants argue that they were not properly notified of the transition or of the requirement to obtain a permit under the new system. The Applicants do not expressly state at which end of the spectrum their procedural rights lie.

[127] The Applicants also suggest that the fact that the plan the Chief developed was called the "Draft Plan" and that it never attained the status of a bylaw is something to consider. They state that the plan remained unchanged from March 21, 2017 to July 13, 2017 even though the Lands Committee was supposed to be reviewing it. I take these arguments to suggest that I should not give the Draft Plan much weight.

[128] The Respondents submit that the extent to which the Applicants argue they are entitled to procedural fairness is unclear. The Respondents also submit that the appreciation of the duty of procedural fairness has two steps. The first is whether the Applicants are entitled to procedural fairness. The basis of the Applicants' procedural fairness argument is their asserted interest in the land (*Crowchild* at para 18). In the absence of a certificate of possession issued under section 20

of the *Indian Act*, the Applicants have no legal interest to the land. In addition, the Respondents argue that many of the inconsistencies in the new process regard affiants' evidence which supports the Applicants, instead of the Applicants' own evidence. As result, there is no legal basis for the Applicants' procedural fairness arguments.

[129] The Respondents made submissions on the five factors outlined in *Baker* that are used to determine the content of the duty of procedural fairness (at paras 21-28). In summary, the Respondents submit that the duty owed by the band council of CFN was at the low end of the spectrum when considering the *Baker* factors.

[130] The Respondents submit that both Applicants and most of their supporting affiants have served within Chief and Council at some point. Some were even members of the Lands Committee. As a result, they all know what subsection 28(2) permits entail. They were also aware of what the correspondence of January 20, 2017 and October 11, 2017 meant. As referenced in the cross-examination of one Applicant, Mr. Lerat, he acknowledged that the January 20, 2017 letter made it clear what the process going forward was going to be. Both of the Applicants acknowledged in cross-examination that they were also aware of the Decisions by October 11, 2017. Mr. Lerat even applied for and received a permit in accordance with the new process.

[131] I find that *Crowchild* has limited application to the facts of this particular case. In finding a breach of procedural fairness, Justice Pentney in *Crowchild* noted the detailed evidence of the nature of that First Nation's land allocation custom and the use of directives. In this case, there is

no detailed custom of land allocation like the use of directives as described in *Crowchild*. In addition, *Crowchild* dealt with a land dispute within a family, which involved the participation of a family member who was on Council, giving rise to the finding of the lack of procedural fairness in that case. There is no such bias or reasonable apprehension of bias that arises on the facts of this proceeding.

[132] Dealing first with the bias argument, the Applicants acknowledge that the inherent political and legislative nature of the functions of band councils permit a degree of pre-judgment (*Old St Boniface Residents v Winnipeg* [1990] 3 SCR1170 at page 1192; *Crowchild* at paras 49-50; *Roseau River Anishinabe First Nation v Atkinson,* 2003 FCT 168, 228 FTR 167 at para 47). There is a high onus to meet in establishing bias or fettering of discretion. The Applicants also refer to *Crowchild* in that one of the fundamental tenets of procedural fairness is an impartial decision-maker.

[133] I find that the Applicants' bias argument is not persuasive. The Applicants did not provide any evidence to establish that any members of the band council had any "prejudgment of the matter" as required by *Old St. Boniface* at page 1197. They have not met the high evidentiary burden to make out a case. The Applicants merely disagreed with the band council's decision.

[134] The Applicants also pointed to three ways in which the *Wood Mountain* case differs from this case (existence of a policy, the carrying out of a land survey, length of terms of permits) to illustrate the lack of procedural fairness by CFN. I am unable to see how these three distinctions make the *Wood Mountain* case inapplicable to the current situation. While it certainly is a good

practice to develop a policy to help guide a First Nation's governance, a key feature of self-determination is that each First Nation is able to determine for itself how it will govern its land use and land tenure system. A First Nation can rely on a clear and accepted unwritten practice or custom or it can rely on a clear and accepted written practice or custom. It may learn from other First Nations, adopting similar policies, practices and laws if it so chooses; but it is not bound to follow what other First Nations do.

[135] I also find that the Draft Plan did not need to attain the status of an *Indian Act* bylaw to be given any greater significance as the Applicants argue. It was a plan that was developed by the band council to fill a void. The band council had the authority to fill the void and they did not require a bylaw or policy to do so.

[136] I find that the Applicants were entitled to procedural fairness at the low end of the spectrum. On the facts before me, while I find that the *Baker* factors favour a low expectation of procedural rights, I also find that the Applicants' were not denied procedural fairness. The timeline, which was set forth in the affidavits of the Applicants, is consistent with the evidence of the Respondents, and it is summarized as follows:

- In a January 20, 2017 letter, Chief Delorme invited the Applicants to a meeting on February 16, 2017 (Both Mr. Pelletier and Mr. Lerat confirm receiving this letter).
- A meeting was held on February 16, 2017 where Chief Delorme discussed the "land transition" (Mr. Pelletier did not attend but was informed of the meeting by another land occupant; Mr. Lerat attended this meeting).
- On March 15, 2017 there was a community meeting held at the CFN Band Hall (both Mr. Pelletier and Mr. Lerat attended this meeting).
- On October 10, 2017, a letter was posted on a CFN Facebook page to the effect that effective January 1, 2018 all lands would be leased by the Lands Department (both Mr.

Pelletier and Mr. Lerat were aware of this letter). This letter referred to the BCR and the Motion.

- There was a November 27, 2017 meeting that the Applicants attended. The parties differ on the outcome of the meeting and what was discussed.
- On December 31, 2017, Chief Delorme posted on the same Facebook page confirming the final land improvement payment of $20/acre will be provided in 2018 to the family member whom had a past personal agreement in 2017 with the non-First Nation farmer.

[137] As explained by the Supreme Court, “Between the judicial decisions and those which are discretionary and policy-oriented will be found a myriad of decision-making processes with a flexible gradation of procedural fairness through the administrative spectrum.” (*Martineau v Matsqui Institution,* [1980] 1 SCR 602 at 629).

[138] CFN’s communications also require a closer review. The Chief’s January 2017 Letter refers to those CFN members who continue to farm. The letter does not validate or formally recognize an existing legal interest in the lands by the Applicants nor does the meeting notice of March 9, 2017 recognize a legally binding interest by the way it was worded. I find that when one reviews the minutes provided by Chief Delorme there are various terms used such as “landowners”, “customary landholder” “traditional landholder” or “buckshee’ers” and no legal significance should be attached to the terms alone. The Draft Plan and other communications have similar wording.

[139] When one examines the evidence as a whole, starting with the 1992 minutes all the way to the Draft Plan and from the January 20, 2017 and October 11, 2017 letters, and the general timeline of events, it is clear to all involved that the *status quo* that had developed was without a legal basis and that resolving the land tenure issues had proved difficult, if not impossible. The

evidence also indicates that the band council was trying to approach a very difficult issue with respect for both the land occupants and the greater CFN membership. The Draft Plan and the Decisions reflected the wish of CFN to respect any rights of current CFN members who continue to farm as opposed to CFN members who do not continue to farm and simply collect revenues by "leasing" to non-CFN members. I find that the Applicants and the affiants had knowledge of the historical land issues and that they also had knowledge of what the CFN band council was going to do about the land issues.

[140] The most significant fact is that the Applicants do not have a legally recognized interest pursuant to the *Indian Act*. I acknowledge that the *Indian Act* land management regime still contains some paternalistic aspects; however, unless and until CFN opts out of this *Indian Act* process (which it is in the process of trying to do through the *FNLMA* system) the *Indian Act* process will govern the way reserve lands are administered.

[141] The absence of a legally recognized interest pursuant to the *Indian Act* is significant. I highlight the following passage by Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law* (Toronto: Carswell, 2013) at page 181:

> In principle, the regime of certificates of possession is exclusive and a band member cannot acquire a right to possess reserve land by any other means. Thus, custom, long-term use or adverse possession have no legal effect and do not deprive the band council of its power to determine the use of land which is in fact possessed by one of its members, but without a certificate of possession having been granted in due form. Courts have also concluded that the law of trusts could not apply to certificates of possession, and that the law of estoppel cannot be used to create rights of possession of reserve land.

[142] A word must also be said about the concept of "custom". The Applicants' submissions are rooted in what they call custom. Much of the case law of this Court refers to the requirement for a "broad consensus" for the establishment of a custom. Most of the cases that discuss this concept relate to election disputes. The Applicants point to the use of band council resolutions over the years for the customary recognition of their ancestors' interests in lands. There is no evidence before me to establish whether such a system received the broad consensus of the CFN membership. Even when Mr. Pelletier asked for a band council resolution in 1992 he was not given one. Yet there are letters or motions from other band council administrations that purport to respect the existing *status quo* of the day. This again illustrates the inconsistent approach to the land management regime over the years.

[143] Is the inability or unwillingness to address a long-standing problem like land tenure sufficient to create a custom by default? I do not think so. In my view, the cases establish that there must be compelling evidence of a positive duty or an engagement with the membership to create a broad consensus of a custom. The Applicants have not provided such compelling and persuasive evidence to establish that a custom, as they suggest, exists.

[144] Even so, it is also established that the concept of custom is not frozen in time. It can change and adapt to changing circumstances. In *McLeod Lake Indian Band v Chingee*, 153 FTR 257, 165 DLR (4th) 358 (FCTD), though dealing with an election dispute, Justice Reed stated at para 10:

> Also, custom by its nature is not frozen in time. It can and does change in response to changed circumstances. A band may choose to depart from oral tradition and set down its custom in written form. It may move from a hereditary to an electoral system. It may

> choose to adopt as customary practices, practices and procedures that resemble the election procedures used to elect municipal or provincial governments. I cannot interpret the reference to "custom of the band" in subsection 2(1) as preventing a band from changing the custom according to which it governs itself from time to time in response to changing circumstances.

[145] It is my view that the same can be said of a land management regime of a First Nation. What may have been permissible or acceptable at one point in time may not be permissible or acceptable at another point in time. As stated, I do not have enough evidence before me to determine that what the Applicants (and the affiants) suggest is a custom that has the broad consensus of the community. Even if there was such evidence before me to establish a custom of land tenure as the Applicants' have argued, that custom would not be frozen in time. It can change depending on the circumstances.

[146] As stated, I find that the new land regime process was well-known to the Applicants. They detailed the process in their affidavits and acknowledged as much in cross-examinations. The new process adopted and employed by CFN afforded all land occupiers with the first opportunity to continue to farm the lands to which they claimed an interest. Had the Applicants taken advantage of this process they would have obtained a legally enforceable subsection 28(2) permit on terms more advantageous to non-CFN members. Only one of the Applicants, Mr. Lerat, applied for and obtained such a permit. This permit, notwithstanding its limited term, is a formal legal document that provides more security than what a band council resolution could provide. Contrary to their arguments, in applying for such a permit, the Applicants would still be able to earn a livelihood. They still can obtain a permit in the future if it is their wish to conduct a farming operation.

[147] The Applicants' evidence is that the permitting process was rife with problems. The Respondents' evidence is that there were some clerical errors made in terms of legal land descriptions but any errors of which they were made aware were rectified in a timely manner.

[148] I find that the evidence establishes that those who applied for permits were accommodated and were provided with assistance with the application process. The evidence establishes that those who applied for permits received one regardless of the wrinkles that occurred in the implementation of the permit system. Even those who had never claimed an interest as a land occupier were able to obtain a permit. The objectives of enabling CFN members to farm and for CFN to receive the permit fees (for the first time) were met. These objectives were articulated in the January 2017 and October 11, 2017 correspondence that the Applicants received and in the various meetings. The various minutes of meetings, provided by Chief Delorme, indicated a desire to move in this direction.

[149] As the minutes of the past meetings of the band council and Lands Committee reflect, the Applicants and most of their supporting affiants have served on the band council or Lands Committees previously. When one looks at the content of the letters from former Chiefs, Mr. G. Lerat and Mr. Lavallee, it is clear that there was an awareness of the tenuous nature of the land tenure system that existed during their respective terms. One might view these letters as an attempt to secure or preserve alleged legal rights to the Original Reserve Lands that they claimed. Accordingly, I gave these letters little weight when assessing the evidence of whether this was evidence of a custom that created legally binding interests. As determined above, there is insufficient evidence before me to establish that such a custom exists.

[150] The Applicants suggest that the band council was required to call meetings with thirty days of advance notice, but they do not provide authority for this requirement. Perhaps they refer to other formal processes like those required in a land designation that occurred in 2012, as referred to in Ms. Ferguson's affidavit. However, the actions taken by the band council were not related to a land designation. A land designation vote has specific legal requirements as contained in the *Indian Act* and policy manuals of the Department. The band council was entitled to determine its own process and manner for which it wished to inform the membership of its decision on how to proceed with the new land management regime.

[151] A final point about the Draft Plan. The Draft Plan contained several options that land occupants could select, and, by presenting options, the band council was not bound to wait for any particular choice by any land occupant. The manner by which to proceed was within the purview of the band council. I find that the Draft Plan, the band council's correspondence, and the various meetings represented an effort to inform the CFN membership and the land occupants of what was going to occur in 2018. There is no evidence that the Applicants preferred any option presented; however, it is clear they disagreed with the band council's entire approach, save for the exceptions related to Mr. Lerat and other land occupants who applied for and received permits.

[152] For all of the above reasons, I find that the Applicants were not denied procedural fairness.

D. *Were the Decisions Reasonable?*

[153] As the Supreme Court of Canada stated in *Dunsmuir* at para 47:

> In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[154] In *Pastion v Dene Tha' First Nation*, 2018 FC 648 at para 28, Justice Grammond stated the following about the deference to be afforded to Indigenous governments:

> One particular aspect of deference must be emphasized. When deciding whether Indigenous decision-makers have made an unreasonable decision, reviewing courts should read their reasons generously, supplementing any apparent omission by looking to the record […]

[155] I find that the CFN band council attempted to strike a balance between CFN's collective interests concerning land revenues and the individual interests of the descendants of the original grantees of the informal interests. In so doing, the Chief and Council also factored in a system of compensation to which, arguably, the Applicants may not have been entitled, seeing as there was no legally enforceable right that the Applicants could establish to the lands in question.

[156] In addition, the Chief and Council factored into the decision-making process the number of years that the Applicants, and others like the Applicants, received rents from non-CFN farmers over the years notwithstanding their lack of a legal interest. Lastly, the Chief and Council made a conscious choice for the sake of community harmony not to publish the amount of rents that the Applicants, and others like the Applicants, would have likely received over the

years. The Chief and Council integrated this concern into the decision to select the $20/acre level of compensation.

[157] In isolation, the $20/acre of compensation seems arbitrary and possibly unreasonable. However, when one considers the rents the Applicants received over the past several decades, as well as a preferential permit fee (lower than that of non-CFN farmers), and the ability to continue (or begin) farming operations, this amount is not arbitrary nor is it an unreasonable way to strike a balance between individual and collective interests within CFN.

[158] I also find that there is no requirement for the band council to develop a written policy to do what they had the authority to do pursuant to the *Indian Act*.

[159] Faced with a contentious issue that had been simmering for several decades, and having considered the evidence, I find that the Decisions reflected in the BCR and the Motion are reasonable.

VIII. Conclusion

[160] The application for judicial review is dismissed.

JUDGMENT in T-625-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

The Respondents are granted costs.

"Paul Favel"

Judge

ANNEX

Office of the Chief
Office (306) 696-2520
Facsimile: (306) 696-2767
E-mail: Chief.Delorme@cowessessfn.com

January 20, 2017

Mr. Gary W. Pelletier,
Box 79,
Cowessess, SK S0G 5L0

Dear Mr. Pelletier:

Re: Cowessess First Nation Land Base

One of the strengths and greatest assets of the Cowessess First Nation is its land base. We have on the home reserve 32,000 acres and since the conclusion of our Treaty Land Entitlement Settlement in 1996, we have added an additional 55,000 acres to our First Nation's land base. We are currently under the Indian Act system of land administration which, at times, hinders our opportunity to grow and expand our First Nation's economic land base. Since settling in the currently location in the late 1870s, Cowessess has a rich history which today transpired into a participating economy.

The Cowessess First Nation is a participating First Nation under the First Nations Land Management Act (FNLMA). Our participation under the FNLMA will allow our First Nation to grow our land base economically and allow us to take control and authority over the administration of our lands from a self-governing perspective. In order to be a part of the FNLMA, our First Nation will need to ratify a Land Code. The previous Land Code which was developed did not pass membership approval and specifically excluded lands on the home reserve. Exiting the Indian Act and opting into a Lands Management Act has provided more opportunity for bands like Muskoday First Nation, Siksika Nation, and if ratified by Cowessess First Nation, our nation as well.

Cowessess Lands Department currently has no direct affiliation with agriculture farmers whom come onto the home reserve. The long-term value of land is determined by what is seeded and chemicals used. The return on investment for both the farmer and beneficiary of the land shall be fair and within the current market value. Without the Lands Department involved, there are many unknowns.

The Cowessess First Nation will begin in the very near future the initiative of operating all of its lands from the Lands Department Office on the reserve which will include both lands added to the reserve under TLE as well as lands included within the home reserve. Prior to beginning this process, we would like to meet with those band members who have continually farmed lands on the reserve over the past several years to

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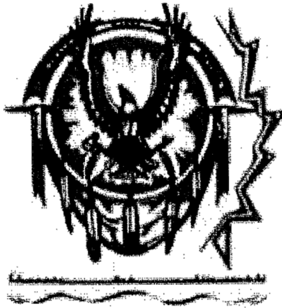
obtain from them input on the process moving forward. In this regard, we are inviting you to an open meeting at the band office on Thursday, February 16th at 5:30 pm to discuss these matters. We will also be inviting to the meeting members of our chief and council, land staff and Lands Committee. Cowessess currently has two Certificate's of Possession (CPs) in effect with respect to its reserve lands. This meeting will not deal with the CPs, but rather will deal only with lands unaffected by the CPs.

Once we transition all of our lands to be governed and administered through our Lands Department, we as a First Nation will move forward with re-addressing the Land Code so as to benefit the whole of the First Nation and for future generations yet to come.

We look forward to meeting with you in February and we wish to thank you for your anticipated cooperation in this process.

Yours truly,

Cadmus Delorme
Chief, Cowessess First Nation



Cowessess First Nation #73

Office of the Chief
Office (306) 696-2520
Facsimile: (306) 696-2767
E-mail: Chief.Delorme@cowessessfn.com

October 10, 2017

TO: Citizens, Cowessess First Nation

Re: All Lands Under Lands Department

The Cowessess First Nation is proud of the land we continue to occupy and provide growth opportunities for citizens today and future generations. One of the biggest assets of our First Nation is of course our land base. In order for our First Nation to progress forward in the future, both economically and socially, the sound financial management and operation of our land base is critical to our overall growth as a First Nation. On behalf of all citizens, the Chief & Council have made significant progress in managing lands through our Cowessess First Nation Lands Department.

Decision Made

Beginning effective January 2018, all lands leased for agriculture and ranching purposes on the Cowessess First Nation will be required to be registered directly with the First Nation's Lands Department utilizing Indian Act Section 28(2) Agriculture and Grazing Permits, as entered into between the Her Majesty the Queen in Right of Canada and the proposed permittee. This includes the lands included on the original Cowessess Reserve along with all lands which have been purchased and added to reserve status through Treaty Land Entitlement (which was approved by Council by way of Band Council Resolution # *2017/2018-114*).

Progressing Forward

The Lands Department staff look forward to working with those individuals wishing to lease lands on the First Nation. Cowessess citizens seeking to lease and operate land will have support from the Lands Department. All lands permitted will be done at fair market value. Any offer to lease or permit lands will go through the Cowessess First Nation Lands Department and a Section 28 (2) permit will be provided. This process has been successful with land purchased through our Treaty Land Entitlement and we are confident it will work with the original land base as well.

From a governance perspective, our ultimate goal will be to eventualy ratify and implement our own Cowessess Lands Act. This is not an easy task, but the focus will remain to achieve this one day at a time. From now until the end goal, centralizng all land through the Lands Department will lead to potentially ratifying a Lands Code which will allow us as a First Nation to participate in the First Nations Lands Management Act thereby bringing us even closer to implementing our own land authorities and administration. Finally, incorporating the Lands Department to run as a business will provide ultimate return on investment for us as a First Nation.

From a business perspective, the second greatest asset (our citizens being our first) is the amount of land our First Nation currently possesses. We have an existing land base of over 105,000 acres of land and still growing. As a First Nation we have the opportunity to utilize our lands to establish farming operations and other business opportunities that would create jobs and bring economic livelihood to our First Nation. Along side our band businesses, any citizen seeking to utilize land will also have the opportunity to lease land and become entrepreneurs.

Honouring the Past

In order to move forward, we cannot forget the current and past citizens for some of the work that they provided in farming our reserve land. As time progressed, the community membership acknowledged that certain properties were being farmed by families or individuals. Community recognition of such farming practices was recorded through Band Council Resolution until the early 1990s. Farming became a new way of life of our ancestors in the 1880s and, until the 1980s, it was a direct economic drive for certain families. Today, there are almost no more families with assets to farm land. Over the last few decades, most of the land on the original reserve has been privately leased by certain citizens to non-citizen farmers with the citizens receiving payment directly to themselves. The First Nation did not receive anything.

In January 2017, a meeting occurred where the 27 individuals who were privately leasing lands directly to non-citizen farmers were invited to attend. The issues relating to the direct leasing of lands to non-citizen farmers was discussed. Further, in February 2017, a community meeting occurred at which time the issues were discussed openly with the band membership. Meetings were also held with the Lands Committee along with the five non-citizen farmers who were leasing lands directly from certain citizens. The following were common opinions that were expressed by members at these meetings:

1. Make the process fair, do to one, do to all;
2. Prepare governance and opportunities for future generations;
3. Bring a collective sense to the land while empowering ones to utilize the land.

Honoring these important considerations and the opinions expressed by the members, and to facilitate the transition into full legal leasing and control of our land base, the decision was made by Chief and Council to provide for 2018 a final Land Improvement Fee of $20 per acre to those citizens who had previously engaged in farming operations (which was approved by Council in *Motion #2017/2018-172*).

This payment will honour those past citizens and their families who previously engaged in farming operations and to recognize that certain improvements may have been completed by individuals in relation to the lands. Similarily, all past payments received by the citizens who were directly leasing lands to the non-citizen farmers was also taken into account in determining this improvement payment.

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Net Profit for All Citizens

Profit generated from land leases are accounted through the Reserve and Lands Environment Management Program (RLEMP) where it is deposited into a Revenue Account in Ottawa. To retrieve dollars, accountability is utilized through a Band Council Resolution (BCR) with direction given on where the money will be utitlized. The money generated will be put towards *training delivery, overhead and equipment, professional fees, unfunded Senior and Recreation services.*

As we finalized this past situation, we look forward to seeking even more opportunties for citizens today and yet unborn. There was always a collective sense of territory based on Cowessess Nation. We will now focus on strengthening advisory departments, institutions, legal templates to follow and the Inherent Right to provide *pimacihowin,* which is a Cree term meaning making a living in today's realization of our First Nation's Treaty relationship. Chief and Council will continue to empower the 2016 Cowessess First Nation Strategic Plan and refocus the Nation's energy on building societies that work-economically, socially, culturally and politically. The critical change required in the development conversation is a shift away from blame and away from the expectation of outside help. The decisions that we make today will help to ensure that the lands and resources of our First Nation are managed for the community as a whole and will allow us to progress forward economically as a First Nation.

Yours truly,

Cadmus Delorme
Chief, Cowessess First Nation

Cadmus Delorme
P.O. BOX 100 • COWESSESS, SASKATCHEWAN • S0G 5L0

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-625-18
STYLE OF CAUSE:	GARY W. PELLETIER AND GORDON D. LERAT v CADMUS DELORME, CURTIS LERAT, CAROL LAVALLEE, BONNIE LAVALLEE, LIONEL SPARVIER, RICHARD AISCAICAN, PATRICIA SPARVIER, MALCOLM DELORME, AND JONATHAN Z. LERAT
PLACE OF HEARING:	REGINA, SASKATCHEWAN
DATE OF HEARING:	APRIL 8, 2019
JUDGMENT AND REASONS:	FAVEL J.
DATED:	DECEMBER 13, 2019

APPEARANCES:

Stephanie Lavallee Mark Ebert	FOR THE APPLICANTS
W. Allan Brabant Rival Farrell Racette T. Joshua Morrison	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Semaganis Worme Legal Barristers & Attorneys-At-Law	FOR THE APPLICANTS
Brabant & Company Law Office MLT Aikins LLP	FOR THE RESPONDENTS