

Federal Court



Cour fédérale

**Date: 20100330**

**Docket: T-966-08**

**Citation: 2010 FC 342**

**Ottawa, Ontario, March 30, 2010**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**BERNADETTE DUMAIS**

**Applicant**

**and**

**FORT MCMURRAY NO. 468 FIRST NATION  
AND ALBERT CREE**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] Ms. Bernadette Dumais is a member of the Fort McMurray First Nation (FMFN) and a former band councillor. She ran for the office of Chief at an election held in April 2008, but lost in a close vote. Ms. Dumais maintains that there were serious problems with the election. In particular, she submits that the list of electors was not posted in accordance with the FMFN's election regulations. In addition, she suggests that there were suspicious circumstances surrounding the election which caused her to believe that supporters of the persons elected at the time were receiving favours in return for their support.

[2] On these grounds, Ms. Dumais challenged the results of the election. An Appeal Committee dismissed her appeal. The Committee found that there was insufficient evidence to support Ms. Dumais' allegations. Ms. Dumais now argues that the Committee erred in failing to set aside the results of the election. However, I can find no grounds for overturning the Committee's decision and must, therefore, dismiss this application for judicial review.

## II. Issues

[3] There are two issues:

1. What standard of review applies to the Committee's decision?
2. Did the Committee err in law or in its fact-finding when it dismissed Ms. Dumais' appeal?

## III. Analysis

### A. *What standard of review applies to the Committee's decision?*

[4] The appropriate standard of review to be applied to the decision of an appeal committee was addressed by Justice Eleanor Dawson in *Giroux v. Swan River First Nation*, 2006 FC 285. She

concluded that the appropriate standard is correctness in relation to interpretations of the law and patent reasonableness in respect of fact-finding. After that case was decided, the Supreme Court of Canada rendered its decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. The Court held that there are two possible standards of review: correctness and reasonableness. Patent unreasonableness is no longer applicable. Accordingly, the standard applicable to the Committee on questions of law should be correctness and, in respect of fact-finding, reasonableness. I note that the Federal Court of Appeal came to the same conclusion regarding decisions of a band council in *Martselos v. Salt River Nation #195*, 2008 FCA 221, para. 28.

B. *Did the Committee err in law or in its fact-finding when it dismissed Ms. Dumais' appeal?*

(a) Alleged Error of Law

[5] Ms. Dumais argued before the Committee that the list of electors was not posted in compliance with the FMFN Customary Election Regulations. The Regulations require that the first list be posted 21 days before the election (s. 6.1). The second list must be posted 12 days before the election (s. 8.1). Ms. Dumais argued that the second list was not posted until April 16, 2008 and should have been posted on April 14, 2008. Ms. Dumais also maintained that the second list was not posted in a public place as required by the Regulations (ss. 6.1, 8.1).

[6] The Committee found that the list of electors was posted in keeping with the Regulations. The election took place on April 28, 2008. The uncontradicted evidence showed that the first list

was posted on March 28, 2008, well before the 21-day deadline. The second list was posted on April 16, 2008, exactly 12 days before the election, as the Regulations require. The first list was posted at the Band Store, the Band Administration Building and the Health Centre, all public places. The second list was posted at the Band Store and the Band Administration Building, although the latter was closed. In any case, the list clearly was posted publicly, in accordance with the Regulations.

[7] I can see no misinterpretation of the Regulations by the Committee.

(b) Alleged Errors in Fact-finding

[8] Ms. Dumais suggests that the Committee made two errors of fact. First, the Committee failed to find that some ineligible voters had been allowed to cast ballots in the election and some eligible voters were denied that opportunity. Second, the Committee failed to conclude that there was evidence of corrupt practices surrounding the election.

[9] Much of the evidence supporting these submissions is contained in Ms. Dumais' affidavit, filed on this application for judicial review. FMFN points out that this evidence was not before the Committee. Further, the affidavit contains a good deal of hearsay, the reliability of which is unknown. The affidavit also contains argument and speculation.

[10] It is difficult to know what evidence was before the Committee because there is no record. However, Ms. Dumais did make written submissions to the Committee outlining her concerns. Those submissions are very brief and do not include references to the vast array of information contained in her affidavit supporting this application for judicial review. Yet, they summarize the issues Ms. Dumais put before the Committee and the information on which she was relying. I must consider whether the Committee's conclusions were reasonable light of what appears to have been put before it, not the more expansive record that is before me.

[11] Regarding improprieties in voting, Ms. Dumais has not provided evidence, even on this application, to support her allegations. Before the Committee, she raised concerns about amendments to the voters list and the availability of statutory declarations on election day for those who were not on the list. The Committee found that statutory declarations were available at the polling station, and that one elector had sworn one. It also found that the Electoral Officer turned away some prospective voters based on her interpretation of the residency requirement in the Regulations, and allowed some people to vote based on verbal information they provided. I can see nothing unreasonable about the Committee's conclusion. The Electoral Officer appears to have properly performed her role as described in the Regulations (s. 8.8).

[12] As for alleged corrupt practices, the Committee stated that "no evidence was adduced at the hearing that supports the allegation". In her written submissions to the Committee, Ms. Dumais stated that she intended to present to the Committee records of improper payments. It does not appear that she did so. The Committee went on to say that, if there was evidence available to

support the allegations of corruption, it should be presented to the proper authorities, not the Committee. Ms. Dumais suggests that the Committee was abdicating its supervisory role. I do not read the Committee's decision as a refusal to perform its mandate. Rather, given that the Committee had not been given any evidence, it merely suggested that, if evidence was available to support Ms. Dumais' allegations of corruption, it should be presented to proper authorities, presumably the police. Again, I can see nothing unreasonable about the Committee's conclusion.

#### IV. Conclusion and Disposition

[13] The Appeal Committee did not err in finding that the FMFN electoral lists were properly posted. Its conclusion was not unreasonable that Ms. Dumais' allegations, both of impropriety in voting procedures and of corrupt practices, were unsupported by the evidence. Accordingly, I must dismiss this application for judicial review, with costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed with costs.

“James W. O’Reilly”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-966-08

**STYLE OF CAUSE:** DUMAIS v. FORT MCMURRAY NO. 468 FIRST NATION, ET AL.

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** November 17, 2009

**REASONS FOR JUDGMENT AND JUDGMENT:** O'REILLY J.

**DATED:** March 30, 2010

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