

Federal Court



Cour fédérale

Date: 20151209

Docket: T-58-15

Citation: 2015 FC 1369

Ottawa, Ontario, December 9, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MONTANA FIRST NATION

Applicant

and

SANDRA PEIGAN AND BRADLEY RABBIT

Respondents

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [Act] for judicial review of a decision of the Montana First Nation Appeal Board [Appeal Board], dated December 18, 2014 [Decision], which deemed invalid and set aside the results of a by-election held October 29, 2014 [By-election].

II. BACKGROUND

[2] Montana First Nation is a band within the meaning of s 2 of the *Indian Act*, RSC, 1985, c I-5.

[3] In October 2013, Montana First Nation updated its election laws from its 1990 *Montana Tribal Council Regulations* to the *Montana Election Law* [*Election Law*] and created the *Draft Regulations on the Election Process and Conduct of Members of Council* [*Regulations*]. The *Regulations* were meant to provide guidance to Council, and were distributed to its members. They were approved by Chief and Council, but were never ratified by, or distributed to, the membership at large.

[4] Montana First Nation held a general election, applying the new *Election Law*, on October 7, 2014. Two candidates for councillor, Randall Potts and Cody Rabbit Sr., had criminal records, but contended that the *Regulations* allowed them to run, as they had not been convicted in the past five years. Their nominations were approved by the Band's Electoral Officer.

[5] The Respondent, Sandra Peigan, advised the Acting Band Manager that improper nominations for councillor had been accepted. Following consultation with legal counsel, the Acting Band Manager indicated to the Electoral Officer that, given that the *Regulations* were only in draft form, the *Election Law* would take precedence over them. The Electoral Officer then opted to not apply the *Regulations*, and rescinded the candidacies of Messrs. Randall Potts and Cody Rabbit Sr.

[6] A new Chief and Councillor, Darrell Strongman, as well as three other councillors, were elected in the October general election. The Chief immediately resigned his councillor position to act as Chief and the Electoral Officer called a By-election to fill the Council seat vacated by Chief Strongman.

[7] Four appeals were submitted following the By-election, alleging violations of the *Election Law*. These appeals centered on candidate eligibility (specifically in regards to the Criminal Record Check), conflicts between the *Election Law* and the *Regulations*, the nomination procedure, and irregularities with voting procedure and tallying. The appeals were heard before the Appeal Board on November 7, 2014.

[8] The By-election was held on October 29, 2014, with five candidates running for the vacant councillor position, including each of the Respondents. Mr. Bradley Rabbit was elected to the position with 80 votes.

III. DECISION UNDER REVIEW

[9] In its December 18, 2014 Decision, the Appeal Board deemed the results of the By-election of October 29, 2014 invalid and set them aside. The Appeal Board considered each of the four appeals alleging violation of the *Election Law* in turn.

A. *First Appeal*

[10] The first appeal alleged that there was a violation of the *Election Law* that may have affected the result of the By-election, because there is no procedure governing the election of a candidate for two positions; or there was an irregularity in the voting process that may have affected the result of the By-election.

[11] In terms of a violation of the *Election Law*, the Appeal Board stated that the By-Election affected the results that would have otherwise occurred at the general election. The Appeal Board highlighted two mistakes: the order in which the ballots for Chief and for councillor were counted; the restriction of the By-election candidates list to the general election candidates.

[12] As regards the first mistake, the Appeal Board said that if the ballots for Chief were counted first, Chief Strongman would have resigned or withdrawn from the councillor position producing different elections results, or, if he did not resign until the appeals process, then a by-election would be the proper course to follow.

[13] The Appeal Board went on to find that procedural unfairness would result from allowing other Montana First Nation members to run for the position of councillor when two candidates who met the criteria and paid their fees for the initial election already exist. Alternatively, had the initial appeal period passed and the current Chief and Council decided that s 13 of the *Election Law* was the procedure to be followed, s 13.1 would be triggered and a by-election would be prompted.

[14] The Appeal Board addressed alleged voting process irregularities by stating that, while there are no sections in the *Election Law* that stipulate how the ballots should be counted, s 13 of the *Regulations* indicates that ballots for the position of Chief are to be counted first. It is “questionable” whether Chief Strongman was a “member of Council” as he technically held two positions that required waiting until the appeal period has passed before he officially “entered into” either. Therefore, much of this matter turns on whether s 13 applies.

[15] Section 13 contemplates four situations in which a by-election may be triggered: (1) to break a tie; (2) when a member of Council resigns; (3) when a member of Council dies; and (4) when a member is otherwise caused to vacate office. Only sections 2 and 4 are relevant here.

[16] The Appeal Board stated that scenario 2 may not apply as Chief Strongman was technically not yet a member of Council when he withdrew from that position. Scenario 4 also presupposes that the candidate is a member of Council which, given that the appeal period had not yet completed, is a position that Chief Strongman did not yet hold.

[17] Therefore, in terms of the first subject of appeal, the Appeal Board affirmed that a violation of the *Election Law* occurred, and that there was an irregularity in the voting process that resulted in the activation of s 13.

B. *Second Appeal*

[18] The second appeal, similar to the first, appealed whether a by-election was necessary when two viable candidates were affected by Chief Strongman’s “dual win.” The Appeal Board

said that there were challenges to the principles of fundamental justice resulting from the fact that the appeal period had not yet passed. This violated the *Election Law* and caused irregularities in the voting process. Additionally:

[t]he application of [the *Election Law*] and [the *Regulations*] has resulted in miscommunication for candidates. The Council Regulations did stipulate that the Office of Chief ballots were to be counted first, therefore the withdrawal of candidacy of Mr. Strongman would have seen a council elected from the October 7 pool of candidates.

Therefore, the Appeal Board concludes, there was an irregularity in the voting process that led to the application of s 13.

C. *Third Appeal*

[19] The third appeal was based on irregularities related to candidate eligibility criteria concerning severance packages. Its dismissal by the Appeal Board is irrelevant to this judicial review.

D. *Fourth Appeal*

[20] The fourth appeal addressed alleged voting irregularities and whether the decision to hold a by-election violates s 14 of the *Election Law*, as no candidate begins to hold office until the day following an election. The Appeal Board held that, as concluded in the other appeals:

...there was a pre-emptive withdrawal by Mr. Strongman prior to the commencement of office and prior to the completion of the appeals process that may have impacted the voting selection of councillor in the October 7, 2013 Montana Band Election. Alternatively, there should be stipulations in the [*Election Law*]

that call for ‘run offs’ for current elections as opposed to relying on Section 13 By-elections.

[21] The Appeal Board stated that there has been confusion in separating the *Election Law*, the *Regulations*, past practices and the 1990 *Montana Tribal Council Regulations* (which calls for reviews and community consultation).

[22] The Decision effectively overruled the decision of the Electoral Officer that a by-election had been triggered. It set aside the results of the By-election and held that a run-off election should be called with only Ms. Peigan and Candace Buffalo, another of the original five candidates, being permitted to run. The Decision also indicated that, given that Ms. Buffalo intended to withdraw her candidacy, Ms. Peigan was acclaimed and a new election would not be necessary.

IV. ISSUES

[23] The Applicant has raised the following issues:

1. Does the Decision lack procedural fairness?
2. Did the Appeal Board act beyond its jurisdiction?
3. Did the Appeal Board err in its interpretation of the *Election Law* and/or the *Regulations*?

V. STANDARD OF REVIEW

[24] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where

the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[25] The standard to be applied to the first issue is that of correctness: *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at para 43 [*Khosa*]; *Baker v Canada (Minister of Immigration)* [1999] 2 SCR 817 at para 22.

[26] *Dunsmuir* and subsequent jurisprudence have demonstrated that questions of true jurisdiction are narrow and arise infrequently: above, at para 59; *Tan v Canada (Attorney General)*, 2015 FC 907 at paras 37-39. To determine if it had jurisdiction to hear a complaint, the Appeal Board first had to interpret the *Election Law*. Unless a situation is exceptional, the interpretation of a tribunal of a home statute or one closely connected to its function, will be presumed to be a question of statutory interpretation, subject to deference and reviewable on the reasonableness standard: *ATA v Alberta (Information and Privacy Commissioner)*, 2011 SCC 61 at para 34; *B010 v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 58 at para 25. Therefore the second and third issues will be reviewed under a standard of reasonableness.

[27] Under the standard of correctness, deference will not be shown to the decision-maker by the reviewing court. Rather, the Court must be occupied by the question of whether the tribunal's decision was correct: *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100.

[28] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir*, above, at para 47; *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

VI. STATUTORY PROVISIONS

[29] The following provisions of the *Election Law* are applicable in this proceeding:

Section 12 – Election Appeals

12.1 Any candidate may appeal the results of an election within thirty (30) days of the date of the election on the grounds that there has been:

- a. a violation of this law that may have affected result of the election, or;
- b. an irregularity in the voting process

12.2 Notice of Appeal shall be made in writing setting out the particulars of the alleged violation or irregularity, and shall be sent by registered mail or personally delivered to the Electoral Officer, who shall provide a written receipt of the Notice Appeal to the candidate.

12.3 On receipt of a Notice of Appeal, the Electoral Officer shall immediately notify the Council and the Appeal Board and the Appeal Board and forward all ballots in their possession, together with the Electors List and any other relevant documentation to the Appeal Board.

12.4 Within seven (7) days of receipt of the Notice of Appeal, the Appeal Board shall:

- a. hold an Appeal on the issue or issues raise, or;
- b. conduct an investigation of the matter or issue alleged.

[...]

Section 13 – By-Elections

13.1 If an election is held to break a tie vote, or a member of Council resigns, deceases or is otherwise caused to vacate office, a by election for such vacant position shall be held no later than thirty (30) days after the date on which the position became vacant, or on such other date as determined by Council to be in the best interests of the Band.

13.2 The candidate receiving the greatest number of votes in a by-election for a vacant position shall serve only for the remainder of the term in office.

[...]

Section 14 – Commencement of Office

14.1 Subject to section 14.2, where the position of Chief or Councillor is filled by election or acclamation, the successful candidate shall commence office on the day following the election.

14.2 If an Appeal of the election or acclamation is commenced, the individual holding the office to which the Appeal relates shall cease to perform the duties associated with the office until the Appeal process is completed and resolved.

VII. ARGUMENTS

A. *Applicant*

(1) Procedural Fairness

[30] The Applicant submits that the By-election appeal process lacked procedural fairness by denying the Applicant and others adequate notice and an opportunity to be heard.

[31] The Applicant states that the Decision was quasi-judicial. As such, the parties affected should have had the opportunity to make representations before the tribunal, and receive proper notice allowing them to do so: *Supermarchés Jean Labrecque Inc v Quebec (Tribunal du travail)*, [1987] 2 SCR 219 at 146-177. In the present circumstances, this did not occur. Montana First Nation was never invited to participate. Mr. Rabbit was not advised of the details of the hearing, and other candidates in the By-elections, Sheila Potts and Patti-Currie-Beebe, were not even aware of the hearing until after it occurred.

[32] The Applicant submits that the contents of the Decision make it clear that the Appeal Board relied exclusively on the submissions of the appellants, and so failed to follow the most basic requirements of procedural fairness.

(2) Jurisdiction

[33] The Applicant submits that the Appeal Board went beyond its jurisdiction in hearing appeals brought by ineligible appellants. Section 12.1 of the *Election Law* says that “[a]ny

candidate may appeal the results of an election within thirty (30) days of the date of the election...” Neither Candace Buffalo nor Carolyn Buffalo, both appellants, were candidates in the By-election. While Carolyn Buffalo did run in the general election, she did not run for the position of councillor.

[34] By incorporating into the Decision arguments of individuals not entitled to appeal the By-election, the Appeal Board acted beyond its jurisdiction.

(3) The Interpretation and Application of the *Election Law* and the *Regulations*

[35] The Applicant submits that the Appeal Board erred in its application of the *Election Law* with respect to the grounds of appeal or, alternatively, that its interpretation of the *Election Law* was unreasonable.

[36] Section 12.1 of the *Election Law*, provides that:

Any candidate may appeal the results of an election within thirty (3) days of the date of the election on the grounds that there has been:

- (a) a violation of this law and that may have affected the result of the election; or
- (b) an irregularity in the voting process.

[37] The Applicant says the Decision dwelled too much on the second half of ground (a). It should go without saying that the By-election affected the results of the election, as Mr. Rabbit did not run in the original election; therefore, he could not have won. The real question the Appeal Board should have considered, concerns the second half of ground (a), whether there was a violation of the *Election Law* which is a condition precedent to the application of this section.

[38] The Applicant argues that the Appeal Board looked at the irrelevant question of whether there was procedural fairness in allowing other candidates to enter into the race for Council when they had the opportunity to do so at the first instance in the October 7, 2014 Election. The Appeal Board's conclusion that it would be procedurally unfair to allow other Montana First Nation members to run for councillor when two candidates existed who had paid their fees and met the criteria is unreasonable. Holding an open by-election is not procedurally unfair. Furthermore, the candidates who had already paid for the first election had two opportunities to run, and lost both elections. Procedural fairness does not guarantee anyone a seat on Council.

[39] The Applicant further submits that the Appeal Board's comments that counting ballots for Chief first would have changed the results of the general election - because the Chief would have resigned or withdrawn from the councillor position - is unsupported by the *Election Law*. This is not the case, and it's clear that there was no violation of the *Election Law* because, the Applicant argues:

If the ballots for Chief were counted first and Mr. Strongman resigned as councillor the result would be the same, since he is permitted by the [*Election Law*] to hold both positions and in either case his resignation of the councillor position would trigger a s. 13 by-election for that position. The only way there would be a different result would be if Mr. Strongman, after being elected as Chief, withdrew as a candidate for councillor before being elected, which is not only uncertain but appears to be prohibited by s. 9.3 of the [*Election Law*]: "any candidate may withdraw his/her name from the Candidates List no later than two (2) full days before the election..."

[40] The Appeal Board also considered ground (b) of s 12.1 of the *Election Law*, inquiring into whether there was "an irregularity in the voting process." The Applicant submits that the Appeal Board's conclusion that s 17 of the *Regulations* requires ballots for Chief to be counted

first is an incorrect assessment. First, the *Regulations* should not have been applied as they were never ratified by, or distributed to, the membership. This is why they were not applied by the Electoral Officer. Second, the Electoral Officer was entitled to exercise her discretion as to the ballot-counting order, and the Appeal Board was not entitled to simply substitute its own interpretation.

[41] As regards the Appeal Board's finding that since the Chief was not a member of Council he was not entitled to resign, and therefore the By-election should not have been triggered. The Applicant submits that the Electoral Officer was simply exercising her discretion in the interpretation of the *Election Law* to deal with a situation not contemplated in the statute. The Applicant says that the By-election may not have strictly conformed to the requirements of s 13, but this does not render it invalid: *D'Or v St Germain*, 2014 FCA 28 at para 8.

[42] Section 14 of the *Election Law* reads:

14.1 Subject to section 14, where the position of Chief or Councillor is filled by election or acclamation, the successful candidate shall commence office on the day following the election

14.2 If an Appeal of the election or acclamation is commenced, the individual holding the office to which the Appeal relates shall cease to perform the duties associated with the office until the Appeal process is completed and resolved.

[43] The Applicant submits that the *Election Law* does not contemplate a contradiction between on the one hand, holding the office and temporarily not performing the duties of that office and, on the other, that if an office can be held then it can also be resigned.

[44] In terms of the Appeal Board's alternative conclusion that, after resigning, Chief Strongman would have been rendered ineligible for office as per s 4 of the *Election Law*, the Applicant submits that he could not be characterized, as is required by s 4(k), as a "candidate seeking the position of Chief or Councillor," and as such the requirement that he not have resigned from a Council position is irrelevant. Therefore, Chief Strongman's resignation as councillor would not render him ineligible to hold office as Chief in the same term.

[45] The Applicant submits that, even if Chief Strongman was not permitted to resign until the end of the appeal period, the result would have been the same, and a by-election would have been called as per s 13.

[46] The Applicant comments on the Appeal Board's assertion that there "should" be stipulations in the *Election Law* about run-off elections. Run-off elections are only permitted in ties as per s 11.3, and the Appeal Board is not entitled to decide an appeal based on what it thinks should be in the law.

[47] The conclusions of the Appeal Board that the By-election results should be set aside and that a new "run-off" vote should take place, and that "the remaining candidate" (the Respondents) will be acclaimed, are neither correct nor reasonable and should not be upheld.

[48] The Applicant requests: (a) an order of *certiorari* quashing the Decision; (b) a declaration that the hearing that resulted in the Decision was not procedurally fair; (c) a declaration that the

Decision contains an error in law and/or is unreasonable; and (d) such further relief as counsel may advise and this Honourable Court deems just.

B. *Respondents*

[49] The Respondents did not file written submissions. Only Ms. Peigan appeared and spoke at the hearing of this application.

VIII. ANALYSIS

[50] As the transcript of the September 15, 2015 hearing makes clear, the Court was very concerned about procedural fairness matters in this application and the failure of the Appeal Board to produce a record of its proceedings.

[51] In particular, Ms. Peigan, who has no experience in these matters, had been told in writing by Applicant's counsel that she was not obliged to file materials for the hearing because her arguments were already reflected in the Appeal Board Decision and "therefore will be before the Court." Ms. Peigan wrote back to counsel that she was confused about what she was being told by Applicant's counsel, but the matter was never clarified.

[52] It was totally inappropriate for Applicant's counsel to advise Ms. Peigan that she did not need to file materials. There was no written version of her arguments before the Court and this prevented her from being able to make her full case at the hearing in any meaningful way.

[53] Given the procedural irregularities, the missing Appeal Board record, and the consequences of any further delay, the Court proposed that a viable way forward that would give both sides what they wanted would be to quash the obviously defective Appeal Board Decision under review and return the matter so that a new appeal board could consider Ms. Peigan's complaints. The procedural fairness errors alone render the Decision untenable. To simply quash the Decision would have meant that any irregularities with the By-election process would simply be ignored, which would deprive Ms. Peigan of her rights under the electoral appeal process and deprive the challenged councillors of legitimacy.

[54] This solution was accepted by both sides and the Court indicated orally that this would be its decision. Counsel for the Applicant also suggested that the Court, in its order, should provide directions. Mr. Bailey advised the Court that "it would make good sense to constitute a new Board" from outside the community which would consider the election appeals in a legitimate way.

[55] Mr. Bailey also advised that I should make it clear that the old record would be irrelevant in any new appeal proceedings and that I should direct that the new appeal board keep a record and make it available to all interested parties, which he said "would be of tremendous assistance."

[56] Mr. Bailey also advised the Court that my order "should address Mr. Rabbit's continuing role" because he thought "Ms. Peigan raises a good point" about the fact that Mr. Rabbit, whose position on Council is being challenged, continues to attend Council meetings.

[57] The following excerpt from the transcript of the hearing before me makes clear how this matter was concluded:

JUSTICE: Because if we -- if we go through this process today, I mean, as is the case often, one side is always seriously disappointed by the results or perhaps even both sides are, if I can't produce something, which is constructive, and to simply strike down the Appeal's [*sic*] Board, seems to me doesn't clean up what may be the mess that lies behind the Appeal's [*sic*] Board as well, so that's why I'm discussing this with you.

...

JUSTICE: Well, whatever way that goes, we -- you know, it seems to me the only -- the only way out of this is to -- is to strike a legitimate Appeal's Board [*sic*] and have them hear these appeals.

...

JUSTICE: -- once again that isn't really an issue that I can deal with because it's -- it's not before me. All I can do -- do is to deal with this particular review application.

And, I think, I'm getting a -- some considerable understanding of the problems from Mr. Bailey and Mr. Christoff. Although, they didn't suggest that this remedy was something they wanted, yet nevertheless I don't find them vigorously opposing it.

And in the end, it seems to me, it's the only way to get you what you also want, which is to have your appeal considered by a legitimate Appeal's [*sic*] Board.

So is that something that you can consent to?

MS. PEIGAN: Yes, I will.

JUSTICE: Okay. Anything either of you wishes to say? I mean, what I could do is, I guess, is to craft a consent order. Send it to you both, both sides for any comments and suggestions what could provide me in writing.

But, I think, today we've identified -- I think you've picked up what my concerns are and what my objective is here, So if there -- there are any strenuous objections to going in that direction, let me hear them now. Otherwise I will assume that we're working towards a rehearing of this by a newly constituted Appeal's Board.

MR. BAILEY: I -- think that's going -- a newly constituted Appeal's [*sic*] Board appointed pursuant to the election law by the chief and council.

And, again, I don't -- this is a -- this is a thorny issue. Ms. Peigan has raised it and I think it's a legitimate concern that she raises.

And that is, you know, the -- the -- the uncertainty of Mr. Rabbit's role within the -- you know, the governing body of chief and council.

I think the law states that during an appeal, the -- the elected councillor continues to sit as a councillor, but cannot act as a councillor, if that makes -- makes sense? And I -- I -- maybe we can have some discussion about that, but I think with respect, My Lord, your order should perhaps address that.

JUSTICE: Well, I think if --

MR. BAILEY: If for no other reason, then, to give some direction to chief and council.

JUSTICE: Well, I could -- I think in the order we could point out that particular provision in the bylaw and ask chief and council, look, to consider this in the way you're handling things because, of course, that could become a common issue later in any way -- you know, if this gets back into litigation or whatever, if they have continued to disregard that, then that could be a serious problem from their perspective.

But you're right, to try and give some guidance. That's the way it ought to be pitched, Mr. Bailey. I agree.

MR. BAILEY: Yeah. Yeah, it's as -- because, as I understand your comments earlier, My Lord, the -- the consent order that you're considering does grant the -- relief of certiorari, but orders chief and council to reconstitute a new Appeal Board and hear the appeal of Ms. Peigan.

JUSTICE: That's -- that's what I have in mind.

MR. BAILEY: Yeah.

JUSTICE: But maybe the better way to go about this is to -- is to let you draft the consent order.

MR. BAILEY: Okay.

JUSTICE: You've got a much better feel for the way Montana works than the Court has at this stage, and to run it by Ms. Peigan -

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MR. BAILEY: Yeah.

[58] As the transcript makes clear, the Court reached a conclusion on the application. The decision of the Appeal Board would be set aside and the matter would go back for reconsideration by a different appeal board. The Court would also provide directions on certain matters after further input from Applicant's counsel and Ms. Peigan on appropriate wording. In fact, the Court asked counsel to prepare a draft consent order that would take into account the practicalities of appointing a new appeal board and dealing with the situation of Mr. Rabbit. If there were any problems in this regard then the Court agreed matters could be discussed "by conference call or something like that."

[59] The end result is that the Court reached a decision on the application but gave the parties an opportunity to draft a consent order that would address practicalities to their mutual satisfaction. Failing agreement on practicalities, the Court would simply draft its own order.

[60] Having been given the opportunity to make drafting suggestions, the Applicant subsequently recanted and asked for the hearing to proceed and the Court to order the Appeal Board to produce its record. This cannot occur; the hearing has taken place. The Court is *functus* as regards the principal decision. The application is allowed but the matter is returned for reconsideration by a differently constituted appeal board who will hear and deal with Ms. Peigan's appeal in accordance with the directions of the Court. The only matter that remained to be decided was the precise wording of the directions, and the formulation of the order. The Court made its conclusions clear and both sides were in agreement. The fact they may have now decided not to agree makes no difference to the Court's conclusions which are set out in the

transcript. The Court made a decision but allowed that a conference could be held if the parties could not agree on the drafting they wanted to see in the order, to deal with the appointment of the new appeal board and the continuing role of Mr. Rabbit.

[61] Both the Applicant and Ms. Peigan have subsequently provided the Court in writing their respective suggestions for wording that should be contained in the Court's order. The Court has considered these suggestions.

[62] The Applicant has also acknowledged that the effect of s 14.2 of the *Election Law* requires that "the individual holding office to which the Appeal relates shall cease to perform the duties associated with the office until the Appeal process is completed and resolved." The Applicant and Mr. Rabbit have both affirmed that they will comply with s 14.2 of the *Election Law* pending the outcome of Ms. Peigan's appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed and the decision of the Appeal Board is quashed;
2. The matter of the By-election appeal is returned for reconsideration by a differently constituted and duly appointed appeal board;
3. On or before January 8, 2016, the Chief and Council of the Montana First Nation shall appoint a new appeal board pursuant to the *Election Law* to hear and decide the issues and grounds set out in the appeal of Ms. Sandra Peigan;
4. The new appeal board shall render its decision within 30 days of its appointment. The Chair of the appeal board is directed to maintain a full record of its proceedings and to provide a copy of that record to the parties in the event of judicial review of that appeal board's decision;
5. The duly appointed appeal board will observe all rules of procedural fairness and apply the law applicable to the appeals at issue. The appeal board will seek legal advice where necessary.
6. In accordance with s 14.2 of the *Election Law*, unless and until the appeals are reconsidered, Mr. Bradley Rabbit will have no authority to act as a councillor and will cease to perform the duties of councillor; and,
7. No costs are awarded to either party.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-58-15

STYLE OF CAUSE: MONTANA FIRST NATION v SANDRA PEIGAN AND
BRADLEY RABBIT

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: SEPTEMBER 15, 2015

ORDER AND REASONS: RUSSELL J.

DATED: DECEMBER 9, 2015

APPEARANCES:

Michael J. Bailey
Aaron Christoff

FOR THE APPLICANT

Sandra Peigan

ON HER OWN BEHALF

SOLICITORS OF RECORD:

Maurice Law
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Calgary, Alberta

FOR THE APPLICANT