

Federal Court



Cour fédérale

Date: 20260410

Docket: T-3359-24

Citation: 2026 FC 482

Ottawa, Ontario, April 10, 2026

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**POUNDMAKER CREE NATION, CHIEF
DUANE ANTOINE, COUNCILLOR
MARLENE CHICKENESS, COUNCILLOR
LEON ANTOINE, COUNCILLOR NORMAN
CHECKOSIS AND COUNCILLOR LESTER
FAVEL**

Applicants

and

**DARLENE STONESTAND, DEANNE
KASOKEO AND KAYLIN SEMAGANIS**

Respondents

JUDGMENT AND REASONS

[1] The Applicants, the Poundmaker Cree Nation [PCN], Chief Duane Antoine and Councillors Marlene Chickeness, Leon Antoine, Norman Checkosis and Lester Favel [Individual Applicants], seek judicial review of the November 18, 2024, decision made by the Poundmaker Cree Nation election appeal tribunal [Election Appeal Tribunal or Tribunal] which, among other

things, overturned the results of the May 22, 2024, PCN election and directed that a new election be held for Chief and for all of the Council positions.

[2] For the reasons that follow, I am granting this application for judicial review. The decision was unreasonable, procedurally unfair and biased.

Background

[3] The Individual Applicants were elected to the offices of Chief and Council on May 22, 2024 [2024 Election]. That election was administered according to the draft Poundmaker Cree Nation Band Custom Election Regulations, 1998 [1998 Election Regulations] by the Chief Electoral Officer [CEO], Loretta Pete Lambert.

[4] In accordance with the 1998 Election Regulations, a nomination meeting for the election was held on May 15, 2024, which meeting was presided over by the CEO (paragraph 6(c)(ii)). The 1998 Election Regulations also require that, at the nomination meeting, the eligible band members in attendance are to select a tribunal by nomination. Further, that the tribunal shall hear appeals of elections and shall have the final authority on appeal hearings and/or investigations (paragraphs 6(viii) and (x)). At the nomination meeting, three band members, Marie Adam, Lester Bugler and Sharon Baptiste, were appointed to the Election Appeal Tribunal.

[5] After the 2024 Election, appeals were submitted to the Election Appeal Tribunal.

[6] The Applicants' evidence is that on or about June 18, 2024, the Individual Applicants became aware of at least two appeals. Subsequently, they became aware that there were up to three more appeals. However, the Election Appeal Tribunal refused or failed to provide copies of the appeals or any documents in relation to the appeals to the Individual Applicants, did not meet with them, apprise them of the case against them or afford them an opportunity to respond to the allegations against them.

[7] On November 18, 2024, the Election Appeal Tribunal issued its decision. In the decision it stated that, pursuant to subsection 7(g) (of the 1998 Election Regulations), it was ordering a new election for all Chief and Council positions. It further ordered, among other things, that the Chief and Council members must immediately leave office; with respect to the next election, that RCMP Criminal Record and Vulnerability Checks are mandatory for all candidates to establish eligibility; that Chief Antoine was banned from future elections due to his criminal record; and, that the Election Appeal Tribunal strongly recommended that Darwin Kasokeo, Brandon Favel and Marlene Chickeness be ineligible as candidates in future elections.

[8] The Applicants filed their Notice of Application for Judicial Review on November 29, 2024.

[9] On December 16, 2024, the Applicants filed a motion seeking an interlocutory injunction staying the decision of the Election Appeal Tribunal. On April 7, 2025, the Applicants filed a motion to amend the Notice of Application for Judicial Review and the Notice of Motion for an interlocutory injunction.

[10] On December 12, 2024, Justice Go granted an interim injunction staying the Election Appeal Tribunal's decision until the Applicants' Motion for an Interlocutory Injunction was heard.

[11] At a case management conference held on February 24, 2025, the attending members of the Election Appeal Tribunal informed Associate Judge Coughlan that the appeals submitted to the Election Appeal Tribunal were brought by Darlene Stonestand, Deanne Kasokeo and Kaylin Semaganis.

[12] On June 2, 2025, Justice Go granted the Applicants' motions for an interlocutory injunction and to amend the style of cause (*Poundmaker Cree Nation v Stonestand*, 2025 FC 991 (CanLII) [Injunction Decision]). That order stayed the Election Appeal Tribunal's decision until the Court's disposition of the underlying Judicial Review Application and changed the named respondents from "Poundmaker Cree Nation Election Tribunal 2024, Lester Bugler, Sharon Baptiste, Delainee Antoine-Tootoosis, and Loretta Pete Lambert, Chief Electoral Officer" to "Darlene Stonestand, Deanne Kasokeo, and Kaylin Semaganis." The Applicants filed an amended Notice of Application reflecting the amended named Respondents on June 26, 2025.

[13] I note in passing here that at the hearing of the interlocutory injunction, the Election Appeal Tribunal and the members of that Tribunal took no position on the interlocutory injunction and provided no evidence in response to the Applicants' submissions (Injunction Decision at para 42). They did assert that they were improperly named as respondents. Justice Go noted that the Applicants had explained, as they had at a case management meeting, that they

had not received documentation from the Election Appeal Tribunal relating to the appellants and, as the Attorney General for Canada was not an interested party, the Applicants had no other parties available to be named as respondents. It was only at the request of the Case Management Judge that Ms. Sharon Baptiste, an Election Appeal Tribunal member, provided the names of the individuals who filed the appeals that were the basis for the judicial review (Injunction Decision at paras 53, 55).

[14] On October 9, 2025, a certified tribunal record [CTR] was filed by Ms. Baptiste certifying that the attached materials are true and complete copies of the materials related to the decisions at issue in this proceeding.

[15] By direction dated October 31, 2025, the Case Management Judge noted that the Respondents had not served and filed Notices of Appearance and, therefore, that they had waived any right to participate in this application for judicial review. The Case Management Judge directed the Applicants to file their application record by December 19, 2025 (subsequently extended to December 29, 2025) and a requisition for hearing by January 9, 2026. The Applicants did so and a scheduling order was issued on March 18, 2026. The Respondents have not subsequently sought to participate in the hearing of this application for judicial review. In the result, the only record before the Court is the Applicants' Record (which includes the CTR) and the only party arguing before me is the Applicants.

Decision Under Review

[16] I will reproduce the Election Appeal Tribunal's decision here, in whole (excluding appendices):

WITHOUT PREJUDICE

1. Introduction

The Election Tribunal of Poundmaker Cree Nation (PCN) was established by members on May 15, 2024, in accordance with the PCN Band Custom Election Regulations 1998 (Appendix A). This tribunal conducted a thorough investigation of appeals regarding the May 22, 2024, election, finding substantial evidence of irregularities and misconduct that impacted both the overall election and specific individuals.

2. Jurisdiction and Authority

As authorized by Section 6(e)(x) of the PCN Band Custom Election Regulations 1998, the Tribunal holds final authority in matters of appeal hearings and investigations.

3. Findings of Fact

Voter's List Irregularities

1. **Unauthorized Additions to Membership:** Individuals were added to the band membership and voter's list without the band membership's knowledge or approval, affecting voter eligibility.

2. **Incomplete Voter Information:** Essential voter information, such as birthdates, was missing, complicating identity verification,

3. **Restricted Access to Updated Lists:** Candidates were not given the updated voter's list during the nomination process, limiting transparency.

Chief Electoral Officer (CEO) Concerns

4. **Selection Without Band Member Input:** The CEO, Loretta Pete Lambert, was appointed by the sitting Chief and Council without membership input, raising concerns

about impartiality (Violations: Section 6(a), Section 6(e)(viii)).

5. Non-Band Members in Key Roles: Under PCN custom, the CEO, Deputy, and Polling Clerk should be band members (Violation: Section 6(c)(x)).

6. Use of Outdated Election Code: The election was conducted using the 1998 Code, despite a ratified 2014 Regulation intended to govern the election.

7. Intoxicated Voters Assisted in Voting: Visibly intoxicated voters received assistance from election officers, violating secret ballot provisions (Violations: Section 6(h), Section 6(i)(ii)).

8. Tampered Election Code: The 1998 Code showed signs of tampering, with sections altered or missing (see Appendix B).

9. Eligibility Violations: Individuals with indictable offenses were permitted to run, breaching PCN's election code standards (see Appendix A; Violation: Section 10(a)).

10. Failure to Provide Election Notice: The CEO failed to issue a 30-day election notice to all members, affecting urban members' ability to vote (Violations: Section 6(a), Section 6(d)).

Ballot and Conduct Concerns

11. Ballot Count Discrepancies: Variances between scrutineer and final counts cast doubt on vote accuracy.

12. Conflict of Interest by Election Officers: Close relationships between certain election officers and candidates raised impartiality concerns.

Tribunal Process Issues

13. Non-Transparent Tribunal Appointments: Initial tribunal members were selected by the sitting Chief and Council without member input (Violation: Section 6(e)(viii)).

14. Restricted Access to Facilities: The Tribunal was barred from community facilities, impacting public access,

15. Lack of Compensation for Tribunal Duties: Lack of compensation hindered tribunal members' ability to fulfill their roles.

Urban Member Accessibility

16. Lack of Urban Polling Stations: Absence of polling locations for urban members limited their participation.

Chief and Council Misconduct

17. Improper Use of Band Resources: Band-owned vehicles were used for personal purposes during voting hours (Violation: Section 10(a)).

18. Unethical Office Access: Former council members continued accessing the band office during the campaign period.

19. Failure to Resign Prior to Campaigning: According to PCN's HR manual, candidates seeking office must resign from any current positions.

20. Alleged Bribery: Reports indicate that trips, housing, and payouts were promised to sway votes.

21. Ballot Confusion Due to Spelling Errors: Errors, such as inconsistent spellings of names, led to confusion on ballots.

22. Defamation and Slander: Defamatory statements about candidates were publicly posted on the PCN Administration's Facebook page, and complaints were filed with the law society (see Appendix D).

23. Fiduciary Violations: Certain candidates abused their fiduciary duty to the band (Violation: Section 10(a)).

4. Order / Directives

Pursuant to Section 7(g) of the 1998 Regulations, **we order a new election for all positions** due to extensive procedural breaches and potentially criminal violations that compromised the integrity of the election. **This Order, directed to all Poundmaker Cree Nation Members and the Government of Canada, represents the final decision regarding this election**

5. Conclusion and Recommendations

We share collective responsibility for the future of our nation. Transparency and fairness for all members is our goal as we seek to restore integrity in our community and elections.

Therefore, we order that:

- **The current Chief and Council members must leave office Immediately.**
- The Government of Canada needs to step in and maintain essential services.
- **Emergency Band Meetings will take place via Zoom until Members choose a date for the next Nominations and Election.**
- *Meeting notices will be shared by word of mouth and social media.*
- We need everyone's help!! **Share all notices with every member you know!**

Regarding the next election, we advise Membership:

- **RCMP Criminal Record and Vulnerability Checks** are mandatory for all candidates to establish eligibility under Section 10(a) (no indictable convictions).
- **Duane (Dwayne) Antoine is banned from future elections due to his criminal record.**
- The tribunal strongly recommends that **Darwin Kasokeo, Brandon Favel, and Marlene Chickeness** be ineligible as candidates in future elections due to allegedly coordinated efforts to impact the fairness of this election and reported misconduct, including failure to resign, bribery, defamation against candidates, and fiduciary duty violations.

Respectfully,

Poundmaker Cree Nation Election Tribunal Members

(emphasis original)

[17] The Decision is signed by Lester Bugler, Sharon Baptiste and Delainee Antoine-Tootoosis.

Issues and Standard of Review

[18] In my view, the issues raised by the Applicants can be framed as follows:

1. Whether the Election Appeal Tribunal exceeded its jurisdiction;
2. Whether the Election Appeal Tribunal breached the Applicants' right to procedural fairness;
3. Whether the Election Appeal Tribunal was biased; and
4. What is the appropriate remedy?

[19] The Applicants submit that the applicable standard of review is correctness. They submit that where a matter involves a question of a tribunal's jurisdiction, the correctness standard applies. Similarly, with respect to questions of procedural fairness, the correctness standard applies (citing *Parenteau v Sturgeon Lake First Nation Appeal Tribunal*, 2016 FC 535 [*Parenteau*] at para 36).

[20] I disagree with the Applicants about the correctness standard of review being applicable to the issue of jurisdiction. *Parenteau*, relied upon by the Applicants, predates the Supreme Court of Canada's decision in *Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*] in which that Court explicitly "cease[ed] to recognize jurisdictional questions as a distinct category attracting correctness review" (*Vavilov* at para 65). It found that respect for the rule of law requires courts to apply the standard of correctness for certain types of legal

questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (para 53). Further, that the analysis for determining the standard of review where a court reviews the merits of an administrative decision begins with a presumption that reasonableness is the applicable standard in all cases. Reviewing courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law (paras 10, 23 and 25). Here the presumption has not been rebutted (see also *Carry The Kettle First Nation v Kennedy*, 2021 FC 462 at para 17; *Waterhen Lake First Nation v Canada*, 2025 FCA 49 at para 45; and, *Blois v Onion Lake Cree Nation*, 2020 FC 953 at paras 20-22).

[21] Accordingly, the standard of review for the jurisdictional issue is reasonableness. A reasonable decision is one that is based on an internally coherent and rational chain of analysis (*Vavilov* at para 85). A reviewing court asks if the decision is justified, transparent and intelligible and whether it is justified in relation to the facts and the law that constrain the decision-maker (*Vavilov* at paras 85, 99, 105).

[22] I do agree with the Applicants that the standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canada v Akisq'nuk First Nation*, 2017 FCA 175 at para 19; *Labelle v Chiniki First Nation*, 2022 FC 456 at para 34; *Morin v Enoch Cree First Nation*, 2020 FC 696 [*Morin*] at para 21; *McKenzie v Mikisew Cree First Nation*, 2020 FC 1184 at para 29). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard

to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The question is whether the Applicants knew the case to be met and had a full opportunity to make submissions (*Key v Cote*, 2025 FC 1329 [*Key*] at para 35).

Whether the Election Appeal Tribunal exceeded its jurisdiction

[23] The Applicants submit that the decision of the Election Appeal Tribunal is *ultra vires* its authority and ought to be quashed on that basis. The Election Appeal Tribunal itself is a creature of the 1998 Election Regulations, and its authority is limited to the parameters set out therein. Under the 1998 Election Regulations, the Election Appeal Tribunal's authority is confined to either upholding the election or ordering a new election for the positions appealed. Any decision to uphold or order a new election must be based on the grounds set out in subsection 7(b): i) election practices contravening the Regulations, or ii) improper conduct by a candidate at the place of the election and during voting hours.

[24] More specifically, the Applicants first argue that the Election Appeal Tribunal does not have the jurisdiction to prohibit specific members from running in future elections. Second, the Tribunal does not have jurisdiction to decide whether a clear criminal record is required for a candidate to be eligible to run in the 2024 election. And, finally, that the Election Appeal Tribunal overstepped its authority in directing that the election be set aside because the wrong set of election rules was followed. Even if the wrong set of election rules were applied, any Tribunal established pursuant to those impugned rules would have no authority to decide any appeal or call a new election.

Analysis

[25] Before addressing the question of whether the Election Appeal Tribunal exceeded its jurisdiction, it is necessary to first address the role of the 1998 Election Regulations in this matter.

i. Role of 1998 Election Regulations

[26] In their written submissions, the Applicants submit that “PCN is a custom election band that governs its elections and self-governance according to the Nation’s unwritten customary laws. No written law has ever been approved by the membership as representing PCN customs, replacing PCN customs, or amending PCN customs.” In that regard, they refer to *Tootoosis v Poundmaker Cree Nation #345*, 2024 FC 1171 at para 37 [*Tootoosis*] as well as the affidavit of Chief Duane Antoine, affirmed on December 2, 2024.

[27] Chief Antoine’s affidavit deposes that the 1998 Election Regulations were never adopted and that PCN has never adopted or ratified any written regulation or election act. Rather, PCN’s band custom is passed down orally. However, that the 1998 Election Regulations were provided to Indigenous and Northern Affairs Canada [INAC] in 1998 because INAC needed something in writing for its file. Further, that the Chief and Council in office prior to the 2024 Election gave those regulations to the CEO to follow in the administering of the 2024 Election.

[28] The affidavit of Loretta Pete Lambert, the CEO, affirmed on December 23, 2025 [CEO Affidavit] deposes that the previous Chief and Council provided her with the 1998 Election

Regulations to be followed in the 2024 Election. Similarly, as the CEO for the 2020 election, she had been provided with the same regulations to be followed in that election. The CEO deposes that she administered both the 2020 election and the 2024 Election in accordance with 1998 Election Regulations. She also deposes that she is aware that there is also a draft 2014 election code, however, to the best of her knowledge, that election legislation was never ratified. She states that she is also aware that there was a recent decision of this Court (*Tootoosis*) confirming that PCN custom remains unwritten. She deposes that she referenced *Tootoosis* in her written submissions to the Election Appeal Tribunal in her response to the appeals. Her September 14, 2024, submission to the Tribunal [CEO Tribunal Submission] is found in the CTR and confirms this.

[29] The CEO also deposes that under the 1998 Election Regulations, it is the Chief Electoral Officer who acts as chair of the nomination meeting. The nomination meeting for the 2024 Election was held on May 15, 2024, and she presided as chair. In that role, she advised attendees that she would be administering the 2024 Election in accordance with the 1998 Election Regulations and no objections to this were raised. Rather, a band member in attendance objected after the CEO announced that an Election Appeal Tribunal had been appointed by Chief and Council. The band member read directly from the 1998 Election Regulations, pointing out that these say that tribunal members are to be appointed by nomination at the nomination meeting and that they needed to be present to accept their respective nominations. Of the three individuals whose names had been brought forward by Chief and Council, only Marie Adam was present to accept her nomination. The CEO deposes that band members present at the nomination meeting

then nominated Lester Bugler and Sharon Baptiste, who were both present to accept their nominations, and who were accordingly appointed to the Election Appeal Tribunal.

[30] *Tootoosis*, which was decided after the 2024 Election but before the Election Appeal Tribunal decision, held that because the 1998 Election Regulations were never ratified by the PCN membership, they do not have the force of law (at para 37).

[31] I note that, in her appeal to the Election Appeal Tribunal, Deanne Kasokeo (a named Respondent in this matter) submitted that PCN passed the Poundmaker Cree Nation Election Act 2014 [2014 Election Act] by referendum and that it was in full force and effect. She attached a copy of those regulations to her submission which, on the cover page has a handwritten note (the author of the note is not identified) stating “Note: This is the New Poundmaker Election Act which was passed by referendum vote March 15, 2014.” However, the copy provided also has a large and predominate “DRAFT” watermark on every page and it is not signed. As noted above, the Respondents have not participated in this judicial review hearing and, therefore, have provided no further evidence as to the status of the 2014 Election Act.

[32] Further, and despite her allegation that the wrong election code was utilized, Deanne Kasokeo also states in her appeal submissions that the appeals process, “can be interpreted without limitations within the *Poundmaker Election Regulations, 1998*”.

[33] In its decision, the Election Appeal Tribunal states that the Tribunal was established by band members “in accordance with the PCN Band Custom Election Regulations 1998” (the 1998

Election Regulations), a copy of which it attached as Appendix A. And, under the heading “jurisdiction and authority,” stated that “[a]s authorized by Section 6(e)(x) of the PCN Band Custom Regulations 1998, the Tribunal holds final authority in matters of appeal hearings and investigations.”

[34] While the Election Appeal Tribunal in its findings states that the election was conducted using the “1998 Code” despite a “ratified 2014 Regulation intended to govern the election”, the Election Appeal Tribunal itself appears to have accepted that it was appointed and was afforded its authority under the 1998 Election Regulations. It provides no analysis of how it reached its finding that the 2014 Election Act is in force and effect and was intended to govern the 2024 Election. Indeed, the decision provides no analysis whatsoever, it simply lists many conclusive statements and describes them as “findings of fact.” Nor does the Tribunal engage with *Tootoosis*, which had been brought to its attention by the CEO Tribunal Submission.

[35] Based on the evidence before me, it would appear that PCN elections may be governed by oral custom, and not a written code. However, there is no evidence before me as to what that custom may entail. As I indicated in *Da'naxda'xw First Nation v Peters*, 2021 FC 360

[*Da'naxda'xw*] at paras 66-72, there are a number of requirements for establishing First Nations custom:

[72] In summary, custom requires evidence of a practice and the manifestation of the will of the First Nation’s members to be bound by that practice (*Francis* at para 26). Establishing band custom requires evidence demonstrating that the custom is firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a broad consensus (*Francis* at para 36; *Beardy* at para 97; *Shirt* at para 31). Chief and Council alone cannot determine that a change

in circumstance comprises a new custom, there must be broad consensus among the membership (*Shirt* at para 32; *Bertrand* at para 37; *Shotclose* at para 69). Similarly, custom is not frozen in time, but any change requires a broad consensus of the membership (*McLeod* at para 10; *Francis* at para 24). The inquiry into whether a custom enjoys broad consensus is fact and context specific and the evidence may demonstrate that there is no consensus (*McLeod* at para 17, *Shirt* at para 40, *Taypotat v Taypotat*, 2012 FC 1036 [*Taypotat*]). Custom may be demonstrated by a one-time event like a referendum or majority vote, by a series of events, or possibly acquiescence (*McLeod* at paras 18-19, *Francis* at para 30, *Awashish* at para 44). The burden is on the party trying to demonstrate custom to prove that there is a broad consensus (*Francis* at para 21; *Taypotat* at para 28) and the existence of a band custom and whether or not it has been changed with the substantial agreement of the band members will always depend on the circumstances (*Taypotat* at para 30).

(See also *Hunt v Kwakiutl First Nation*, 2024 FC 367 at paras 31-34).

[36] That said, nor does the evidence before me establish that the 1998 Election Regulations are inconsistent with any customs regarding election appeals (*Standinghorn v Atcheynum*, 2007 FC 1137 at para 36).

[37] Faced with this, I conclude that the Election Appeal Tribunal accepted that it was appointed and that it obtained its authority pursuant to the 1998 Election Regulations. Further, that the CEO was instructed to and did administer the 2024 Election pursuant to the 1998 Election Regulations. Therefore, for the purposes of this judicial review, I accept that in these circumstances the limits of the Election Appeal Tribunal's jurisdiction also emanate from the 1998 Election Regulations.

[38] I will therefore consider whether the Election Appeal Tribunal exceeded its jurisdiction based on the 1998 Election Regulations.

ii. Jurisdiction of Election Appeal Tribunal

[39] Section 7 of the 1998 Election Regulations sets out the procedures that govern an appeal of the results of an election:

Appeals

7. The following procedures govern an appeal to the election results.

a) Any Elector may appeal the results of the election within thirty (30) days from the day of the election.

b) Grounds for appeal are restricted to:

i) Election practices that contravene these Regulations.

ii) Improper conduct on the part of a candidate at the place of the election and during voting hours.

iii) In the event of an appeal, the Candidate(s) and Band Membership will be notified by the chief Electoral Officer through written notice.

c) An appeal must be in writing to the Tribunal and it must contain details on the grounds upon which the appeal is made.

(d) A Tribunal will rule on whether to allow or disallow an appeal hearing.

(e) If it is judged that there is sufficient evidence to warrant an appeal, the Tribunal may order a hearing and/or an investigation.

(f) An appeal hearing will take the form of a formal meeting consisting of:

i) The Chief Electoral Officer

ii) The Appellant

iii) The Tribunal

(g) the decision of the group (f) will represent the final decision regarding the election. the hearing may:

- i) Uphold the election
- ii) Order a new election for the position(s) appealed only.

[40] Thus, pursuant to subsection 7(b), the grounds of any appeal are limited to election practices that contravene the 1998 Election Regulations and improper conduct on the part of a candidate at the place of the election and during voting hours.

[41] Notably, paragraph 6(c)(viii) states that the duties of the CEO, assisted by the Deputy, shall be to “examine the validity of all ballots cast, and the validation of all ballots shall be final and not subject to appeal.” The Election Appeal Tribunal can, therefore, only address grounds of appeal that fit within the two categories listed in subsection 7(b) and that do not deal with the validity of ballots.

[42] I have read the four appeals found within the CTR which raise various concerns. However, it is sufficient here to deal only with the issues raised by the Applicants.

[43] In that regard, the Applicants submit that the Election Appeal Tribunal does not have the jurisdiction to prohibit specific members from running in future elections. I agree that nothing in the 1998 Election Regulations authorizes this.

[44] The decision of the Election Appeal Tribunal describes its last section as “Conclusion and Recommendations.” It first sets out its order. It then states that, “[r]egarding the next election, we advise Membership:”

- **RCMP Criminal Record and Vulnerability Checks** are mandatory for all candidates to establish eligibility under Section 10(a) (no indictable convictions).

- **Duane (Dwayne) Antoine is banned from future elections due to his criminal record.**

(emphasis original)

[45] These statements are mandatory in nature. This is also demonstrated by the fact that the next item is framed as a recommendation:

- The tribunal strongly recommends that **Darwin Kasokeo, Brandon Favel, and Marlene Chickeness** be ineligible as candidates in future elections due to allegedly coordinated efforts to impact the fairness of this election and reported misconduct, including failure to resign, bribery, defamation against candidates, and fiduciary duty violations.

(emphasis original)

[46] I agree with the Applicants that the Election Appeal Tribunal lacked jurisdiction to prohibit Chief Antoine (or any PCN member) from running for office in future elections – on any basis.

[47] I also agree with the Applicants that the Election Appeal Tribunal exceeded its jurisdiction by mandating that candidates for the next election must have a clear criminal record check to be eligible to run in an election. The eligibility requirements for candidates for the

offices of Chief and Council are set out in subsections 3(c) to (f) of the 1998 Election Regulations and do not include such a requirement.

[48] Should the PCN determine that they wish to add such a requirement then this could be accomplished by adding this requirement to an election code ratified by the membership. It is not the role of the Election Appeal Tribunal to unilaterally prescribe candidate eligibility requirements, nor do they have the jurisdiction to do so. Nor is there any evidence before me that custom requires candidates to provide a clear criminal record check. Indeed, the evidence before me is that Chief Antoine has been elected five times as Chief subsequent to the complained of conviction in 2003.

[49] Further, with respect to the reference to subsection 10(a), this is a provision that pertains to the removal of persons who have been elected to the offices of Chief and Council:

Removal from Office

10. Once duly elected by Band Members, the Chief and Councillors represent and are therefore accountable to all Band Members. The Chief and Councillors may be removed from office if they:

- (a) Abuse their fiduciary obligation to the Band Membership and are convicted of any indictable offence such as being fraudulent or criminal in their actions.
- (b) Resign in writing on their own accord.

[50] The Election Appeal Tribunal's authority was limited to determining appeals of the 2024 Election on the grounds set out – election practices that contravene the regulations and improper conduct by a candidate at the place of the election during voting hours. Nothing in the 1998

Election Regulations suggests that the Election Appeal Tribunal also has the authority to make decisions about removal from office of Chief and Council on the basis of subsection 10(a).

[51] Relatedly, with respect to the Election Appeal Tribunal finding that there were eligibility violations, specifically, “[i]ndividuals with indictable offences were permitted to run, breaching PCN’s election code standards (See Appendix A; Violation: Section 10(a))”, subsection 10(a) pertains to the removal from office after an election, it does not set out eligibility requirements for candidates who seek to run for office. Nor is having a criminal record a ground for an appeal under the 1998 Election Regulations.

[52] The evidence before me indicates that this was known to the Election Appeal Tribunal. The CEO Affidavit states that she attended a June 20, 2024, meeting with the Election Appeal Tribunal where the 1998 Election Regulations were reviewed. She deposes that at the meeting it became immediately apparent to her that Lester Bugler and Sharon Baptiste wanted Chief Antoine off Council. They were adamant that he should be removed from Chief and Council because they said that he had a criminal record. Lester Bugler insisted that he had information of criminal activity by Chief Antoine and that he should be removed pursuant to section 10 of the 1998 Election Regulations. The CEO deposes that she reminded Mr. Bugler and Ms. Baptiste that the Tribunal’s authority was limited to the section 7 grounds of appeal in the 1998 Election Regulations and that section 10 had nothing to do with an election appeal. Nor did the 1998 Election Regulations prevent candidates with criminal records from running in an election. She deposes that she also reminded the Election Appeal Tribunal that the impacted members of Chief and Council had a right to know the cases against them.

[53] At a subsequent meeting on July 9, 2024, the purpose of which was to determine whether there was enough information to move forward with the appeals, the CEO deposes that she again attempted to remind the Election Appeal Tribunal that their authority was limited to the grounds of appeal in the 1998 Election Regulations and that the impacted members of Chief and Council had a right to know the case against them. “However, Mr. Bugler and Ms. Baptiste again maintained that they could decide the Appeals based on the grounds of appeal that they thought should apply. They also maintained that they did not have to provide the information being demanded by Chief and Council.”

[54] I find that the Election Appeal Tribunal lacked jurisdiction to prohibit Chief Antoine (or any PCN member) from running for office in future elections and to prescribe as an eligibility requirement a clear criminal record check. This renders those aspects of its decision unreasonable.

[55] Although not raised by the Applicants, having read the decision and the materials contained in the CTR, it is a profound understatement to say that many other aspects of the decision are also unreasonable. Many of the findings appear to exceed the Election Appeal Tribunal’s jurisdiction. Moreover, the decision does not identify which appeal is being considered, the grounds of appeal raised in that appeal or which candidate’s position is at issue. Its findings are generalized. And, significantly, neither the decision nor anything in the record before me provides any reasoning upon which the “findings of fact” are based. There is also no reference to the CEO’s submission to the Tribunal that directly engaged with the allegations contained in the appeals.

[56] In any event, given my finding below that the decision was also procedurally unfair, it will be quashed in whole on that basis.

Whether the Election Appeal Tribunal breached the Applicants' right to procedural fairness

[57] The Applicants submit that there was a complete lack of procedural fairness afforded to the Chief and Councillors. The findings of the Election Appeal Tribunal have serious consequences for both Chief and Council and for PCN. The Individual Applicants were not provided with notice that the matter had been referred to the Election Appeal Tribunal. Nor were they provided with an opportunity to know the case being made against them or even whether their specific seat on Council was being appealed. They were not provided an opportunity to respond to any of the allegations before the Election Appeal Tribunal. Finally, no hearing was held by the Tribunal. The Applicants submit that the Individual Applicants were not afforded the ability to inform themselves as to the appeal process, to know the case against them, to provide evidence, raise defences, or otherwise meaningfully respond to the appeals, despite their formal requests. They were not afforded any procedural rights.

[58] This assertion is supported by the record before me.

[59] The CEO Affidavit states that on June 18, 2024, she received a forwarded email from Deanne Kasokeo which was a covering email enclosing her notice of appeal, without exhibits. On the same date, she became aware that Kaylin Semaganis had also submitted an appeal to the

Tribunal. On June 19, 2024, she became aware of a possible third appeal brought by Darlene Stonestand.

[60] The CEO Affidavit states that on June 19, 2024, she sent an email to the Election Appeal Tribunal informing the members that she had forwarded the Kasokeo appeal to Chief and Council. She asked the Tribunal to send her the Semaganis and Stonestand appeals so that she could also forward them to Chief and Council. Tribunal member Sharon Baptiste responded by asking why Chief and Council needed to see the appeals when the Tribunal had not yet reviewed them. The CEO responded that it was crucial for everyone to understand the case against the results of the election and requested that the case of all of the appellants against the election results be promptly presented.

[61] On June 24, 2024, Chief Antoine sent a letter to the Election Appeal Tribunal, on behalf of Chief and Council, stating that they understood that the Election Appeal Tribunal would be meeting on at least two appeals received by the Tribunal on June 18, 2024. However, that no public notices of appeal had been posted informing members or the affected candidates about the appeals. Nor had the Election Appeal Tribunal sent any communications to the affected candidates about these appeals or the process that was going to be followed. The Tribunal had also not shared the notices of appeal or any of the evidence with affected candidates. Chief Antoine stated that to properly respond to the appeals they needed: the notices of appeal with all of the exhibits; the documentary and witness evidence that would be relied upon; proper notices and communications relating to the appeals; and, adequate time to gather evidence in response and to properly respond to the appeals. Chief Antoine stated that Chief and Council were entitled

to this information as a matter of fairness. Chief and Council also objected to Sharon Baptiste hearing the appeals and asked that she remove herself from the Election Appeal Tribunal as they had a legitimate concern that her ongoing public hostility towards impacted candidates would undermine the entire appeal process.

[62] On June 24, 2024, Ms. Baptiste replied by email to Chief Antoine stating:

Duane/Dwayne, the people elected me and that is the process.
Fairness and unbiased professional conduct is questionable at all
levels of this election process.

Thank you

[63] Chief Antoine's affidavit states that in the period following June 24, 2024, the CEO informed Chief and Council of a possible third appeal that she believed was brought by Darlene Stonestand, but that the Election Appeal Tribunal was refusing to share that appeal with her.

[64] The CEO Affidavit states that the Election Appeal Tribunal instructed her to issue a Notice of Appeal, which she did. This was issued on June 27, 2024, and gave notice of three appeals. A copy of the notice is found in the CTR and states that the Election Appeal Tribunal had launched an investigation into the allegations, met with the appellants on June 19, 2024, would meet with the CEO on July 9, 2024, and then determine its next steps.

[65] On July 23, 2024, one of the Tribunal members, Marie Adam, submitted a letter of resignation. She expressed concern with an unfair text message and stated that she believed this opened the Election Appeal Tribunal up to allegations of bias and prejudice against Chief and possibly Council, even before the Tribunal had finished listening to the appellants, and that it

suggested the decision had already been made. She expressed the view that the Election Appeal Tribunal should be dissolved.

[66] On August 2, 2024, Chief and Council wrote again to the Election Appeals Tribunal (by way of the CEO). This letter referred to and reiterated the concerns set out in the June 24, 2024 letter, specifically Chief and Council's concern with the Election Appeal Tribunal's ongoing breach of procedural fairness and denial of natural justice owed to those members of Chief and Council whose offices may be impacted by the appeals and that a substantive response had not been received from the Tribunal. Chief Antoine also referred to the resignation letter of Marie Adam and raised concerns with respect to the content of that letter and the reason for her resignation.

[67] Following the resignation of Ms. Adam, Tribunal member Lester Bugler distributed a notice to PCN membership on August 19, 2024, purporting to call a band meeting which would be held August 24, 2024, followed by an election appeal meeting. On August 20, 2024, counsel for PCN wrote to Mr. Bugler indicating that the purpose of the meeting appeared to be to select a new tribunal member relating to the 2024 Election. The letter stated that it served to put Mr. Bugler on notice that he was not an authorized representative of PCN and he did not have any authority to convene meetings related to the 2024 Election or/and election appeals. It appears that Mr. Bugler did not agree because in a letter to the CEO dated August 31, 2024, he states that “the Poundmaker people have selected a tribunal member (Delainee Antoine Tootoosis ...)” and that the Tribunal would be moving forward with the appeal process.

[68] Chief Antoine's affidavit states that he was aware that on or about September 14, 2024, the Election Appeal Tribunal convened to hear the appeal(s). However, neither he, nor any of the other members of Council received any written communications from the Election Appeal Tribunal notifying them about the appeal hearing or even informing them what appeal(s) were going to be heard or whose elected positions might be affected.

[69] On or about November 18, 2024, Chief Antoine heard that a PCN member had posted the Election Appeal Tribunal's decision on Facebook. The decision was later delivered to the Band Office. He deposes that Chief and Council were never advised what appeals were before the Election Appeal Tribunal, they had not received copies of the appeals and had no idea what allegations and submissions were made, or even who the allegations were against.

[70] The jurisprudence is clear that, in the First Nation's context of election appeals (and also removal from elected office), at a minimum there must be notice to the candidates whose election is being appealed, they must be informed of the case against them and afforded a meaningful opportunity to respond (*Morin* at para 34; *Halcrow v Kapawe'no First Nation*, 2021 FC 219 [*Halcrow*] at paras 49, 58; *Parenteau* at para 49; *Meneen v Tallcree First Nation*, 2025 FC 791 [*Meneen*] at paras 22-23; *Laboucan v Little Red River Cree Nation No 447*, 2010 FC 722 [*Laboucan*] at paras 37-39 aff'd 2011 FCA 87; *Tsetta v Band Council of the Yellowknives Dene First Nation*, 2014 FC 396 [*Tsetta*] at para 39).

[71] Here the June 27, 2024, public notice of appeals issued on behalf of the Election Appeal Tribunal provided the Applicants with no specific information about the appeals. Nor does a

“Appeal Tribunal Notice” dated July 15, 2024, found in the CTR, which states “a formal hearing into the Appeal(s) that have been launched according to Section 7 of the *Poundmaker Cree Nation Band Custom Regulations, 1998*”, would be held on July 29, 2024, the status of any publication of this notice is not apparent from the record before me. These notices do not even identify which candidates are the subjects of the appeals nor how many appeals will be addressed. This Court has held that without specific notice of the issues raised in appeals, and whether the issues related to the election process or the election results, applicants are not properly informed of the issues that would be considered by an appeal committee (*Halcrow* at para 49). To be sufficient, notice must be meaningful. It must provide the particulars of the appeal including the allegations at issue (*Alexander First Nation v Burnstick*, 2021 FC 618 at para 71). The lack of adequate notice is a breach of procedural fairness.

[72] And, despite repeated requests and the fact that both Chief Antoine and the CEO pointed out the lack of procedural fairness stemming from the failure of the Election Appeal Tribunal to provide copies of the appeals to the Applicants (other than the Kasokeo notice of appeal, without exhibits, forwarded to the CEO and by the CEO to Chief and Council), along with the supporting evidence submitted with the same, the Tribunal did not do so. This precluded the Applicants from knowing the case against them.

[73] Nor were the Applicants provided with any opportunity to respond to the allegations against them (which allegations they were not informed of). While it appears that the Election Appeal Tribunal met with the appellants, they afforded the Applicants no such opportunity.

[74] In addition to the affidavit evidence of the CEO and Chief Antoine, I have reviewed the contents of the CTR. Other than the notices of appeal and the email forwarding the Kasokeo appeal, described above, it contains no evidence that the Applicants were provided with any details of the appeals or afforded any opportunity to respond to them. This is particularly egregious as the Election Appeal Tribunal makes “findings of fact” that include serious matters such as “tampered election code,” “alleged bribery,” “defamation and slander,” “fiduciary violations” and “potential criminal violations that compromised the integrity of the election.” Yet the Applicants were neither informed of the allegations nor given the opportunity to respond to them.

[75] I acknowledge that section 7 of the 1998 Election Regulations sets out the process to be followed by the Tribunal, including as follows:

- c) An appeal must be in writing to the Tribunal and it must contain details on the grounds upon which the appeal is made.
- d) A Tribunal will rule on whether to allow or disallow an appeal hearing.
- e) If it is judged that there is sufficient evidence to warrant an appeal, the Tribunal may order a hearing and/or an investigation.
- f) An appeal hearing will take the form of a formal meeting consisting of:
 - i) The Chief Electoral Officer
 - ii) The Appellant
 - iii) The Tribunal

[76] Thus, the 1998 Election Regulations do not require those who were elected to office and who are the subject of, or would be affected by, an appeal to be informed of the allegations or be afforded an opportunity to respond.

[77] On this point, the Applicants submit that subsection 7(f) omits the affected candidates by mistake which is apparent because one of the two grounds for appealing an election is related to misconduct on the part of the candidate whose election to office is being appealed. Affected candidates are also entitled to notice of the appeal pursuant to paragraph 7(b)(iii). The Applicants submit that it is absurd for a candidate whose conduct is being challenged and who is entitled to written notice of an election appeal to be excluded from being an actual party to the appeal and unable to respond to the case against them.

[78] However, I need not make a finding on whether there was an error in the drafting of the 1998 Election Regulations (but agree that the result was absurd). This is because the jurisprudence is clear, in the context of election appeals (and also individuals being removed or suspended from positions of Chief or Councillors) that notice, knowledge of the case to be met and a meaningful opportunity to response – the basic tenets of procedural fairness – apply regardless of whether the decision arises by way of regulation or custom and even in the absence of a statutory or other framework defining or guiding what procedural protections are to be afforded (*Hall v Kwikwilem First Nation*, 2020 FC 994 [*Hall*] at para 38 citing *Sparvier v Cowessess Indian Band (TD)*, 1993 CanLII 2958 (FC); *Tsetta* at para 39; *Crowchild v Tsuut'ina Nation*, 2017 FC 861 at paras 27-29 citing *Hill v Oneida Nation of the Thames Band Council*, 2014 FC 796 at para 69; *Laboucan* at para 36; *Cardinal v Bigstone Cree Nation*, 2018 FC 822 at

paras 27-28; *McCallum v Peter Ballantyne Cree Nation*, 2019 FC 898 at para 52; *Key* at para 173).

[79] Accordingly, the fact that the 1998 Election Regulations do not stipulate that the Applicants must be advised of the case against them and be afforded an opportunity to respond does not relieve the Election Appeal Tribunal of the duty of procedural fairness owed.

[80] I conclude that the Election Appeal Tribunal breached the duty of procedural fairness owed to the Applicants. Accordingly, the decision must be quashed.

Whether the Election Appeal Tribunal was biased

[81] The Applicants submit that the Election Appeal Tribunal lacked impartiality in rendering its decision. Additionally, it acted in bad faith and abused its power in order to achieve its intended purpose, which was to remove Chief Antoine from Council and prohibit him from running in future PCN elections.

[82] With respect to bad faith, the Applicants submit that the CEO Affidavit and Ms. Adam's resignation letter support such a finding. As does the fact that the Tribunal's decision recommends that all members of the previous term Chief and Council be prevented from running in future elections.

[83] With respect to a lack of impartiality and bias, the Applicants submit there is a reasonable apprehension of bias, if not actual bias, on the part of the Tribunal, particularly members Lester

Bugler and Sharon Baptiste. Further, Chief and Council objected to Sharon Baptiste's participation on the Election Appeal Tribunal based on her ongoing public animosity towards Chief Antoine and her close relationship with Respondent Deanne Kasokeo but this was not addressed.

[84] The Applicants submit that Ms. Adam's resignation letter as well as the June 24, 2024 email from Sharon Baptiste to Chief Antoine; combined with the tone of the proceedings throughout; the dismissive attitude towards the Applicants' objections; Ms. Baptiste's ongoing personal prejudices against Chief Antoine, and her close personal relationship with Respondent Kasokeo, establish a sufficient evidentiary basis for this Court to find that there was not only a reasonable apprehension of bias, but actual bias on the part of the Tribunal.

Analysis

[85] The test for bias is well established and has been restated many times. It asks, "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly" (*Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC); *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 [*Yukon*] at paras 20-21).

[86] Impartiality is related to bias, and the same test is used, as I explained in *Grey v Whitefish Lake First Nation*, 2020 FC 949:

[22] The issue of bias is inextricably linked to the need for impartiality. Decision makers are required to approach every case with impartiality and an open mind (*Yukon* at para 22) and to decide the case independently (*Cojocar v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at para. 22 [*Cojocar*]). Impartiality and independence are also assessed using the reasonable apprehension of bias test.

[87] The threshold for a finding of reasonable apprehension of bias is high, and the burden is on the party seeking to establish it (*Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 57; *Yukon* at paras 25-26).

[88] Evaluating an allegation of reasonable apprehension of bias of Indigenous decision-makers must be done in context (*Thompson v Mohawk Council of Kahnawà:ke*, 2025 FC 1908 at para 55). This Court has recognized that in the context of small First Nations, it is not realistic to expect the same degree of objectivity and impartiality that one would expect from the judiciary. However, the jurisprudence also states that the decision-makers must remain open to having their minds changed and approach the issues in good faith (*Saulteaux v Carry the Kettle First Nation*, 2022 FC 1435 at para 78, citing *Hall* at para 48).

[89] In her affidavit, the CEO states that during the June 20, 2024, meeting with the Election Appeal Tribunal “it became immediately apparent to me that Lester Bugler and Sharon Baptiste wanted Chief Antoine off the Council. They were adamant that he should be removed from Chief and Council because they said that he had a criminal record.”

[90] In her July 23, 2024, resignation letter, former Election Appeal Tribunal member Marie Adam stated:

On Saturday there was an incident that happened, a text message, that was very concerning, comments that were made not in a fair manner. This was to the appellants and it was not the first time. I believe this has opened the tribunal to bias and prejudice against the elected Chief and possible Council, without us even finishing listening to appellants and doing the research on the appeals.

I asked for a retraction of a statement that was made. I haven't seen the retraction to date. However, in retrospect, I think that it does not matter now even if retracted. The connotations related to the message will still be there and may be interpreted as the view of the whole tribunal. They are not my views or statements. And it suggests a decision has already been made.

[91] Tribunal member Sharon Baptiste's email to Chief Antoine on June 24, 2024, which pre-dates the Tribunal's decision, states "Duane/Dwayne, the people elected me and that is the process. Fairness and unbiased professional conduct is questionable at all levels of this election process."

[92] This evidence suggests that two members of the Election Appeal Tribunal, Lester Bugler and Sharon Baptiste, did not approach the appeals submitted to the Tribunal with impartiality and an open mind. In my view, the evidence before me also supports a finding that they did not act in good faith when carrying out their duties as Tribunal members. This is demonstrated by my findings above that the Tribunal showed a complete disregard for procedural fairness. Additionally, that its decision exceeded the Tribunal's jurisdiction in several ways, including by making recommendations that individuals, two of whom were not elected to Council in the 2024 Election, be ineligible as candidates in future elections.

[93] In my view, an informed person viewing this evidence would not think that it is more likely than not that these Tribunal members would decide the appeals fairly. This is sufficient to establish a reasonable apprehension of bias on the part of these two Tribunal members.

What is the appropriate remedy

[94] The Applicants acknowledge that Courts tend to err on the least intrusive manner of oversight of election matters out of respect for the efforts of First Nations and their membership to enact rules governing their election process. This typically translates to remitting decisions back to the tribunal when a decision is quashed. However, they submit in this matter it is appropriate for this Court to decline to remit the matter back to the Election Appeal Tribunal because doing so would serve no useful purpose. The Applicants submit that this matter is similar to *Bill v Thomas*, 2007 FC 1152 [*Bill*] where this Court found that the appeal board misapplied the election law in its decision, declared its decision to be null and void, and substituted its own decision.

[95] The Applicants submit that the Election Appeal Tribunal breached the Individual Applicants' right to procedural fairness, acted well beyond its jurisdiction and was biased. Further, that the Respondents have not shown any interest and have waived their right to participate in this application. There is no useful purpose served by remitting back to any election tribunal appeals which have essentially been abandoned.

Analysis

[96] In their Notice of Application, the relief sought by the Applicants includes:

1. An Order in the nature of *certiorari* quashing the Decision purporting to remove the Applicants from office and declaring Chief Duane Antoine permanently ineligible to be a candidate in future elections; and
2. An Order affirming the results of the May 22, 2024, election as originally declared by the Chief Electoral Officer Loreta Pete-Lambert;
3. In the alternative, an Order in the nature of *certiorari* quashing the Decision purporting to remove the Applicants from office and declaring Chief Antoine permanently ineligible to be a candidate in future elections; and
4. An order in the nature of *mandamus* directing that a new Election Tribunal be appointed to decide the Appeal(s) in accordance with the guidance of this Court setting out the procedural fairness entitlements to be afforded to the Applicants (the “**New Election Tribunal**”); and
5. The New Election Tribunal shall be comprised of a single panel member appointed by this Court to be determined on the basis of submissions of the Parties to the within Application for Judicial Review and who:
 - a. possesses the requisite legal knowledge of administrative law and procedural fairness principles to ensure adherence to this Court’s guidance; and
 - b. has no affiliation to Poundmaker Cree Nation or personal interest in the outcome of the Appeal(s);

.....

(emphasis original)

[97] As the Applicants acknowledge, this Court has recognized that the least intrusive means should be adopted when determining the appropriate remedy with respect to a First Nation election review. As held in *Felix v Sturgeon Lake First Nation*, 2014 FC 911:

[135] This Court has addressed similar issues and I have considered the jurisprudence which emphasizes that the Court should not be too quick to craft remedies for the community. I note, in particular, the words of Justice Barnes in *Sweetgrass First Nation v Gollan*, 2006 FC 778, 294 FTR 119 at para 53:

53 There is much to be said for the Court adopting the least intrusive path into the affairs and decisions of Sweetgrass in fashioning a remedy for the electoral impasse which has arisen. Like most other democratic institutions, the electors and elected representatives of Sweetgrass are fully capable of conducting their business without outside involvement and, except in a limited way, this case is no exception.

[Emphasis in original]

[98] This Court in *Bill* stated, in obiter:

[31] In the normal course of a judicial review, the reviewing Court would have the option to return the matter to a differently and properly constituted Appeal Board to re-determine the matter. However, the *Election Act* makes no provision for such a possibility, as my colleague Mr. Justice John O’Keefe concluded in *Bill v. Pelican Lake Indian Band*, [2006] F.C.J. No. 877, 2006 FC 679, and which was affirmed by Mr. Justice Létourneau on appeal, as cited above. Mr. Justice O’Keefe stated at paragraph 59:

59 The matter cannot be referred to a differently constituted Appeal Board as there is no provision to constitute another Appeal Board. Subsection 11(1) of the Act requires the Appeal Board to be appointed as follows:

- 11(1) An Appeal Board shall be appointed by the membership at the Nomination Meeting immediately after the close of nominations has been announced by the Chief Electoral Officer or his/her designate.

[32] I also add that the Court’s finding of apparent bias makes it impossible to return the matter to the Appeal Board as it was constituted after the March 2007 election. What can a Court do in such a situation?

[33] This exceptional situation calls for exceptional measures. To put an end to this vicious cycle and allow the democratic will of Band members to run its course, this Court therefore allows the appeal. In *obiter* therefore, the Court is of the studied opinion that

the applicants should take all means possible to correct the present situation. The Pelican Lake Band Council, under the direction of the applicants, Chief Peter Bill and Councillors Romeo Thomas, Frederick Whitehead, David Thomas, Gilbert Chamakese, Sidney Bill and Jimmy Bill, elected for a three year term on March 9, 2007, are encouraged to take the decision of the electoral process back to the people according to Band custom, and decide how best the Band will be governed pursuant to the amendments deemed to be in the best interests of the Band and its people.

[34] In so doing, the Court would encourage the Band Council to turn its mind to the people within six (6) months of these reasons, and using the amending formula provided under section 16 of the *Election Act* put in place clear, fair and just procedures to assure that the democratic will of the Band members is respected and allowed to run its course and effectively stop the revolving door of judicial proceedings.

[99] While this is not a circumstance like *Bill*, where there had been multiple judicial reviews, this is an exceptional situation.

[100] I have found above that the decision of the Election Appeal Tribunal was unreasonable, breached the duty of procedural fairness owed to the Applicants and that the record before me demonstrates a reasonable apprehension of bias. I am quashing the decision for those reasons. The immediate effect of this is that the Chief and Councillors elected in the 2024 Election will remain in their elected offices.

[101] However, I do not agree with the Applicants that the appeals can be deemed abandoned because the Respondents failed to participate in this judicial review. The Respondents too are to be afforded procedural fairness. Therefore, the question is how those appeals should now be dealt with.

[102] In *Halcrow* the appeal committee process under review in that case was found to be procedurally unfair and to be unreasonable. Justice McDonald quashed the decision and held that the appeals should be reconsidered by a differently constituted appeal committee (at para 64). This is the usual remedy. The difficulty here is that, like in *Bill*, the appeals cannot be referred to a differently constituted election appeal tribunal as the 1998 Election Regulations do not contemplate this. A tribunal is appointed at a nomination meeting when an election is pending. The election in issue occurred on May 22, 2024, and the next election is scheduled to take place in four years later, being in May 2028 (section 4, 1998 Election Regulations). This is over two years away. As the term of the Chief and Councillors who were the subject of the appeals has another two years to run, this is not a case where the appeals have become moot by reason of another election. Nor will a nomination meeting be called in the near future at which time a new election appeal committee would be nominated.

[103] And, significantly, given my finding that the record demonstrates that there was a reasonable apprehension of bias, the matter cannot be remitted back to the same Election Appeal Tribunal.

[104] Because the 1998 Election Regulations do not provide for this circumstance and because there is not sufficient evidence before me as to PCN custom, the Court is left in the difficult and exceptional position of crafting a remedy (see *Mercredi v Fond du Lac Denesuline First Nation*, 2018 FC 1272 at paras 50-56, aff'd 2020 FCA 59; *Gladue v Beaver Lake Cree Nation*, 2021 FC 909 at para 44-45; *Marcel Colomb First Nation v Colomb*, 2016 FC 1270 at para 34; *Da'naxda* at paras 181-182).

[105] I will order that the Election Appeal Tribunal's decision is quashed in whole. Within three weeks of this decision, Chief and Council and the Respondents will each propose the names of two candidates for selection to a new election appeal committee and the parties will exchange the names and the candidate's qualifications (their CVs). The proposed candidates must have no affiliation to Poundmaker Cree Nation, no personal interest in the outcome of the appeals and must have education and/or experience in First Nation elections sufficient to enable them to determine all aspects of the appeals in accordance with the 1998 Election Regulations and the principles of procedural fairness. Within one week of the exchange of the names and qualifications of the proposed candidates, the parties will agree upon the selection of three of the four proposed candidates to form a new election appeal tribunal. Unless otherwise agreed, the new election appeal tribunal will be comprised of one candidate proposed by each party, the third candidate will be mutually agreed from the remaining two proposed candidates.

[106] The new election appeal tribunal's jurisdiction and mandate shall be determined by the 1998 Election Regulations because those draft regulations were used to administer the 2024 Election. The new election appeal tribunal will be provided with the full record that was before the Election Appeal Tribunal when it made its decision – which is the CTR – within one week of its appointment. The new election appeal tribunal will not communicate with the Election Appeal Tribunal members (Lester Bugler, Sharon Baptiste and Delainee Antoine-Tootoosis). The new election appeal tribunal will ensure that complete copies of the appeals with all supporting documents are provided to the candidates who may be affected by one or more of the appeals. The new election appeal tribunal will assess all aspects of the appeals (timeliness of submissions, supporting submissions, etc.) and rule on whether to allow or disallow each appeal. If it is

determined that there is sufficient evidence to warrant an appeal(s), then it will order a hearing and/or an investigation. Notwithstanding subsection 7(f) of the 1998 Election Regulations, any such hearing and/or investigation will also include the potentially affected members of Chief and Council. Any appeal hearing and/or investigation is to be conducted in accordance with the principles of procedural fairness.

[107] The new election appeal tribunal will complete its assessment of the appeals and issue its written reasons and decision(s) within four weeks of its appointment. PCN will compensate the new election appeal tribunal members for their reasonable time spent and expenses incurred in conducting the appeals.

Costs

[108] The Applicants have sought costs. While they have been the successful party, the Respondents have not participated in the application for judicial review and are the individuals who brought appeals of the 2024 Election. In these circumstances, I am exercising my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106 and decline to make an award of costs.

JUDGMENT IN T-3359-24

THIS COURT'S JUDGMENT is that

1. The November 18, 2024, decision of the Election Appeal Tribunal of the Poundmaker Cree Nation is quashed in whole.

2. Within three weeks of this decision, Chief and Council and the Respondents will each propose the names of two candidates for selection to a new election appeal committee and the parties will exchange the names and the candidate's qualifications (their CVs). The proposed candidates shall have no affiliation to Poundmaker Cree Nation, no personal interest in the outcome of the appeals and must have education and/or experience in First Nation elections sufficient to enable them to determine all aspects of the appeals in accordance with the 1998 Election Regulations and the principles of procedural fairness. Within one week of the exchange of the names and qualifications of the proposed candidates, the parties will agree upon the selection of three of the four proposed candidates to form a new election appeal tribunal. Unless otherwise agreed, the new election appeal tribunal will be comprised of one candidate as proposed by each party, the third candidate will be mutually agreed from the remaining two proposed candidates.

3. The new election appeal tribunal's jurisdiction and mandate shall be determined by the 1998 Election Regulations. Within one week of its appointment, the new election appeal tribunal will be provided with the full written record that was before the Election Appeal Tribunal when it made its decision. The new election appeal tribunal

will not communicate with the Election Appeal Tribunal. The new election appeal tribunal will ensure that complete copies of the appeals with all supporting documents are provided to the candidates who may be affected by one or more of the appeals. The new election appeal tribunal will assess all aspects of the appeals (timeliness of submissions, supporting submissions, etc.) and rule on whether to allow or disallow each appeal. If it is determined that there is sufficient evidence to warrant an appeal(s), then it will order a hearing and/or an investigation. Notwithstanding subsection 7(f) of the 1998 Election Regulations, any such hearing and/or investigation will also include the potentially affected members of Chief and Council. Any appeal hearing and/or investigation is to be conducted in accordance with the principles of procedural fairness.

4. The new election appeal tribunal will complete its assessment of the appeals and issue its written reasons decision(s) within four weeks of its appointment.
5. PNC will compensate the new election appeal members for their reasonable time spent and expenses incurred in conducting the appeals.
6. There is no order as to costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-3359-24

STYLE OF CAUSE: POUNDMAKER CREE NATION, CHIEF DUANE ANTOINE, COUNCILLOR MARLENE CHICKENESS, COUNCILLOR LEON ANTOINE, COUNCILLOR NORMAN CHECKOSIS AND COUNCILLOR LESTER FAVEL v DARLENE STONESTAND, DEANNE KASOKEO AND KAYLIN SEMAGANIS

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: APRIL 2, 2026

JUDGMENT AND REASONS: STRICKLAND J.

DATED: APRIL 10, 2026

APPEARANCES:

Riva J. Farrell Racette

FOR THE APPLICANTS

SOLICITORS OF RECORD:

MLT Aikins LLP
Regina, Saskatchewan

FOR THE APPLICANTS