Date: 20081114

Docket: T-440-08
T-1370-08

Citation: 2008 FC 1268

Ottawa, Ontario, November 14, 2008

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

GEORGE PRINCE AND PAULETTE CAMPIOU

Applicants

and

SUCKER CREEK FIRST NATION #150A,
JARET CARDINAL, RONALD WILLIER AND RUSSELL WILLIER

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The parties in this case are before the court on two separate matters. The first matter (T-440-08) is an application for judicial review of the Sucker Creek First Nation Band Council's decision, dated February 22, 2008, to suspend the applicants as elected Councillors pending an investigation into allegations of conflict of interest against the applicants. On April 15, 2008, I granted an interlocutory injunction reinstating the applicants as Councillors pending the outcome of this judicial review application.

[2] The second matter (T-1370-08) is an application for judicial review of the Band Council's resolutions dated August 20, 2008 to remove the applicants from their positions as elected Councillors of the Sucker Creek First Nation. On September 30, 2008, Madam Justice Hansen granted the applicants' motion for an interlocutory injunction and ordered that the applicants be reinstated as Councillors with pay, including back pay, pending a determination of this application for judicial review.

Overview

[3] In this case, the Court concludes that the first application to set aside the decision suspending the applicants must be allowed because the indefinite suspension of the two councillors was effectively a removal, and the Council did not follow the election rules to remove the applicants. Moreover, the Council Meeting suspending the two councillors lacked fairness in that the applicants were not given notice of the allegations against them or an opportunity to respond. The second application to set aside the Band Council resolutions removing the two councillors is also allowed. The clear election regulations (referred to below) were not followed in that there was no prerequisite petition from the electors seeking the removal of the two councillors before the Council removed them.

[4] The Court also expresses surprise that the Sucker Creek First Nation was using its money on a legal case that is so clearly without merit and contrary to the election regulations after the Court had granted the injunction on April 15, 2008

FACTS

Facts relating to the first matter: the decision of Sucker Creek First Nations Band Council to suspend Applicants (T-440-08)

[5] The facts of this case prior to the removal of the applicants as Councillors of the Band are as found in my Order for the interlocutory injunction, *Prince v. Sucker Creek First Nation #150A*, [2008] F.C.J. No. 599 at paragraphs 2 to 18:

> The applicants are members of the Sucker Creek First Nation (the respondent Band). They were elected as Councillors of the respondent Band Council on November 28, 2006 for terms of three years. Their elections were never challenged;
>
> The Sucker Creek First Nation is three and a half hours north of Edmonton;
>
> The respondent Band is a First Nations Band duly constituted under the *Indian Act*, R.S.C. 1985, c. I-5 (the Act). The government structure, procedures, and custom elections of the respondent Band are governed by the *Customary Election Regulations of the Sucker Creek First Nation #150A* (the Election Regulations). The Election Regulations provide for the election of one Chief and six Councillors to act as representatives of the respondent Band for a term of three years; and
>
> The respondent, Jaret Cardinal, is the Chief of the respondent Band, having been elected along with the applicants on November 26, 2006. The respondents, Ronald Willier and Russell Willier, are Councillors of the respondent Band and occupy positions on Council along with the applicants.
>
> **Allegations of misconduct**
>
> On or about February 6, 2008, the Chief and Council of the respondent Band received a complaint that the applicants were involved in a conflict of interest with regard to one of the Band's contractual arrangements. The allegations were contained in a letter of complaint dated February 6, 2008, written by Orlando Alexis, who is employed as the Consultation Officer of the respondent Band.

The complaint alleged, in part:

1. the verbal abuse of Band employees;
2. "political interference" by the applicants;
3. the diverting of work from one third party contractor to Joy Ann Prince, the daughter of the applicant George Prince and first cousin of the applicant Paulette Campiou; and
4. the unauthorized renegotiation of rates paid to third party contractors for brush and tree clearing under the contractual arrangement between the respondent Band and ATCO Electric Ltd.

Process leading to the suspensions

In response to the letter of complaint, on February 7 or 8, 2008, the respondent Band Council convened a meeting to address the allegations raised therein. Both applicants were present at that meeting and had a copy of the letter of complaint.

On February 14, 2008, the respondent Band Council convened to review the issues raised in the letter and to determine how best to proceed. The applicants were present at that meeting and presented a letter from Vic McArthur responding to, and rebutting, the allegations against them.

On February 15, 2008 the Chief and Council convened another meeting to decide how to proceed in relation to the applicants. The applicants were excluded from this meeting.

On February 20, 2008 the Sucker Creek First Nation received a letter (which the respondents concede was important) from Morgan Construction and Environmental Ltd. This letter alleged "issues" regarding rates of pay for contractors, which was the main conflict of interest allegation against the applicants. This letter was never shown to the applicants.

On February 21, 2008 the respondent Band received a memorandum from ATCO Electric Ltd. alleging problems with rates of pay for contractors involving the applicants. This memorandum was also never shown to the applicants.

On February 22, 2008, the respondent Band Council convened a "secret" meeting in Edmonton, Alberta, at which all of the allegations against the applicants were further deliberated.

Present at that meeting were the three individual respondents, as well as Councillor David Prince. Neither of the applicants were present at the meeting, nor were they notified of its occurrence. Also not present at the meeting was Councillor Ken Cardinal, who was under suspension pending an investigation into unrelated allegations of misconduct.

At the meeting, it was decided that the applicants should be suspended with pay until such time as an independent investigation had been conducted into the allegations contained in the letter of complaint. On or about February 29, 2008, the applicants each received a letter signed by Chief Cardinal and the two respondent Councillors advising them of the suspensions. The letters, dated February 26, 2008, are the decisions under review and stated, in part:

> Given the seriousness of this situation, the Chief and Council are compelled to act and look into this issue. Therefore, I regret to inform you that you have been suspended from your position on Council pending a full investigation into this matter. The suspension will be with pay. During the investigation, you will be prohibited from going to the Finance Office or from having any dealings with the Consultation Department or ATCO. Please turn in your keys, your cell phone as well as any other Band Property.
>
> … In the meantime, your suspension from your duties as a member of Council remains in place until the investigation has concluded and Council determines what step, if any, need to be taken next.

The applicants ignored the respondents' letters and continued to perform their duties as Councillors.

On March 3, 2008 the applicant Paulette Campiou responded to the letter of complaint dated February 6, 2008.

On March 10, 2008, the applicants each received another letter from the respondents advising them that if they did not abide by the suspension decision, their pay would be suspended and a special meeting called to consider removing them from office. The letters provided for a "framework of investigation" and review, which outlined the process that the respondent Band would follow in assessing the plausibility of the allegations. As well, the letters

outlined how the ultimate suspension decision was reached, stating at page 3:

> On Friday, February 22, 2008, the Chief and Council met in Edmonton, at the Hilton Garden Suites Hotel to follow up the initial review of the letter of complaint.
>
> Based on the information tabled, it was felt that it was in the interests of the Council's, our membership, and our community that both George Prince and Paulette Campiou be suspended pending an investigation of this letter of complaint.
>
> The formal vote occurred and the motion passed as the votes all registered in the affirmative. As a result, both you, Paulette Campiou and George Prince are suspended from active duty as Councillors effective immediately with pay.

> On March 12, 2008, the applicants arrived at the offices of the respondent band and discovered that the locks on their office doors had been changed and that they were forbidden to access the premises. On March 17, 2008, the applicants filed the within application for judicial review, as well as this motion, in which they seek an interlocutory injunction allowing them to continue to carry out their duties uninterrupted until the within application is finally determined.
>
> On March 20, 2008, the pay of each applicant, while under suspension, was reduced from $1,750 a week each to $700 a week.

[6] On April 7, 2008 I heard the motion by the applicants for an interlocutory injunction prohibiting the respondent Sucker Creek First Nation from suspending them as Band Councillors pending the outcome of this judicial review application. On April 15, 2008 I delivered my Reasons for Order and Order that the interlocutory injunction will be granted. I held at paragraph 35:

> ¶35. The applicants have shown that the democratic process and their constituents will be irreparably harmed should the injunction

> not be granted. To begin with their suspensions are indefinite, meaning that no definitive time table has been established concerning the investigation into the allegations against them. Only one year and 8 months remain in the applicants' term of office. Each month is important.
>
> ¶36. Accordingly, the balance of convenience favours the applicants, their constituents and the democratic process. The concern over the alleged conflict of interest can be addressed by suspending the applicants' duties with respect to the ATCO contracts until the investigation has been completed.

[7] Following this Order, the applicants were reinstated with pay and their duties with respect to the ATCO contracts were suspended until the investigation was completed.

[8] On July 4, 2008 the independent investigative body handed down its report to the Council. The Council made no decision regarding the suspension. Instead the Council began proceedings to remove, rather than suspend, the applicants.

Additional facts relating to the second matter: the decision of Band Council to remove Applicants (T-1370-08)

[9] On August 21, 20078, the applicants received a copy of a Band Council Resolution dated August 20, 2008 stating that they had been removed as Councillors. The Resolution was signed by the three individual respondents and indicated that the decision had been reached pursuant to meetings held on July 23, August 7 and August 19, 2008.

[10] The respondents state that a Notice of Special Council Meeting was served on each Councillor and a Special Council Meeting was held on July 23, 2008 at Sucker Creek First Nation.

This meeting was adjourned then continued on August 7 and August 19 in Edmonton. Notices were served on each Councillor at least 48 hours prior to the continued Council Meetings.

[11] The applicants received a notice on or about July 14, 2008 indicating that a Special Meeting of Council would be held on July 23, 2008, for the purpose of considering their removal as Councillors. The applicants state that this meeting was not convened by the Council but was called by Chief Jaret Cardinal. Council did not receive a petition of any kind seeking the removal of the applicants as Councillors. This meeting was held at the Sucker Creek First Nation premises.

[12] The applicants state that the Band Council Resolution was not presented at the meetings of July 23 and August 7. All Council members were present at the July 23 meeting. At that meeting the applicant Paulette Campiou read into the record a number of jurisdiction objections to the meeting on behalf of herself and the applicant George Prince, including objections based on the lack of a petition seeking their removal, and the fact that the Special Meeting had not been convened by Council. After the applicant Paulette Campiou stated that she wished to have her lawyer present, all of the Council agreed to adjourn the meeting to August 7.

[13] Between July 23 and August 7, 2008, counsel for the applicants requested particulars of the allegations against the applicants, specifically which alleged facts constituted which of the alleged breaches. The applicants state that counsel for the Band refused to provide particulars, replying that the applicants knew the allegations against them and that these were contained in the affidavit sworn

by Chief Jaret Cardinal in the application for the interlocutory injunction that came before me in April 2008.

[14] The next Council Meeting was held in Edmonton, three and half hours away from Sucker Creek at the law offices of Ms. Pricilla Kennedy, counsel for the respondents in the second matter. The Chief and the six Council members attended the meeting together with their respective lawyers (5 lawyers plus one student-at-law). The 53-page verbatim transcript of the meeting was before the Court at the hearing.

[15] In reviewing the 53-page transcript, it is clear that the meeting was completely consumed by legal wrangling about "legal" objections raised by the lawyers including the allegation that Chief Jaret Cardinal could not rule on the removal of the applicants since he had commenced an action against the applicants in the Court of Queen's Bench of Alberta for defamation. The meeting was adjourned with the agreement of all counsel that "once legal counsel has provided direction" the meeting will be resumed. (Ms. Kennedy agreed to that at page 52 of the transcript she said "o.k.".) Ms. Crook, also counsel for the respondent agreed to that. Ms. Crook said at page 52 "thank you". (Counsel for the respondents Ms. Kennedy and Ms. Crook agreed at page 52 of the transcript.)

[16] On August 14, 2008, the applicants received a notice that the Special Meeting to consider their removal as Councillors would continue on August 19, 2008. The applicants state that this further meeting was not convened by Council or with their concurrence. The applicants did not attend the August 19, 2008 meeting, which was again held in the law offices of Ms. Kennedy.

[17] Four of the seven Council members were not present at the meeting on August 19, 2008. The transcript from the August 19 Special Council Meeting indicates that there was a motion to remove Councillor George Prince put forward by Ronald Willier, seconded by Russell Willier, and voted on by the three present Councillors. Following this, a motion to remove Councillor Paulette Campiou was put forward by Russell Willier, seconded by Ronald Willier, and voted on by the three Councillors present.

[18] The Band Council Resolutions removing Councillors George Prince and Paulette Campiou contained a statement of the appeal process provided in the *Election Regulations.* The applicants have not appealed the decisions to remove them to the Appeals Committee under the *Regulations.* The applicants state that the only remedy available to them under the regulations would be a by-election, which is not an adequate remedy.

ISSUES

[19] The issues in this application are:

a. Was the decision of the Band to suspend the applicants from their positions as Councillors valid?

    1. Does the Council have the authority to suspend Councillors?
    2. Was the decision validly made at a duly convened Council meeting?
    3. Was the decision to suspend the applicants lacking in procedural fairness?

b. Was the decision of the Band to remove the applicants from their positions as Councillors valid?

    1. Were the proper procedures followed in removing the applicants from their positions as Councillors?
    2. Was the decision to remove the applicants lacking in procedural fairness?
    3. Is there an alternate adequate remedy?

STANDARD OF REVIEW

[20] The respondents submit that the decision of the Band Council to suspend the applicants was a factual question to be determined by the member of Council. Thus, the respondent submits that the appropriate standard of review is reasonableness.

[21] The applicant has argued that the Council acted beyond its powers in suspending the applicants. Mr. Justice Beaudry held in *Martselos v. Salt River First Nation*, 2008 FC 8 at paragraphs 16-18 that on questions of whether the Council acted beyond its powers, the appropriate standard of review is correctness (see also *Vollant v. Sioui*, 2006 FC 487, 295 F.T.R. 48, per Justice de Montigny at paragraph 31). The respondents have argued that the Council has the authority to suspend by custom. The Federal Court of Appeal noted, in its decision upholding Mr. Justice Beaudry's holding in *Martselos*, that "the Council has a greater expertise on matters such as knowledge of the Band's customs." (See also *Giroux v. Swan River First Nation*, 2006 FC 285, 288

F.T.R. 55, per Justice Dawson at paragraph 54, varied on other grounds in 2007 FCA 108, 361 N.R. 360 [*Giroux*]).

[22] Writing for the Federal Court of Appeal in *Martselos*, Madam Justice Trudel held that if the Council is found to have the power to carry out the impugned act, its application to the facts and the exercise of its discretion to the facts is reviewable on a standard of reasonableness *Martselos v. Salt River Nation #145*, 2008 FCA 221 at paragraphs 27-32.

[23] Breaches of procedural fairness are reviewed on a standard of correctness (*Martselos*, supra, per Mr. Justice Beaudry at paragraph 18).

[24] On the issue of the removal of the applicants, the primary issue is procedural fairness, which is subject to a standard of review of correctness.

ANALYSIS

1. The first matter -- Suspension of the Applicants

i. Authority of the Council to suspend Councillors

[25] The applicants submit that the Council does not have the power to suspend Councillors. The *Election Regulations* do not make any provision for the suspension of Councillors. The *Regulations* only contain a provision for the removal of Councillors. The applicants, citing *Martselos v. Salt River First Nation*, 2008 FC 8 in their written memorandum, argue that where the powers of Council are set out in an Elections Code, the Council is limited to those powers and it

would be incorrect to expand them. In *Martselos*, a Chief of the Salt River First Nation was removed on grounds other than those listed in the *Election Regulations.* Mr. Justice Beaudry held at paragraph 32 that the "*Customary Election Regulations* are an all-encompassing legal code which establish the grounds for which a Chief or Councillor may be removed from office" and that it would be incorrect to expand these grounds.

[26] The applicants further argue that an indefinite suspension is, in effect, a removal. The provision in the *Election Regulations* for the removal of Councillors requires that a petition be brought containing the signatures of more than 50% of the electorate. The applicants submit that as the removal provision was not invoked or followed, the suspension was also invalid if considered an effective removal.

[27] The respondents submit that the custom of the Sucker Creek Nation is that the Chief and Counsel can suspend and otherwise sanction Councillors for misconduct.

[28] The courts have held that customs of a band are practices "which are generally acceptable to members of the band upon which there is broad consensus." (See *Bigstone v. Big Eagle*, 52 F.T.R. 109 per Justice Strayer at p.8; see also *Bone v. Sioux Valley Indian Band No. 290 Council* (1996), 107 F.T.R. 133 per Justice Heald at paragraph 26; *McLeod Lake Indian Band v. Chingee* (1998), 153 F.T.R. 257 per Justice Reed at paragraphs 12-13.)

[29] The respondents submit that the Chief and Council of Sucker Creek Fist Nation have historically suspended Council members for misconduct, and point out that the present Council, including the two applicants, suspended another Council Member on January 20, 2008. The affidavits of Fred Badger and respondents Councillor Ronald Willier and Russell Willier state that this is a practice accepted by general custom and usage.

[30] Finally, the respondents submit that both the *Election Regulations* and the Band's draft *Code of Ethics* give the Council the power to sanction or suspend its members. The *Election Regulations* provide that council has the authority to take actions and decisions "for the proper governance of the Sucker Creek First Nation." The only authority expressly provided to the Council to deal with misconduct by Councillors under the *Election Regulations* is the authority to remove Councillors upon receipt of a petition signed by 50% plus one of the Band members. The respondents argue that not only customary practice, but also common sense and "the general law recognizing the power of a legislative body to sanction or control its own members" give the Council the authority to discipline Councillors short of removing them from office.

[31] The Court agrees that the Council has powers through custom which are not codified in the *Election Regulations* or elsewhere. The Council has the authority through customary practice to discipline or sanction Council members short of removal. For example, the Council had the authority to suspend the applicants' duties with respect to the ATCO contract, and I upheld this aspect of the applicants' suspension while granting the interlocutory injunction reinstating the applicants from their suspension. However, the indefinite suspension of Councillors who are elected

for three year terms is effectively a removal, with serious consequences. Not only does it deprive Councillors of the ability to fulfill their duties before any allegations against them have been proven, it also leaves the constituents who elected them unrepresented. To achieve such an outcome, the Council must follow the removal procedure outlined in the *Election Regulations*. Further, as discussed below, the process used in suspending the applicants was lacking in procedural fairness. Even if there exists a general consensus that the Council has the power to suspend Councillors, a suspension carried out in this manner is a breach of procedural fairness and cannot be protected as a customary practice.

[32] Mr. Kenneth McLeod, counsel for the Sucker Creek First Nation, Ronald Willier and Russell Willier, argued that the application for judicial review of the suspension decision should be dismissed because it is moot. It is not moot if the subsequent decision by the respondents to remove the applicants is set aside on judicial review. Then the Court would be left to decide whether the original decision to suspend the applicant was valid. In any event, even if the first matter was moot, the Court sees an importance for the parties in having the suspension matter resolved to settle an important legal question between the parties which remains pertinent.

[33] I am satisfied, as was Madam Justice Tremblay-Lamer in *Lafond v. Muskeg Lake Cree Nation*, 2008 FC 727 at paragraphs 10 to 12, that the Chief and Council retain customary powers and authority, where Band legislation has not "covered the field", to suspend and discipline councillors. However, like Madam Justice Tremblay-Lamer in that case, I am satisfied that the

applicants "suspension" from office was in fact a "removal" from their elected position. Justice Tremblay-Lamer said at paragraph 12:

> Nevertheless, I am of the view that while couched as a suspension from office, and thus qualitatively different from a removal, what has actually occurred in the present case is a removal of the applicant from his elected position.

ii. Was the meeting a "Duly Convened Meeting" of Council?

[34] Neither the Indian Act and its regulations, nor the Band's *Election Regulations*, contains a definition of a "duly convened meeting."

[35] The applicants, citing in their memorandum *Assu v. Chickite*, [1999[1 C.N.L.R. 14 (BC S.C.) at paragraphs 39-40, argue that the requirements of a duly convened meeting are:

1. the meeting is called at the request of a majority of Councillors;
2. advance notice is given of the meeting; and
3. the meeting is attended by a quorum of Council

[36] The meeting in this case was called at the request of the Chief, not the majority of the Councillors. Advance notice was not given. Further, no notice was given to the applicants. Thus, the applicants argue that the meeting was not a "duly convened meeting."

[37] Council meetings are traditionally held at the Band Office in Sucker Creek. The applicants submit that the respondents deviated so far from this practice in calling a "secret" meeting in Edmonton.

[38] Regardless of the definition of a "duly convened meeting," a meeting called without advance notice, and with no notice to the applicants, and held away from the Band Office, does not conform to any notion of fairness to the applicants. As discussed below, the lack of notice to the applicants is a procedural fairness issue that undermines the validity of the Council's decision to suspend the applicants.

iii. Procedural Fairness

[39] Band Councils must operate according to the rule of law. This obligates Band Councillors to respect the duty of procedural fairness in exercising their powers and taking decisions in the interests of those they were elected to serve. (See *Long Lake Cree Nation v. Canada (Minister of Indian and Northern Affairs)* [1995] F.C.J. No 1020, per Justice Rothstein at paragraph 31; *Balfour v. Norway House Cree Nation*, 2006 FC 213, 288 F.T.R. 182, per Justice Blais at paragraphs 12-14).

[40] It is trite law that procedural fairness includes the right to be heard.

[41] The decision to suspend the applicants was made at a "secret" meeting on February 22, 2008, in an Edmonton hotel. The applicants were not given notice. The applicants were also excluded from a prior meeting regarding their suspensions on February 15, 2008. Additionally, the applicants were never provided with either the letter from Morgan Construction and Environmental Ltd., containing the main conflict of interest allegations against the applicants, or the memorandum from ATCO Electric Ltd. alleging problems with rates for pay for contractors involving the

applicants. Thus, the applicants did not have an opportunity to respond to these allegations or to be present at the meeting where the decision to suspend them was taken.

[42] The decision to suspend the applicants was entirely lacking in procedural fairness to the applicants. I conclude that the applicants were not validly suspended from their duties as Councillors.

2. The second matter – The Removal of the Applicants

i. Were the proper procedures followed in removing the applicants?

[43] Sections 15.3 -15.5 of the *Election Regulations* provide:

> **15.3 Petition for Removal**
>
> Upon receipt of a petition signed by at least fifty percent plus one (50%+1) Electors stating one or more of the grounds set forth in 15.1 and 15.2 for seeking the removal of a named Chief or Councillor, the Council will convene a special meeting of the Council to consider the removal of the Chief or Councillor from Office.
>
> 15.4 The Chief or Councillor who is the subject of the petition shall be allowed to present written or oral evidence.
>
> **15.5 Resolution for Removal**
>
> Upon consideration of all relevant evidence presented at the meeting as to whether the alleged grounds for removal of a Chief or Councillor fall within the provisions of 15.1 or 15.2, the council may then by resolution passed at the Special Meeting, remove a Chief or Councillor from office. Such Resolution must state the grounds for removal and the effective date of the removal of the person from office.
>
> If a person does want to appeal this decision, the same procedure for an Election appeal will be followed.

[44] No petition was received by the Band Council seeking the removal of the applicants. The Band Council Resolutions removing the applicants were voted on by the three respondents only. The respondents do not explain why section 15.3 of the *Elections Regulations* was not followed except their assertion that the grounds for removal specified in section 15.1 and 15.2 do not require a petition and in any event, the respondents submit that the applicants have an alternate remedy for appealing their removal under s. 15.5 of the *Election Regulations*. Thus, the respondents submit that it is unnecessary for the Court to consider the alleged errors surrounding the removal of the applicants.

[45] The Court finds that the Council members not present were given proper notice of the meeting on August 19th and a proper description of the subject of the meeting. The Court is perplexed when Council Members do not attend so that a resolution of issues is grid-locked.

[46] The submission that the resolution removing the applicants is not valid because there was not a quorum of four councillors as required by the Election Regulations, (subsection section 2 (q)) and will not be given any weight. The applicants cannot contend that the meeting did not have a quorum when they had adequate notice of the meeting and chose not to attend. They cannot lift themselves up with their own bootstraps.

[47] It is clear to the Court that the procedures for removing elected Councillors in the Election Regulations were not followed. Thus, the removal is not valid under the Election Regulations for the following two reasons:

a. the Election Regulations clearly and expressly provide that the Council can only remove the Chief or a Councillor upon receipt of a petition signed by at least 50% plus one of the electors stating the grounds under section 15.1 or 15.2 for seeking the removal before the Council can convene a special meeting to consider the removal. In this case there was no such petition; and

b. the meeting where the applicants were allegedly removed, was not a meeting convened by the Council. In fact, four of the seven members of Council did not agree to that meeting at that date. When the previous meeting had adjourned it was agreed that the next meeting would be at a time and place agreed upon. Instead this meeting was set unilaterally by the respondents.

[48] As Madam Justice Carolyn Layden-Stevenson held in *Denn Tha' First Nation v. Didzena* 2005 FC 1292 at paragraph 28:

> …. Further, the removal of an individual from office is a serious matter. It has a profound impact on the individual. Here, the negative consequences for the First Nation community are indisputable. It is appropriate, where such a serious step is to be taken, that safeguards articulated in the governing regulations be followed to the letter …

[49] In this case, the *Election Regulations* require that there be a petition of 50% plus one of the electorate before the applicants can be removed by Council. The electorate elected the applicants and the Election Regulations give the electorate the power to initiate their removal. The Election Regulations are crystal clear, and reflect logical and democratic principles. Otherwise, Councillors who fight amongst themselves could bring resolutions to remove each other by forming alliances of four councillors. That would undermine the will of the electors and makes no sense.

ii. Adequate Alternate Remedy

[50] The respondents argue that section 15.5 of the *Election Regulations* provides the applicants with an adequate alternate remedy. The relevant portion of section 15.5 provides that "if a person does want to appeal this decision, the same procedure for an Election appeal will be followed."

[51] The applicants argue that section 15.5 of the *Election Regulations* does not provide an adequate remedy. The procedure for an appeal under section 15.5 is the same procedure followed in appealing an election result under section 12.8 of the *Election Regulations*. The remedies available all result in a by-election. There is no remedy under the *Election Regulations* to reverse the decision to remove the applicants and to reinstate them in their position as Councillors.

[52] The respondents rely on *Willier v. Sucker Creek Indian Band #150A*, 2001 FCT 1325 to argue that the appeal process in the *Regulations* must be followed. In that case, Mr. Justice Gibson held at paragraph 22:

> It is not for this Court to run roughshod over the will of the people of this First Nation and intervene in the role reserved to the Election Appeal Committee where that Committee has had not opportunity to act and to perform the function reserved to it.

[53] *Willier*, however, is distinguishable on the facts. In that case, the dispute between the parties concerned an election and not the removal of a councillor. While a by-election may be a perfectly adequate remedy when appealing the outcome of an election, it does not follow that it will suffice where an elected councillor has been removed.

[54] In *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, Chief Justice Lamer listed several factors that may be considered in determining whether there is an adequate alternative remedy:

> ¶37 ... I conclude that a variety of factors should be considered by courts in determining whether they should enter into judicial review, or alternatively should require an applicant to proceed through a statutory appeal procedure. These factors include: the convenience of the alternative remedy, the nature of the error, and the nature of the appellate body (i.e., its investigatory, decision-making and remedial capacities). I do not believe that the category of factors should be closed, as it is for courts in particular circumstances to isolate and balance the factors which are relevant.

[55] In the present case, the alleged errors are the misapplication of the Election Regulations and breaches of procedural fairness. The appellate body under the Election Regulations, the Election Appeal Committee, does not have any specific ability to deal with errors of this nature. The remedies available through the Committee are limited to calling a new election, a by-election or a run-off election. The Committee does not have the power to reverse the removal of the Councillors or to reinstate them. Thus, the nature of the error and the nature of the appellate body suggest that the appeals process in the Elections Regulations is not an adequate alternate remedy, and that judicial review is the more appropriate remedy in this case.

CONCLUSION

[56] For the foregoing reasons, the Court concludes:

a. the first application to set aside the decision to suspend the applicants is allowed. While the Sucker Creek First Nation Chief and Council have the power through custom to suspend or discipline the Chief or Council Members, the indefinite

suspension of the two Councillors in this case is effectively a removal. The clear procedure for removal was not followed. In any event, the meeting called to suspend the two Councillors was not a "duly convened meeting". Moreover, the meeting lacked fairness in that the Councillors affected were not given notice or an opportunity to respond to the allegations against them which led to their suspension; and

b. the second application to set aside the decision to remove the two Councillors is also allowed. The decision removing the two Councillors is set aside. The Election Regulations were not followed in that there was no petition from 50% plus one of the electors seeking the removal of the two Councillors for one or more of the grounds set fourth in section 15.1 and 15.2 of the Election Regulations.

No Judgment on the merits of the alleged conflict of interest

[57] The Court makes no judgment on the merits of the alleged conflict of interest against the two applicants. The Court's Judgment is restricted to the requirement that the Band follow its Election Regulations before removing an elected Councillor, and give the Councillor a fair opportunity to know the allegations against him or her, and respond before the Band makes any decision affecting his or her right to sit as a Councillor.

LEGAL COSTS

[58] The Court is surprised that the Sucker Creek First Nation has spent its resources on a case without merit and contrary to the Election Regulations.

[59] On April 15, 2008 I granted an injunction against the Sucker Creek First Nation from suspending the applicants without following the requirements under the Election Regulations.

[60] The subsequent file is full of formal legal documents regarding notices of meetings and minutes of special meetings.

[61] Then on September 30, 2008 another injunction was issued by Justice Hanson of this Court against the Sucker Creek First Nation to again stop the removal of the applicants.

[62] When the Court awards legal costs it has to take into account a number of factors. One factor is why the respondents allowed these applications to proceed when their defence had no merit.

[63] Counsel for the applicants advised the Court that they have incurred legal costs in excess of $70,000. The applicants request legal costs in the lump sum amount of $10,000 as Madam Justice Layden-Stevenson allowed in *Dene Tha' First Nation*, above. From the material on these two files the Court does not doubt that the costs of the applicants were extremely high and that $10,000 as a lump sum payment is reasonable for party and party costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. these two applications for judicial review are allowed with costs in the amount of $10,000;
2. in the first matter, Docket T-440-08, the decision of the Sucker Creek First Nation Band Council dated February 22, 2008 suspending the applicant is set aside; and
3. in the second matter, Docket T-1370-08, the Band Council Resolutions dated August 20, 2008 removing the applicants as Councillors is set aside.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-440-08
STYLE OF CAUSE:	GEORGE PRINCE ET AL v. SUCKER CREEK FIRST NATION #150A ET AL
PLACE OF HEARING:	Edmonton, AB
DATE OF HEARING:	October 16, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	KELEN J.
DATED:	November 14, 2008

APPEARANCES:

Thomas R. Owen	FOR THE APPLICANTS
Ken McLeod	FOR THE RESPONDENTS (SUCKER CREEK FIRST NATION, RONALD WILLIER, RUSSELL WILLIER)
Priscilla Kennedy	FOR THE RESPONDENT (JARET CARDINAL)

SOLICITORS OF RECORD:

OWEN LAW Edmonton, AB	FOR THE APPLICANTS
WALSH WILKINS LLP CALGARY, AB	FOR THE RESPONDENTS (SUCKER CREEK FIRST NATION, RONALD WILLIER, RUSSELL WILLIER)
DAVIS LLP	FOR THE RESPONDENT (JARET CARDINAL)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1370-08
STYLE OF CAUSE:	GEORGE PRINCE ET AL v. JARET CARDINAL ET AL
PLACE OF HEARING:	Edmonton, AB
DATE OF HEARING:	October 16, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	KELEN J.
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