

Federal Court



Cour fédérale

Date: 20120307

Docket: T-757-11

Citation: 2012 FC 294

Ottawa, Ontario, March 7, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

CECILIA FITZPATRICK

Applicant

and

JIM BOUCHER

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, for judicial review of a decision of an appeal arbitrator, dated May 2, 2011, in the matter of the April 5, 2011 election of Jim Boucher as Chief of the Fort McKay First Nation.

[2] In the election, Cecilia Fitzpatrick (the applicant) and Jim Boucher (the respondent) were the sole candidates of the Fort McKay First Nation for Chief. The respondent won the election by a narrow margin (one vote). The applicant appealed the election based on six allegedly invalid votes that could have affected the result. The appeal arbitrator rejected the applicant's appeal, basing his

decision on the interpretation of provisions of the Election Code of the Fort McKay First Nation (the Election Code).

[3] The applicant requests that this Court order a new election for Chief of the Fort McKay First Nation. Specifically, the applicant requests the following relief:

1. an order that the appeal arbitrator erred in law in interpreting the Election Code of the Fort McKay First Nation and acted beyond his jurisdiction in making his decision regarding the election of Chief of the Fort McKay First Nation;

2. an order quashing the election of Jim Boucher as Chief of the Fort McKay First Nation and directing a new election for Chief of the Fort McKay First Nation;

3. costs of the proceeding to the applicant on a solicitor-client basis; and

4. such further and other orders as the Court shall deem just and convenient in the circumstances.

Background

General Election

[4] The procedure for general elections is set out in Part 1 (sections 2 to 21) of the Election Code.

[5] On April 5, 2011, a general election was held for Chief and Councillors of the Fort McKay First Nation. Prior to the election and pursuant to section 5.1 of the Election Code, the Fort McKay

First Nation Council appointed as returning officer, Kelsey Becker Brookes, barrister and solicitor practicing in the area of municipal law. The returning officer's duties are listed in section 7 of the Election Code. In addition to specific duties, the returning officer's duties broadly include "all other things necessary for the conduct of an election" (section 7.1.11 of the Election Code).

[6] In the April 2011 election, the applicant and respondent were the sole candidates for Chief. The applicant received 162 votes and the respondent received 163 votes. A recount of the ballots for Chief confirmed these results. The respondent was therefore elected Chief of the Fort McKay First Nation. On April 20, 2011, the applicant filed an appeal of the election of the respondent as Chief.

Appeal Procedure

[7] Election appeals are covered under Part 7 (sections 78 to 90) of the Election Code. Prior to the election, the returning officer must appoint an appeal arbitrator to determine any controversies arising from an election (section 78.1 of the Election Code). Accordingly, the returning officer appointed Frank Foran, Q.C. as appeal arbitrator for the April 2011 election.

Grounds of Appeal

[8] Permitted grounds of appeal are listed under section 81.1 of the Election Code. The applicant's notice of appeal sets out two grounds of appeal:

1. The returning officer erred in her interpretation and application of sections 57, 81.1.1 and 81.1.2 of the Election Code; and

2. The requirement to produce photograph identification to confirm identities was inconsistently applied such that some individuals who did not produce photograph identification were allowed to cast ballots, whereas others that did produce photograph identification were not permitted to cast ballots.

[9] This application focuses on the first ground of appeal, which pertains to the voting procedure and associated form (Form 11) established by the recording officer for incapacitated electors. The recording officer established this procedure based on her interpretation of section 57 of the Election Code. Form 11 is very similar to that used under the *Local Authorities Election Act*, RSA 2000, c L-20 for municipal elections in Alberta.

[10] The voting procedure established by the recording officer permitted incapacitated electors to specify an individual to assist them in marking their ballot. The procedure provided that the recording officer would ask the incapacitated elector whether they needed help to mark their ballot, and whether they wanted the specified individual to help them. If the incapacitated elector responded affirmatively, the recording officer would initial Form 11 and would then require the specified individual to fill in a statement that provided that:

1. he or she was a friend or relative of the incapacitated elector and;
2. he or she would:
 - (a) read the ballot to the incapacitated elector;
 - (b) mark the ballot in accordance with the incapacitated elector's instructions;and

- (c) keep secret all information that might come to them by virtue of providing the assistance.

[11] Upon this statement being filled in and signed by the specified individual, the recording officer would initial the statement. Form 11 was then attached to the voting register and the specified individual would assist the incapacitated elector in marking his or her ballot.

[12] At the general election of April 5, 2011, this voting procedure for incapacitated electors was employed on six separate occasions at the Fort McKay voting station. Although all six occasions were at issue, particular attention was drawn at the appeal hearing to Elder Maggie Bouchier, a blind elector, who voted with the aid of her cousin, Martha Powder. Martha Powder is allegedly a supporter of the respondent, whereas Elder Maggie Bouchier is allegedly a supporter of the applicant. However, Elder Maggie Bouchier did not volunteer who she voted for in the appeal hearings. Neither party was able to request that she do so, because the Election Code specifically provides that no person can be required to disclose the particular candidate that they voted for (section 39.1).

Appeal Arbitrator's Decision

[13] The hearing of the applicant's appeal was held on April 27, 2011. On May 2, 2011, the appeal arbitrator released his decision and reasons. In his decision, the appeal arbitrator dismissed both of the applicant's grounds of appeal.

Standard of Review

[14] The first ground of appeal is the sole ground at issue in this judicial review. This ground of appeal focused on the returning officer's interpretation and application of section 57 of the Election Code. The appeal arbitrator held that the interpretation of this section is, or is primarily, a question of law, and the appropriate standard of review is therefore correctness.

Interpretation of Section 57.1

[15] The appeal arbitrator focused on the use of the word "may" in section 57.1 of the Election Code, deeming it permissive rather than mandatory. Section 57.1 states:

The returning officer, at the request of an elector who is unable to read or is incapacitated by blindness or another physical condition from marking the elector's ballot in the usual manner may, at the elector's request, mark the vote of that elector on the elector's ballot in the manner directed by that elector, and shall immediately deposit the ballot in the ballot box. [emphasis added]

[16] The appeal arbitrator held that this provision does not limit who the incapacitated elector may request to mark his or her ballot – rather, it merely permits the incapacitated elector to request, amongst other individuals, that the returning officer mark his or her ballot. The appeal arbitrator found further support for this interpretation in section 57.2 of the Election Code, which states:

No candidate or agent shall be present in the voting compartment at the marking of a ballot under this section. [emphasis added]

[17] The appeal arbitrator held that if section 57.1 restricted the incapacitated elector's choice to only the returning officer, then section 57.2 would be unnecessary.

[18] The appeal arbitrator also relied on section 38.1 to support his interpretation of section 57.1.

Section 38.1 of the Election Code states:

While an elector is in a voting compartment for the purpose of marking the elector's ballot, no other person, except a person who has been permitted to assist an incapacitated elector, may enter the voting compartment or be in a position from which the person can see how the elector marks the elector's ballot. [emphasis added]

[19] According to the appeal arbitrator, the reference to "a person" as opposed to the "returning officer" in this provision enforced his interpretation of section 57.1 as not being limited to the returning officer.

[20] The appeal arbitrator also addressed the returning officer's preparation of Form 11. At the appeal hearing, the returning officer stated that she prepared this form so that proper precautions were in place to ensure ballots were marked appropriately. She also stated that individuals are often more comfortable having a friend or relative mark their ballot than someone, such as the returning officer, whom they do not personally know. The appeal arbitrator held that the preparation of Form 11 did not offend section 57.1 of the Election Code. In rendering this decision, he also relied on section 7.1 of the Election Code which broadly empowers the returning officer to "do all things necessary for the conduct of an election".

[21] In summary, based on his interpretation of the relevant provisions of the Election Code, the appeal arbitrator rejected the applicant's first ground of appeal.

Relief had there been a Breach of Section 57.1 of the Election Code

[22] Although the appeal arbitrator found no breach of section 57.1, he included in his reasons a discussion of appropriate remedies had he found the opposite to be true. The appeal arbitrator acknowledged that as the respondent only won the election by a margin of one vote, a breach of section 57.1 may have affected the result. However, as there was no evidence regarding which candidate received the votes of the six incapacitated electors, the appeal arbitrator held that he would have ordered a new election for Chief. As the appeal arbitrator found no breach of section 57.1, no such order was made.

Costs of Appeal

[23] The appeal arbitrator did not find that the appeal was so lacking in merit such as to constitute an abuse in process. Therefore, pursuant to section 79.1 of the Election Code, the appeal arbitrator held that the Fort McKay First Nation should be responsible for the payment of the costs of the appeal.

Issues

[24] The respondent specified the following issues in his memorandum of fact and law, which I think appropriately address the submissions of both parties:

1. What is the standard of review?
2. Did the appeal arbitrator err in his interpretation of section 57.1 of the Election Code?
3. Did the appeal arbitrator err in not granting relief?

Applicant's Written Submissions

Interpretation of Section 57.1 of the Election Code

[25] The applicant submits that the returning officer incorrectly interpreted section 57.1 of the Election Code. The applicant submits that the correct interpretation of this provision provides that only the returning officer may assist an incapacitated elector in marking a voting ballot. Therefore, as incapacitated electors were aided by individuals other than the returning officer on six separate occasions in the April 2011 election, the applicant submits that these votes were unlawful. Consequently, those six incapacitated electors became ineligible voters.

[26] The applicant relies on three other provisions of the Election Code to support her interpretation of section 57.1: section 48.1, section 51 and section 54.3.

[27] Section 48.1 of the Election Code falls under the heading, “Persons at voting station” and states:

Except for the returning officer, election officials, agents of candidates authorized to attend at the voting station and the electors who are for the time being actually engaged in voting, no other person is entitled to be present, nor shall any other person be permitted to be present, in the voting station during the time appointed for voting. ...[emphasis added]

[28] The applicant submits that the presence of other individuals at the voting station to assist the incapacitated electors was contrary to section 48.1 and thus unlawful.

[29] The applicant also relies on section 51 of the Election Code which pertains to interpreters for electors that do not understand the English language. Section 51.2 of the Election Code states:

The interpreter may not be an elector or member.

[30] The applicant submits that this section provides that individuals who assist voters cannot be electors or members.

[31] The applicant also relies on section 51.2 of the Election Code in her submission that the appeal arbitrator erred in his interpretation of the word “may” in section 57.1. The applicant submits that the entire context of the Election Code, including section 51.2, must be considered when interpreting this word in section 57.1. Where this is done, the applicant submits that it is clear that no other voters could be at the polling booth with an incapacitated elector.

[32] Finally, the applicant submits that section 54.3 of the Election Code also only permits the returning officer or her agent to take the vote of the elector. This section pertains to electors who are shut in, in hospital or otherwise incapable of physically attending at a voting station on the advance voting day. It provides that the returning officer or her agent may attend these electors to receive their advance vote.

[33] In summary, the applicant submits that the appeal arbitrator incorrectly dismissed the appeal based on his opinion that the returning officer could alter the procedure of the Election Code. According to the applicant, this is contrary to the provisions of the Election Code.

Granting of Relief

[34] The applicant submits that the appeal arbitrator erred in concluding that the breach of section 57.1 of the Election Code by six incapacitated electors did not result in a converted election requiring a new election for Chief. The applicant cites a number of cases to support her submission that the number of votes at issue in this application, coupled with the narrow margin by which the respondent was elected Chief, is sufficient to void the April 2011 election of Chief of the Fort McKay First Nation.

Respondent's Written Submissions

Standard of Review

[35] The respondent submits that the proper standard of review in cases concerning election appeals is correctness.

Interpretation of Section 57.1 of the Election Code

[36] The respondent's argument relies primarily on rules of statutory interpretation.

[37] The respondent submits that the applicant's interpretation of section 57.1 of the Election Code does not conform to accepted principles of statutory interpretation and legislative construction. Rather, the respondent submits that the correct interpretation was provided in the appeal arbitrator's decision. That interpretation holds that section 57.1 does not limit who the incapacitated elector may request to mark his or her ballot. Similarly to the appeal arbitrator's finding, the respondent submits that section 57.1 is permissive rather than mandatory and therefore only operative where the incapacitated elector requests the assistance of the returning officer. Where no such request is made, the respondent submits that the returning officer does not have a duty, or the discretion, to require that an incapacitated elector seek their assistance in voting.

[38] In response to the applicant's reliance on section 48.1, section 51 and section 54.3 to support her interpretation of section 57.1, the respondent submits that none of these sections address incapacitated voters.

[39] With regards to section 48.1 of the Election Code, the respondent submits that an accepted principle of legislative construction is that provisions addressing the specific subject are to be preferred over general provisions dealing with the same subject matter. Therefore, the respondent submits that the specific provision addressing incapacitated electors (section 57.1) should prevail over the more general provision (section 48.1). In addition, the respondent submits that section 48.1 is consistent with section 57.1 by permitting those that accompany and assist an incapacitated elector to remain in the voting station as long as they are assisting the elector and are not merely loitering there.

[40] The respondent also submits that sections 51 and 54.3 do not apply or assist in the interpretation of the Election Code provisions regarding incapacitated electors.

Granting of Relief

[41] The respondent submits that as the appeal arbitrator found no breach of the Election Code, no relief should be granted.

[42] In the alternative, if the Court finds that a breach did occur, the respondent submits that the Court, on judicial review, has the discretion to grant a remedy appropriate to the circumstances. The

respondent refers to existing jurisprudence in which the Court has upheld the results of a flawed election process where broad interests outweigh the unjustified disruption within a Band that would occur if a new election was ordered.

[43] Finally, the respondent submits that even if the appeal arbitrator had ordered that a new election be held, the Court is not precluded from denying such relief.

Analysis and Decision

Standard of Review

[44] Where previous jurisprudence has determined the standard of review applicable to a particular issue before the Court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57).

[45] In this application, the main issue is whether the appeal arbitrator correctly interpreted section 57.1 of the Election Code. It is established law that the standard of review for an appeal committee's legal interpretation of what constitutes a corrupt election practice under an Aboriginal customary election regulation is correctness (see *Giroux v Swan River First Nation*, 2006 FC 285, [2006] FCJ No 406 at paragraph 55; and *Wilson v Ross*, 2008 FC 1173, [2008] FCJ No 1456 at paragraph 26).

[46] In reviewing the appeal arbitrator's decision on the standard of correctness, the Court must not show deference to the appeal arbitrator's reasoning process. Rather, the Court must undertake its own analysis of the question at issue. If the Court does not agree with the appeal arbitrator's decision, it must substitute its own view and provide the correct answer (see *Dunsmuir* above, at paragraph 50).

Interpretation of Section 57.1 of the Election Code

[47] The interpretation of section 57.1 is the primary issue in this application. This is due to the recognized overriding aim of election statutes to promote the right to vote (see *Keefe v. Pukanich*, 2007 NWTSC 90, [2007] NWTJ No 92 at paragraphs 12 and 33). Therefore, courts have generally been careful not to interfere with an election if reasonable efforts have been made to comply with statutory requirements. However, where an irregularity, such as voting by unqualified electors, could affect the election result, courts have required strict compliance with the statutory procedures (see *Keefe* above at paragraphs 14 and 15; and *Camsell v Rabesca*, [1987] NWTR 186 at page 8).

[48] In this application, if the applicant's interpretation of section 57.1 of the Election Code is correct, the six incapacitated electors' votes would not be in compliance with the statutory procedure. There would therefore be sufficient votes by unqualified persons to affect the one vote margin by which the respondent was elected Chief (see *Foley v Wooff*, [1961] SJ No 6 at paragraph 13; and *Lamb v McLeod* (1932) 3 WWR 596 at page 602). Therefore, the interpretation of section 57.1 of the Election Code and corresponding determination of whether the incapacitated electors were unqualified to vote, lies at the core of this application.

[49] The Supreme Court of Canada has adopted the modern approach to statutory interpretation as the prevailing and preferred approach to statutory interpretation (see *Bell ExpressVu Ltd. Partnership v Rex*, 2002 SCC 42 at paragraph 26). This approach must be applied when interpreting section 57.1 of the Election Code.

[50] In her submission, the applicant relied primarily on three separate sections of the Election Code (48.1, 51 and 54.3) to support her interpretation of section 57.1. Section 48.1 broadly mandates who is permitted at voting stations. The applicant submits that this provision limits these individuals to the: returning officer; election officials; agents of candidates authorized to attend at the voting station; and electors while engaged in voting.

[51] As this provision makes no exception for individuals assisting an incapacitated elector (other than the returning officer), the applicant submits that the interpretation of who may assist an incapacitated elector under section 57.1 is limited to the returning officer. In response, the respondent submits that the accepted *generalia specialibus non derogant* principle of legislative construction provides that provisions addressing a specific subject are to be preferred over general provisions dealing with the same subject matter. Thus, when it comes to the voting procedure for incapacitated electors, the more specific section 57.1 should be preferred over the more general section 48.1.

[52] In *Vidéotron Ltée v Industries Microlec Produits Électroniques Inc.*, [1992] 2 SCR 1065, at page 1080, Justice Gonthier observed that “[i]t is well settled that specific rules prevail over general

rules”. This rule of construction has also been confirmed by Professor Sullivan in *Sullivan and Driedger on the Construction of Statutes*, 4th ed, Toronto, Butterworths, 2002, at page 273:

When two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one.

[53] In this application, section 48.1 generally applies to persons who may be present at voting stations. However, section 57.1 more specifically applies to the voting procedure for incapacitated electors and provides that no agent or candidate shall be present in the voting compartment when the ballot is being marked.

[54] For ease of reference, I will set out sections 48.1, 51 and 57 of the Election Code:

48. Persons at voting station

48.1. Except for the returning officer, election officials, agents of candidates authorized to attend at the voting station and the electors who are for the time being actually engaged in voting, no other person is entitled to be present, nor shall any other person be permitted to be present, in the voting station during the time appointed for voting. For greater certainty, the persons prohibited from the voting station include candidates, unless attending for the purposes of casting their own vote, and members of the media.

51. Interpreter

51.1. If an elector does not understand the English language, the returning officer may allow or appoint an interpreter to translate any statements, questions, or documents as necessary to allow the elector to vote.

51.2. The interpreter may not be an elector or member.

51.3. Before acting as an interpreter, the interpreter shall make a statement in the prescribed form.

51.4. Where any elector has required the assistance of an interpreter, the returning officer shall make a report in the prescribed form.

57. Incapacitated elector at voting station

57.1. The returning officer, at the request of an elector who is unable to read or is incapacitated by blindness or another physical condition from marking the elector's ballot in the usual manner may, at the elector's request, mark the vote of that elector on the elector's ballot in the manner directed by that elector, and shall immediately deposit the ballot in the ballot box.

57.2. No candidate or agent shall be present in the voting compartment at the marking of a ballot under this section.

57.3. When a ballot has been marked pursuant to this section, the returning officer shall make a report in the prescribed form.

[55] In the present case, the ballots of six incapacitated voters were marked for them by friends (or relatives) who accompanied them into the voting compartment. If the applicant is correct that section 57.1 of the Election Code only permits the returning officer to mark these voters' ballots, then there has been a breach of the Election Code on six different occasions and the appeal arbitrator is in error.

[56] The respondent states that section 57.1 of the Election Code does not limit the marking of the ballots of an incapacitated voter to the returning officer but that others, such as a friend, can also mark the ballots.

[57] I do not agree with the respondent. In my view, the appeal arbitrator erred by ruling that section 57.1 of the Election Code does not limit who the incapacitated elector may ask to mark his

or her ballot and that the section merely permits the elector to ask the returning officer as but one possible individual amongst others, to mark his or her ballot.

[58] A review of the relevant sections of the Election Code discloses the following. Section 38.1 deals with secrecy in voting and provides that normally only the elector can enter the voting compartment, however, if an elector is incapacitated, the person permitted to assist the voter may also enter the voting compartment. Section 48.1 states that only the returning officer, election officer, agents of candidates and electors who are at the time actually engaged in voting, are permitted to be in the polling stations during voting. Candidates are not permitted in the voting station unless they are casting their own vote.

[59] Section 57 of the Election Code specifically deals with incapacitated electors at the voting station. Section 57.1 permits an elector who is unable to read or is incapacitated by blindness or another physical condition, thus, making him or her unable to mark the ballot in the usual manner, to request that the returning officer mark her or his vote on the ballot in the manner directed by the elector.

[60] Section 57.2 of the Election Code prohibits any candidate or agent from being present in the voting compartment at the marking of a ballot under section 57.1.

[61] Against this background, I must assess the facts of this case; namely, where an elector entered the voting compartment and had his or her ballot marked by a friend or relative instead of the returning officer, as provided for in section 57.1 of the Election Code.

[62] I do not believe that it is in dispute that, under normal circumstances, an elector must mark his or her own ballot. The present Election Code makes an exception for incapacitated voters who may ask the returning officer to mark his or her vote on the ballot in the manner directed by the elector. There is good reason to require the elector to mark his or her own choice on the ballot as it relates to a person's right to vote for the candidate of his or her choice without influence in the voting compartment from others.

[63] Beginning from the basic proposition that, to vote, a person must normally mark his or her own ballot, then it follows that any exception to this procedure should be explicitly stated in the Election Code. In the present case, there is such an exception made for incapacitated voters to request that the returning officer mark their choice on the ballot. However, there is no similar provision made for a friend or relative to mark the elector's choice on the ballot. Consequently, I must conclude that only the returning officer can mark the incapacitated voter's choice on the ballot.

[64] My conclusion is further supported by section 48.1 of the Election Code, which clearly prohibits an elector's friend or relative to be present in the voting station, let alone in the voting compartment. Thus, if section 57.1 of the Election Code was understood as permitting an incapacitated elector to request that a friend mark his or her ballot, it would contradict section 48.1 of the Election Code which prohibits such an individual from even being present with the elector in the voting compartment.

[65] In summary, I am of the view that the decision of the appeal arbitrator was in error in ruling that an incapacitated voter's ballot could be marked by a person other than the returning officer. The

number of votes in question in this case are sufficient to void the outcome of the election of Chief. If the votes are not legal, there is no way of knowing who the disallowed ballots were cast for and this in turn would affect the outcome of the election as it would be impossible to know which candidate received the most votes. In such circumstances, courts have held that the election must be set aside. This is the same conclusion reached by the appeal arbitrator in his alternative finding at paragraph 126 of his decision.

[66] As a result, I conclude that the decision of the appeal arbitrator must be set aside with respect to the election of Jim Boucher as Chief of Fort McKay First Nation. I would direct a new election for Chief of the Fort McKay First Nation.

[67] The applicant has asked for costs on a solicitor-client basis. I am not prepared to award costs on a solicitor-client basis. None of the facts of this case support the award of solicitor-client costs. This case dealt primarily with the interpretation of an election code with respect to voting by incapacitated voters. Any person can err in such an interpretation and such an error should not be the basis of an award of solicitor-client costs. I would award the costs of the application to the applicant.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The decision of the appeal arbitrator with respect to the election of Jim Boucher as Chief of Fort McKay First Nation is set aside.
2. The election of Jim Boucher as Chief of Fort McKay First Nation is quashed and set aside and a new election for Chief of Fort McKay First Nation is ordered.
3. The applicant shall have costs of the application.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

Fort McKay First Nation Election Code

7. Duties of returning officer

7.1. In addition to performing the duties specified in this Code, a returning officer shall:
[...]

7.1.11. do all other things necessary for the conduct of an election.

38. Secrecy of vote

38.1. While an elector is in a voting compartment for the purpose of marking the elector's ballot, no other person, except a person who has been permitted to assist an incapacitated elector, may enter the voting compartment or be in a position from which the person can see how the elector marks the elector's ballot.

39. Maintenance of secrecy

39.1. No person shall be required to disclose in any proceedings, including proceedings for a controverted election, whether the person has voted for a particular candidate.

48. Persons at voting station

48.1. Except for the returning officer, election officials, agents of candidates authorized to attend at the voting station and the electors who are for the time being actually engaged in voting, no other person is entitled to be present, nor shall any other person be permitted to be present, in the voting station during the time appointed for voting. For greater certainty, the persons prohibited from the voting station include candidates, unless attending for the purposes of casting their own vote, and members of the media.

51. Interpreter

51.1. If an elector does not understand the English language, the returning officer may allow or appoint an interpreter to translate any statements, questions, or documents as necessary to allow the elector to vote.

51.2. The interpreter may not be an elector or member.

51.3. Before acting as an interpreter, the interpreter shall make a statement in the prescribed form.

51.4. Where any elector has required the assistance of an interpreter, the returning officer shall make a report in the prescribed form.

54. Advance vote stations

54.3. The returning officer or his agent may, on the advance voting day, attend with electors who are shut in, in hospital, or otherwise incapable of physically attending at a voting station for the purposes of receiving that elector's vote. Any votes received from such electors shall be held in a separate ballot box which is then sealed so that no ballots can be deposited in it without breaking the seal, and the ballot box must remain like that and be stored in a secure place until it is opened for the counting of ballots at the close of the voting stations on election day.

57. Incapacitated elector at voting station

57.1. The returning officer, at the request of an elector who is unable to read or is incapacitated by blindness or another physical condition from marking the elector's ballot in the usual manner may, at the elector's request, mark the vote of that elector on the elector's ballot in the manner directed by that elector, and shall immediately deposit the ballot in the ballot box.

57.2. No candidate or agent shall be present in the voting compartment at the marking of a ballot under this section.

57.3. When a ballot has been marked pursuant to this section, the returning officer shall make a report in the prescribed form.

79. Costs of appeal

79.1. Subject to the appeal arbitrator's ability to order costs pursuant to section 89.3, the first nation shall be responsible for the payment of the appeal arbitrator's fees and associated costs, and for the hearing costs.

81. Permitted grounds of appeal

81.1. A candidate or elector who voted in the election, may appeal an election on the basis that:

81.1.1. the returning officer made an error in the interpretation or application of the Code which affected the outcome of the election;

81.1.2. a person voted in the election who was ineligible to vote and provided false information or failed to disclose information relevant to their right to vote and their participation affected the outcome of the election;

81.1.3 a candidate who ran in the election was ineligible to run and provided false information or failed to disclose information relevant to the validity of their nomination;

81.1.4 a candidate engaged in conduct contrary to section 23 and the candidate's conduct affected the outcome of the election; or

81.1.5 a candidate was guilty of a corrupt election practice or benefited from and consented to a corrupt election practice.

89. Determination of appeals

89.3 If the appeal arbitrator determines that an appeal was so lacking in merit as to constitute an abuse of the appeal process he or she may order the appellant to pay the costs of the appeal hearing or the cost of the affected candidates or both.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-757-11

STYLE OF CAUSE: CECILIA FITZPATRICK
- and -
JIM BOUCHER

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: September 7, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: March 7, 2012

APPEARANCES:

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