

Federal Court



Cour fédérale

Date: 20120911

Docket: T-1678-11

Citation: 2012 FC 1073

Ottawa, Ontario, September 11, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

**CHIEF WILBUR DEDAM, IRENE DEDAM,
RONALD SOMERVILLE and
JASON BARNABY**

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under sections 18, 18.1 and 18.2 of the *Federal Courts Act*, RSC 1985, c F-7 of a decision by the Honourable John Duncan, Minister of Aboriginal Affairs and Northern Development Canada (the Minister) dated September 14, 2011 whereby the applicants, Wilbur Dedam, Irene Dedam, Ronald Somerville and Jason Barnaby were removed from their elected positions as Chief and Band Councillors of the Esgenoopetitj First Nation pursuant to subparagraph 78(2)(b)(iii) of the *Indian Act*, RSC 1985, c I-5. The Minister's decision was based on his finding that the applicants had participated in, or been sufficiently connected to,

corrupt practice in relation to the Esgenooetitj First Nation's general election held on May 25, 2010.

[2] The applicants seek an order quashing the Minister's decision, restoring Wilbur Dedam to the position of Chief of Esgenooetitj First Nation and restoring Irene Dedam, Ronald Somerville and Jason Barnaby as Band Councillors of Esgenooetitj First Nation.

[3] In the alternative, the applicants seek a declaration that the Minister's decision is invalid and an interim order, pursuant to section 18.2 of the *Federal Courts Act*, restoring Wilbur Dedam to the position of Chief of Esgenooetitj First Nation and Irene Dedam, Ronald Somerville and Jason Barnaby as Band Councillors of Esgenooetitj First Nation, pending the final disposition of this application.

[4] Finally, the applicants seek an order that this motion be dealt with on an expedited basis pursuant to Rule 385(1) of the *Federal Courts Rules*, SOR/98-106 and the cost of the proceedings.

Background

[5] On May 25, 2010, the applicants were elected in the Esgenooetitj (Burnt Church) First Nation general election. Applicant Wilbur Dedam was elected as Chief of Esgenooetitj First Nation and applicants Irene Dedam, Ronald Somerville and Jason Barnaby were elected as Band Councillors of Esgenooetitj First Nation. These positions became effective on June 19, 2010, with expiry on or about June 18, 2012.

[6] On June 29, 2010, Curtis Bartibogue filed an appeal to the Assistant Deputy Minister pursuant to paragraph 12(1)(a) of the *Indian Band Election Regulations*, CRC c 952 (the Regulations). Curtis Bartibogue was an unsuccessful candidate for Chief of Esgenoopetitj First Nation in the May 2010 election.

[7] After receiving Curtis Bartibogue's appeal, the Minister, acting pursuant to section 13 of the Regulations, designated Mr. Jacob Hes to investigate the allegations of corrupt election practices raised by Mr. Bartibogue. Mr. Hes, a former Royal Canadian Mounted Police (RCMP) member with over thirty five years experience and prior experience investigating First Nation election appeals was retained on March 5, 2011. He was mandated to investigate the election appeal allegations and to complete a report of his findings by March 31, 2011.

[8] On March 16, 2011, Mr. Hes visited the Esgenoopetitj First Nation Band office to inform the Chief and Band Manager of his mandate. As Chief Wilbur Dedam was unavailable at the time, a meeting was held with Chief Executive Officer Ashley Dedam, Band Comptroller Alex Dedam and Director of Education Simon Dedam. Mr. Hes left his contact number for the applicants.

[9] Subsequently, all four applicants met jointly and/or individually with Mr. Hes and provided statements on the election appeal allegations. Mr. Hes also interviewed other Band members and officials, some of whom he also obtained written statements. On March 21, 2011, Mr. Hes met with members of the RCMP Fredericton Commercial Crime Section (the local RCMP) on the criminal investigation into the 2010 Esgenoopetitj First Nation election.

[10] Mr. Hes compiled his findings and recommendations in a report dated March 23, 2011 (the Hes Report).

Hes Report

[11] In the Hes Report, Mr. Hes considered two of the grounds for appeal identified in the election appeal. Both grounds alleged that on May 8, 2010, electors Patrick Leon Somerville and Sylvia Arlene Martin were given money by one or more of the applicants in exchange for their votes. On the first ground, Patrick Leon Somerville was allegedly paid \$260 by applicants Jason Barnaby, Wilbur Dedam and Irene Dedam in exchange for his vote. On the second ground, Sylvia Arlene Martin was allegedly given money by applicant Jason Barnaby in exchange for her vote. This latter transaction was allegedly depicted on a DVD submitted by Curtis Bartibogue in his election appeal.

[12] On May 8, 2010, Doris Abrams had invited various family members and guests to a lobster dinner at her home. Mrs. Abrams is Jason Barnaby's aunt. Jason Barnaby brought the lobsters to his aunt's residence. The applicants' affidavits indicate that Jason brought the lobsters either or in part as cultural gifts to share amongst friends and relatives, as a personal gift to Mrs. Abrams for Mother's Day and/or as a gesture of appreciation for continued electoral support from Mrs. Abrams' family members.

[13] In support of the first ground regarding Patrick Leon Somerville's alleged vote buying, Mr. Hes noted evidence from Patrick Leon Somerville that Jason Barnaby told him who to vote for and

paid him \$260 for his vote. Patrick Leon Somerville alleged that he had been paid upwards of \$300 in the previous four elections for his vote. Mr. Hes also noted Electoral Officer Kevin Brian Dorey's evidence that mail-in ballot packages for six non-resident band members were sent to Doris Abrams' mailing address and that the Voter Declarations completed by Doris Abrams' family members were all witnessed by one of three individuals.

[14] Turning to the evidence contradicting this first ground, Mr. Hes noted evidence from Mary Ann Somerville, Doris Abrams and all the applicants that some conversations were held at Doris Abrams' home about the upcoming Chief and Council elections. These individuals also recalled that some voters were assisted with completing their ballots. However, they stated that there were no exchanges of money for their votes.

[15] Wilbur and Irene Dedam noted that Sylvia Arlene Martin requested \$500 for her vote while on a telephone call with her mother, Doris. However, Wilbur responded that in that case, Sylvia Arlene Martin did not have to vote. Wilbur also noted that this was the second election in which Sylvia Arlene Martin had requested payment for her vote. Mrs. Abrams explained that she arranged for the applicants to come visit so that her children did not have to travel to Burnt Church to see the Chief. She also stated that she believed the whole reason for the appeal was to seek welfare.

[16] Based on this evidence, Mr. Hes concluded on the first ground that:

In reviewing the interviews and statements it is quite clear that the real focus was not in campaigning [*sic*] for the election but rather the completion of the ballots and Voter Declarations.

[17] Turning to the second ground regarding Sylvia Arlene Martin's alleged vote buying, Mr. Hes noted Sylvia Arlene Martin's statement that her mother called her on the evening of May 8, 2010 and advised her that Jason Barnaby and his sister were going to pick her up. On arrival to her mother's house, Jason gave her the mail-in ballot package and she checked off the name of Curtis Bartibogue. However, upon doing so, Jason said "No, No, No" and scratched off the mark, replacing it with a mark beside Wilbur Dedam's name. When Sylvia Arlene Martin explained that she could not see, Jason marked the rest of the ballot, gave her money and then drove her home. Sylvia Arlene Martin stated that she had her son record the event with a video pen. She also stated that she had been paid for her vote in the past seven elections.

[18] Conversely, Jason Barnaby indicated that upon request, he helped Sylvia Arlene Martin fill in her ballot according to what she had previously told him she wanted. A little while later, when Sylvia Arlene Martin told him that she was "Rum-Sick", he gave her some money. Mr. Hes noted Doris Abrams's statement that her daughter Sylvia Arlene Martin no longer wanted to be involved in this matter. Mr. Hes also noted the information he received from the local RCMP officers involved in the related criminal investigations. These officers informed him that on July 8, 2010, a Constable met with Sylvia Arlene Martin. She gave details of her meeting with Jason Barnaby and handed over the \$260 she had allegedly received from him. Mr. Hes observed:

In meeting with Arlene at her residence it was very obvious to me that this is a person of very limited financial resources and not using the \$260 for herself but instead turning the money in as evidence was a great financial sacrifice.

[19] With regards to vote buying, Mr. Hes noted that:

In speaking with the different witnesses and community members it became quite obvious that the practice of buying votes is an accepted community practice that has been going on for many of the previous Chief and Council elections in Esgenoopetitj FN. Chief Wilbur Dedam, Irene Dedam, Mary Ann Somerville, Ronald Somerville, and Jason Barnaby readily admit to travelling to go visit non-resident band members to campaign when in all reality it is to secure their votes.

[20] Mr. Hes also drew negative inferences from: Wilbur Dedam's written statement in which he did not appear shocked about Sylvia Arlene Martin's request for \$500 to vote for him; the DVD as translated by Arthur Bartibogue; and subsequent contact by Jeff Narvey indicating that he witnessed his son receive \$200 from Jason Barnaby on May 20, 2010.

[21] After Mr. Hes filed his report, copies were distributed to all the candidates. Responses were initially invited within two weeks. Time extensions were subsequently granted, with responses accepted until June 14, 2011.

Election Appeal Report

[22] On August 12, 2011, Nathalie Nepton, Director of Band Governance of Indian and Northern Affairs Canada (INAC), completed the Esgenoopetitj First Nation Election Appeal Report (the Election Appeal Report). The Election Appeal Report noted that only the two grounds of appeal investigated in the Hes Report were relevant; the three other grounds raised in the election appeal were dismissed for various reasons, including lack of information.

[23] The Election Appeal Report noted that Wilbur Dedam was the sole applicant to file a responding affidavit to the Hes Report. However, this affidavit did not challenge any of the facts on which the conclusions and recommendations in the Hes Report were made, nor did it present any new evidence.

[24] On the first ground, the Election Appeal Report noted that although it could not be established that the applicants paid Patrick Leon Somerville \$260 for his vote, the events of May 8, 2010 supported the allegation that corrupt practices had taken place. Voters were offered lobster in return for their vote and not afforded the privacy needed to complete their ballot in secret. It was therefore deemed reasonable to conclude that these circumstances would have created substantial pressure on voters to vote in favour of the candidates in attendance at the Abrams' residence on May 8, 2010.

[25] On the second ground, the Election Appeal Report noted that the video of the alleged transaction between Sylvia Arlene Martin and Jason Barnaby was unreliable due to: the poor quality audio track; an unreliable translation; and apparent edits to the video. However, the Election Appeal Report concluded that:

Regardless of the intent, and the amount of money provided, having a candidate who completes a ballot for an elector, particularly one who is intoxicated and may or may not be able to verify that the ballot reflects their true intentions, and then offers money or goods in return constitutes corrupt practice. Arlene Martin was denied the right to vote in secret, and Jason Dean Barnaby paid her in return for her vote.

[26] Based on its review, the INAC Band Governance Directorate recommended that the Minister exercise his authority under subparagraph 78(2)(b)(iii) of the *Indian Act* to remove the applicants from office. This recommendation was based on the applicants' connection with corrupt election practices through their participation in the exchange of lobster for mail-in ballot votes on May 8, 2010 at Doris Abrams' residence.

[27] The Election Appeal Report recommended that applicants Wilbur Dedam, Irene Dedam and Ronald Somerville be ineligible as candidates of the Esgenoopetitj First Nation Chief and Council for two years as this was the first finding of corrupt practices against these individuals and the value of goods involved was low. The report also recommended that applicant Jason Barnaby be ineligible as a candidate of the Esgenoopetitj First Nation Chief and Council for four years as he was connected to two instances of vote-buying and the amount of money or goods involved was low.

Minister's Decision

[28] Upon review of the Hes Report and the Election Appeal Report, the Minister reported to the Governor in Council pursuant to subsection 14(1) of the Regulations. Subsequently, on September 14, 2011, Ministerial Declarations were issued for all four applicants, disqualifying them as candidates for the offices of Chief and Council of Esgenoopetitj First Nation. These declarations were based on there being sufficient cogent evidence to support a finding of corrupt practice in relation to the election held on May 25, 2010 and sufficient cogent evidence connecting the applicants to that corrupt practice. Wilbur Dedam, Irene Dedam and Ronald Somerville were

disqualified from running in Esgenoopetitj First Nation elections for two years, while Jason Barnaby was disqualified from running in Esgenoopetitj First Nation elections for four years.

[29] The applicants were notified of the Minister's decision in a letter dated September 16, 2011.

Issues

[30] The applicants submit the following points at issue:

1. What is the appropriate standard of review to be applied to the Minister's decision of September 14, 2010?
2. Were the applicants' rights to procedural fairness and/or natural justice violated given that a parallel criminal investigation was being conducted by the Commercial Crime Branch of the RCMP?
3. Was the evidence provided to the Minister sufficient to authorize the removal of the applicants from elected office?
4. Was the imposition of a period of disqualification from running for office order by the Minister reasonable under the circumstances?

[31] I would rephrase the issues as follows:

1. What is the standard of review?
2. Was there a breach of procedural fairness and/or natural justice?
3. Was there sufficient evidence before the Minister to justify his decision?

4. Was the Minister's order disqualifying the applicants from running for office for a set period reasonable?

Applicants' Written Submissions

[32] The applicants raise three main points at issue in this case:

1. The issuing of Mr. Hes' mandate concurrently with an ongoing RCMP criminal investigation was a breach of procedural fairness and/or natural justice;

2. There was insufficient evidence to authorize the applicants' removal from office; and

3. The Minister's order disqualifying the applicants from running for office for a set period of time was unreasonable.

[33] The applicants submit that the appropriate standard of review is correctness.

[34] On their first point, the applicants note that throughout the duration of Mr. Hes' mandate, there was an on-going investigation by the local RCMP. This investigation revolved around video evidence obtained by Curtis Bartibogue that allegedly depicted Jason Barnaby passing money to Sylvia Arlene Martin. The applicants submit that due to this parallel criminal investigation, their lawyer advised them not to discuss issues pertaining to the exchange of money for votes that allegedly occurred at the home of Doris Abrams as it may result in an exchange of information with the local RCMP leading to the pursuit of criminal charges against them. The applicants therefore were constrained from providing full and candid statements to Mr. Hes.

[35] The applicants submit that the Minister failed to observe a fundamental principle of natural justice by ordering Mr. Hes' investigation while there was an on-going criminal investigation. This denied the applicants the opportunity to provide full and frank statements to Mr. Hes without fear of possible criminal prosecution.

[36] The applicants also note that Mr. Hes never provided any indication that the information he collected during his investigation may be used against them in a possible criminal prosecution. However, the Hes Report included an attachment evidencing the fact that he was communicating with members of the local RCMP.

[37] On their second point, the applicants note that neither the *Indian Act* nor the Regulations define what constitutes corrupt practice. However, they submit that in *Wilson v Ross*, 2008 FC 1173, [2008] FCJ No 1456, this Court explained that what is relevant to this determination is the motive or intent behind the impugned conduct and whether the conduct was directed to improperly affecting an election.

[38] The applicants submit that the Hes Report contained several factual errors and material facts requiring further clarification that may have influenced the Minister's decision. These include: incorrect reference to Mary Ann Somerville as a Band Councillor (Mary Ann the wife of applicant Ronald Somerville); Emile Vienneau and Doris Abrams incorrectly identified as Esgenoopetitj First Nation electors; and seven of the nine individuals who signed their statements do not support the election appeal allegations even though the findings of two of these individuals are included in Allegation 1 of the Hes Report.

[39] The applicants submit that the Hes Report also lacks credibility and demonstrates extreme bias towards them. The applicants note that Mr. Hes did not obtain any secondary statement from Curtis Bartibogue as he considered that such evidence did not fall within the scope or mandate of his investigation. Further, the applicants submit that the Hes Report relies on unreliable information sources in its conclusions on vote buying or corrupt election practices. In support, the applicants highlight Patrick Leon Somerville's statement that he was given money in exchange for his vote. Patrick Leon Somerville did not allege that he was provided this money by any of the applicants, but rather by "some lady" that he could not identify or name.

[40] For these reasons, the applicants submit that the Hes Report was unreliable, rife with inaccuracies and insufficient information and scant with the proper and necessary documentary evidence to support its findings. The applicants thus submit that Mr. Hes presented his report to the Minister in a capricious manner without regard to all the materials before him.

[41] In addition, the applicants submit that there was insufficient evidence to conclude that vote buying had occurred. The applicants refer to the Election Appeal Report and note that only two of the five grounds of corrupt practice raised in the election appeal were upheld based on the Hes Report recommendations.

[42] The first ground of appeal pertained to the alleged vote payment to Patrick Leon Somerville. However, the applicants submit that this ground lacks the sufficient standard of proof required for their removal from office. The applicants note that Patrick Leon Somerville was unable to identify the person who invited him to the Abrams' household, the person who picked him up to go to the

Abrams' household and the person who allegedly paid him for his vote. Further, the applicants note the reference in the Election Appeal Report to the lobster dinner at the Abrams' household as evidence of gifts to those who voted. However, this issue was not raised in the election appeal or in the Hes Report. The finding that this pre-election activity justified the applicants' removal from office was thus tenuous.

[43] The second ground of appeal pertained to the alleged vote payment to Sylvia Arlene Martin. The applicants note that Jason Barnaby has admitted to providing some money to Sylvia Arlene Martin for alcohol. However, Jason swears that he only gave her \$30 not \$260. He also maintains that this is a longstanding and common practice in his community. The applicants submit that there was no evidence linking Wilbur Dedam, Irene Dedam or Ronald Somerville to this alleged corrupt practice.

[44] On the third point at issue in this application, the applicants submit that the period of disqualification from running for office was unreasonable given the contradictory statements, lack of credible witnesses and tenuous evidence that the Minister relied upon in rendering his decision. The applicants submit that decision makers must bear in mind the importance of their decisions on the lives of those affected and the greater the impact on those persons, the more stringent the procedural protections required. The Minister erred in accepting that lobster brought to the Abrams' residence by Jason Barnaby was a corrupt practice. The lobster was not limited to a pre-selected group of attendees, but rather available to all family members and guests at the Abrams' house. Further, there was no evidence that any of the other applicants were involved in providing the lobster.

[45] The applicants note that their removal from office has caused immediate financial hardship on them and their families. As career politicians that have previously been elected as officials for their community, they derive their source of living from politics. Their removal from office attracts the highest standard of procedural fairness and thus, a high standard of evidence substantially linking them to the participation in corrupt election practices. The applicants submit that the evidence relied on by the Minister does not meet this standard, as it is merely conjecture and speculation.

Respondent's Written Submissions

[46] The respondent first addresses the appropriate standard of review of the Minister's decision made pursuant to subparagraph 78(2)(b)(iii) and subsection 78(3) of the *Indian Act*. In applying the direction provided by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the respondent notes that there is no privative clause in these provisions. In addition, the respondent submits that this Court has found that the appropriate standard of review of decisions on alleged vote buying is reasonableness. Thus, the respondent submits that the appropriate standard of review of the Minister's decision is reasonableness. However, the respondent acknowledges that the appropriate standard of review for issues of procedural fairness is correctness.

[47] The respondent then delves into the evidentiary threshold applicable to the Minister's decision issued pursuant to subparagraph 78(2)(b)(iii) and subsection 78(3) of the *Indian Act*. The respondent submits that the evidentiary threshold that the Minister must meet in considering

whether corrupt practices are established is far lower than that in criminal or civil cases. In this case, the respondent submits that the appearance of a corrupt practice was supported by specific evidence documented in the Hes Report and appropriately included circumstantial evidence. Further, the respondent submits that waiting for the conclusion of the parallel criminal investigation would fail to acknowledge the different evidentiary threshold applicable to the two investigations.

[48] In response to the applicants' submission that the impugned conduct must be directed at improperly affecting the election outcome, the respondent submits that there is clear evidence that: goods and money were supplied to secure votes; the votes were obtained improperly without secrecy; and the votes were collected and submitted improperly. The respondent notes that one vote acquired improperly could affect the outcome of an election. In this case, the respondent submits that the evidence and circumstances considered by the Minister met the evidentiary threshold of establishing that there was an appearance of corrupt practices.

[49] The respondent also notes that the applicants were provided with all the material before the Minister and were provided with a reasonable opportunity to respond. The respondent submits that the Minister's decision is a reasonable outcome of this administrative process.

[50] The respondent also submits that the Minister did not err in disqualifying the applicants from future elections. The respondent submits that the evidence clearly implicates all the applicants in agreeing to provide lobster at Doris Abrams' residence on May 8, 2010. There is also clear evidence that votes were cast without privacy, some voters were assisted in voting and money was provided contemporaneously with voting. The applicants should have prevented the votes from

being cast in these circumstances or at least left the gathering. The respondent submits that the sanctions were fitting in light of the applicants' participation at the Abrams' gathering and that the increased penalty for Jason Barnaby was fitting given his later involvement in Sylvia Arlene Martin's voting.

[51] The respondent also submits that the Minister did not carry out his investigation in a capricious manner or conduct it with extreme bias. In support, the respondent submits that the facts alleged in the applicants' application do not suggest improper motives, a closed mind, conflict of interest, history with the applicants, predetermination of the issues to be investigated or any other matters that could properly raise legal bias. Rather, the applicants' application raises matters of sufficiency of evidence and investigation. These do not pertain to bias and were addressed above by the respondent.

[52] Turning to the procedural fairness issue, the respondent notes that the applicants were provided with: all the election appeal materials disclosing the original allegations of the corrupt election practices; the opportunity to submit written responses to the appeal allegations; access to the Hes Report with ample time to respond to it; and copies of all the materials, except privileged materials that were before the Minister. The respondent notes that the criminal investigation file was not before the Minister and was therefore not part of the record for these proceedings. Thus, the respondent submits that the administrative process proceeded in a fair manner.

[53] The respondent also addresses the contemporaneous local RCMP criminal investigation. The respondent submits that the Minister has wide discretion to choose the manner of investigation

under subsection 13(1) of the Regulations. The respondent notes that the Minister must consider both the applicants' and the appellants' rights to a fair and expeditious resolution. The respondent also notes that the Minister should not have to wait for the conclusion of the more stringent investigation and evidentiary standard of a criminal investigation if he can conclude that there has been an appearance of corrupt practice after conducting an investigation according to the lower evidentiary standard. Thus, the respondent submits that the Minister did not breach procedural fairness by ordering Mr. Hes' investigation prior to the conclusion of the local RCMP investigation. In fact, the interest of the public in a speedy resolution of an alleged improper election required him to retain Mr. Hes to conduct the investigation when he did.

[54] Finally, the respondent notes the list of documents that the applicants have requested in their application. However, a number of these were not before the Minister when he made his decision and the respondent therefore submits that the request for these documents is inappropriate. Based on established jurisprudence, the respondent submits that the proper record for judicial review in this proceeding is limited to the following:

1. The allegations forwarded by the individuals lodging the appeal;
2. The particulars of these allegations verified by affidavit;
3. The candidates' written responses to the particulars set out in the appeal;
4. Any supporting documents relating to the candidates' responses as duly verified by affidavit; and
5. The Hes Report and materials included therein.

[55] The local RCMP investigation file material which was not before the Minister, should not form part of the record in this application.

[56] In summary, the respondent submits that the Minister acted on sufficient documentary, *viva voce* and circumstantial evidence in finding that the applicants acted collectively in exchanging goods and/or money to secure votes. The Minister's decision was a reasonable outcome as the applicants' conduct was deserving of an appropriate penalty to ensure that the seemingly entrenched corrupt practices do not continue.

Analysis and Decision

Issue 1

What is the standard of review?

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* above, at paragraph 57).

[58] It is trite law that issues of procedural fairness attract a correctness standard of review (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 43; *Ross v Canada (Indian and Northern Affairs)*, 2007 FC 499, [2007] FCJ No 675 at paragraph 22; and *Muskego v Norway House Cree Nation Appeal Committee*, 2011 FC 732, [2011] FCJ No 963 at paragraph 26). Similarly, the correctness standard generally applies to legal interpretations of what constitutes corrupt election practices (see *Wilson* above, at paragraphs 26 and 27). Where a

correctness standard applies, little deference is owed to the Minister's decision (see *Dunsmuir* above, at paragraph 50).

[59] Conversely, whether the evidence supports a finding of corrupt election practices is a question of mixed fact and law that attracts a standard of review of reasonableness (see *Hudson v Canada (Minister of Indian Affairs and Northern Development)*, 2007 FC 203, [2007] FCJ No 266 at paragraph 74). In reviewing the Minister's decision on the reasonableness standard, the Court should not intervene unless he came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Khosa* above, at paragraph 59). It is not up to a reviewing Court to substitute its own view of a preferable outcome, nor is it the function of the reviewing Court to reweigh the evidence (see *Khosa* above, at paragraphs 59 and 61).

[60] **Issue 2**

Was there a breach of procedural fairness and/or natural justice?

Where a decision is administrative and affects the rights, privileges or interests of an individual, it is generally sufficient to trigger the application of the duty of fairness (see *Ross* above, at paragraph 38). However, the content of that fairness varies and must be decided in the specific context of each case.

[61] In *Ross* above, Mr. Justice Pierre Blais weighed the factors relevant to a determination on the content of fairness, as identified by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, [1999] SCJ No 39, and found that "the

applicants were entitled to an important level of procedural fairness, particularly in light of the finality of the Minister's decision and the importance of the decision" (at paragraph 57). However, Mr. Justice Blais found that the appropriate level of procedural fairness did not amount to a quasi-judicial level (see *Ross* above, at paragraph 57).

[62] Mr. Justice Blais also explained that the Minister was not required to give notice that an investigation was being launched or to interview the applicants as part of that investigation (see *Ross* above, at paragraph 58). However, Mr. Justice Blais did find that the duty of procedural fairness required the Minister to disclose the results of the investigation and provide the applicants with an opportunity to file written responses that would be considered by the Minister in his final determination (see *Ross* above, at paragraphs 59 and 66; and *Esquega v Canada (Attorney General)*, 2005 FC 1097, [2005] FCJ No 1332 at paragraph 25). If the duty of fairness was breached at the stage of the Minister's determination on corrupt electoral practices, anything flowing directly from that decision, such as Ministerial Declarations removing individuals from office, would also be "tainted by that error" (see *Ross* above, at paragraph 72).

[63] In this case, the applicants were notified early in the process about the investigation. The applicants were also given an opportunity to speak with Mr. Hes and to provide him with their statements. After Mr. Hes completed his report, the applicants were provided with information on the election appeal, copies of the Hes Report and an extended time period to submit their comments on this information. Thus, the facts indicate that the applicants were afforded greater procedural rights than those mandated in *Ross* above.

[64] Nevertheless, the applicants' main concern with the breach of their procedural fairness rights pertain to the Minister's issuance of Mr. Hes' mandate while an RCMP criminal investigation was ongoing. The Minister's power to investigate an election appeal is provided in section 13 of the Regulations.

[65] Jurisprudence exists on situations where the RCMP has been conducting criminal investigations into alleged corrupt electoral practices while an electoral appeal was before the Minister. In *Ross* above, the Minister actually treated the RCMP investigative report as the sole investigation report required under section 13 of the Regulations (at paragraph 10). Mr. Justice Blais considered the language of subsection 13(1) of the Regulations and found that this provision granted the Minister wide discretion in his choice of procedure (see *Ross* above, at paragraph 31). This wide discretion arose in part from the requirement that the Minister weigh the applicants' rights against the larger public interest (see *Ross* above, at paragraph 42).

[66] Mr. Justice Blais acknowledged that the individual retained by the Minister to conduct the electoral appeal investigation could have coordinated his investigation concurrently with the RCMP investigation (see *Ross* above, at paragraph 33). The Minister could also have chosen to rely on evidence gathered by the RCMP in their investigation "as the most expedient way to make a determination under sections 78 and 79 of the Act" (see *Ross* above, at paragraph 35). Finally, Mr. Justice Blais acknowledged that reports prepared in the context of a criminal investigation, such as the local RCMP investigation in this case, might necessitate the withholding of some information to protect witnesses and safeguard evidence (see *Ross* above, at paragraph 75).

[67] In this case, the Minister exceeded the legal procedural fairness requirements by providing early notification to the applicants of the pending investigation, sharing copies of the Hes Report with the applicants and granting extended periods of time to comment on the Hes Report. Although this extended period of time was provided, Wilbur Dedam was the sole applicant to file additional submissions. As noted in the Election Appeal Report, this submission did not provide new evidence, but rather highlighted some minor errors in the Hes Report and contradicted some of the statements referred to therein. Further, the concern about the concurrent RCMP investigation was not raised until November 2011 in supplemental affidavits filed by the applicants and Wilbur Dedam's lawyer.

[68] As mentioned above, the Minister has wide discretion on his choice of procedure under section 13 of the Regulations. Although the specific fact situation that arises in this case has not previously been raised, the jurisprudence clearly suggests that it is possible to have concurrent RCMP criminal investigations and election appeal investigations. The use of the word expedient in subsection 13(1) of the Regulations enforces the view that the Minister must bear in mind the interests of both the applicants and the broader public in deciding what procedure to apply under this provision.

[69] In summary, the facts indicate that the applicants were provided significant procedural fairness rights throughout the election appeal investigation. The Minister's wide discretion and requirement to decide the validity of an election appeal in an expedient manner enforces the finding that his decision to retain Mr. Hes for the election appeal investigation concurrently with the ongoing RCMP investigation was not a breach of procedural fairness.

[70] **Issue 3**

Was there sufficient evidence before the Minister to justify his decision?

Neither the *Indian Act* nor the Regulations provide a definition of corrupt practice.

Nevertheless, guidance on determining the meaning of this term has emerged in the jurisprudence.

As indicated by Madam Justice Eleanor Dawson in *Wilson* above, at paragraph 23:

In my view, no exhaustive definition can be given as to what constitutes corrupt practice in the context of an election. However, at least one core concept of corrupt practice is any attempt to prevent, fetter, or influence the free exercise of a voter's right to choose for whom to vote. What is relevant is the motive or intent behind the impugned conduct. Is the conduct directed to improperly affecting the result of an election?

[71] Madam Justice Dawson continued at paragraph 33 in *Wilson* above:

[...] Benefits must be distributed on the basis of merit. When a benefit is conferred not based on merit, but rather based upon an intent to influence an elector, a corrupt practice occurs.

[72] Sufficiently compelling circumstantial evidence can be relied upon in making a determination on corrupt election practices (see *Hudson* above, at paragraph 86). In addition, certain conduct can permit an inference to be drawn that such conduct is intended to corrupt electors (see *Wilson* above, at paragraph 22).

[73] The findings and conclusions of an investigator retained under section 13 of the Regulations are relevant in assessing a Minister's decision on corrupt electoral practices (see *Hudson* above, at paragraph 78).

[74] Further, as indicated by the language used in section 14 of the Regulations, the evidentiary standard of proof for corrupt election practices requires only the appearance of wrongdoing (see *Keeper v Canada (Minister of Indian Affairs and Northern Development)*, 2011 FC 307, [2011] FCJ No 387 at paragraphs 5 and 16). Thus, there need only be sufficient evidence to substantiate the appearance that the allegation is true (see *Keeper* above, at paragraph 8). As explained by Madam Justice Dawson in *Wilson* above, at paragraph 34:

[...] The core question to be answered was whether the three successful candidates by their conduct, viewed as a whole, intended or attempted to improperly influence the outcome of the election.

[75] In this case, there was clear evidence that all the applicants attended Doris Abrams' residence on May 8, 2010. A lobster dinner was offered to attendees. The lobster was brought to Doris Abrams' residence by applicant Jason Barnaby. Election ballots were marked publicly in Doris Abrams' kitchen without the privacy required to complete ballots in secret. In the Election Appeal Report, INAC recognized that there was insufficient evidence to establish that Patrick Leon Somerville was paid \$260 for his vote and that the video of the alleged transaction between Sylvia Arlene Martin and Jason Barnaby was unreliable. Nevertheless, the circumstances surrounding the provision of lobster and the lack of privacy in filling out election ballots was deemed sufficient to conclude that there would have been substantial pressure on voters to vote in favour of the candidates in attendance (i.e., the applicants).

[76] Recalling the lower evidentiary threshold required for a Minister's determination under section 14 of the Regulations, I find that there was sufficient evidence before the Minister for him to come to a determination of an appearance of corrupt election practices.

[77] **Issue 4**

Was the Minister's order disqualifying the applicants from running for office for a set period reasonable?

The Minister's power to disqualify individuals from running for office for upwards of six years is provided in subsection 78(3) of the *Indian Act*. This provision states:

78.(3) The Minister may declare a person who ceases to hold office by virtue of subparagraph (2)(b)(iii) to be ineligible to be a candidate for chief or councillor of a band for a period not exceeding six years.

78.(3) Le ministre peut déclarer un individu, qui cesse d'occuper ses fonctions en raison du sous-alinéa (2)b(iii), inhabile à être candidat au poste de chef ou de conseiller d'une bande durant une période maximale de six ans.

[78] Subparagraph 78(2)(b)(iii) of the *Indian Act* provides:

78. (2) The office of chief or councillor of a band becomes vacant when

78. (2) Le poste de chef ou de conseiller d'une bande devient vacant dans les cas suivants :

...

...

(b) the Minister declares that in his opinion the person who holds that office

b) le ministre déclare qu'à son avis le titulaire, selon le cas :

...

...

(iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.

(iii) à l'occasion d'une élection, s'est rendu coupable de manoeuvres frauduleuses, de malhonnêteté ou de méfaits, ou a accepté des pots-de-vin.

[79] Having found that the Minister came to a reasonable conclusion on subparagraph 78(2)(b)(iii), I must now determine whether the Minister acted reasonably in disqualifying the applicants for the times indicated in his decision.

[80] It is clear from the Act that the Minister has the authority under subparagraph 78(2)(b)(iii) of the Act to impose periods of disqualification to run as a candidate. In the case of the applicants, other than Jason Dean Barnaby, they were disqualified from being a candidate for two years from the date of the order. Based on the evidence in this case, I am of the view that this was a decision that the Minister was entitled to make and was a reasonable decision.

[81] However, with respect to Jason Dean Barnaby, the Minister disqualified him from being a candidate for four years from the date of the Ministerial order. I am of the view that the decision to disqualify this applicant for four years was unreasonable. It is unclear from the recommendation at page 127 of the applicants' record as to the amount of money paid to Sylvia Arlene Martin. It was also noted that the amount of money or goods in each case was low. In light of the evidence, I am of the opinion that a disqualification for four years is too long and instead, I would vary the disqualification to two years.

[82] The application for judicial review is therefore dismissed with the exception of the disqualification period for Jason Dean Barnaby which is varied to a two year disqualification period.

[83] As the respondent was largely successful on the judicial review application, I would award costs to the respondent.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed with the exception of the disqualification period for Jason Dean Barnaby which is varied to a two year disqualification period.

2. The respondent shall have its costs of the application.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

Federal Courts Act, RSC 1985, c F-7

2. (1) In this Act, . . .

“federal board, commission or other tribunal” means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*;

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

18.1(3) On an application for judicial review, the Federal Court may

...

2. (1) Les définitions qui suivent s’appliquent à la présente loi. . . .

« office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d’une prerogative royale, à l’exclusion de la Cour canadienne de l’impôt et ses juges, d’un organisme constitué sous le régime d’une loi provinciale ou d’une personne ou d’un groupe de personnes nommées aux termes d’une loi provinciale ou de l’article 96 de la *Loi constitutionnelle de 1867*.

18. (1) Sous réserve de l’article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l’alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d’obtenir réparation de la part d’un office fédéral.

18.1(3) Sur présentation d’une demande de contrôle judiciaire, la Cour fédérale peut :

...

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

...

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
18.2 On an application for judicial review, the Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.

18.2 On an application for judicial review, the Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.

Federal Courts Rules, SOR/98-106

385. (1) Unless the Court directs otherwise, a case management judge or a prothonotary assigned under paragraph 383(c) shall deal with all matters that arise prior to the trial or hearing of a specially managed proceeding and may

(a) give any directions that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits;

(b) notwithstanding any period provided for

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

...

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
18.2 La Cour fédérale peut, lorsqu'elle est saisie d'une demande de contrôle judiciaire, prendre les mesures provisoires qu'elle estime indiquées avant de rendre sa décision définitive.

18.2 La Cour fédérale peut, lorsqu'elle est saisie d'une demande de contrôle judiciaire, prendre les mesures provisoires qu'elle estime indiquées avant de rendre sa décision définitive.

385. (1) Sauf directives contraires de la Cour, le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) tranche toutes les questions qui sont soulevées avant l'instruction de l'instance à gestion spéciale et peut :

a) donner toute directive nécessaire pour permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;

b) sans égard aux délais prévus par les

in these Rules, fix the period for completion of subsequent steps in the proceeding;

présentes règles, fixer les délais applicables aux mesures à entreprendre subséquemment dans l'instance;

(c) fix and conduct any dispute resolution or pre-trial conferences that he or she considers necessary; and

c) organiser et tenir les conférences de règlement des litiges et les conférences préparatoires à l'instruction qu'il estime nécessaires;

(d) subject to subsection 50(1), hear and determine all motions arising prior to the assignment of a hearing date.

d) sous réserve du paragraphe 50(1), entendre les requêtes présentées avant que la date d'instruction soit fixée et statuer sur celles-ci.

Indian Act, RSC 1985, c I-5

78. (1) Subject to this section, the chief and councillors of a band hold office for two years.

78. (1) Sous réserve des autres dispositions du présent article, les chef et conseillers d'une bande occupent leur poste pendant deux années.

(2) The office of chief or councillor of a band becomes vacant when

(2) Le poste de chef ou de conseiller d'une bande devient vacant dans les cas suivants :

(a) the person who holds that office

a) le titulaire, selon le cas :

(i) is convicted of an indictable offence,

(i) est déclaré coupable d'un acte criminel,

(ii) dies or resigns his office, or

(ii) meurt ou démissionne,

(iii) is or becomes ineligible to hold office by virtue of this Act; or

(iii) est ou devient inhabile à détenir le poste aux termes de la présente loi;

(b) the Minister declares that in his opinion the person who holds that office

b) le ministre déclare qu'à son avis le titulaire, selon le cas :

(i) is unfit to continue in office by reason of his having been convicted of an offence,

(i) est inapte à demeurer en fonctions parce qu'il a été déclaré coupable d'une infraction,

(ii) has been absent from three consecutive meetings of the council without being authorized to do so, or

(ii) a, sans autorisation, manqué les réunions du conseil trois fois consécutives,

(iii) was guilty, in connection with an election, of corrupt practice, accepting a

(iii) à l'occasion d'une élection, s'est rendu coupable de manoeuvres frauduleuses, de

bribe, dishonesty or malfeasance.

malhonnêteté ou de méfaits, ou a accepté des pots-de-vin.

(3) The Minister may declare a person who ceases to hold office by virtue of subparagraph (2)(b)(iii) to be ineligible to be a candidate for chief or councillor of a band for a period not exceeding six years.

(3) Le ministre peut déclarer un individu, qui cesse d'occuper ses fonctions en raison du sous-alinéa (2)b(iii), inhabile à être candidat au poste de chef ou de conseiller d'une bande durant une période maximale de six ans.

Indian Band Election Regulations, CRC c 952

5.(4) Subject to subsection (5), at least 35 days before the day on which an election is to be held, the electoral officer shall mail, to every elector who does not reside on the reserve, a package consisting of

(4) Sous réserve du paragraphe (5), au moins trente-cinq jours avant l'élection, le président d'élection envoie par la poste aux électeurs qui ne résident pas dans la réserve une trousse comprenant les éléments suivants :

(a) a ballot, initialled on the back by the electoral officer;

a) un bulletin de vote portant au verso les initiales du président d'élection;

(b) an outer, postage-paid return envelope, pre-addressed to the electoral officer;

b) une enveloppe extérieure, c'est-à-dire l'enveloppe de retour préaffranchie et préadressée au président d'élection;

(c) a second, inner envelope marked "Ballot" for insertion of the completed ballot;

c) une enveloppe intérieure portant la mention « bulletin de vote » dans laquelle doit être inséré le bulletin de vote rempli;

(d) a voter declaration form;

d) une formule de déclaration d'identité;

(e) a letter of instruction regarding voting by mail-in ballot;

e) les instructions relatives au vote par bulletin de vote postal;

(f) a statement

f) un avis mentionnant :

(i) identifying the location of all polling places, and

(i) l'emplacement de chacun des bureaux de vote,

(ii) advising the elector that he or she may vote in person at a polling place on the day of the election in accordance with subsection 6(3) in lieu of voting by mail-in ballot; and

(ii) que l'électeur peut, au lieu de voter par bulletin de vote postal, voter en personne, en conformité avec le paragraphe 6(3), à un bureau de vote le jour de l'élection;

(g) a list of the names of any candidates who were acclaimed.

g) le cas échéant, un avis mentionnant le nom des personnes élues par acclamation.

(5) Where the reserve consists of more than one electoral section, the package mailed to an elector who does not reside on the reserve shall contain a ballot for the candidates for chief only.

(5) Lorsqu'une réserve est divisée en plus d'une section électorale, la trousse envoyée par la poste aux électeurs qui ne résident pas dans la réserve contient un bulletin de vote qui ne concerne que l'élection du chef.

6.1 As soon as is practicable after the close of the polls, the electoral officer or deputy electoral officer shall, in the presence of any candidates or their agents who are present, open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,

6.1 Dans les plus brefs délais après la fermeture du scrutin, en présence des candidats ou de leurs agents qui se trouvent sur les lieux, le président d'élection ou le président du scrutin ouvre les enveloppes reçues avant la fermeture du scrutin et, sans déplier le bulletin de vote postal qu'elles contiennent :

(a) reject the ballot if

a) soit rejette le bulletin si :

(i) it was not accompanied by a voter declaration form, or the voter declaration form is not signed or witnessed,

(i) aucune formule de déclaration d'identité ne l'accompagne ou celle-ci n'est pas signée ou attestée par un témoin,

(ii) the name of the elector set out in the voter declaration form is not on the voters list, or

(ii) le nom mentionné sur la formule de déclaration d'identité n'apparaît pas sur la liste électorale,

(iii) the voters list shows that the elector has already voted; or

(iii) la liste électorale indique que l'électeur a déjà voté;

(b) in any other case, place a mark on the voters list opposite the name of the elector set out in the voter declaration form, and deposit the ballot in a ballot box.

b) soit fait une marque sur la liste électorale en regard du nom de l'électeur mentionné dans la formule de déclaration d'identité et dépose le bulletin de vote postal dans une boîte de scrutin.

11. The electoral officer shall deposit all ballot papers in sealed envelopes with the superintendent, who shall retain them in his possession for eight weeks, and unless otherwise directed by the Minister or by a person authorized by him shall then destroy the ballot papers in the presence of two witnesses who shall make a declaration that they witnessed the destruction of those

11. Le président d'élection doit remettre tous les bulletins de vote dans des enveloppes scellées, au surintendant, qui doit les garder en sa possession durant huit semaines et, sauf ordonnance contraire du Ministre ou d'une personne qu'il y autorise, les détruire en présence de deux témoins qui déclarent avoir été témoins de leur destruction.

papers.

12. (1) Within 45 days after an election, a candidate or elector who believes that

(a) there was corrupt practice in connection with the election,

(b) there was a violation of the Act or these Regulations that might have affected the result of the election, or

(c) a person nominated to be a candidate in the election was ineligible to be a candidate,

may lodge an appeal by forwarding by registered mail to the Assistant Deputy Minister particulars thereof duly verified by affidavit.

(2) Where an appeal is lodged under subsection (1), the Assistant Deputy Minister shall forward, by registered mail, a copy of the appeal and all supporting documents to the electoral officer and to each candidate in the electoral section in respect of which the appeal was lodged.

(3) Any candidate may, within 14 days of the receipt of the copy of the appeal, forward to the Assistant Deputy Minister by registered mail a written answer to the particulars set out in the appeal together with any supporting documents relating thereto duly verified by affidavit.

(4) All particulars and documents filed in accordance with the provisions of this section shall constitute and form the record.

13. (1) The Minister may, if the material that has been filed is not adequate for deciding the validity of the election complained of, conduct such further

12. (1) Si, dans les quarante-cinq jours suivant une élection, un candidat ou un électeur a des motifs raisonnables de croire :

a) qu'il y a eu manoeuvre corruptrice en rapport avec une élection,

b) qu'il y a eu violation de la Loi ou du présent règlement qui puisse porter atteinte au résultat d'une élection, ou

c) qu'une personne présentée comme candidat à une élection était inéligible,

il peut interjeter appel en faisant parvenir au sous-ministre adjoint, par courrier recommandé, les détails de ces motifs au moyen d'un affidavit en bonne et due forme.

(2) Lorsqu'un appel est interjeté au titre du paragraphe (1), le sous-ministre adjoint fait parvenir, par courrier recommandé, une copie du document introductif d'appel et des pièces à l'appui au président d'élection et à chacun des candidats de la section électorale visée par l'appel.

(3) Tout candidat peut, dans un délai de 14 jours après réception de la copie de l'appel, envoyer au sous-ministre adjoint, par courrier recommandé, une réponse par écrit aux détails spécifiés dans l'appel, et toutes les pièces s'y rapportant dûment certifiées sous serment.

(4) Tous les détails et toutes les pièces déposés conformément au présent article constitueront et formeront le dossier.

13. (1) Le Ministre peut, si les faits allégués ne lui paraissent pas suffisants pour décider de la validité de l'élection faisant l'objet de la plainte, conduire une enquête aussi

investigation into the matter as he deems necessary, in such manner as he deems expedient.

(2) Such investigation may be held by the Minister or by any person designated by the Minister for the purpose.

(3) Where the Minister designates a person to hold such an investigation, that person shall submit a detailed report of the investigation to the Minister for his consideration.

14. Where it appears that

(a) there was corrupt practice in connection with an election,

(b) there was a violation of the Act or these Regulations that might have affected the result of an election, or

(c) a person nominated to be a candidate in an election was ineligible to be a candidate,

the Minister shall report to the Governor in Council accordingly.

approfondie qu'il le juge nécessaire et de la manière qu'il juge convenable.

(2) Cette enquête peut être tenue par le Ministre ou par toute personne qu'il désigne à cette fin.

(3) Lorsque le Ministre désigne une personne pour tenir une telle enquête, cette personne doit présenter un rapport détaillé de l'enquête à l'examen du Ministre.

14. Lorsqu'il y a lieu de croire

a) qu'il y a eu manoeuvre corruptrice à l'égard d'une élection,

b) qu'il y a eu violation de la Loi ou du présent règlement qui puisse porter atteinte au résultat d'une élection, ou

c) qu'une personne présentée comme candidat à une élection était inadmissible à la candidature,

le Ministre doit alors faire rapport au gouverneur en conseil.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1678-11

STYLE OF CAUSE: CHIEF WILBUR DEDAM, IRENE DEDAM,
RONALD SOMERVILLE and
JASON BARNABY

- and -

THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Fredericton, New Brunswick

DATE OF HEARING: March 12, 2012

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

DATED: September 11, 2012

APPEARANCES:

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