

Federal Court



Cour fédérale

Date: 20140730

Docket: T-1704-13

Citation: 2014 FC 758

Ottawa, Ontario, July 30, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RICHARD HORSEMAN

Applicant

and

**DUSTIN TWINN, ELECTORAL OFFICER
FOR HORSE LAKE FIRST NATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Richard Horseman seeks to overturn a decision of the Horse Lake First Nation's electoral officer, Mr Dustin Twin, removing Mr Horseman as a candidate for Chief of the HLFN for an election that took place in October 2013.

[2] Mr Twin concluded that Mr Horseman was ineligible because the Band Election Custom Code provided that a candidate must not be in arrears on any debts owed to the HLFN or entities under its control in an amount equal to or greater than \$2500. Mr Twin took a number of steps to ascertain who was indebted to the HLFN. He found that Mr Horseman owed the HLFN or entities under its control amounts exceeding \$2500. He informed Mr Horseman that he was ineligible and advised him of the right to appeal the decision under the Code.

[3] Mr Horseman argues that the officer treated him unfairly by not giving him a chance to address the officer's concerns before the decision was rendered. He also contends that the decision was unreasonable because his debts were not personal. They were owed by a corporate entity with which he was associated. He asks me to overturn the officer's decision and order the officer to reconsider his candidacy.

[4] In my view, this application for judicial review must be dismissed. Mr Horseman had the option of appealing the officer's decision and that is a preferable procedural remedy in the circumstances. Accordingly, I must decline to address Mr Horseman's application for judicial review.

II. The Court's Discretion

[5] The Court clearly has discretion whether to consider an application for judicial review where the applicant has an adequate alternative remedy (*Buenaventura Jr v Telecommunications Workers Union*, 2012 FCA 69 at para 24). The Court must consider the convenience, speed, and

cost of the alternative remedy, the nature of the alleged error, and the nature of the alternative decision maker.

[6] Here, the appeal mechanisms under the Code are far more convenient, expeditious, and cost-effective than applying for judicial review in this Court. There is no possibility now of reinstating Mr Horseman as a candidate in the last election, but that might have been possible if he had pursued an appeal within the applicable 30-day limit instead of launching this application. He was clearly informed of the possibility of doing so. Further, an appeal would be the preferable remedy given that the provisions of the Code were drafted by members of the HLFN to suit local circumstances. Moreover, the alleged error by the officer related directly to the electoral process, for which the remedy of an appeal was specifically provided in the Code.

[7] Accordingly, the Court should decline to entertain Mr Horseman's application for judicial review.

III. Conclusion and Disposition

[8] Mr Horseman had an adequate alternative remedy – an appeal of the electoral officer's decision finding him ineligible for office – which he should have pursued instead of commencing this application for judicial review. Accordingly, the application is dismissed, with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1704-13

STYLE OF CAUSE: RICHARD HORSEMAN v DUSTIN TWINN,
ELECTORAL OFFICER FOR HORSE LAKE FIRST
NATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 12, 2014

JUDGMENT AND REASONS: O'REILLY J.

DATED: JULY 30, 2014

APPEARANCES:

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