

Federal Court



Cour fédérale

**Date: 20191217**

**Docket: T-1875-18**

**Citation: 2019 FC 1605**

**Ottawa, Ontario, December 17, 2019**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**ERIC REDHEAD**

**Applicant**

**and**

**WILLIAMS MILES, DANIEL REDHEAD,  
JEFFREY NAPAOKESIK, JEMIMA  
ANDERSON also known as PEGGY BEARDY  
ANDERSON, THERESA MILES,  
GEORGETTE REDHEAD AND THE  
SHAMATTAWA FIRST NATION**

**Respondents**

**JUDGEMENT AND REASONS**

I. Nature of the Matter

[1] The Applicant, Eric Redhead, applies pursuant to s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 to judicially review an October 23, 2018 decision [Decision] removing him from office as Chief of Shamattawa First Nation [SFN] after being elected in an election held on

October 2, 2018 [2018 Election] and, instead, installing Jeffrey Napaokesik as Chief. The Decision was made by two of three electoral officers of SFN following a meeting of members of SFN called by three members of SFN.

[2] The application for judicial review is allowed.

## II. Background

### A. *Pre and Post 2018 Election Process*

[3] SFN is an Indian band within the meaning of the *Indian Act*, RSC 1985, c I-5 and is located in northeastern Manitoba. Their election procedures are governed according to oral or unwritten custom.

[4] The Chief and Council of SFN serve a two-year term upon their election. There is one Chief and four Councillors. Historically, elections for Chiefs and Councillors have occurred in separate elections.

[5] In 2017, Daniel Redhead, William Miles, and Charmain Miles were nominated and accepted as electoral officers for SFN [Electoral Officers].

[6] In September 2018, a nomination meeting for Chief, overseen by the Electoral Officers, resulted in the Applicant and Jeffrey Napaokesik receiving the only nominations.

[7] The SFN election date was set for October 2, 2018 with advance polls being held in Winnipeg on September 25, 2018 and in Thompson on September 27, 2018. Both advance polls were overseen by the Electoral Officers.

[8] On October 2, 2018, the Applicant was elected by a margin of six votes over Jeffrey Napaokesik. On October 3, 2018 the Electoral Officers notified Indigenous and Northern Affairs Canada [INAC] of the 2018 Election results.

[9] On October 17, 2018, Jemima Anderson, Theresa Miles, and Georgette Redhead, named Respondents who did not respond to the application brought by the Applicant and who have not provided affidavit evidence, posted a notice which purported to call a membership meeting on October 18, 2018. The notice was posted online, and stated “concerns of our community issues that are not real addressed to SFN membership”.

[10] The membership meeting was held on October 22, 2018. Two Electoral Officers, William Miles and Daniel Redhead, attended throughout and were made aware of allegations of electoral corruption and intimidation against the Applicant. There are few details about the meeting, but the community members that attended (an unknown number) passed a motion to remove the Applicant as Chief.

[11] The Applicant was not notified of this meeting, did not attend the meeting, and was not made aware of any of the meeting’s planned content, including the allegations of electoral corruption and intimidation and the consequences that may have arisen therefrom.

[12] On October 23, 2018, the day after the meeting called by the three SFN members, two of the Electoral officers, William Miles and Daniel Redhead, signed a letter, the Decision, that purportedly removed the Applicant from office and installed Jeffrey Napaokesik as Chief.

[13] It is this Decision that is the subject of this judicial review. The Applicant seeks a number of orders, including (a) a declaration that the Applicant continues to and currently holds the office of Chief, (b) that the Decision purporting to remove the Applicant as Chief be quashed, (c) that the matter not be remitted for reconsideration by the current Electoral Officers, or, in the alternative, that it be remitted only to a differently-constituted panel of Electoral Officers, (d) costs from Respondents William Miles, Daniel Redhead, and Jeffrey Napaokesik of \$5,200.00 inclusive of disbursements, (e) any other relief as the Court may permit.

[14] SFN, though listed as a Respondent, is supportive of the Applicant's case and has requested many of the same remedies. Accordingly, throughout this decision I will refer to them only as SFN.

[15] The remaining Respondents, William Miles, Daniel Redhead and Jeffrey Napaokesik, request that the Decision be quashed and remitted back to the same decision-makers, with costs. Throughout this decision I will refer to these three individuals as the Respondents.

[16] One of the Electoral Officers, Charmain Miles, assisted with the nominations process and the advance polls; and she also signed the letter that notified INAC of the election results. She did not assist with the October 2, 2018 voting day process, she did not sign the Decision and she

was in attendance for only part of the October 22, 2018 meeting. She is not a party to this application.

B. *The Evidence*

[17] The evidence concerning whether or not a custom exists that empowers the Electoral Officers to initiate an investigation, initiate an appeal or otherwise conduct and decide an appeal is disputed.

[18] In support of the Applicant's position, the Applicant and Eli Hill, a councillor of SFN, provided affidavit evidence.

[19] In support of the Respondents, the evidence comes from Daniel Redhead, William Miles and Jeffrey Napaokesik.

[20] The following are excerpts of the evidence to illustrate the parties' respective positions.

**Affidavit of Daniel Redhead & Affidavit of William Miles  
[same wording, same paragraph]:**

“4. Electoral Officers are chosen by the community and assigned with the responsibility to oversee the election process, in accordance with SFN's election customs. Electoral Officers are tasked with the responsibility to ensure that the election is fair and that corrupt practices do not impede the true wishes of the community throughout the election process. Before, during and after the election, Electoral Officers have the power to receive and address any concerns or allegations with respect to the fairness of the election, including allegations of corrupt practices. If a corrupt practice impacts on the fairness of an election, Electoral Officers have the power to take the action needed to protect the fairness of the election and ensure that the true wishes of the community are expressed through the election process.”

**Affidavit of Christine Joan Redhead (as Exhibit “A” to affidavit of Daniel Redhead):**

“4. I was chosen as an Electoral Officer, along with other members of SFN, because I have the knowledge of our election customs and traditions.

5. As the Electoral Officer, I saw that the election for Chief conducted on September 23<sup>rd</sup> 2016 was fair, there was no corruption during the election process, and I did not observe or hear of any bribery.

6. During the election, I received no complaints from SFN members that would have indicated to me that corrupt practices were occurring.

7. If I had received any complaints or reports of unfairness, corruption or bribery, I, along with the other Electoral Officers, would have investigated those reports and taken appropriate action against any candidate or member who was involved in a corrupt practice.”

**Affidavit of Jeffrey Napaokesik:**

“19. As stated, Electoral Officers are familiar with SFN election customs and are entrusted to ensure that they are followed, and that the election process is fair. Where Electoral Officers are made aware of unfairness or corrupt practices (including bribery), the Electoral Officers are to investigate those allegations and take appropriate action to ensure the fairness and integrity of the election process.”

**Affidavit of William Miles:**

“6. Ms. Redhead was the Electoral Officer in 2016 and oversaw the election process which resulted in Mr. Napaokesik being declared Chief of SFN for a two-year term. Ms. Redhead confirms that she was not made aware of any allegations of corrupt practice with respect to the election, but also notes that if she was made aware of any allegations of corrupt practice relating to the election, she would have investigated the allegations and acted on them. This is consistent with the role of Electoral Officers and the customs that apply to SFN elections. I have spoken to Rosemary Thomas and Dolly Napaokesik, both respected Elders of SFN, and they have confirmed to me that Electoral Officers do have the power to remove a Chief following an election if the Chief was successful in the election as a result of corrupt practices.”

**Affidavit of Eli Hill:**

“5. To my knowledge, there is a lack of consensus in the community about the power to remove someone from their position as Chief or Councillor.

6. To my knowledge, there is a lack of consensus concerning the existence of a procedure for appealing or reviewing election results.

7. I am not aware of any instances in which a Chief or Councillor has been successfully removed from office according to an oral custom.

8. I am not aware of any instances in which election results have been appealed due to allegations of election fraud.

[...]

13. These three Electoral Officers were appointed by the community to their positions in December 2017 in order to assist with developing a custom election code for Shamattawa.

14. William Miles and Daniel Redhead were also appointed to oversee the elections in December 2017 and again in October 2018.

15. To my knowledge, there is no established band custom that Electoral Officers have the power or authority to remove anyone from the position of Chief or Councillor, or to make decisions on election appeals.”

**Cross-examination of Eli Hill** (when asked why he seemed to have expected that the concerned band members would have presented allegations of corrupt election practices to him):

Q: What I’m saying is that, “no person has brought any evidence to me,” but that’s not a requirement of band custom anyway, is it?

A: Yes, if there is – like, chief and council as a quorum have authority in Shamattawa. If a member has a complaint about something, then they would address it at the chief and council meeting.

Q: Okay. But when it comes to elections, your evidence is that that mandate rests with electoral officers. Yes?

A: No.

Q: No?

A: Because if there was a membership meeting, and if things were brought up to light, say like, what we are here for, what do you call it – if there was a membership meeting and people were saying Eric is accused of fraud, then they would call another meeting to present to chief and council.

Q: And that would be for the chief's decision?

A: The council, the quorum. Like, the chief has no authority, only under the quorum.

Cross-examination of Eli Hill (when questioned about the role of Electoral Officers):

Q: But their job is to count the votes after everyone has voted?

A: Yes.

Q: And their job is to make sure to take the ballot box to the elders so they can vote?

A: Yes.

Q: And they are responsible for the fairness of the election?

A: Yes.

Q: And they are responsible for ensuring, once the votes are counted, that the correct person is made chief?

A: Yes.

Q: So they also then would be responsible to be receiving complaints or other information about how the election went forward?

A: They will receive that, but also chief and council will be receiving those. Again, as I stated, that if there is – if there are allegations, then they would call another meeting, and then present the facts to the chief and council.”

**Affidavit of Eric Redhead:**

7. There does not appear to be a consensus in the community about the power to remove anyone from Chief and Council.



8. For example, attached as Exhibit “B” is a Band Council Resolution (“BCR”) dated October 25, 2016 signed by the quorum of the then Chief and Council; namely then Chief Jeffrey Napaokesik, then Councillor Liberty Redhead and then Councillor Roderick Miles. In this BCR, these three people take the position that removal of a Chief requires a conviction of an indictable offence before a Chief can be removed and it cannot be done by petition or community meeting.

[...]

11. In my view, the customary reasons and process for removal of Chief or Councillors are not broadly shared and people have different views. This has led to turmoil.

12. Further, there does not appear to be a consensus in the community about the process for appeal of election results or that such a process even exists.

13. I have never heard of an election appeal at Shamattawa prior to the events described within this Affidavit.”

[21] The Applicant and SFN argue that the affidavits of William Miles, Daniel Redhead and Jeffrey Napaokesik include hearsay evidence of the purported beliefs of community members Christine Joan Redhead, Bennett Redhead, Rosemary Thomas and Dolly Napaokesik. Accordingly, they should not be relied upon because they violate Rule 81(1) of the *Federal Courts Rules* (SOR/98-106).

[22] I will focus on the references in the affidavit of Christine Joan Redhead (“Ms. Redhead”) as highlighted above, but the same considerations apply to those made by Bennett Redhead (referenced in the affidavit of Daniel Redhead), Rosemary Thomas and Dolly Napaokesik (both of whom were referenced in William Miles’ affidavit).

[23] Ms. Redhead swore her affidavit on October 21, 2016 in a separate matter. Daniel Redhead has attached her affidavit to his affidavit. Ms. Redhead was the Electoral Officer for SFN in 2016. She said that there were no allegations of corrupt practice with respect to that election. If there were such allegations, she stated she would have investigated them and acted on them. She said that this is consistent with the role of Electoral Officers and the customs that apply to SFN elections.

[24] Daniel Redhead also says that, according to Bennet Redhead, “a highly respected Elder of SFN”, Electoral Officers have the power to remove a Chief following an election if the Chief was successful in the election as a result of corrupt practices.

[25] The Applicant submits that these allegations cannot be accepted because they constitute hearsay (*Federal Courts Rules*, Rule 81(1)).

[26] SFN agrees that Ms. Redhead’s affidavit is inadmissible, because it was filed in another court proceeding. In addition, SFN submits that the Respondents have not established that Ms. Redhead’s evidence is reliable and necessary, requirements for an exception to the hearsay rule (*R v Mapara*, [2005] 1 SCR 358 at para 13).

[27] Moreover, SFN notes that it is not clear if Ms. Redhead is alleging that a band custom would enable her, as an Electoral Officer, to undertake an investigation of election fraud, or if she is simply stating that she would have taken such action.

[28] The other Respondents are silent on this issue.

[29] It is true that a testimony from a former adjudicative proceeding is characterized as hearsay (*R v Hawkins*, [1996] 3 SCR 1043, at 153-154). An exception to the inadmissibility of hearsay may be made if a witness is unavailable (*Éthier v Canada (RCMP Commissioner)*, [1993] 2 FC 659 (C.A.); *R v Khelawon*, [2006] 2 SCR 787). However, there is no clear indication that any of the affiants were unable to testify personally in this matter.

[30] Even if the affidavits contain hearsay and no exception to the hearsay rule is granted, the statements made by the affiants are admissible to the extent that they are not tendered as proof of their content. Ms. Redhead's affidavit is an exhibit attached to Daniel Redhead's affidavit, not as a standalone affidavit. From this, I understand that the affidavit of Ms. Redhead and the statements attributed to the Elders in Daniel Redhead's and William Miles' affidavits were not tendered as proof of their content. Rather, they are presented as evidence of something that was told to individuals who are testifying in this matter. The Court will limit its appreciation of the evidence accordingly.

[31] In any event, the affidavits are not determinative of the issues before the Court.

C. *Prior Proceedings*

[32] This matter was case managed and the parties were unsuccessful in having this matter mediated.

[33] This application is not the first proceeding related to the governance of the SFN. It is not necessary to delve into the merits of the other proceedings that have been before this Court except to state that the nature and scope of SFN's unwritten customs have been at the heart of these previous disputes.

III. Decision under Review

[34] The full text of the Decision signed by two of the Electoral Officers is as follows:

Dear Sir

On October 22, 2018 community meeting to appeal the October 2, 2018 chiefs Election of the Shamattawa First Nation. There was concern of corrupt practices during that election of vote buying and intimidation in order to sway the voters.

Due to the evidence presented to us at the meeting we find that Jeffrey Napaokesik has been declared the winner of the Election of October 2, 2018 of the Shamattawa First Nation.

IV. Issues and Standard of Review

[35] The Applicant's Memorandum of Fact and Law raised the following issues:

- (1) Whether the process by which the purported decision of October 23 was made violated the Applicant's entitlement to procedural fairness and therefore cannot be sustained;
- (2) Whether there exists a custom for the conduct of an election appeal that would give Electoral Officers the jurisdiction to investigate and decide an election appeal;
- (3) What is the appropriate remedy in this case?

[36] In their Memorandum of Fact and Law the Respondents conceded that, "the required level of procedural fairness was not afforded to the Applicant as it relates to the Decision". They also acknowledged the agreement between counsel that the Applicant was not seeking relief in the nature of *quo warranto* against Jeffrey Napaokesik.

[37] I am therefore granting the application for judicial review on the breach of procedural fairness issue. Although procedural fairness is flexible and varies with the circumstances (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 22 (CanLII), the most basic principles are that those that may be affected by decisions are provided notice of the impending decision and an opportunity to be heard (*Orr v Fort McKay First Nation*, 2011 FC 37, at para 12).

[38] Based on the facts before me—that the Applicant had no notice of the allegations against him at the October 22, 2018 meeting and was denied any opportunity to respond to them—I find that the Applicant has been denied procedural fairness even at a rudimentary level. The Decision is, therefore quashed.

[39] There are now only two issues to be decided in this judicial review:

- (1) Do the SFN Electoral Officers have the jurisdiction to intervene in, investigate and/or decide the outcome of an election?
- (2) If the answer is no, what is the appropriate remedy?

[40] Whether the SFN Electoral Officer have the jurisdiction to do what they did is a question of law and will be reviewed on a correctness standard: *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 59 (CanLII).

V. Parties' Positions

A. *Do the SFN Electoral Officers have the jurisdiction to intervene in, investigate and/or decide the outcome of an election?*

[41] The Applicant argues that SFN's Electoral Officers do not have the ability to investigate and decide elections appeals because there is no SFN custom that governs elections appeals.

[42] As there is no written source of law in this case, the Applicant relies on *Shirt v Saddle Lake Cree Nation*, 2017 FC 364 at paras 31-32 [*Shirt*] for the proposition that oral band customs must be "firmly established, generalized and followed consistently and conscientiously by a majority of the community" before it can be used as a source of law. He notes that no evidence of a custom of election appeals exists, and a number of different opinions exist that demonstrate that there is no community consensus. Therefore, there is no source of law giving Electoral Officers the power to hold elections appeals. He argues that, without a source for this power, by legislation or custom, it cannot exist.

[43] SFN agrees with the Applicant that Electoral Officers do not have this power. SFN submits that Electoral Officers' powers are usually given by Band Council, and Electoral Officers have no specific powers to hold an elections appeal. Their powers are restricted to "ensuring a fair and legitimate elections process" but cannot include the power to hold appeals without an explicit grant of power from Council. It claims that the procedural unfairness in this case shows why they are not given such powers—they do not have the skills to hold appeals properly.

[44] SFN also contests the application of the doctrine of necessity to give Electoral Officers the power to hold elections appeals. It notes that various cases establish that the doctrine only applies rarely and in exceptional circumstances, which are not present here. It argues that the doctrine also cannot apply because Electoral Officers are not necessary—the Council can appoint other qualified members of the community if it feels an appeal is necessary. It adds that, in any case, the Federal Court is capable of resolving elections disputes, making other adjudicators unnecessary.

[45] The Respondents argue that Electoral Officers are chosen by the community and are tasked with the responsibility to oversee the electoral process and, therefore, they have the power to intervene in the event of unjust election practices. They claim that there is a broad community consensus as to the nature of the role of an Electoral Officer. In addition, they highlight pieces of their submitted evidence that, for them, show that the Applicant won the election in an unfair manner. They submit that the maintenance of the fairness and integrity of the election system requires that Electoral Officers do more than counting votes.

[46] In addition and in the alternative, the Respondents argue that the doctrine of necessity applies. They rely on *Bill v Pelican Lake Appeal Board*, 2006 FCA 397, for the proposition that, where nobody exists to perform something legally necessary, even disqualified individuals may be empowered to act. For them, Electoral Officers are the *only* means by which an elections appeal may be heard in this case.

B. *What is the appropriate remedy?*

[47] The Applicant highlights this Court's powers to quash a decision with directions and/or make declarations, per Sections 18 and 18.1 of the *Federal Courts Act*. They submit that this Court should quash the decision and declare that SFN Electoral Officers cannot hold elections appeals.

[48] In the alternative, the Applicant submits if this Court decided that SFN Electoral Officers have the power to hold such appeals, then this Court should remit the decision to a different panel of Electoral Officers because there is a reasonable apprehension of bias with the current officers. He argues that the unfair appeal process used, the fact that the Electoral Officers seemed to have pre-decided on the Applicant's guilt, and reliance on undisclosed evidence at the October 22, 2018 meeting, as evidence that there is a reasonable apprehension of bias that disqualifies them from re-deciding.

[49] SFN agrees that the Decision ought to be quashed and no redetermination made. However, if the matter is sent for redetermination, a different panel of Electoral Officers should hear the Applicant's case due to a reasonable apprehension of bias with the current ones.



[50] The Respondents maintain that the proper remedy is to remit the decision back to the Electoral Officers, where it can be re-determined with proper procedures.

VI. Analysis

A. *Do the SFN Electoral Officers have the jurisdiction to intervene in, investigate and/or decide the outcome of an election?*

[51] The facts of this case demonstrate that the Electoral Officers conducted the electoral appeal process believing that it was within their jurisdiction to do so. As I have mentioned previously, this is a question of law and is thus reviewable on a standard of correctness.

[52] I acknowledge that oral customs and traditions also form part of the law of the land and that these laws and traditions need not always be written (*Pastion v Dene Tha' First Nation*, 2018 FC 648).

[53] I am persuaded by the Respondents' arguments that the relevant issue is one of *scope*—does the scope of Electoral Officers' power permit them to investigate and decide elections appeals? This scope might come from a number of sources, including established custom, the nature of their appointment and duties, or by legal necessity. I will evaluate each in turn.

[54] On the first point, there is insufficient evidence before me to establish that a broad consensus of the members of a SFN exists which empowers the Electoral Officer to conduct an inquiry on their own or at the request of SFN members. Therefore, I find that a custom does not exist with respect to these purported powers of Electoral Officers. As the Applicant has noted,

there is no evidence of an election appeal occurring before this case. As *Shirt* stands for the proposition that there is a high bar for establishing an oral custom, I believe that the lack of evidence in this regard cannot establish an oral custom giving Electoral Officers this power. I make this finding with respect to Elders of SFN. I am not suggesting that the Elders who are quoted by the Respondents are incorrect; I merely find that the evidence before me was insufficient to establish the existence of such a custom as the Respondents suggest.

[55] On the second point, there is considerable disagreement and uncertainty as to the scope of the powers of Electoral Officers and there is understandable tension. On one hand, the position of the Applicant and SFN is that the Electoral Officers are limited to *conducting* the election in a fair manner - their role ends when the Chief is elected. On the other hand, the mandate of Electoral Officers to provide a fair election process may incidentally extend to post-election decisions concerning its integrity.

[56] In these unknown waters, drawing upon the principles of the common law is helpful. There is no question that, at common law, there is never an inherent right to appeal a decision; any right of appeal must be created by way of statute: *Chagnon v Normand*, [1889] 16 SCR 661. I believe that this principle stands for the proposition that once a decision has been made; there cannot be a mechanism to appeal that decision unless there is one created by law, whether written or unwritten. In other words, decisions are final unless there is something that says otherwise.

[57] Therefore, since no written code or oral custom establishes a right of appeal from election results or decisions to the Electoral Officers, there can be no right of appeal from the final election results or decision in this particular case. Specifically for the Electoral Officers, they do not have the power to investigate, initiate or conduct and decide an appeal of an election result unless granted those powers explicitly from the Chief and Council or the people of SFN.

[58] It is true that what the Electoral Officers have done does not exactly resemble an appeal *per se*. It could be characterized as an internal investigation. However, the lack of an informative written code or a clear and accepted unwritten practice or custom makes this merely a speculative exercise in classification. In the end, a final election result was made and communicated by the Electoral Officers and then “appealed” (for lack of a better term) by the Electoral Officers on behalf of certain members, or themselves, when they received certain information. The Electoral Officers then acted as adjudicators for the matter and overturned the original decision. I find that, without evidence showing otherwise, it most resembles an appeal.

[59] Finally, with regard to the doctrine of necessity, I do not believe that these are appropriate circumstances for its application, as the bar is extraordinarily high and other mechanisms exist, such as judicial review to the Federal Court, to remedy elections issues. It is typically appropriate to apply the doctrine where *no* other means of taking a legal action exists.

[60] Therefore, I find that Electoral Officers do not have the authority to investigate and decide appeals from a final election result once they have issued it. With that said, I do not comment on their powers *before the final decision was made*. If anything is to be done based on

the scope of Electoral Officers' powers, it must be done as a part of the *elections process*, which ends once a successful candidate has been elected.

[61] This is a situation where it would be well within the purview of SFN to undertake some work on developing a broad community consensus on this issue. I note that Daniel Redhead described the work of SFN to move toward the establishment of a code but the community has been unable to finalize these matters. I urge SFN to continue with this very important work for the sake of governance certainty which no doubt will provide financial and administrative security for the carrying out of programs and services for the people of SFN.

B. *What is the appropriate remedy?*

[62] Because the Decision was made in a procedurally unfair manner, it is quashed in accordance with section 18.1(3)(b) of the *Federal Courts Act*.

[63] I also find that the Electoral Officers *do not* have the power to conduct election appeals, and it follows that the matter should not be remitted for redetermination by the same Electoral Officers or by different Electoral Officers. To order this matter to be re-determined in this manner would be imposing a process on SFN that it has not previously decided to adopt.

[64] Had the SFN developed some form of an appeal process (written or unwritten), with a process for selecting replacement Electoral Officers who are specifically empowered to investigate matters or launching an appeal of their own right or at the insistence of SFN members, I would have no difficulty in referring this matter back to be re-determined by a

differently constituted group of Electoral Officers. Based on the evidence before me, there is no such practice that has been endorsed by the members of SFN or the Chief and Council. In the absence of a clear law (written or unwritten) that has the broad consensus of SFN, this Court is an appropriate forum to have these disputes determined (*Shirt*, para 4). I make this determination with some reluctance as this Court has been called upon previously to deal with disputes. This Court would prefer to have SFN adjudicate any disputes within the parameters of its own laws.

[65] Because I have found that the decision is quashed, I find it necessary to declare that Eric Redhead was, and continues to be, the current Chief of SFN in accordance with section 18(1)(a) of the *Federal Courts Act*.

[66] For the purpose of future certainty, I also find it necessary to declare that SFN Electoral Officers may not investigate, initiate, conduct or decide elections appeals without an explicit grant of power from either the Chief and Council and/or the people of SFN in whatever process the SFN decides. SFN has the ability to expedite such work toward a grant of explicit power for the Electoral Officers before the next Chief election. Until that happens, the Electoral Officers are to concern themselves with administering a fair electoral process, but their jurisdiction ends when the final election result is made at the conclusion of the counting of votes.

[67] Declarations are discretionary remedies. I find that the circumstances of this matter provide me with enough of a basis to grant the discretionary remedy of declaratory relief.

[68] I did observe some positive development. It was submitted that SFN had never before held off-reserve polling stations; yet that progressive step was not met with disapproval by the community in the election of October 2, 2018. Laws are constantly evolving and they are seldom accepted unanimously by any community. There are customs and traditions that remain strong within SFN. I urge the parties to use those strong customs and traditions to work their way through any new issues that they face.

VII. Conclusion

[69] For the reasons above, the application for judicial review is granted. Eric Redhead is declared Chief of SFN. The Electoral Officers may not investigate, initiate, conduct or decide election appeals without an explicit grant of power from the Chief and Council and/or the members of SFN. SFN would be well advised to properly document both the process for granting any explicit powers to Electoral Officers and the nature and scope of any such grants.

[70] The Applicant is granted costs.

**JUDGMENT in T-1875-18**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed;
2. The Court declares Eric Redhead Chief of Shamattawa First Nation;
3. The Court declares that Shamattawa First Nation Electoral Officers will not investigate, initiate, conduct decide elections appeals without an explicit grant of power from either the Chief and Council and/or the people of Shamattawa First Nation.
4. The Applicant is granted costs from the Respondents, William Miles, Daniel Redhead and Jeffrey Napaokesik in the amount of \$2,000.00.
5. Shamattawa First Nation is not granted costs.

“Paul Favel”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1875-18

**STYLE OF CAUSE:** ERIC REDHEAD v WILLIAMS MILES, DANIEL REDHEAD, JEFFREY NAPAOKESIK, JEMIMA ANDERSON also known as PEGGY BEARDY ANDERSON, THERESA MILES, GEORGETTE REDHEAD AND THE SHAMATTAWA FIRST NATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** APRIL 23, 2019

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** DECEMBER 17, 2019

**APPEARANCES:**

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Megan Smith

Ryan Savage FOR THE RESPONDENTS  
(WILLIAM MILES, DANIEL REDHEAD, AND  
JEFFREY NAPAOKESIK)

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