

Federal Court



Cour fédérale

Date: 20220616

Docket: T-1633-21

Citation: 2022 FC 909

Ottawa, Ontario, June 16, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

VERNON WATCHMAKER

Applicant

and

KEHEWIN CREE NATION #466

Respondent

JUDGMENT AND REASONS

I. Nature and summary

[1] This application for judicial review is brought by a member of the Kehewin Cree Nation [KCN], a band under the *Indian Act*, RSC 1985, c I-5 located on Treaty 6 territory in Northeastern Alberta. The Applicant was elected band Chief in 2018. He ran for re-election as Chief in KCN's 2021 elections, the results of which were announced on September 29, 2021 at 1:40 p.m.

[2] The Applicant was not successful in his bid and was defeated by Trevor John [Mr. John] by 84 votes. He wished to appeal the result of the election. In this connection, the KCN had in place the *Kehewin Cree Nation's Elections Act* [the *Elections Act*], which among other things established the Election Appeals Committee to hear and decide appeals.

[3] The Applicant launched his appeal of the election results on October 6, 2021 at 1:49 p.m. He did so by filing appeal documents with the Deputy Electoral Officer.

[4] It is common ground the Applicant did not file appeal documents with the Election Appeals Committee, and that the Election Appeals Committee never considered his appeal.

[5] Instead, his appeal was determined to be invalid by the Electoral Officer because the appeal documents were said to be filed 5 or 10 minutes outside the “within seven (7) days” allowed under section 15 of the *Elections Act*. The Electoral Officer reasoned that because the Applicant submitted his application at 1:49 p.m., rather than prior to October 6, 2021 at 1:40 p.m., he missed the deadline for launching an appeal.

[6] Under the *Elections Act*, appeal applications are subject to a limitation period of “within seven (7) days” from the date that the election results were announced. The Electoral Officer took the position that the expression “within seven (7) days” was determined on a “to the minute” basis.

[7] The Applicant maintains he submitted his appeal within the limitation period, taking the position he had until the end of the seventh day after election results were disclosed.

[8] The Applicant asks that the election results be invalidated such that a new election may be held. In the alternative, he requests that the Committee be reconstituted in accordance with the Election Act, and that his appeal application be evaluated by it.

[9] This application is granted for the following reason.

II. Facts

A. *Previous finding of contempt against the Applicant*

[10] The Respondent notes that in an earlier matter I found the Applicant in contempt of this Court: see *Joly v Gadwa*, 2018 FC 746 and subsequently sentenced him to a fine of \$3,000.00 in part because he did not fully purge his contempt: see *Joly v Gadwa*, 2019 FC 175 .While the Respondent submits these findings should be factors in dismissing this application, I am not persuaded they are relevant. Therefore, these matters are not considered further.

B. *Material facts leading up to this Application*

[11] The Applicant was elected to the position of band councillor in 2014. Following this, he was elected as Chief from 2018 to 2021. Mr. Watchmaker ran as a candidate to be re-elected for the position of Chief in the 2021 elections, in which seven council members and a Chief were to

be elected. His unsuccessful bid for re-election in 2021 and his subsequent appeal, or rather his efforts to appeal his election results, are the subjects of this application.

[12] On September 29, 2021, the election results were released at 1:40 p.m. The results showed that Mr. John secured 284 votes, resulting in his election as Chief. Mr. Watchmaker had the second-highest number of votes, with 200 votes. The precise numbers may be found in the Applicant's Record and are reproduced in part below:

OFFICIAL FINAL COUNT
KEHEWIN CREE NATION – ELECTIONS 2021
TERM September 29, 2021 to September 29, 2024

Chiefs Tabulation

		Manual	Electronic	TOTAL	
Dion	Drayton	15	37	52	CHIEF
Gadwa	Eric	28	139	167	CHIEF
John	Melvin	4	15	19	CHIEF
John	Trevor	88	196	284	CHIEF
Watchmaker	Vernon	58	142	200	CHIEF

[13] In his appeal documents filed with the Deputy Electoral Officer and Electoral Officer, the Applicant alleged corrupt practices and contraventions of the *Elections Act*, thus impugning the validity of the results. The Applicant alleges the manner in which KNC conducted the election alongside their refusal to accept and assess his appeal application are breaches of procedural fairness.

III. Decision under review

[14] As noted, the Applicant filed his appeal documents with the Deputy Electoral Officer and Electoral Officer. They were not filed with the Election Appeals Committee. As such, the Election Appeals Committee never considered his appeal.

[15] However, the Electoral Officer rejected his appeal documents taking the position the Applicant's appeal was submitted out of time.

[16] In this connection, the Electoral Officer announced the results of the election at 1:40 p.m. on September 29, 2021.

[17] Following this, the Deputy Electoral Officer sent an e-mail, dated October 1, 2021. This e-mail laid out the 7-day limitation period for launching an appeal under the *Elections Act* as seen by the Electoral Officer as follows:

The date of official count was September 29, 2021.

So 7 days now is the period to await appeal submissions.

That would be October 6, 2021.

If no appeals are brought in and declared Valid by Irwin Kehewin the Electoral Officer, then the Election period will be done after the 7 days.

If an appeal is brought within 7 days and is Valid, then Irvin will have 7 days to respond in written form. And the appeals committee will be brought in and they will have 21 days to come to decision.

[18] In apparent reliance on the e-mail from the Deputy Electoral Officer just quoted, the Applicant submitted his appeal documents to the Deputy Electoral Officer on October 6, 2021 at 1:49 p.m. Their receipt was confirmed in an e-mail from Tara Currie, an administrative worker of KCN.

[19] Following this, the Applicant received a call from the Deputy Electoral Officer informing him that the Electoral Officer rejected his appeal.

[20] He also received a call from the Electoral Officer who provided reasons for his rejection of the Applicant's appeal. The only evidence on the record of are two pages of handwritten notes, prepared by the Electoral Officer:

Vern ph'd using his wife 's ph, I told him about the time I made my declaration to announce the new C+C, It was from 1:44 (starting time) + 7 days, I cited the election law where you have to accept or declare nomination by 9, 2 days later (48) hrs from close of nominations. Phone call ended @ 2:19. I went home to pick up my lawn chair after that came back + witnessed the ceremonial inauguration for C+C @ tepee and than the headdress transfer ceremony conducted by Leonard Bastion of Pekigan. (See CTR at 23-24).

IV. Sections of the *Kehewin Cree Nation Election Act* [the *Election Act*] referred to

[21] The following provisions of the *Elections Act* are referred to in this matter:

Section 3: SELECTION OF THE ELECTORAL OFFICER

A. At least ninety (90) days prior to the Kehewin Cree Nation Elections, the Kehewin Cree Nation Elders Advisory Committee will advertise and accept bids for an Electoral Officer.

B. At least sixty (60) days prior to the Kehewin Cree Nation Elections, the Kehewin Cree Nation Elders Advisory Committee

will review the bids and recommend Electoral Officer(s) to Chief and Council.

C. At least forty five (45) days prior to the Kehewin Cree Nation Elections, the Chief and Council will select one of the Committee's recommendations and pass a Band Council Resolution to accept the Electoral Officer.

D. The Electoral Officer shall not be a member of Kehewin Cree Nation No. 123 and should be certified by Indigenous Services Canada (a.k.a. Indian Affairs).

E. The Electoral Officer will be in charge of the elections pursuant to the provisions of this Act.

Section 4: SELECTION OF THE ELECTION APPEALS COMMITTEE

A. At least thirty (30) days prior the Kehewin Cree Nation Elections, the Electoral Officer will appoint a "Kehewin Cree Nation Election Appeals Committee" consisting of three (3) non-Kehewin Members.

B. The Committee will include at least one non-Kehewin Elder.

Section 5: DUTIES OF THE ELECTION APPEALS COMMITTEE

A. The Kehewin Cree Nation Election Appeals Committee will receive, review and make a decision on appeals regarding the Election according to the process outlined in section "15. Appeals Process".

Section 15: APPEALS PROCESS

A. Submission: An appeal submitted to the Election Appeals Committee must:

1. be made within seven (7) days after the final voting results.

2. be in writing and set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths, the facts substantiating the grounds for the appeal accompanied by any supporting documentation, and

3. be accompanied by a non-refundable fee in the amount of one thousand (\$1,000.00) paid by cash or certified cheque/money orders payable to Kehewin Cree Nation.

B. An appeal submitted under this section must sufficiently verify one or more of the following:

1. that the person declared elected was not qualified to be a candidate,

2. that there was a violation of this code in the conduct of the election that might have affected the result of the election, or

3. that there was corrupt or fraudulent practice in relation to the election such as the following:

a) Any Kehewin Cree Nation Member, or non-member, in connection with the election must not:

1) offer money, goods, employment or other valuable consideration in an attempt to influence an elector to vote or refrain from voting for a particular candidate,

2) by intimidation or duress, attempt to influence another person to vote or refrain from voting for a particular candidate,

3) vote or attempt to vote knowing they are not entitled to vote,

4) knowingly use a forged ballot, or

5) put a ballot into a ballot box knowing that they are not authorized to do so under the regulations.

C. Procedure: Upon receipt of an election appeal, the Election Appeals Committee shall:

1. in the case where the appeal is submitted in accordance with this section, forward a copy together with supporting documents by registered mail to the Electoral Officer and to each candidate at the election, or

2. in the case where the appeal is not submitted in accordance with this section, inform the appellant(s) in writing that the appeal will not receive further consideration.

D. Response to allegations: Any candidate or the Electoral Officer may, within seven (7) days of the receipt of the appeal(s), forward to the Election Appeals Committee a written response to the appeal allegations, together with any supporting documentation.

E. Investigation: The Election Appeals Committee may, if the material that has been filed is not adequate for deciding the validity of the election complained of, conduct such further investigation into the matter as the committee deems necessary.

[Emphasis added]

V. Issues

[22] The Applicant submits the issue is whether the First Nation breached the Applicant's right to procedural fairness.

[23] The Respondent submits the issue is whether the First Nation's decision to refuse the Applicant's election appeal application for missing the deadline was reasonable.

VI. Standard of Review

[24] The Applicant alleges breaches of procedural fairness. As such, he maintains the relevant standard of review is correctness. The Respondent contends the primary issues relate to the substance of the First Nation's decision, and submits the relevant standard of review is reasonableness.

[25] In my respectful view, the standard of review with respect to the Electoral Officer's decision in this case not to refer the Applicant's appeal to the Election Appeals Committee is reviewable on the standard of correctness.

[26] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': Re: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [per Rennie JA]. In this connection I also note the Federal Court of Appeal's recent decision holding judicial review of procedural fairness issues is conducted on the correctness standard: see *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 per de Montigny JA [Near and LeBlanc JJA concurring]:

[35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[27] I also understand from the Supreme Court of Canada's teaching in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23 that the standard of review for procedural fairness is correctness:

[23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

[Emphasis added]

[28] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

[50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VII. Analysis

A. *Preliminary Issues raised by the Respondent regarding the remedies*

[29] The Respondent takes issue with the remedies requested by the Applicant. First, the Applicant seeks an order compelling KCN to hold a new round of elections. The Respondent maintains the Court does not have the authority to do so. However, in *Gadwa v Kehewin*, 2016 FC 597, I note Justice Strickland made an order resulting in the necessity of holding a new election. In that case, the Applicant in this case lost his position as Chief because of the Electoral

Officer's finding that he engaged in corrupt election practices. In view of my disposition of this case, I need not consider this argument.

[30] Second, the Respondent points out the Applicant failed to name the Elections Appeal Committee as a respondent, thus depriving the Committee of an opportunity to respond to Mr. Watchmaker's allegations. The Respondent underlines the relevance of *Halcrow v Kapawe'no First Nation*, 2021 FC 219 [per McDonald J], a case which concerned two Applicants who were both elected as council members. The Respondents, who were unsuccessful candidates, contested the election results by filing a Notice to Appeal. The Election Appeal Committee allowed their appeal. Justice McDonald set aside the decision of the Election Appeal Committee, holding that the Applicants were not properly notified of the Notice to Appeal submitted by the Respondents.

Justice McDonald states in her decision:

[the two Council members] having been elected, had the highest personal interest of any member of the KFN, in any reconsideration of the election results by the Appeal Committee. This fact alone elevates, and by a significant degree, the procedural fairness owed to them. The Applicants had the right to have adequate notice of the case against their successful elections, and they should have been provided with sufficient opportunity to make representations before a decision adverse to their interests was made.

[31] Again, in view of my disposition of this case, it is not necessary to deal with this submission.

B. *Did the Electoral Officer and Deputy Electoral Officer err in declining to refer Mr. Watchmaker's appeal to the Elections Appeal Committee?*

[32] The Applicant submits the following breaches of procedural fairness:

- i. By proceeding with the election with a Committee that was not properly constituted;
- ii. By refusing to accept and render a decision on the Applicant's appeal.

[33] On the first point, subsection 4A of the *Elections Act* requires an Election Appeals Committee comprising "three (3) non-Kehewin Members". It is not disputed all three Election Appeals Committee members were in fact Kehewin members; in other words all three members were appointed contrary to subsection 4A of the *Elections Act*. In like manner, subsection 3D of the *Elections Act* states the Electoral Officer "shall not be a member" of KCN, and must also be "certified by Indigenous Services Canada (a.k.a. Indian Affairs)". It is not disputed these statutory requirements were not met either. The Electoral Officer was in fact a member of KCN, and there is no evidence he was "certified by Indigenous Services Canada (a.k.a. Indian Affairs)".

[34] In my view, if the Applicant had issues in these two respects, he could and should have moved to challenge the appointment decisions when he became aware of them. I am not satisfied he was unaware of any of these appointments because he was Chief of the band when they were made. Moreover, insofar as the appointment of the Electoral Officer is concerned, and in my discretion, I will not hear this objection from the Applicant because he was not only Chief of KCN when the Electoral Officer was appointed, but in fact the Applicant signed the Band

Council Resolution effecting that appointment. I need not consider the issue of the non-compliant composition of the Election Appeals Committee because it played no role in this affair; however that defect is relevant later in these reasons in terms of remedy.

[35] The second point to determine is whether there was a breach of procedural fairness in the Electoral Officer refusing to refer the Applicant's appeal to the Elections Appeal Committee. I agree there was.

[36] The Respondent says there is no merit in this submission because the Applicant failed to follow the procedures laid out in the *Elections Act* itself. The Respondent submits the Applicant should have filed his appeal with the Election Appeals Committee, but instead, filed it with the Deputy Electoral Officer and Electoral Officer. The Respondent says the *Elections Act* gives no authority to the Electoral Officer (or his Deputy) concerning the acceptance or rejection of appeals. Instead, the Respondent submits, the *Elections Act* gives decision making authority over appeals, including decisions with respect to their validity, to the Elections Appeal Committee:

Section 15: APPEALS PROCESS

...

C. Procedure: Upon receipt of an election appeal, the Election Appeals Committee shall:

1. in the case where the appeal is submitted in accordance with this section, forward a copy together with supporting documents by registered mail to the Electoral Officer and to each candidate at the election, or
2. in the case where the appeal is not submitted in accordance with this section, inform the appellant(s) in writing that the appeal will not receive further consideration.

[Emphasis added]

[37] I note the *Elections Act* provides in subsection 3E that “The Electoral Officer will be in charge of the elections pursuant to the provisions of this Act.” However, I note there is no reference to the Electoral Officer in those provisions of the *Elections Act* dealing with appeals. Instead, that authority is given to the Elections Appeal Committee by section 15, and by Section 5:

5. DUTIES OF THE ELECTION APPEALS COMMITTEE

A. The Kehewin Cree Nation Election Appeals Committee will receive, review and make a decision on appeals regarding the Election according to the process outline in section “15. Appeals Process”.

[38] In reviewing the pleadings in this case, however, the Notice of Application seeks judicial review “in respect of the decision of the Electoral Officer and ultimately the Election Appeals Committee, of October 6, 2021...” If the request for judicial review had been limited to a decision of the Election Appeals Committee, the Applicant’s failure to e-mail his appeal to the Election Appeals Committee might have been fatal to his application. Certainly, I am unable to make any finding relating to a decision of the Election Appeals Committee because it was not served with this Application and in any event, it made no decision in relation to the Applicant’s appeal. However, the Applicant has pleaded the matter such that the decision of the Electoral Officer is properly before this Court.

[39] In my view, the combined effect of the two provisions of the *Elections Act* just referred obliged the Elections Appeal Committee to make the decision whether or not to accept the appeal, not the Electoral Officer or his Deputy.

[40] I am unable to find any support in the *Elections Act* for the proposition the Electoral Officer has any role to play or discretion to exercise in whether or not the Applicant's appeal should be sent to the Election Appeals Committee. In declining to do so, in my view the Electoral Officer inappropriately assumed an authority he did not have and which in fact the *Elections Act* gives exclusively to the Election Appeals Committee.

[41] I come to this conclusion again having regard to the *Elections Act* itself:

15. APPEALS PROCEDURE

...

C. Procedure: Upon receipt of an election appeal, the Election Appeals Committee shall:

1. in the case where the appeal is submitted in accordance with this section, forward a copy together with supporting documents by registered mail to the Electoral Officer and to each candidate at the election, or

2. in the case where the appeal is not submitted in accordance with this section, inform the appellant(s) in writing that the appeal will not receive further consideration.

[Emphasis added]

[42] While the *Elections Act* provides in subsection 3E that “The Electoral Officer will be in charge of the elections pursuant to the provisions of this Act,” importantly there are no

references to the Electoral Officer in those provisions of the *Elections Act* dealing with appeals. Instead, the authority to decide whether or not to proceed with an appeal, is given to the Election Appeals Committee not only by para 15C2, but by and reinforced through section 5:

5. DUTIES OF THE ELECTION APPEALS COMMITTEE

A. The Kehewin Cree Nation Election Appeals Committee will receive, review and make a decision on appeals regarding the Election according to the process outline in section “15. Appeals Process”.

[43] In my respectful view, the Electoral Officer should not have interposed himself between the Applicant and the Election Appeals Committee as happened here. Such a decision is contrary to the express constraining, and notably procedural language of the *Elections Act*. This is entirely a procedural matter, and in my view, the decision of the Electoral Officer breached the procedural rights of the Applicant in a material and substantive manner. See *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817:

22 Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

...

24 A second factor is the nature of the statutory scheme and the “terms of the statute pursuant to which the body operates”: *Old St. Boniface, supra*, at p. 1191. The role of the particular decision within the statutory scheme and other surrounding indications in

the statute help determine the content of the duty of fairness owed when a particular administrative decision is made. Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted: see D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 7-66 to 7-67.

...

27 Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, *supra*, at pp. 7-66 to 7-70. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: *IWA v. Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC), [1990] 1 S.C.R. 282, *per* Gonthier J.

[44] Therefore, judicial review must be granted.

[45] I turn to the remedy. The decision of the Electoral Officer to withhold the appeal from the Election Appeals Committee must be set aside as one made without lawful authority and a breach of procedural fairness. Normally the Court would refer the matter to a different officer for redetermination. However, it appears both the Electoral Officer and the Deputy Electoral Officer were involved in the Decision. The Electoral Officer made the Decision not to send the appeal forward. The Deputy Electoral Officer sent the e-mail of October 1, 2021, asserting the right of the Electoral Officer to make such a decision. Therefore, the Court will direct that the Applicant's appeal material be forwarded to the Election Appeals Committee for determination under sections 5 and 15 of the *Elections Act*.

[46] In my view it will also be necessary for a new Elections Appeal Committee to be established that complies with subsection 4A of the *Elections Act*. In my view, the Court should not be implicated in a decision entrusting this matter to the existing Election Appeals Committee because of its improper constitution. On this point and on the issue of timeliness, the Court adopts the following conclusion by Justice Favel in *McDonald v Fond du Lac Denesuline First Nation*, 2022 FC 844:

[87] This Court “has acknowledged on several occasions that it would prefer to find the least intrusive manner in which to oversee election matters out of respect for the efforts the First Nation and its membership have taken to enact rules governing their election processes” (*Mercredi FC* at para 56). However, in my view, the facts of this case and the history of FLDFN elections call for a slightly more interventionist approach. In this regard, I agree with Justice Grammond’s statements at paragraph 19 of the *McDonald Injunction*:

[A non-interventionist approach] is conditional upon the community’s commitment to follow its own process. The recent postponement of the election raises doubts in this regard. If this happens again, the Court may consider the more intrusive measures suggested by the Federal Court of Appeal in *Mercredi [FCA]*. As I mentioned in *Thomas v One Arrow First Nation*, 2019 FC 1663, at paragraphs 15–16 and 21, where a First Nation’s appeal process becomes ineffective, this Court will intervene.

[88] Given that the Appeal Board was not properly constituted and in light of the denial of procedural fairness to the Applicants, it is appropriate to grant the remedy of *certiorari* to set aside the Appeal Decisions. For the reasons articulated in *Mercredi FC*, I am remitting the Applicants’ appeals to a newly and properly formed Appeal Board appointed in accordance with the process set out in clause 3.3 of the *Election Act*. However, I am ordering that the appointment of the Appeal Board and the conduct of the Applicants’ appeals be addressed within clear timelines (*Mercredi FCA* at para 5; *Carry the Kettle First Nation v Kennedy*, 2021 FC 462 para 71 and Judgment)...

[Emphasis added]

VIII. Conclusion

[47] Because of the breach of procedural fairness outlined above, this application for judicial review will be granted. The Court will Order the creation of a new duly constituted Election Appeals Committee. The Court will order that the Applicant may send his appeal material directly to the newly created Election Appeals Committee for determination under sections 5 and 15 of the *Elections Act*.

IX. Costs

[48] The parties did not agree on costs. The Applicant requested an all-inclusive lump sum award of \$7,500.00 if successful while the Respondent submitted that amount should be in the range of \$3,500.00 to \$5,000.00. The Respondent if successful requested a lump sum all-inclusive award of costs in the amount of \$3,500 to \$5,000. This is a novel point, and of importance to the First Nation. I have found in favour of the Applicant. In my view, a reasonable award of costs in this case would be \$4,000.00, which I will award in favour of the Applicant payable by the Respondent.

JUDGMENT in T-1633-21

THIS COURT'S JUDGMENT is that:

1. Judicial review is granted.
2. The Electoral Officer shall appoint a new Election Appeals Committee that complies with subsection 4A of the *Elections Act* within 30 days of this Order.
3. The Applicant may send his appeal material directly to the newly created Election Appeals Committee for determination under sections 5 and 15 of the *Elections Act*.
4. The Respondent shall pay the Applicant costs in the all-inclusive lump sum of \$4,000.00.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1633-21

STYLE OF CAUSE: VERNON WATCHMAKER v KEHEWIN CREE
NATION #466

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JUNE 6, 2022

JUDGMENT AND REASONS: BROWN J.

DATED: JUNE 16, 2022

APPEARANCES:

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Dennis Callihoo FOR THE RESPONDENT

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