Federal Court  Cour fédérale

Date: 20221212

Docket: T-1117-22

Citation: 2022 FC 1709

Ottawa, Ontario, December 12, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

HECTOR LEO BEEDS, IRENE LENHART AND LORNE SAKEBOW

Applicants

and

CHIEF PETER BILL, COUNCILLOR LEE BILL, COUNCILLOR WILLIE THOMAS, COUNCILLOR DONNY RABBITSKIN, AND IN HER CAPACITY AS CHIEF ELECTORAL OFFICER, LORETTA J. PETE LAMBERT

Respondents

JUDGMENT AND REASONS

[1] The applicants were denied the opportunity to be candidates in the election for the chief and council of Pelican Lake First Nation [PLFN], because they did not reside on PLFN's reserve. They also allege that the respondents, who were elected, engaged in corrupt practices and vote-buying during the election campaign.

[2] The applicants' appeal to the PLFN Appeal Board [the Board] was dismissed. With respect to the residence issue, the Board held that one of the applicants, Mr. Beeds, was eligible, but that the others were not. However, it concluded that this situation did not affect the results of the election. It therefore let the election results stand. With respect to vote-buying, after hearing the evidence on both sides, it found that the applicants had not brought sufficient evidence of their allegations.

[3] The applicants now seek judicial review of the Board's decision. I am allowing their application in part only. The Board's findings with respect to the applicants' eligibility and to vote-buying were reasonable. Its decision is compatible with the evidence and the applicable legal principles. However, the Board's finding that the absence of Mr. Beeds's name from the ballot did not affect the result of the election for the position of chief is unreasonable. The Board did not give reasons for its finding, and there is nothing in the evidentiary record that justifies it. Thus, the matter is remitted to the Board on this issue only.

I. Background

[4] PLFN holds elections for its chief and council every three years. These elections are held according to the *Act Respecting the Election of Chief and Councillors of the Pelican Lake First Nation* [the Election Act]. Among other things, section 5(3)(b) of the Election Act requires candidates to have been ordinarily resident on PLFN's reserve for the twelve months preceding the election.

[5] Elections took place on March 24, 2022. The three applicants were nominated at the nomination meeting held on March 8, 2022. Mr. Beeds and Ms. Lenhart were nominated for chief and Mr. Sakebow was nominated for councillor. They each signed a sworn statement to the effect that they met the eligibility criteria, including the residency requirement. However, the Chief Electoral Officer [the CEO] required additional documentation and later determined that the applicants were not ordinarily resident on PLFN's reserve. She therefore removed their names from the list of candidates that was circulated on March 11. Their names did not appear on the ballot.

[6] The respondents are among the winners of the election. Chief Bill is in his sixth term as chief and was re-elected with 366 votes, while the other candidates received 212 and 204 votes, respectively. Councillors Bill, Thomas and Rabbitskin ran on a common platform with Chief Bill and were also elected. Three other council members were also elected, who are not party to this proceeding.

[7] The applicants appealed the results of the election. They alleged that they were wrongly disqualified because of their residence and that the respondents engaged in vote-buying. They also challenged the validity of the residency requirement and the validity of amendments made to the Election Act in 2021, but they withdrew these grounds at the hearing before the Board.

[8] The Board heard the matter on April 23 and 24, 2022. The parties then provided written submissions. The Board issued its decision on May 4, dismissing the appeal and confirming the election results.

[9] In its reasons, the Board first discussed the application of the residency requirement. After reviewing the evidence, it found that Mr. Beeds was eligible to run, because he was living off reserve to pursue a course of study at an educational institution, an exception explicitly recognized in section 2(m) of the Election Act. In contrast, it found that Ms. Lenhart and Mr. Sakebow did not meet the residency requirement. The Board also found that the Election Act required the CEO to draw a final list of candidates at the close of the nomination meeting. Thus, the CEO could not make further inquiries into the candidates' residence and issue a revised list of candidates three days later. In the end, however, while finding breaches of the Election Act, the Board stated that these breaches "would not reasonably be seen to have affected the results of the Election" and confirmed the results, based on section 12(6)(b) of the Election Act.

[10] The Board then turned to the issue of corrupt practices and vote-buying. It reviewed the evidence, including the testimony of three PLFN members who stated that the respondents gave them money in exchange of their votes, a video allegedly showing one of these incidents, and the testimony of the respondents themselves. This evidence will be reviewed in more detail later in these reasons. The Board found that the evidence was limited and did not "meet the evidentiary burden for a finding of corruption in the election process."

[11] The applicants are now seeking judicial review of the Board's decision. At the hearing, counsel for the applicants informed me that Ms. Lenhart no longer wished to pursue this application, even though she did not file a notice of discontinuance.

II. Analysis

[12] In my view, only one aspect of the Board's decision is unreasonable and warrants this Court's intervention: its finding that the outcome of the election for chief was not affected by the absence of Mr. Beeds's name from the ballot. In all other respects, the Board's decision is reasonable.

[13] Before giving my reasons for reaching this conclusion, I must highlight certain aspects of the framework for judicial review, flowing from the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. When performing judicial review, courts do not decide the case themselves, as this is a task entrusted to the administrative decision maker, in this case the Board. Rather, their role is merely to ensure that the decision is reasonable or, in other words, that it is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov*, at paragraph 85.

[14] Deference to the decision maker is particularly apposite in respect of findings of fact, especially where credibility is at stake. A decision maker, such as the Board, "may assess and evaluate the evidence before it [and] absent exceptional circumstances, a reviewing court will not interfere with its factual findings": *Vavilov*, at paragraph 125. As we will see below and as the applicants themselves recognized in their written submissions to the Board, this case largely turns on the witnesses' credibility.

[15] We perform judicial review by first analyzing the reasons given by the decision maker: *Vavilov*, at paragraph 84. However, we may also look at the evidence before the decision maker and the submissions of the parties to better understand the decision maker's reasoning process: *Vavilov*, at paragraph 94. Moreover, reasons should not be assessed against a standard of perfection: *Vavilov*, at paragraph 91. These guidelines are particularly relevant in this case, because section 12(6) of the Election Act gives the Board only seven days to issue a decision. One cannot expect the reasons to address every minute detail of the evidence, especially as the hearing in this case lasted two full days.

A. *Corrupt Practices*

[16] The applicants' main argument in respect of corrupt practices is that the Board wrongly disregarded their evidence. They say that part of the respondents' evidence corroborates theirs, and that insofar as they deny offering money to the applicants, they should not be believed.

[17] The Board, as I mentioned above, reached the opposite conclusion. On the whole, it found the evidence insufficient to support a finding of vote-buying or corrupt practice. This is a finding of fact that can only be overturned on judicial review if the Board "has fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, at paragraph 126. Indeed, as the applicants wrote in their final submissions to the Board: "The question then comes down to credibility – whose evidence should be preferred?" It is thus necessary to begin with an overview of the evidence, especially given the brevity of the Board's reasons.

(a) *Incident Involving Christine Smallboy*

[18] The first instance of alleged vote-buying involved Chief Bill and Ms. Smallboy, a PLFN member. It took place in the parking lot of the advance polling station in Prince Albert. Candidates were in their parked vehicles so that electors could speak with them. Ms. Smallboy approached Chief Bill while another person took a video of the interaction. Chief Bill first gave Ms. Smallboy a small white piece of paper, which she kept in her hand. It is common ground that this piece of paper is a list of Chief Bill's slate of candidates; it was put in evidence before the Board. A few seconds later, Chief Bill gave Ms. Smallboy something else, which we cannot see, and which she put in her pocket. As it was taken from a certain distance, the video does not include the sound of the conversation.

[19] In her testimony, Ms. Smallboy said that what Chief Bill gave her was money, although she was unable to say how much, and that Chief Bill told her to vote for his slate of candidates. Chief Bill, for his part, denied giving money to Ms. Smallboy. Rather, he testified that Ms. Smallboy mentioned that her daughters were also present for voting and that she needed additional copies of the list of candidates. Thus, the second item that he gave her was a few additional copies of the list.

[20] Moreover, there is an additional element bearing on Ms. Smallboy's credibility. Chief Bill testified that Ms. Smallboy had asked him for financial assistance on several occasions and filed copies of text messages to support this. Ms. Smallboy denied asking for such assistance, in spite of the text messages.

[21] The Board did not provide detailed reasons for preferring Chief Bill's testimony to that of Ms. Smallboy, beyond summarizing what each one had said and highlighting the fact that she was unable to say how much money he had given to her. Nevertheless, there was no fundamental misapprehension of the evidence and the Board's conclusion that the evidence was insufficient is reasonable. The video does not prove that Chief Bill gave money to Ms. Smallboy. There were credibility issues with her testimony, as she could not say how much money she received and denied asking for financial assistance in the past. She also testified that she received money first and the list of candidates second, while the video shows that she received the list first. Weighing the evidence, the Board was entitled to find that the allegation of vote-buying had not been proven.

(b) *Incident Involving Thomas James Sakebow*

[22] Another PLFN member, Mr. Thomas James Sakebow, testified that on election day, at the PLFN gas station, Chief Bill and Councillors Bill, Thomas and Rabbitskin each gave him $40 and a list of candidates for which to vote.

[23] Chief Bill denied giving money to Mr. Sakebow on election day. Councillor Bill testified that Mr. Sakebow called him on election day and requested money to buy gas to return home. He said that he met him at the gas station and gave him $20, that he did not ask Mr. Sakebow to vote for him and that Mr. Sakebow told him that he had already voted. Likewise, Councillor Rabbitskin testified that he met Mr. Sakebow and gave him $40 for gas money, after he had voted. Councillor Thomas testified to the effect that he was with Chief Bill on election day when they ran into Mr. Sakebow. According to Councillor Thomas, Mr. Sakebow got into an argument

with Chief Bill over whether the latter had sufficiently supported him in the past. After the argument, both Chief Bill and Councillor Thomas left without giving Mr. Sakebow any money.

[24] More generally, the respondents testified that it is a common practice for PLFN members to ask councillors personally for financial help and for councillors to provide such help. They also stated that some of the applicants and their witnesses have frequently done this.

[25] The Board found the evidence insufficient to buttress a finding of corrupt practice, but did not give specific reasons for its conclusion, beyond summarizing the evidence and noting the respondents' submissions regarding the practice of giving financial assistance. Yet, in doing so, it did not fundamentally misapprehend the evidence. In reaching its conclusion, the Board implicitly but unmistakably found that the events unfolded as described by the respondents and that Mr. Sakebow's account was not credible. Assessing the witnesses' credibility lies at the heart of the Board's mission, and the applicants have not persuaded me that its finding is unreasonable.

[26] The applicants also suggested that the Board may have disregarded the law regarding the concept of corrupt practices or vote-buying. However, I note that in their post-hearing submissions, the parties referred the Board to several decisions of this Court: *Gadwa v Kehewin First Nation*, 2016 FC 597 [*Gadwa*], aff'd *sub nom Joly v Gadwa*, 2017 FCA 203; *Henry v Roseau River Anishinabe First Nation*, 2017 FC 1038 [*Henry*]; *Potts v Alexis Nakota Sioux Nation*, 2019 FC 1121 [*Potts*]; *Whitford v Red Pheasant First Nation*, 2022 FC 436 [*Whitford*].

[27] In *Henry*, at paragraphs 57–59, my colleague Justice Leonard S. Mandamin summarized as follows the legal principles with respect to vote-buying:

> […] bribery occurs when a vote is procured from an elector for valuable consideration. Both the impugned candidate and compromised elector must agree to the exchange of consideration in return for a promise to vote a certain way and, at common law, no bribery occurs if no condition is placed on the consideration given […]
>
> In other words, there is no bribery, or vote buying, when money is given without any condition to vote in a certain way.

[28] In that case, Justice Mandamin agreed with a finding that, in light of all the circumstances, giving a small sum of money to a member on election day did not amount to vote-buying. Likewise, a chief did not engage in a corrupt practice by buying gas for a member, where they did not discuss how the member would vote: *Potts*, at paragraphs 32–34. Giving modest amounts of financial assistance does not constitute vote-buying if the recipient of the assistance is not asked to vote in a particular way: *Good v Canada (Attorney General)*, 2018 FC 1199 at paragraphs 227–241, 270–272 [*Good*].

[29] In contrast, findings of corrupt practices were made where money was clearly given to support a request to vote in a particular way, or in exchange of a commitment to do so: *Gadwa*, at paragraph 81; *Papequash v Brass*, 2018 FC 325 at paragraphs 18, 20, 21, 24 and 39.

[30] In light of these principles, the Board could reasonably conclude that the evidence was insufficient to conclude that the respondents tried to buy Mr. Sakebow's vote.

(c) *Incident Involving Isaiah Sakebow*

[31] The incumbent Council held its last meeting at a Saskatoon hotel on March 22, 2022. After the meeting concluded, a number of PLFN members attended and pizza was ordered. Isaiah Sakebow testified that he was present and that each of Chief Bill and Councillors Bill and Thomas gave him $20. None of them told him how to vote, but he understood that the payment was in exchange for his support. Chief Bill and Councillors Bill and Thomas denied giving money to Isaiah Sakebow.

[32] The Board summarized Isaiah Sakebow's testimony and found that it did not constitute sufficient evidence of a corrupt practice. This conclusion is reasonable in spite of the lack of explicit reasons for it. Once again, the issue boiled down to a credibility contest between each party's witnesses. The applicants have failed to explain why the Board could not reasonably prefer the testimony of the respondents to that of Isaiah Sakebow.

(d) *March 8, 2022 Council Meeting*

[33] The applicants also assert that the Board failed to mention the affidavit of Romeo Thomas, which raised allegations regarding a meeting of the Council on March 8, 2022. Romeo Thomas, who was an outgoing member of the Council, stated that this meeting took place after the nomination meeting and that the respondents, who by then were candidates for re-election, made "manual checks" to electors, in some cases in an amount of $5,000 and directed PLFN's housing supervisor to work with the CEO.

[34] It is unclear whether the applicants raised this issue before the Board, as their written submissions are entirely silent in this regard. If they did not, they cannot argue on judicial review that the Board acted unreasonably in not discussing this evidence.

[35] In any event, Romeo Thomas's affidavit is extremely vague as to the nature of the alleged improprieties. He did not testify before the Board. Chief Bill, however, testified that the payments were made pursuant to a housing assistance program that provides grants of up to $5,000 to members. In these circumstances, I am not persuaded that the Board's failure to refer specifically to this affidavit renders its decision unreasonable.

[36] Overall, the applicants have failed to demonstrate that the Board fundamentally misapprehended the evidence or that its decision with respect to corrupt practices is unreasonable. The Board could find that the respondents' witnesses were more credible than the applicants'.

B. *Residence Requirement*

[37] The applicants also challenge the manner in which the Board dealt with the residency issue. They argue that the Board unreasonably found that any breach of the Election Act with respect to residency would not have affected the outcome of the election. This breach, they say, was the CEO's amendment to the list of candidates after the nomination meeting was closed. In the alternative, they rely on the Board's finding that Mr. Beeds met the eligibility requirement, and they assert that the Board's finding that Mr. Sakebow was not resident on the reserve was unreasonable.

[38] On each of these issues, the respondents take the opposite position. They argue that because they won the election with overwhelming majorities, none of the issues related to Messrs. Beeds and Sakebow's absence from the ballot would have changed the results. In the alternative, they rely on the Board's finding that Mr. Sakebow did not meet the eligibility requirements, and they assert that its findings regarding the CEO's conduct and Mr. Beeds's residence were unreasonable.

[39] I am in partial agreement with the applicants. The Board's findings regarding the residence of Messrs. Beeds and Sakebow was reasonable; therefore, only Mr. Beeds was eligible. In my view, the Board's comments regarding the CEO's conduct were not determinative of the residency issue. Lastly, the Board's conclusion that Mr. Beeds's absence from the ballot would not have changed the result is unreasonable because it is not motivated nor justified.

[40] I explain each of these propositions in detail below.

(1) Mr. Beeds's Residence

[41] The Board found that Mr. Beeds met the residence requirement because he had been attending an educational institution outside the reserve. Of course, Mr. Beeds's application for judicial review does not challenge this finding. Yet, in responding to that application, the respondents assert that the Board's decision is unreasonable with respect to this particular issue. I disagree with this submission.

[42] Before the Board, Mr. Beeds asserted that he lived at his son's house on the reserve. However, he testified that from February 2020 to February 2022, he resided in Prince Albert to attend an educational program offered by Timanaska Development Corp. [Timanaska], which covered topics such as forest management, preservation and conservation of traditional lands, and the carbon credit and wood product industries. He provided a letter attesting to his completion of the program. He acknowledged that the program included on-the-job training, for which he was paid. On this issue, the respondents called Ms. Verna Haines, who works in student services for the Agency Chiefs Tribal Council [ACTC], of which PLFN is a member. She testified that ACTC does not recognize Timanaska as an educational institution and does not offer funding to attend programs offered by Timanaska.

[43] While, of his own admission, Mr. Beeds was not ordinarily resident on the reserve for the 12-month period preceding the election, the Board could reasonably find that he fit within the exception set forth in section 2(m)(iv) of the Election Act, namely, that he left the reserve "to pursue a course of study at an educational institution." The Election Act does not define educational institution, nor does it require that it be recognized by ACTC for funding purposes. It was for the Board to assess whether Timanaska was an educational institution. While the issue was disputed, the Board did not disregard any constraint flowing from the Election Act or the evidence before it in reaching its conclusion.

(2) Mr. Sakebow's Residence

[44] According to section 2(m) of the Election Act, a person's residence is the place where the person usually resides and is determined according to the facts of each case, including where the

person usually sleeps and receives mail and the place of residence of their family members. Before the Board, counsel for the applicants summarized the evidence in favour of Mr. Sakebow as follows:

> . . . in the 12 months leading up to the Election Mr. Sakebow had made many efforts to reside on the reserve. Like many members of Pelican Lake First Nation have done for decades, Mr. Sakebow worked seasonally off-reserve and then would return to his usual place of residence, the Pelican Lake First Nation reserve. As indicated in his oral evidence, Mr. Sakebow was faced with many roadblocks and challenges which resulted in him having to move between Prince Albert and the Pelican Lake First Nation reserve, including his house being condemned. However, he persisted and returned to the reserve whenever that was possible for him to do. Mr. Sakebow has immediate family who lives on-reserve who he stays with in an overcrowded house, he speaks the language, and he grew up on reserve.

[45] Yet, it was also in evidence that during the 12 months before the election, Mr. Sakebow lived for about six months in Prince Albert or in southern Alberta for seasonal work. The Board was also made aware that Mr. Sakebow was unable to provide utility bills showing an address on the reserve and that PLFN's housing manager indicated that Mr. Sakebow did not have a house in his name on the reserve.

[46] After reciting the relevant provisions of the Election Act and reviewing some of the evidence, the Board found that Mr. Sakebow was not eligible because he did not meet the residency requirement, but did not further explain its finding. The Board did not specifically mention Mr. Sakebow's above-quoted submissions.

[47] Mr. Sakebow argues that the Board's decision is unreasonable, mainly because it did not address his evidence and submissions. However, the decision maker's failure to provide detailed

reasons with respect to each minute issue is not in itself a ground for judicial review, especially where the law gives the decision maker very little time to write reasons: *Vavilov*, at paragraphs 91–94.

[48] The issue then becomes whether the Board's decision is compatible with the evidence before it. Mr. Sakebow has not explained why this would not be the case. Indeed, I find that the Board's conclusion was reasonable. There was evidence that Mr. Sakebow had been mainly residing outside the reserve during the 12 months before the election. His submissions were more in the nature of a plea for an exemption from the residency requirement because of the housing crisis. While I sympathize with Mr. Sakebow's situation, I note that he has chosen not to challenge the validity of the residency requirement before the Board. On the evidence, the Board could find that Mr. Sakebow did not meet the residency requirement, and my role is not to reweigh the evidence or relevant factors.

(3) Changing the List of Candidates

[49] Irrespective of the Board's findings regarding their place of residence, the applicants argue that the CEO could not remove their names from the list of candidates that was drawn at the end of the nomination meeting on March 8, 2022. In other words, the applicants say that the fact that they were on the initial list of candidates entitled them to run in the election, irrespective of their actual place of residence. In respect of this issue, the Board concluded as follows:

> Also, that there was a discrepancy between how the Nomination Meeting of March 8th was to occur according the Act and how it actually occurred. We find that the two Nominated Candidates Lists – the first being March 8th and the second being March 11th – was a departure from the process set out in sections 6(3) and 6(5)

> of the Act and that the departure does form either an error or violation of the Election Act in the interpretation or application of the Act.
>
> According to the Election Act, the Nominated Candidates of March 8th was to be a final list. The Nomination Meeting was to be open for four hours and then closed. All eligible candidates are to be confirmed at the close of the meeting. It appears from the first Nomination List dated March 8th that this process was followed in which all three applicants were on that list. However, that list was changed to the March 11th Nominated Candidates List, and this procedure was a departure and therefore error in the interpretation or application of the Act.

[50] The applicants agree with this finding and argue that it invalidates the election, irrespective of the Board's findings regarding their place of residence. The respondents argue that the Board's interpretation of the Election Act is unreasonable and highly impractical and that it cannot render eligible a candidate who does not meet the residency requirement.

[51] I do not need to decide whether the Board's interpretation was reasonable, because this issue cannot logically determine the outcome of the case. The Board's opinion cannot be commended for its clarity, but this passage appears to be more in the nature of a comment (or *obiter dictum*). If the Board had thought that the applicants were entitled to run simply because their names were on the initial list of candidates, it would have said so and it would not have needed to make findings as to the residence of Messrs. Beeds and Sakebow. Moreover, if I were to accept the applicant's view, this would entail that an ineligible candidate is allowed to run, which is illogical.

(4) Effect on Outcome of Election

[52] Thus, Mr. Beeds was eligible to run, but his name was omitted from the ballot. The Board nevertheless found that this omission "would not reasonably be seen to have affected the results of the Election." It did not give reasons for this conclusion. I agree with the applicants that this is unreasonable.

[53] Where a decision maker fails to give reasons, its conclusion may still be reasonable if the justification is readily apparent from the record. To use a famous metaphor, a decision is reasonable if the reviewing judge needs only to "connect the dots" to obtain a clear picture of the reasons for the decision: *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraph 11, quoted in *Vavilov*, at paragraph 97. This is why I upheld the Board's findings with respect to corrupt practices and Messrs. Beeds's and Sakebow's place of residence. With respect to the effect on the outcome of the election, however, no such justification can be found in the evidence before the Board. What I have before me is a blank page, with no dots to connect.

[54] The respondents submit that the Board was entitled to find that the outcome would not have been affected, because Chief Bill won by a substantial majority, four of the six councillors of his slate were elected and his achievements in his previous term were substantial. I do not agree that these factors, without more, would have allowed the Board to conclude that the outcome would have been the same. The results of the councillor elections are not in evidence and it is for the electors, not this Court, to pass judgment on a candidate's achievements. While Chief Bill won with a comfortable advance over the runner-up, he did not obtain an absolute

majority. Moreover, I can only speculate as to how electors would have voted had Mr. Beeds's name been on the ballot. The respondents have not drawn my attention to any piece of evidence that would support an inference in this regard.

[55] This is not a case like *Pastion v Dene Tha' First Nation*, 2018 FC 648, [2018] 4 FCR 467, where an ineligible candidate was allowed to run and the number of votes he received was known. Here, we simply do not know how many electors would have voted for Mr. Beeds had his name been on the ballot. The situation is more analogous to that in *Thomas v One Arrow First Nation*, 2019 FC 1663.

[56] At the hearing before me, counsel for the respondents drew my attention to the fact that the audio recording of the hearing before the Board inadvertently includes discussions between members of the Board during a break. Counsel suggested that these discussions may provide insight into the reasons for the Board's finding that the outcome of the election would not have been affected.

[57] In my view, it is improper to listen to this recording. Unless procedural fairness issues are raised, administrative tribunals exercising adjudicative functions enjoy deliberative secrecy: *Tremblay v Quebec (Commission des affaires sociales)*, [1992] 1 SCR 952; *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at paragraph 58, [2016] 1 SCR 29. The deliberations of the Board were confidential. I have not listened to the recording, and my decision is based solely on the Board's reasons and the evidence before it.

[58] As neither the Board's reasons nor the evidence disclose a justification for the Board's finding that Mr. Beeds's absence from the ballot would not have affected the outcome, this finding is unreasonable.

(5) Procedural Fairness

[59] The applicants raised concerns with the fairness of the process followed by the CEO to ascertain their compliance with the residency requirement. They argue that the CEO should have given them more opportunity to provide evidence and submissions regarding their place of residence. They also suggest that the CEO took direction from the chief and council in deciding the residency issue.

[60] In my view, these issues are now moot, as the Board reached an independent decision regarding the residency requirement, after listening to the applicants' testimony.

[61] In any event, it is far from clear that there was a breach of procedural fairness. While she discussed her fees with the incumbent chief and council after the nomination meeting, the CEO also shared the difficulties she had verifying the candidates' eligibility, in particular their residence. In this regard, the chief and council offered the help of PLFN's housing manager. There is nothing untoward in this process. A CEO who is not familiar with the community is entitled to rely on information provided by a First Nation's administrative staff to determine a candidate's eligibility: *Waquan v Mikisew Cree First Nation*, 2021 FC 1063 at paragraphs 24–26. There is simply no evidence that the CEO "took direction" from the chief and council.

[62] Moreover, Mr. Beeds had text message conversations with the CEO on March 10 and 11, in which he provided additional information as to his place of residence. This shows that the applicants were aware that the CEO took issue with their residency status and that she was prepared to receive any further evidence they sent her.

III. Concluding Comments

[63] The evidence in this and other cases brought before this Court shows that it is a common practice in First Nation communities to provide financial assistance to members. This may take several forms. Members may ask councillors personally to provide money out of their personal funds to meet an urgent need. Requests for financial assistance may be made to the council, which may accept or reject them on an *ad hoc* basis. Communities may also create more formal members' assistance programs that operate according to an established process and eligibility criteria: *Whitford*, at paragraphs 19–21.

[64] It is not the Court's role to criticize the giving of financial assistance. Nevertheless, where candidates in an election make decisions regarding such assistance, this may well raise an appearance of impropriety, even in the absence of an intention to buy votes. See, for example, *Yellowbird v Samson Cree Nation*, 2021 FC 209.

[65] Formalizing the processes for granting assistance may go a long way towards dispelling suspicion, but is unlikely to replace entirely the giving of assistance out of the personal funds of elected officials or candidates. Nevertheless, I join my voice to those of my colleagues who

suggested that candidates in First Nations elections should agree to refrain from giving such form of assistance during an election campaign: *Good*, at paragraph 295; *Whitford*, at paragraph 22.

IV. Disposition

[66] For the foregoing reasons, the application for judicial review will be allowed, but only with respect to the Board's finding that Mr. Beeds's absence from the ballot would not have affected the outcome of the election for the position of chief. This issue will be remitted to the Board for redetermination. The application will be dismissed in all other respects. In particular, the election for the positions of councillor is valid.

[67] When determining the issue anew, the Board may or may not reach the same conclusion as in its previous decision. It should give reasons for its decision. It may decide whether it needs to receive new evidence or submissions or not, and whether it needs to hold a new hearing or not. However, it should not revisit the issues that it has already decided in a manner that I have found reasonable.

[68] As success is divided, no costs will be awarded.

JUDGMENT in T-1117-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed in part.

2. The decision of the Pelican Lake First Nation Appeal Board is set aside insofar as it holds that the outcome of the March 24, 2022 election for the position of chief was not affected by the absence of Mr. Beeds's name on the ballot and the matter is remitted to the Board for redetermination on this issue only.

3. No costs are awarded.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1117-22
STYLE OF CAUSE:	HECTOR LEO BEEDS, IRENE LENHART AND LORNE SAKEBOW v CHIEF PETER BILL, COUNCILLOR LEE BILL, COUNCILLOR WILLIE THOMAS, COUNCILLOR DONNY RABBITSKIN, AND IN HER CAPACITY AS CHIEF ELECTORAL OFFICER, LORETTA J. PETE LAMBERT
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 30, 2022
JUDGMENT AND REASONS:	GRAMMOND J.
DATED:	DECEMBER 12, 2022

APPEARANCES:

Jeff Howe	FOR THE APPLICANTS
Anil K. Pandila, K.C. Kimberly A. Stonechild	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Howe Legal Professional Corporation Regina, Saskatchewan	FOR THE APPLICANTS
Pandila & Co. Barristers and Solicitors Prince Albert, Saskatchewan	FOR THE RESPONDENTS