Federal Court  Cour fédérale

Date: 20210503

Docket: T-1592-19

Citation: 2021 FC 391

Ottawa, Ontario, May 3, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

GARNET YUZICAPPI AND ANGELA REDMAN

Applicants

and

STANDING BUFFALO SENATE COUNCIL

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under section 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7 of an August 30, 2019 election appeal decision [Decision] of the Standing Buffalo Senate Council [Respondent]. The Respondent dismissed Mr. Yuzicapi's [Primary Applicant] appeal of the July 29, 2019 Standing Buffalo Dakota Nation [SBDN] general election [Election].

[2] The Primary Applicant is a member of the SBDN and was a candidate for the position of Councillor in the Election. He appealed the results of the Election on the grounds that certain actions contravened sections 8 and 9 of the *Standing Buffalo Dakota Nation Election Act, 1998* [*Election Act*]. Ms. Redman was not party to the appeal but is a SBDN member who has interest in the matter and who was a signatory in an appeal document.

[3] The Applicants request that the Court quash the Decision and order a new election pursuant to section 17.9 of the *Election Act.* Alternatively, the Applicants request that the Court quash the Decision and remit the appeal for redetermination by the Senate Council following the election of a new Senate Council Chair.

[4] The Application for judicial review is allowed.

II. Background

[5] The terms of office for the SBDN band council were set to expire on August 3, 2019. A band council resolution dated June 6, 2019, appointed a Chief Electoral Officer [CEO] and two deputy electoral officers for the Election.

[6] On July 19, 2019, the CEO presided over a nomination meeting for the positions of Chief and Councillors. The following Elders attending the nomination meeting formed the Senate Council pursuant to section 18 of the *Election Act*: Barbara Ryder, Buds Maple, Bernice Yuzicappi, Rosella Archdale, Rozella McKay, and Rosebelle Goodwill. Gloria Moostoos was

appointed as an alternate and Marita Crant [Ms. Crant] as Chair. There are no requirements for any formal adoption of the Senate Council by the SBDN Band Council.

[7] An Election was held on July 29, 2019, with four candidates running for Chief and 35 candidates for the six Councillor positions. Roberta Soo Oye Waste was elected as Chief and Dwayne Louis Redman, Brendan Wajunta, Beckie Yuzicappi, Kimberley Goodfeather, Sandra Jean Redman, and Minnie Jane Ryder as Councillors. Their terms of office are from August 3, 2019 to August 2, 2022. The CEO prepared an Election Report Summary dated July 31, 2019, and submitted it to the Band Council who were in office.

[8] On August 20, 2019, the Primary Applicant sought to appeal the election and submitted a "petition" of signatures of eligible electors pursuant to section 17.3 of the *Election Act*. The appeal document referenced two grounds reproduced below:

> The grounds of the appeal are Election practices which contravene this ELECTION Act are:
>
> 1. POWERS AND DUTIES OF CHIEF ELECTORAL OFFICER
>
> 2. APPOINTMENT OF ELECTORAL OFFICERS

[9] The appeal document then attached the petition signature pages for the two grounds as follows:

> APPOINTMENT OF ELECTORAL OFFICERS
>
> 8.1 Immediately after an Election date has been set, but not less than thirty (30) days prior to the Election date, the existing Chief and Councillors of the Standing Buffalo Dakota First Nation shall appoint, by resolution, one Chief Electoral Officer and in addition shall appoint two or more Deputy Electoral Officers as required.

> Wayne Sandy was appointed as Chief Electoral Officer, Murriel Goodwill and Chelsea Isnana were appointed as Deputy Electoral Officers, all are band members.
>
> 8.4 The Chief Electoral Officer and the two or more Deputy Electoral Officers shall all be Band members.
>
> As stated in the ELECTION REPORT, received July 6, 2019, Wayne Sandy verifies that Amanda Louison assisted with the Election. She is referred to as his "Superior", however, Amanda Louison is not a Band member nor does she work for Standing Buffalo Dakota Band.
>
> …
>
> POWERS AND DUTIES OF CHIEF ELECTORAL OFFICER
>
> 9. The appointed Chief Electoral Officer shall be vested with the following duties and powers:
>
> d) Examine, validate and rule on the eligibility of all nominees.
>
> According to the ELECTION ACT Eligibility of Candidates, 4.c), any eligible elector of the Standing Buffalo Dakota First Nation who has been ordinarily resident and a continuous resident on the Standing Buffalo Dakota Reserve for twelve (12) consecutive months immediately prior to the date of the Election is currently resident on the Standing Buffalo Reserve.
>
> As of Election Day, July 26, 2019, the following candidates were not confirmed by Standing Buffalo Housing as having current residency on Standing Buffalo Reserve according to this ACT: Roberta Soo-oye Waste, Grant Whiteman, Sandra Jean Redman, Brenda Wajunta, Matthew Whitecloud, Stanford Melbourne, Gwenda Yuzicappi.

[10] The Applicants also refer to letters from Lisa Tawiyaka [Ms. Tawiyaka] from the SBDN housing department and Maureen Yuzicappi [Ms. Yuzicappi] that the Senate Council improperly dealt with.

III. The Decision

[11] On August 26, 2019, the Senate Council met. There was some confusion with Ms. Tawiyaka's letter so Ms. Crant contacted the Primary Applicant for clarification. The Senate Council reconvened on August 30, 2019, voted to dismiss the appeal, and sent a two-page letter notifying the Primary Applicant and a separate letter to Ms. Tawiyaka. There are minutes of the Senate Council meetings.

[12] A majority of the Senate Council agreed to deny the appeal on the basis that (1) there were no grounds to the appeal and (2) the documentation filed was inadequate to decide the validity of the complaint.

[13] In its Decision, the Senate Council referred only to section 8.1 and 8.4 of the *Election Act* and stated that it had reviewed the Election Report Summary, Chief and Council meeting minutes, and the band council resolutions calling the Election and appointing the Electoral Officers. The Decision also noted that the Primary Applicant "did approve the election report then proceeded to appeal an election based on the information you approved". It goes on to state that:

> …the BCR which appointed the electoral officers was reviewed and it was noted that you had signed off on the appointment of Wayne Sandy and the two deputy electoral officers. Had you not agreed or approved of the reports, and subsequently not signed the BCR appointing the Electoral officers the Senate may have been in a better position to support your appeal.

[14] The Decision explains the method for voters to add their name to the voters list and refers to an "additional petition on residency" which was not dealt with in the context of this application. It also explains that there was an error in the date that the Primary Applicant used for the Election Report Summary and, in the Senate Council's view, the requirements for a valid petition were not satisfied. Specifically, of the 100 signatures, the Senate Council "could only confirm 88 names that included the full name, signature and status number".

IV. Issues and Standard of Review

[15] Considering the parties' characterization of the issues, I am of the view that there are two issues for determination that encompass all of the issues raised by the parties:

(1) Is the Decision reasonable?

(2) Was the Senate Council Chair biased?

[16] The Applicants made no written submissions on the appropriate standard of review but at the hearing agreed with the Respondent that the reasonableness standard applies to the Decision as a whole. The Respondent also submitted that the reasonableness standard applies to all issues.

[17] Since this matter does not fall under an exceptive category as identified in *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 [*Vavilov*], the reasonableness standard applies save for the issue of bias, discussed below. In addressing whether the Decision was reasonable, the Court is unable to revisit or reweigh the evidence, make its own findings of fact, or substitute its own preferred outcome for that of the decision-maker (*Canada (Canadian Human Rights Commission) v Canada (Attorney General),* 2018 SCC 31 at para 55). Decisions

of decision-making bodies exercising delegated authority, such as an appeal tribunal, are also reviewed on a standard of reasonableness (*Taykwa Tagamou Nation v Linklater,* 2020 FC 220 at para 36 [*Taykwa Tagamou*]).

[18] Therefore, for the Court to intervene, a decision must have fundamental and serious shortcomings and lack the required degree of justification, intelligibility, and transparency (*Vavilov* at para 100). If a decision is found to be internally coherent, includes a rational chain of analysis, and is justified based on the facts and law it will be reasonable (*Vavilov* at para 85).

[19] Issues of procedural fairness, including arguments related to bias, typically attract a correctness standard of review (*Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 at paras 49, 54, 56). However, "the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected" (*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at para 22).

V. Preliminary Matter

[20] The Respondent requests that the Court strike the Applicants' affidavits or disregard specific contents based on inadmissibility, as they do not comply with Rule 81(1) of the *Federal Courts Rules*. The Respondent also submits that the affidavits submitted center on the Applicants' assertions of bias and conflict of interest and these assertions were not before the tribunal. The Respondent submits that where a party could reasonably be taken to have had the capacity to object before the administrative decision-maker and does not do so, the objection

cannot be made later on judicial review (*Bernard v Canada (Attorney General)*, 2015 FCA 263 at para 26 [*Bernard*]).

[21] I agree with some of the submissions of the Respondent related to the affidavits containing argument and opinion, however, the contents of the affidavits are not determinative of the issues before me. The Certified Record of Proceedings, together with the *Election Act*, provide the necessary information for the consideration of the issues in this matter.

VI. Parties' Positions

(1) Applicants' Position

[22] The Applicants state that the appeal was perfected in accordance with section 17.3 of the *Election Act* in that the appeal document contained details of the grounds of appeal, the $200 fee was paid, and 100 Electors signed the petitions in support of the appeal. Section 17.3 provides the following:

> 17.3 An appeal must be in writing and submitted to the Band Office to the attention of the Senate Council. The appeal must contain details of the grounds upon which the appeal is made and such appeal application shall be accompanied by:
>
> a) a $200.00 deposit in cash or certified negotiable instrument payable to the Standing Buffalo Dakota Nation returnable to the appellant upon success of the appeal. Otherwise the deposit shall be forfeited to the Standing Buffalo Dakota Nation general account as an administrative fee in the event the appeal fails; and
>
> b) signatures of one hundred Electors who are in support of the appeal by way of a petition which clearly sets out the particulars of the appeal on every page which contains signatures.

[23] The Applicants submit that the Senate Council incorrectly determined that they could only consider one ground of appeal with the $200 appeal deposit and arbitrarily chose to deal with only one ground of appeal.

[24] The Applicants state that the Senate Council incorrectly decided that the letter from Ms. Tawiyaka was a separate appeal application and dismissed it for failing to submit a deposit. They further state that the Senate Council incorrectly dismissed the issue concerning the CEO's delegation of authority to a non-band member, Amanda Louison.

[25] The Applicants also submit that there was a clear apprehension of bias by Ms. Crant, since the appeal involved a newly elected Chief whom Ms. Crant had supported in the Election. They also state that Ms. Crant has a connection to the former Chief, which also creates an apprehension of bias. The Applicants state that Ms. Crant took a lead position in the dismissal of the Primary Applicant's appeal.

(1) Respondent's Position

[26] The Respondent submits that the Senate Council's determination that the Primary Applicant did not perfect his appeal in accordance with the *Election Act* was reasonable. It states that the grounds adduced bear no merit. The Respondent also submits that the Primary Applicant included an appeal of more than one election practice, which required him to pay an additional $200 fee.

[27] Additionally, the Respondent submits that the Primary Applicant had an onus to adduce evidence that all signatories were valid Electors, which he failed to do. The Respondent submits that there are some irregularities with some status numbers on the petition in relation to section 8.1 of the *Elections Act* which results in a lower number than the required 100 signatures.

[28] The Respondent states that the issue of an apprehension of bias did not arise until the judicial review and is meritless. It submits that Ms. Crant nominated the elected Chief prior to becoming a member of the Senate Council and any issues with the previous Chief are hearsay and a decade old. They take issue with the Applicants' suggestion that Ms. Crant should have recognized that she was in a conflict of interest and should have recused herself.

[29] The Respondent submits that, in any event, the Applicants are incorrect in stating that the matter of residency was not considered, as evidenced by the meeting minutes. They state that the Applicants' argument that the CEO's "report clearly shows that residency was not considered in his determination of 'eligibility' of the Candidates" is incorrect and the Senate Council was correct in determining that this issue had no merit.

[30] If the Court determines that the Decision was unreasonable, the Respondent requests that the Court remit the matter to the Senate Council. If the matter is remitted, the Respondent submits that there is no reason why any current member of the Senate Council should be disqualified from hearing the appeal.

VII. Analysis

[31] I have decided to address the issue of bias first, as the determination of this question will impact the remedy.

A. *Bias*

(1) General Principles

[32] In *Johnny v Adams Lake Indian Band*, 2017 FCA 146 [*Johnny*], the Court found a reasonable apprehension of bias. The Court in *Johnny* states that an actual conflict of interest is required for a finding of an apprehension of bias. However, if a reasonable and informed person concluded that the member would be unable to decide the issues fairly, they should not participate (*Johnny* at para 42).

[33] In *Committee for Justice & Liberty v Canada (National Energy Board)* (1976), [1978] 1 SCR 369 at page 394 the Court stated:

> ...[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information.... [That] test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

[34] This Court in *Sparvier v Cowessess Indian Band No 73*, 1993 3 FC 142 at para 75 states that a rigorous test for a reasonable apprehension of bias is not appropriate for the following reason:

> [75]... it does not appear to me to be realistic to expect members of the Appeal Tribunal, if they are residents of the reservation, to be completely without social, family or business contacts with a candidate in an election**. …**
>
> […]
>
> If a rigorous test for reasonable apprehension of bias were applied, the membership of decision-making bodies such as the Appeal Tribunal, in bands of small populations, would constantly be challenged on grounds of bias stemming from a connection that a member of the decision-making body had with one or another of the potential candidates. Such a rigorous application of principles relating to the apprehension of bias could potentially lead to situations where the election process would be frustrated under the weight of these assertions. Such procedural frustration could, as stated by counsel for the respondents, be a danger to the process of autonomous elections of band governments.

[35] If an applicant had opportunities to raise the issue of bias before a decision-maker, they cannot raise it on judicial review (*Bernard* at para 26).

[36] If an applicant was not aware of the bias issue when appearing before a decision-maker, but then becomes aware of it after the fact, it is possible to raise the issue of bias for the first time in an application for judicial review (*Ewert v Canada (Attorney General)*, 2019 FC 733 [*Ewert*] at paras 37-38).

(2) Application of the Principles

[37] The *Election Act* is silent on how to address conflicts of interest or bias involving Senate Council members. The record does not indicate that any arguments or concerns of bias were communicated either to the Senate Council as a group or to Ms. Crant directly. The record indicates that the Primary Applicant and Ms. Crant spoke to one another to clarify whether the Primary Applicant was submitting one or two appeals. That conversation would have been an opportune time to raise the issue of bias. Ideally, the Primary Applicant should have raised it as soon as he became aware that Ms. Crant was the Chair. He did not.

[38] The Respondent points out that, pursuant to the *Election Act*, the Senate Council Chair was responsible for the conduct of the appeal process and acted appropriately. According to section 21.4 of the *Election Act,* the Senate Council is to select a Chair to speak on their behalf and be responsible for the conduct of the appeal process and appeal hearings. As such, a Chair is to assume some responsibility in leading discussions and processes in considering an appeal. While the Applicant takes issue with Ms. Grant "moving" the question for determination at the Senate Council meeting, the *Election Act* simply permits the Senate Council to determine its own rules of procedure pursuant to section 21.4. There was no evidence that the practice of Ms. Crant was not a practice of the Senate Council.

[39] I am in agreement with the Respondent that the Applicants did not provide sufficient evidence of any bias on the part of Ms. Crant in the carrying out of her duties. There are issues with the Decision itself, addressed below. Distinguishable from the circumstances in *Ewert,* the Primary Applicant, having had opportunities to raise the issue of bias before the Senate Council, cannot now raise it on judicial review (*Bernard* at para 26). In this case, the Primary Applicant

was always in possession of the information that could have given rise to a bias argument but choose not to raise it.

B. *Reasonableness of the Decision*

[40] I am cognizant that Indigenous decision-makers, because of their experience and expertise, should be afforded significant deference (*Pastion v Dene Tha' First Nation*, 2018 FC 648 at para 22 [*Pastion*]). This deference is to be viewed within the *Vavilov* framework (*Taykwa Tagamou* at para 40).

(1) Appeal Process

[41] The *Election Act* contains three steps in the process of an appeal. First, an appellant is to satisfy the requirements of section 17.3. Second, the Senate Council is to determine whether there are grounds for an appeal and either dismiss the appeal or hold a hearing (17.6). Third, if the matter warrants a hearing, the Senate Council convenes a hearing in accordance with section 17.7.

(2) Did the notice of appeal provide sufficient grounds?

[42] The Primary Applicant's appeal document sets out the grounds of appeal as: (1) Powers and duties of Chief Electoral Officer and (2) Appointment of Electoral Officers. The petition pages refer to the sections of the *Election Act* that the Primary Applicant wanted to base his appeal on and it included an explanation of the specific issues, albeit briefly.

[43] The Decision letter states that the Senate Council found that there were no grounds on the basis that the Primary Applicant approved the Election Report and signed off on the appointment of the CEO and the two deputy electoral officers. The Decision states, “Had you not agreed or approved of the reports, and subsequently not signed the BCR appointing the Electoral officers the Senate may have been in a better position to support your appeal”. The Applicants submit that the Senate Council erred in considering this in the dismissal of the appeal.

[44] Section 17.3 of the *Election Act*, referred to above, provides only the following wording related to the details required in an appeal document: “…a petition which clearly sets out the particulars of the appeal on every page which contains signatures”. On the face of the petition, I find that there is sufficient detail to comply with the requirement of section 17.3(b) of the *Election Act.* Specifically, the petition refers to sections 8.1 and 8.4, and when read together, indicate that the Primary Applicant was challenging Amanda Louison’s involvement.

[45] The petition dealing with section 9(d) indicates that the issue is residency and it sets out the names of candidates who, in the view of the Applicant, did not meet the residency criteria of the *Election Act*. It is brief, but provides sufficient detail to determine what is being challenged.

[46] With respect, the Decision does not address all of the issues raised in the Primary Applicant’s appeal document. There were essentially three areas being challenged, two issues related to section 8 (sections 8.1 and 8.4) and one issue related to section 9(d) of the *Election Act*. The Decision refers to sections 8.1 and 8.4 of the Primary Applicant’s appeal but is completely silent on the Primary Applicant’s issue with respect to 9(d), which was essentially a

challenge to the CEO's alleged error in his treatment of the residency of some of the candidates in the election.

(3) Was the appeal package sufficient?

[47] Section 17.3 confirms that a $200 deposit must accompany an appeal, the signatures of one hundred Electors in support of the appeal, with the particulars of the appeal on every signature page. I have already determined that the appeal documents provided sufficient particulars.

[48] Section 2(f) of the *Election Act* defines an Elector as "any member of the Standing Buffalo Dakota Nation who meets the requirements to vote as set out in this Act". Section 3 of the *Election Act* defines an eligible Elector as:

> a) Any Band Member of the Standing Buffalo Dakota Nation shall be eligible to vote at the Election who is eighteen (18) years of age or more, on the day of the Election,
>
> b) Notwithstanding their place of residence or their domicile, all eligible Electors of the Standing Buffalo Dakota Nation, who meet the proper age requirements, are entitled to vote.

[49] The Decision states, "your petition identifies the requirements needed for your 100 electors' signatures, specifically "Elector Name and Signature along with the Status Id Number". Upon review of the elector signature section, we could only confirm 88 names that included the full name, signature and status number". While the point that the Senate Council makes may be valid, the *Election Act* only requires the signature of 100 Electors. The *Election Act* is silent on

who or how to verify signatures. At a minimum, the Senate Council should have explained how and why it discounted 12 of the 100 signatures. The Decision is silent on this point.

[50] The Decision also does not explain where the requirement for the status number comes from since there is no requirement in the *Election Act* for a status number to accompany the petition. The Respondent's memorandum of fact and law attempts to explain the deficiencies in the number of signatures and the nature of the status numbers, however, that would be the responsibility of the Senate Council in replying to the appeal. The Senate Council should have put its concerns to the Applicant. As it did not, citing this reason for dismissing the appeal was unreasonable.

[51] One of the matters sought to be appealed was the residency of certain candidates. The Primary Applicant's petition referred not only to section 8.1 and 8.4 but also to section 9(d) of the *Election Act*. The Senate Council explained that it could only consider one issue upon the filing of an appeal. In short, the Senate Council appears to state that there is a $200 fee for each issue.

[52] There is also no mention in the Decision relating to the Primary Applicant's petition referring to the residency issue dealt with in section 9(d) of the *Election Act.* There is no basis for the Senate Council not addressing a petition that had, on its face, the requisite number of signatures. The only requirement under section 17.3 of the *Election Act* is that "The appeal must contain the details of the grounds upon which the appeal is made and such appeal application shall be accompanied by…" On a plain reading of the *Election Act,* and in the absence of

evidence that a practice or custom exists from past appeals, there is no requirement to pay $200 for each ground of appeal.

[53] Further, the Senate Council had some confusion with Ms. Tawiyaka's letter and how it should be addressed. The August 30, 2019 letter to the Housing Department and Ms. Tawiyaka, states that "A call to the other appellant was made to confirm if your documentation was to be viewed separately or in conjunction with the other appeal received and we were informed that it was to be included as 1 package". The August 30, 2019 letter also acknowledged documents sent by Ms. Tawiyaka on August 22, 2019, and stated that the Senate Council "attempted to process it as an appeal but could not move forward as it did not have the required deposit of 200-dollars attached and was addressed to Chief Redman and not the Senate Council".

[54] The August 26, 2019 Senate Council minutes also highlight the confusion with how to treat the Primary Applicant's appeal, his $200 fee, and Ms. Tawiyaka's letter. The following excerpt is illustrative:

> Marita Crant: I'm not sure about the documents, provided to secretary to review documents. Findings include 2 separate petitions and appears only one has a deposit attached? The one with the deposit attached would be the only appeal read. Garnet Yuzicappi's appeal on the Chief electoral officer and Lisa Tawiyaka's appeal on residency? The letter is not quite clear on the intent of the two petitions or the grounds of appeal. (Section 17.2(a)?)

[55] In short, the Senate Council was aware of two petitions from the Primary Applicant but because the $200 fee was "attached" to one (8.1 and 8.4), this was the only petition reviewed or considered. There is a total absence of any reference to the Primary Applicant's petition

referencing 9(d). The excerpt above also illustrates that the Senate Council had issues with whether Ms. Tawiyaka's letter was an appeal. The August 26, 2019 minutes also indicate that "appeal documents" were delivered to the Senate Chair on August 22, 2019 by the CEO. The record is not clear as to what this package contained. Ms.Tawiyaka's letter and the Primary Applicant's appeal concerning section 9 should have alerted the Senate Council that residency of candidates was an issue being raised.

[56] The record also includes an August 14, 2019 letter from Ms. Yuzicappi that the Decision did not reference. On its face, this letter did not comply with section 17.3 nor do the contents indicate whether it was submitted in support of the Primary Applicant's appeal. The August 30, 2019 minutes of the Senate Council discusses this letter and the Senate Council concluded that a letter from Ms. Yuzicappi constituted a separate appeal and therefore required appropriate appeal documentation and a deposit. On its own, there is an allegation of someone having been added to the voters list and a reference to Amanda Louison not being a SBDN member, but no reference to the Primary Applicant's appeal. Without any reference to the Primary Applicant's appeal, it was reasonable for the Senate Council to have concluded as it did and disregard Ms. Yuzicappi's letter.

[57] Lastly, I find that the Senate Council's reference that "Had you not agreed or approved of the reports, and subsequently not signed the BCR appointing the Electoral officers the Senate may have been in a better position to support your appeal" is not relevant for the purposes of replying to the appeal that was before them.

[58] For all of the above reasons, the Decision fails to meet the requisite standard of justification, transparency and intelligibility.

VIII. Conclusion

[59] I have determined that the Decision is unreasonable and that the Applicants have not raised the bias issue at the earliest possible time and therefore the Court cannot now consider this issue.

[60] The Applicants' request that the Court quash the Decision and order a new election. Alternatively, the Applicants' request that the Court quash the Decision and remit the appeal for redetermination following the election of a new Senate Council Chair. The Respondent submitted that if the judicial review was allowed, it should be sent for redetermination by the Senate Council.

[61] The Decision is quashed. The Primary Applicant's appeal, as set out in his August 20, 2019 appeal document with petitions, is remitted to the existing Senate Council for redetermination.

[62] The Applicants submit that since the Senate Council is having their legal fees and expenses paid by the SBDN, if successful, costs should be awarded under Rule 400. The Applicants cite various cases in support including cases discussing the public interest.

[63] The Respondent submits that no costs should be ordered against them since the SBDN were not named parties in the matter, took no position in the matter, and did not actively participate in the process. They state that the jurisprudence cited by the Applicants is distinguishable. Further, the Respondent states that the Applicants have inappropriately raised serious allegations of impropriety and theft before the Court rather than raise these concerns with the tribunal. Irrespective of the outcome, each party should bear its own costs.

[64] Normally costs are awarded to the successful party. The Applicants' material contains information of a disparaging nature towards Ms. Crant that were not, in any way, connected to the Election or to the appeal before the Senate Council. This factor weighs heavily in exercising my discretion not to award costs to the Applicants. Accordingly, each party will bear their own costs.

JUDGMENT in T-1592-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter of the Primary Applicant's appeal, which includes his August 20, 2019 appeal document with petitions, is remitted to the Senate Council for re-determination.
3. Each party shall bear their own costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	GARNET YUZICAPPI AND ANGELA REDMAN v STANDING BUFFALO SENATE COUNCIL
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