

Federal Court



Cour fédérale

**Date: 20231024**

**Docket: T-402-23**

**Citation: 2023 FC 1411**

**Ottawa, Ontario, October 24, 2023**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**EDDY TALLMAN**

**Applicant**

**and**

**WHITEFISH LAKE FIRST NATION #459**

**Respondent**

**JUDGMENT AND REASONS**

[1] The issue that arises on this judicial review is the impact of the repeated refusals to issue a residency letter to the Applicant, Eddy Tallman, a member of the Whitefish Lake First Nation #459 [Whitefish]. The refusals prevented Mr. Tallman from running for the position of Chief in the Whitefish Election held on April 12, 2022.

[2] Mr. Tallman seeks a remedy in the nature of *mandamus* compelling the Whitefish Housing Director to issue him a residency letter in accordance with the Whitefish Election

Regulations. Mr. Tallman also seeks an Order directing Whitefish to hold a new election for the position of Chief.

[3] For the reasons outlined below, I have found the Housing Director's reconsideration decision to be unreasonable and I have found there was a breach of Mr. Tallman's procedural fairness rights. In the circumstances, I am granting the relief requested by Mr. Tallman.

I. Background

[4] Mr. Tallman is a member of Whitefish which is a band under the *Indian Act*, RSC 1985, c I-5, located in Atikameg, Alberta.

[5] Mr. Tallman was born and raised on Whitefish and is fluent in Cree. He describes having a deep connection to Whitefish's traditional territories, reserve, and community. Despite running a business in Edmonton, he considers Whitefish to be his home.

[6] For various periods between 1986 and 2014, Mr. Tallman served as the Chief of Whitefish. He has let his name stand for elected positions in most Whitefish elections over the last 40 years. From 1997 to 2000, he was Grand Chief of Treaty 8.

[7] Effective March 2021, Whitefish enacted the *Customary Election Regulations of White Lake First Nation #459* [Election Regulations]. Sections 4.1 and 4.2 of the Election Regulations provide that Whitefish is governed by a Council consisting of one Chief and four Councillors who hold office for four year terms.

[8] Section 8.15 (e) of the Election Regulations states that a candidate for election shall submit to the Electoral Officer “a letter from the Housing Director confirming their residency on reserve for the twelve (12) month period prior to the date of Nomination.”

[9] On March 9, 2021—over 12 months before the nomination date of March 29, 2022—Mr. Tallman applied to the Housing Director for a residency letter to allow his name to stand for the position of Chief in the Election scheduled for April 12, 2022.

[10] As of March 2021, Mr. Tallman’s name was on the Whitefish residency list and he provided a statutory declaration stating that he continued to reside on Whitefish with his daughter in the one-year period prior to the nomination period. Aside from a few weeks in April 2021 when he was in Edmonton for medical treatment, Mr. Tallman estimates that he was at his Whitefish home about 60% of the time.

[11] On February 28, 2022, the Housing Director of Whitefish, David Thunder, removed Mr. Tallman’s name from the residency list and refused to issue Mr. Tallman a residency letter. This prevented Mr. Tallman from participating in the April 12, 2022 Whitefish Election for the position of Chief.

[12] Mr. Tallman appealed the Election results in relation to the position of Chief on the grounds that he was unfairly and unreasonably prohibited from running as a candidate.

[13] Section 16.1 of the Election Regulations provides that an appeal must be filed within five days of the election. The Election Appeal Arbitrator has three days to determine whether a hearing will be held and a hearing date is to be set within 21 days of the expiry of the appeal period. The Elections Regulations state that a decision must be made within five days of the hearing (Election Regulations, ss. 16.9, 16.11, and 16.18). Effectively, under the Election Regulations, the Arbitrator must complete the appeal process within 31 days of the Election.

[14] The Arbitrator heard Mr. Tallman's appeal on May 6, June 2, June 13, and June 14, 2022.

[15] Seven months after the election, on November 14, 2022, the Arbitrator issued his decision granting Mr. Tallman's appeal. The Arbitrator concluded that Mr. Tallman was not provided with the fairness he was owed by the Housing Director in the form of notice, opportunity to make submissions, and a full and fair consideration of his submissions. The Arbitrator also noted that the Housing Director had difficulty recalling his communications with Mr. Tallman and was unsure of the year in which certain meetings occurred.

[16] Ultimately, the Arbitrator found the Housing Director's removal of Mr. Tallman from the residency list and refusal to provide a residency letter to be unreasonable. The Arbitrator ordered that a new election be held, but this was conditional upon the Housing Director reconsidering his decision to remove Mr. Tallman from the residency list and his refusal to provide a residency letter.

[17] Specifically, the Arbitrator ordered as follows:

132. For the reasons above, I make the following decision:

- a. The Appeal is upheld.
- b. I hereby call for a new Election, for the position of Chief only, pursuant to s. 16.18 (c) of the Regulations.
- c. The call for a new Election shall be subject to the following conditions:  
  
...
  - vi. If, upon reconsideration, the Housing Director determines that Mr. Tallman was not “resident” on reserve for the 12 months prior to March 29, 2022, but the reconsideration decision is subsequently reversed for any reason (for example, as a result of judicial review or further reconsideration by the Housing Director), the suspension on the call for a new Election shall immediately and automatically end, and I shall make the directions required under s. 16.23.

*Decision Under Review - Housing Director Reconsideration Decision*

[18] On December 1, 2022, legal counsel for Whitefish emailed Mr. Tallman’s legal counsel and advised as follows:

We are writing to advise on behalf of the Whitefish Lake First Nation #459’s Housing Director that he has elected to reconsider both (1) the decision made in February 2022 to remove Mr. Tallman from the Residency List, and (2) the decision that as of March 29, 2022, Mr. Tallman had not been a “resident” on reserve for the prior 12 months.

[19] Prior to receiving notice that the Housing Director would reconsider his decision, on November 23, 2022, legal counsel for Mr. Tallman provided written submissions and a statutory

declaration to the Housing Director and requested that a residency letter be issued. He also requested that the Housing Director provide notice of any evidence he intended to rely upon, and provide Mr. Tallman with the opportunity to respond.

[20] Further, on February 27, 2023, Mr. Tallman submitted declarations from 32 Whitefish members confirming his residence on Whitefish.

[21] Three months after the Arbitrator's decision, the Housing Director issued his reconsideration decision on February 28, 2023. The Housing Director again refused Mr. Tallman's request for a residency letter. The Housing Director makes a number of findings and concludes:

In conclusion, I will not be issuing you a letter confirming your residency under Whitefish Lake First Nations #459's Election Code.

[22] This is the decision under review on this judicial review.

## II. The Evidence

[23] On March 1, 2023, the Applicant filed a Notice of Application for judicial review of the February 28, 2023 decision of the Housing Director of Whitefish.

[24] In the Applicant's Record, the Applicant includes the following affidavits:

- Affidavit of Eddy Tallman sworn April 3, 2023;
- Affidavit of Catherine Heron sworn March 29, 2023;

- Affidavit of Jimmy Gladue sworn March 31, 2023.

[25] In the Respondent's Record, Whitefish includes the cross-examination transcript of Catherine Heron and the cross-examination transcript of Eddy Tallman. They did not file any affidavit evidence.

[26] On March 28, 2023, pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106, a certified tribunal record [CTR] was provided by Anita Thompson of Thompson, Laboucan & Epp LLP. I note that Ms. Thompson is a member of the same law firm as the counsel of record on this judicial review.

[27] The CTR includes the following documents:

- The Customary Election Regulations of Whitefish Lake First Nation #495;
- Residency Lists of March 2021 and March 2022;
- Mr. Tallman's Application for Residency dated March 9, 2021, with attached statutory declarations of Mr. Tallman sworn on March 10, 2021, and Tanya Tallman sworn on March 10, 2021;
- Statutory declaration of Mr. Tallman sworn on November 22, 2022;
- Letter from Mr. Tallman's counsel to the Housing Director dated February 27, 2023;
- Text messages between "Darren" and the Housing Director;
- Text messages between Ms. Tallman and the Housing Director; and
- Images of the Housing Director's handwritten notes

### III. Issues

[28] On this judicial review Mr. Tallman raises a number of issues which I will address as follows:

- A. Is the Reconsideration Decision of February 28, 2023 reasonable?
- B. Was there a breach of procedural fairness?
- C. What is the appropriate remedy?
- D. Costs.

#### IV. Standard of Review

[29] In assessing the reasonableness of an administrator’s decision, the Court must look at “the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker’s work, and past decisions of the relevant administrative body” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61 [*Mason*]).

[30] The purpose of requiring the administrator’s reasons are to demonstrate “justification, transparency and intelligibility,” and the failure to demonstrate transparent and intelligible justification will render the decision unreasonable (*Mason* at paras 59-60). The two fundamental flaws that would render an administrative decision unreasonable are: (1) a failure of rationality internal to the reasoning process; and (2) a failure of justification given the legal and factual constraints bearing on the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 101 [*Vavilov*]).

[31] Questions of procedural fairness are assessed on a correctness standard of review (*Mission Institution v Khela*, 2014 SCC 24; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). The Court must determine

“whether the procedure was fair having regard to all of the circumstances” and “deference is owed to the decision maker’s choice of procedure in determining the content of the duty of fairness but none is owed in determining whether the decision maker fulfilled that duty” (*Canadian Pacific* at para 45).

V. Analysis

A. *Is the Reconsideration Decision of February 28, 2023 reasonable?*

[32] The Applicant highlights a number of findings in the Housing Director’s Reconsideration Decision that he argues are unreasonable. I will address those findings below.

(i) Text messages with Tanya Tallman

[33] In her March 10, 2021 statutory declaration, Tanya Tallman affirmed that her father, Mr. Tallman, was living at her residence as of March 1, 2021. At that time, Ms. Tallman also granted permission to Whitefish administration to visit her residence to verify Mr. Tallman’s residence.

[34] In February 2023, in the context of reconsidering his 2021 decision relating to the residency of Mr. Tallman, the Housing Director had a series of text exchanges with Ms. Tallman. Screen shots of these text message are included in the CTR.

[35] These text messages from the Housing Director to Ms. Tallman evolved from requests that they meet to discuss her statutory declaration, to then asking “allow me to check on the unit”. It is clear from her responses that Ms. Tallman was uncertain as to what the Housing

Director was asking of her. In one of her texts, she insists that her father (the Applicant) and his lawyer be in attendance at any meeting. Finally, Ms. Tallman states that she does not want to have anything to do with the Housing Director after what he did to her father.

[36] The surrounding context of these text messages is relevant. Ms. Tallman's statutory declaration was dated March 10, 2021. The relevant residency period for the election was March 2021 to March 2022. A site visit by the Housing Director in February 2023 to attempt to verify Mr. Tallman's residency as of March 2021, some 23 months before, required more justification.

[37] Notwithstanding the less than clear text message requests from the Housing Director, he relies upon Ms. Tallman's text message responses as a basis to conclude that her statutory declaration sworn 23 months prior, was "not credible" because of her "refusal to meet" and her refusal to allow the Housing Director to "check her house."

[38] Overall, in my view, the Housing Director unreasonably mischaracterized the communications with Ms. Tallman and it was not a reasonable basis for the Housing Director to disregard her sworn evidence.

(ii) Housing Director's Credibility findings

[39] The second issue raised by Mr. Tallman is the Housing Director's following finding:

I had the chance to consider your Statutory Declaration dated November 22, 2023 (*sic*). I don't believe that your (*sic*) resided on-reserve 60 percent of the time 12 months prior to the Election. During the election appeal hearing, you said that you lived on-reserve 60 percent of the time but couldn't tell us approximately

how many days a week or year that was or provide further details. You just kept repeating 60 percent. It did not seem credible.

[40] To put this finding into context, the Election Regulations at section 2.29(c) provides:

**"Resident"** means an Elector who resides on the Reserves of the First Nation. A person can only be Resident in one place at one time, and a person is Resident in that place until another place of residence is acquired. A person's ordinary residence can be described as:

- a) the place the person normally eats and sleeps;
- b) the place the person receives mail; and
- c) the residence of the person's Immediate Family;

a person may also be temporarily absent from a place of residence for education, medical, temporary employment reasons or employment which requires them to live at a job site or work camp as long as the Member maintains a primary residency on Reserve, and can still be considered Resident for the purpose of these Regulations.

[41] This definition recognizes that a "resident" can be at the "residence of their Immediate Family," and that "medical" and "temporary employment reasons" can cause a person to be temporarily absent, without impacting their status as a resident.

[42] In his statutory declaration of November 22, 2022, Mr. Tallman stated as follows:

- 16. In the year before the 2022 nomination meeting on March 29, 2022, the WLFN was my primary residence. I split my time between Edmonton and the WLFN, but I spent approximately 60% of my time at WLFN.
- 17. In late March 2021, I received a diagnosis of prostate cancer, Stage 4. I had to get extensive radiation treatment, which had to be done at the Cross Cancer Institute in Edmonton. For example, during the month of April, 2021, I

had to be hospitalized for 20 days straight, which required me to be in Edmonton.

[43] Despite this sworn evidence of Mr. Tallman, the Housing Director, concludes that “I don’t believe you” and “it did not seem credible.” Aside from the Housing Director’s personal conclusions, which are addressed below, he does not reference any other evidence or facts in support of his conclusion that Mr. Tallman is not credible.

[44] It is a well-known principle that sworn evidence is presumed to be true unless there is reason to doubt its truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) at para 5 [*Maldonado*]). Further as noted in *Maldonado*, an explanation must be provided if sworn evidence is not being accepted. Here the Housing Director has not provided any justification or explanation for his findings. This renders his findings unreasonable.

(iii) Personal Observations of the Housing Director

[45] The third issue raised by Mr. Tallman is the Housing Director’s statement: “I never see you on the Reserve and you advised that this was because you live in Edmonton...”. Mr. Tallman argues that this is contrary to his sworn evidence and it is not otherwise supported by any reliable evidence on the record.

[46] The Respondent relies upon the handwritten notes of the Housing Director in support of this finding. However, in my view, these notes are unreliable and I place no weight on them for the following reasons. First, there is no sworn evidence from the Housing Director that these are

his notes or when they were recorded. Secondly, there are irregularities on the face of the notes, namely, different pen colors and different handwriting. As well, the note regarding Mr. Tallman living in Edmonton appears on a separate page and is not dated. In any event, even if I accept that these are the notes of the Housing Director as of December 13, 2022, the following note of the Housing Director is particularly concerning: “I told him I will remain with my decision that he did not have residency during the previous year leading up to the election.” This notation is concerning as it took the Housing Director until February 28, 2023, to render his reconsideration decision.

[47] The personal observations of the Housing Director of not seeing Mr. Tallman on Whitefish as the basis to deny him a residency letter are unreasonable as they conflict with sworn evidence to the contrary. Mr. Tallman’s statutory declaration of November 22, 2023, states that he runs a foster home, owns a business, and was receiving medical treatment in Edmonton as explanations for why he was not at Whitefish. Further, the Election Regulations contemplate that residents will be away for “medical” and “temporary employment reasons.” Mr. Tallman also explains that he has attended membership meetings, funerals, elders’ events, and other Whitefish gatherings, none of which are addressed by the Housing Director.

[48] The Housing Director’s reliance on his own personal observations to make a credibility finding is unreasonable.

(iv) Refusal to consider the Statutory Declarations

[49] Mr. Tallman argues that the Housing Director's refusal to consider the 32 declarations submitted by Whitefish members, delivered on February 27, 2023, is unreasonable. He relies upon cases that say the timing of a receipt of submissions is not a valid basis to refuse it (*Haile v Canada (Citizenship and Immigration)*, 2019 FC 538, at para 58-62; *Saulteaux v Carry the Kettle First Nation*, 2022 FC 1435, at para 40-50 [*Saulteaux*]). As noted in *Caceres v Canada (Minister of Citizenship and Immigration)*, 2004 FC 843, at para 23: “[t]o disregard the written submissions on the sole basis of the delay of their delivery is absurd.”

[50] Generally, although a decision maker is presumed to have considered all the evidence, a refusal to consider relevant evidence can be a reviewable error (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 15; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 61 [*Hinzman*]).

[51] The Respondent submits that this case is unlike *Hinzman* and *Saulteaux*, because there the decision maker received submissions slightly after the deadline or still had two weeks to review the submissions before rendering a decision, respectively. The Respondent argues in this case that the Housing Director only had one day to review the new evidence, which is an unreasonable expectation and no reasonable explanation for the late submission was given.

[52] Despite the deadline, the Housing Director could have done a cursory review of the statutory declarations. The information contained in the declarations was brief and could easily

be reviewed and considered by the Housing Director in advance of issuing his decision the next day.

[53] I conclude that the Housing Director's outright refusal to consider the 32 new statutory declarations is unreasonable.

(v) Conclusion

[54] For the reasons outlined above, I have concluded that the reconsideration decision of the Housing Director is unreasonable and must be quashed.

B. *Was there a breach of procedural fairness?*

[55] While the above findings on the unreasonableness of the Housing Director's Reconsideration Decision are sufficient to dispose of this judicial review, I will briefly address the procedural fairness arguments raised.

[56] Mr. Tallman raises a number of issues on the fairness of the reconsideration decision. In considering procedural fairness, the Court asks if the process followed was fair having regard to all of the circumstances, if the case to be met was understood, and if there was a proper opportunity to be heard (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21, 22, 28 and 30).

(i) Contents of the CTR

[57] Mr. Tallman notes that his submissions dated November 22, 2023, provided to the Housing Director are not contained within the CTR.

[58] The CTR was provided on March 28, 2023, by Ms. Thompson of Thompson, Laboucan & Epp LLP. In the cover letter accompanying the CTR she states as follows:

The Tribunal, David Thunder the Housing Director of Whitefish Lake First Nation #459, objects, pursuant to Rule 318(2) to the scope of the material requested by the Applicant.

The Tribunal objects to the request for “All communications between TLE Law LLP and David Thunder regarding the Decision” on the basis of solicitor-client privilege.

Subject to this objection, please find enclosed a certified copy of the materials requested from the Housing Director.

[59] Ms. Thompson also certified that the documents in the CTR were the “relevant material in the possession of the Housing Director with respect to the reconsideration decision subject to this judicial review.” Based upon the cover letter and certification, it is clear that Ms. Thompson reviewed and considered the material to be included in the CTR. Further, the cover letter indicates that some material is excluded from the CTR.

[60] The Respondent says that the omission of Mr. Tallman’s submissions from the CTR does not mean that the submissions were not considered. The Respondent says that if Mr. Tallman says he gave the submissions directly to the Housing Director, we should assume the Housing Director considered them. However, Mr. Tallman’s evidence merely confirms that the

submissions were provided to the Housing Director—it does not, and could not, confirm that the submissions were considered by the Housing Director.

[61] The contents of the CTR are important as they inform the Court on judicial review what was considered by the decision maker. Based upon the information before me, I cannot determine if the November 22, 2023 submissions were excluded from the CTR as the result of an oversight or if the submissions were simply not considered by the Housing Director.

[62] The Housing Director makes no reference to the submissions in his decision. This and the fact that they do not appear in the CTR, leaves me with no option but to conclude that the November 22, 2023 submissions were not considered by the Housing Director in his reconsideration decision. This is a breach of procedural fairness (*Kotowiecki v Canada (Attorney General)*, 2022 FC 1314 at paras 26-29).

(ii) Allegations of Bias

[63] Mr. Tallman makes allegations that legal counsel for the Housing Director may have in fact authored the Redetermination Decision. This is based upon the metadata contained within the February 28, 2023 decision indicating that the document was authored by Ms. Thompson, who is legal counsel for Whitefish.

[64] In my view, the Court cannot make a finding on the authorship of the redetermination decision based upon a consideration of the metadata alone. In any event, since the

redetermination decision is being quashed for the reasons outlined above, it is unnecessary to consider this argument further.

C. *What is the appropriate remedy?*

[65] In his Application for judicial review Mr. Tallman seeks the following relief:

- (a) An Order directing the WLFN to hold a new election for the office of Chief without further delay;
- (b) An Order in the nature of *certiorari* quashing and setting aside the Decision;
- (c) An Order in the nature of *mandamus* compelling the WLFN Housing Director to issue the residency letter, in accordance with the WLFN Election Code;
- (d) An Order declaring/directing that the Applicant's candidacy be accepted and that the Applicant be permitted to run in the new WLFN election for Chief;

[66] In the circumstances, I am satisfied that this is a case where remitting the matter back to the Housing Director for yet another redetermination would serve no useful purpose as he has already undertaken a redetermination which, for the reasons outlined above, does not withstand scrutiny (*Canada (Citizenship and Immigration) v. Tennant*, 2019 FCA 206 at para 71-72).

[67] I am satisfied that it is appropriate for this Court to grant an Order of *mandamus* requiring the Housing Director to issue the necessary residency letter to Mr. Tallman. I reached this conclusion for the following reasons.

[68] First, the sworn evidence of Mr. Tallman and his daughter, supports a finding that Mr. Tallman was a resident of Whitefish for the 12 months prior to the nomination meeting for the April 2022 Election. The Respondent has offered no credible evidence to the contrary. Furthermore, the determination of residency is essentially a fact driven matter. Mr. Tallman has filed sworn evidence of his residence at Whitefish. And while the Respondent challenges some of the evidence filed by Mr. Tallman as being hearsay evidence, on the narrow issue of Mr. Tallman's residency during the relevant period, I accept the evidence of Mr. Tallman and Ms. Tallman.

[69] Secondly, the inevitable delay that would be incurred in remitting this matter for yet another redetermination weighs in favor of granting the relief requested by Mr. Tallman. Mr. Tallman took timely action to challenge the election for Chief held on April 12, 2022; however it took the Appeal Arbitrator seven months to issue a decision and it took a further three months for the Housing Director to issue his Reconsideration Decision. This is contrary to the timelines in section 16 of the Election Regulations which contemplates that the election appeal process will be completed within 31 days of the date of the Election.

[70] As noted by Justice Stratas in *Fond du Lac First Nation v Mercredi*, 2020 FCA 59 at para 8, “[f]or the good of the community, disputes over the conduct of elections must be resolved quickly.”

[71] Remitting this matter for another redetermination would stymie the timely and effective resolution of matters and result in the merry-go-round scenario denounced in *Vavilov* at para 142, as follows:

However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: [citation omitted]. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations.

[72] The additional delay that would result in sending the matter back for another redetermination by the Housing Director is not in the interests of justice and would effectively deny Mr. Tallman any meaningful remedy in relation to the April 2022 Election.

[73] In the circumstances I have concluded that the appropriate remedy is to direct the Whitefish Housing Director to forthwith issue a residency letter to Mr. Tallman.

[74] I will also grant the related remedy sought by Mr. Tallman regarding the opportunity to be considered in the election for Chief. I will direct that pursuant to the Election Regulations, a new election be held for the remainder of the term for the position of Chief and be organized forthwith. The date of the election shall not be less than forty-five (45) days, nor more than sixty (60) days, after the date of this judgment. The election is to be conducted by the Electoral Officer or other suitable person in accordance with the Election Regulations and otherwise subject to the timelines set out in the Election Regulations.

VI. Costs

[75] As the successful party, Mr. Tallman is entitled to costs. At the hearing he requested lump sum costs of \$15,000.00 arguing that in First Nations governance cases, the costs awarded should recognize the power imbalance between the parties (*Bellegarde v. Poitras*, 2009 FC 1212, at para 8; *Whalen v. Fort McMurray No. 468 First Nation*, 2019 FC 1119 at para 27 [*Whalen*]).

[76] The Respondent argues that the cases relied upon by Mr. Tallman involve situations where individual members of Council have their costs covered by the First Nation, which is not the case here.

[77] In my discretion, I agree that lump sum costs are appropriate. I also accept that the resource imbalance between Whitefish and Mr. Tallman is a relevant factor to the granting of costs (*Whalen* at para 27).

[78] I award Mr. Tallman lump sum costs in the amount of \$15,000.00 inclusive of disbursements and taxes.

**JUDGMENT IN T-402-23**

**THIS COURT'S JUDGMENT is that:**

1. The February 28, 2023 decision of the Housing Director is quashed;
2. The Housing Director is directed forthwith to issue a residency letter to Mr. Tallman;
3. I direct that pursuant to the Election Regulations, a new election be held for the remainder of the term for the Position of Chief and be organized forthwith. The date of the election shall not be less than forty-five (45) days, nor more than sixty (60) days, after the date of this judgment.
4. The election is to be conducted by the Electoral Officer or other suitable person in accordance with the *Customary Election Regulations of the Whitefish Lake First Nation #459* and otherwise subject to the timelines set out therein.
5. Costs are awarded to the Applicant, payable by the Respondent in the amount of \$15,000.00 inclusive of disbursements and taxes.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-402-23

**STYLE OF CAUSE:** TALLMAN V WHITEFISH LAKE FIRST NATION  
#459

**HEARING HELD BY  
VIDEOCONFERENCE AT:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 11, 2023

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** OCTOBER 24, 2023

**APPEARANCES:**

Evan C Duffy FOR THE APPLICANT

Eric Pentland FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bailey Wadden & Duffy LLP FOR THE APPLICANT  
Edmonton, Alberta

Thompson, Laboucan & Epp LLP FOR THE RESPONDENT  
Edmonton, Alberta