Federal Court  Cour fédérale

Date: 20240726

Docket: T-1946-23

Citation: 2024 FC 1184

Ottawa, Ontario, July 26, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

TALLCREE TRIBAL NATION

Applicant

and

JAMIE MENEEN

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Tallcree Tribal Nation [Applicant] seeks a judicial review of the nomination of Jamie Meneen [Respondent] on September 13, 2023 [Decision] for the election held on September 28, 2023 [Election] on the basis that the Respondent was not eligible to be a candidate for the Election. The Applicant seeks an Order striking the nomination of the Respondent as a candidate for the Election and for an Order declaring the Respondent ineligible to run in the Election.

[2] The application for judicial review is dismissed. The Applicant has not brought this application against the proper respondent. The application is also premature, as the Applicant has not pursued an adequate alternative remedy as set forth in the Tallcree First Nation Election Code [Election Code].

II. Background and Decision

[3] The Election Code governs elections for the Tallcree Tribal Nation. It includes a residency requirement by which individuals must be "Ordinarily Resident" on reserve for at least six months prior to the date of nomination (s 8.3(b)).

[4] On September 12, 2023, the Tallcree Tribal Nation held its nomination meeting for the Election. The Electoral Officer received a letter signed by Clinton Laboucan certifying that the Respondent had lived at a specified address on reserve since February 1, 2023 [Certification Letter]. The Respondent was nominated as a candidate and elected as a Councillor.

III. Issues with the Service of the Notice of Application

[5] Rule 304 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] requires an applicant to service a notice of application on all respondents within 10 days, unless the Court direct otherwise. The Applicant filed the Notice of Application on September 19, 2023 and tried seven times to serve the Respondent within the required 10 days.

[6] The evidence of Mike Cardinal, the band manager, is that he unsuccessfully tried to serve the Notice of Application on the Respondent four times at the address listed on the Certification Letter. Mr. Cardinal further unsuccessfully tried to personally serve the Respondent at another address on the North Tallcree Reserve where the Respondent was staying and at his address in Fort Vermilion. Mr. Cardinal then asked the Electoral Officer to serve the Respondent on the date of the Election, but the Electoral Officer informed him that the Respondent did not appear to vote. After the Election, Mr. Cardinal was unsuccessful in locating the Respondent until October 11, 2023, which is when the Respondent was finally served.

[7] The affidavit of Melanie Williamson, a paralegal for the Applicant's counsel, provided an exhibit with email correspondence. Applicant's counsel received an email from a lawyer on October 13, 2023, stating that he was acting for the Respondent. On November 5, 2023, she received another email from the lawyer stating that he would not represent the Respondent in these proceedings. The Respondent did not retain new counsel. The Respondent also did not file a notice of appearance, a supporting affidavit, or a memorandum of fact and law.

[8] On November 27, 2023, the Applicant filed an *ex parte* motion to validate service of the Notice of Application pursuant to Rules 147 and 304. On December 8, 2023, Associate Judge Coughlan granted the motion as she was persuaded that by October 11, 2023, the Notice of Application and supporting affidavits had come to the attention of the Respondent and that service was obtained late because the Respondent evaded service. Associate Judge Coughlan recognized that none of the Applicant's evidence was decisive and some of it was hearsay.

IV. Issues and Standard of Review

[9] The Applicant does not frame the issues and the Respondent did not file any materials. In any event, in my view, this matter raises the following issues:

1. Can the Court review this application?
2. If the answer is yes, was the Decision reasonable?

[10] The Applicant does not make submissions on the standard of review. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 **[***Vavilov*]. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[11] However, in light of my finding that the Court cannot review this application, there is no need to determine whether the Decision was reasonable.

V. Analysis

A. *Relevant Election Code Provisions*

[12] The Election Code defines "Ordinarily Resident" as follows:

> 2.26 "Ordinarily Resident" means an Elector who resides on the Reserves of the First Nation. A person can only be ordinarily resident in one place at one time, and a person is ordinarily resident in that place until another place of ordinary residence is acquired. A person's ordinary residence can be described as:
>
> (a) the place the person normally eats and sleeps; and
>
> (b) the place in proximity to the person's place of employment;

> a person may also be temporarily absent from a place of ordinary residence for education, medical or temporary employment reasons and can still be considered ordinarily resident for the purpose of this Code.

[13] The Election Code sets the following residency requirements for the nomination of candidates for Chief and Councillors:

> **8.3 Electors Eligible for Nomination**
>
> In order to qualify for nomination, a person must:
>
> …
>
> (b) Have been continuously Ordinarily Resident on reserve for at least six (6) months prior to the date of nomination;
>
> …

[14] The Election Code also creates procedures concerning the Electoral Officer's role in the nomination process, including the following relevant provisions:

> **8.19 Notice to Candidates**
>
> Upon the close of nominations, the Electoral Officer shall promptly notify, in writing, all nominees who have completed all of the requirements set out in this Code whether they are eligible to be Candidates.
>
> **8.20 Electoral Officer to Determine Eligibility**
>
> Nominees who are ruled ineligible by the Electoral Officer, or whom the Electoral Officer determines have not filed a completed nomination form or have not filed other required documents are not eligible to be Candidates.

[15] The Election Code also creates an appeal procedure, including for appeals on the following ground:

> **14.1 Appeal Period and Grounds of Appeal**
>
> Within five (5) business days after the Election Day, or the date on which a Candidate is acclaimed pursuant to section 9, any Elector who voted in the Election may appeal the results of an Acclamation, an Election, By-election, or Run-off election on the following grounds:
>
> …
>
> (b) A Candidate was ineligible for nomination and such ineligibility materially affected the results of the Election, By-election, or Run-off election;
>
> …

B. *Submissions*

[16] The Applicant submits that the Respondent was not a proper candidate to have run in the Election due to his misrepresentations about his residence and failure to comply with the Election Code. The Applicant relies on the evidence of Mr. Cardinal, Rodena Loonskin-Auger, Ryan Uhersky, Judith Quewezance, and Larry Uhersky. The general summary of this evidence is that the Respondent did not reside on the reserve within the time frame required by the Election Code but instead lived in the hamlet of Fort Vermilion. Mr. Cardinal's evidence is that he was told by the Respondent's aunt that the Respondent asked her to state inaccurately that the Respondent was living with her for six months, but the aunt refused to do so.

[17] The Applicant further submits that the Respondent's election as Councillor on September 28, 2023 should be struck as invalid. It is appropriate to bring this application for judicial review as ineligible candidates should not be permitted to run in elections (*East Prairie Métis Settlement v Aiken,* 2010 ABQB 665 at paras 54-58 [*Aiken*]). Challenges to the nomination rules must be

brought immediately and are not properly part of appeal (*Pastion v Dene Tha' First Nation*, 2018 FC 648 at paras 4, 37 [*Pastion*]).

[18] The Respondent did not make written submissions but appeared at the hearing. The Court permitted him some time to speak, notwithstanding that a party must limit their oral submissions to those advanced in their memorandum of fact and law, which the Respondent did not file in this matter (*Rules*, s 70(1); *Bigeagle v Canada*, 2023 FCA 128 at para 90; *Sibomana v Canada*, 2020 FCA 57 at para 6).

C. *Conclusion on Jurisdiction*

[19] After considering the Applicant's submissions and the Election Code, it is my view the Court cannot review the merits of the Decision. In arriving at this determination, I wish to clarify that this determination is not based on the last minute and inadmissible oral submissions of the Respondent.

[20] First, it is my view that the named Respondent was not a decision-maker and the Court does not have jurisdiction. The Court may review decisions of federal boards, commissions or other tribunals in applications for judicial review (*Federal Courts Act*, RSC 1985, c F-7, s 18.1). However, notwithstanding my findings on prematurity below, the appropriate respondent would have been the Electoral Officer at the stage that the Applicant filed the application for judicial review. The Election Code tasks the Electoral Officer with determining whether nominees are eligible for nomination under sections 8.19 and 8.20 of the Election Code. The relevant decision-maker here is the Electoral Officer who approved the nomination, not Mr. Meneen.

[21] Second, the application is premature as the Applicant had an adequate alternative remedy that the Applicant should have exhausted prior to making an application to this Court. Judicial review is discretionary and "absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted" (*CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at paras 30-31). Judicial intervention in Indigenous decision-making processes should also be avoided whenever possible to encourage Indigenous self-government (*Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at para 19 [*Whalen*]).

[22] Section 14 of the Election Code creates an appeal procedure. Under section 14.1, an elector can appeal the results of an election within five business days of the election day on six available grounds, including where a candidate was ineligible for nomination and such ineligibility materially affected the results of the election (s 14.1(b)). The Applicant should have followed the appeal procedure in its own Election Code and then sought judicial review of any adverse decision of the Election Appeal Arbitrator.

[23] The Applicant's two authorities in support of its position that the Court should grant the judicial review do not assist the Applicant. In *Aiken*, the applicants sought a determination from the then-Court of Queen's Bench of Alberta as to the eligibility of certain settlement members to be nominated as candidates under the *Metis Settlements Act*, RSA 2000, c M-14 (at paras 1, 11-17). The Court of Queen's Bench of Alberta found that the governing legislation implicitly granted it jurisdiction to make a determination on eligibility before an election (at paras 63, 67). Furthermore, the Applicant cites *Pastion* without regard to the context as to why the applicant

was required to take earlier action. In *Pastion*, under the applicable election code, an individual must make a challenge to the nomination of a candidate in writing immediately after the nomination meeting date (at paras 31-34). The outcome of both decisions are closely connected to the applicable election laws. Similarly, the Election Code controls the procedure in this matter.

[24] In light of my finding on jurisdiction, there is no need to consider the merits of this matter. The Court must pay deference to the law of the First Nation and let the process play out to a conclusion before it can step in (*Whalen* at para 19).

VI. Conclusion

[25] For the reasons above, the application for judicial review is dismissed without costs.

JUDGMENT in T-1946-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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