

Date: 20080117

**Docket: T-809-07
T-855-07**

Citation: 2008 FC 8

Ottawa, Ontario, January 17, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

FRIEDA MARTSELOS

Applicant

and

**SALT RIVER NATION #195 also known as
SALT RIVER INDIAN BAND #759,
SALT RIVER FIRST NATION COUNCIL and
COUNCILLORS CHRIS BIRD, TONI HERON,
SONNY MCDONALD and MIKE BEAVER**

Respondents

AND BETWEEN:

**MICHAEL BEAVER, SONNY MCDONALD,
TONI HERON and CHRIS BIRD
In their capacity as COUNCILLORS OF
THE SALT RIVER NATION #195**

Applicants

FRIEDA MARTSELOS

Respondent

AMENDED REASONS FOR JUDGMENT AND JUDGMENT

[1] The present case consists of two opposing applications for judicial review, which have been consolidated. The applicant seeks to have a Band Council Resolution (BCR), taken by four members of the Council of Salt River First Nation (SRFN) on May 7, 2007, quashed pursuant the power of this Court under subsection 18.1(3) of the *Federal Courts Act*, R.S., 1985, c. F-7 (the Act). The BCR resolved that the applicant be removed from the Office of Chief of SRFN. The respondents, Councillors of the SRFN, request a writ of *Quo Warranto*, affirming their decision to remove the applicant from the office of Chief and a declaration that the applicant was duly removed from office as provided at paragraph 18(1)(a) of the Act. In the alternative, the respondents request a writ of *Quo Warranto* with respect to the applicant's claim of sole and autocratic authority to govern the affairs of the SRFN, and a declaration that SFRN governance is by majority decision of Chief and Councillors.

ISSUES

[2] The parties agree on the issues of the case:

- a) Was the meeting of May 7, 2007, at which the applicant was removed from the Office of the Chief, duly convened?
 - i) Did the Applicant receive notice of the May 7, 2007 meeting?
 - ii) Does the fact that no agenda was prepared by the Chief invalidate the meeting?
 - iii) Does the absence of evidence regarding the notice to Joline Beaver invalidate the meeting?

b) Were there any grounds for the removal of the Chief?

FACTUAL BACKGROUND

[3] The SRFN is an aboriginal First Nation and a “band” under the *Indian Act*, R.S.C. 1985, c. I-5, (the *Indian Act*) comprised of 812 members, many of whom live in Fort Smith, Northwest Territories. It is governed by a Council comprised of a Chief and six Councillors, all of whom are democratically elected under the *Customary Elections Regulations of the Salt River First Nation (Customary Election Regulations)*.

[4] The Council is empowered to act as the governing body of the SRFN when meeting as a quorum of Council, which requires the presence of four members.

[5] On April 30, 2007, the applicant was declared elected Chief of the SRFN in a by-election called to fill a vacancy in that office, which term would end in August 2008. She assumed the office of Chief on the same day, in accordance with section 3.4 (a) of the *Customary Election Regulations*.

[6] During the first week of May, when the applicant held the office of Chief, there were only six members of the SRFN Council; a by-election had been called for May 15, 2007 to fill a vacancy. The six members were Chief Frieda Martselos, and Councillors Sonny MacDonald, Toni Heron, Michael Beaver, Chris Bird, and Joline Beaver.

[7] According to the evidence presented by the parties, political tensions were high during the week in which the applicant held office. The applicant's first acts as Chief, among others, were to unilaterally remove Councillor Toni Heron from the customary position of Sub-Chief, remove band financial records from the Band Office to Edmonton to undergo an audit despite the fact that one was already scheduled, declare that all expenditures must be approved by her, terminate the employment of the Financial Officer of the Band, deny entry to the Band Office to employees and Councillors, terminate the employment of students, and numerous other changes to the personnel.

[8] In response to these actions, Councillors Sonny MacDonald, Toni Heron, Mike Beaver and Chris Bird came to the SRFN offices to attempt to meet with the new Chief on May 3, 2007. She refused to meet with them. Councillor Heron informed the applicant that Councillor Joline Beaver would not be attending the meeting. On the same day, the applicant was given verbal notice of a meeting to be held the next morning in the SRFN offices.

[9] On the morning of May 4, 2007, the meeting was held as planned and the applicant refused to attend or was absent. The evidence suggests that Councillor Chris Bird telephoned Councillor Joline Beaver to ask her to attend. During the meeting, the four Councillors in attendance signed a documents entitled "Notice to Frieda Martselos, Chief Elect" setting out 21 grounds upon which they were considering removing her from the Office of Chief. The document called for a special meeting of Council on May 7, 2007.

[10] The document was placed in an envelope and delivery to the applicant was attempted by the RCMP. The RCMP phoned the applicant before delivering the envelope, at which time she informed the officer that she would refuse delivery.

[11] Officials from Indian and Northern Affairs Canada (INAC) came to Fort Smith on May 7, 2007 to attempt to resolve the controversy. Officials, Brian Herbert and Nicole Huppy, were met at the airport by the RCMP and informed Mr. Herbert that the applicant had refused delivery of the envelope, and asked him to deliver the envelope to her. Mr. Herbert agreed and attempted delivery. The applicant again refused to accept it. He asked her to meet with the Council, but she refused. Mr. Herbert left the envelope on the applicant's desk, and she refused to open it.

[12] The meeting of May 7, 2007 began around 1:15 p.m., instead of 10:00 a.m. as scheduled. Councillors Michael Beaver, Toni Heron, Chris Bird and Sonny MacDonald were present, along with SRFN member Noline Villebrun, Mr. Herbert and another representative from INAC. Around 3:00 p.m., the four Councillors in attendance notified the applicant that they had resolved to remove her from the office of Chief and delivered the impugned BCR to her office.

[13] INAC accepted and recognized the impugned BCR as valid, and an interlocutory injunction was granted on consent by my colleague Justice Blais on May 25, 2007, restraining the applicant from holding herself out as Chief until such time as the application was heard.

DECISION UNDER REVIEW

[14] The BCR lists 21 grounds upon which Council removed the applicant from the office of the Chief. The BCR states that she was removed pursuant to the provisions of section 19 of the *Customary Election Regulations*. The BCR sets out 13 grounds corresponding to subsections 5(a) and 5(b) of Schedule “B”, based on the 21 particulars that are reproduced below:

- a) Conducting herself in an autocratic manner without regard for the lawful authority of Council by arrogating to herself sole authority for the administration of the affairs of the SRFN contrary to the customs and constitution of the SRFN;
- b) Disregarding and disowning the customary and constitutional right of the Council to govern the affairs of the SRFN through regular and democratic processes on the basis of one vote for each elected member of Council;
- c) Refusing to contact Council members or call a meeting of Council to conduct the business of the SRFN;
- d) Breaking into the office of the sub-chief without authorization of Council;
- e) Terminating the lawfully appointed Band Auditors without authorization of Council and contrary to an existing valid BCR appointing such Auditors;
- f) Purporting to appoint a Band auditor without authorization of accreditation by Council and contrary to an existing valid BCR appointing existing Band Auditors;
- g) Removing or purporting to authorize the removal from the Band Office to Edmonton, or other unknown and unauthorized place, essential Band records including financial records, BCRs, electronic files and a computer, all of which is essential for the due ongoing administration of the SRFN and due audit of the finances of the SRFN;
- h) Wrongly informing the Band’s bankers that she has sole responsibility for all administration and financial matters relating to the Band;
- i) Attempting to obtain access to funds belonging to the Band and held in the Band’s bank accounts without the knowledge or authority of the Council;
- j) Wrongly and without justification threatening the Band’s bankers with legal proceedings in the event that they continue to honour cheques duly written with the authority of Council, and thereby attempting to freeze the bank accounts of the Band;

- k) Terminating the employment of the Financial Officer of the Band without authorization of Council;
- l) Changing the locks of the Band Office and excluding the employees and Councillors of the SRFN from their offices and from access to their records;
- m) Attempting through the aforesaid acts to frustrate the SRFN's responsibility to meet the payroll due on May 4, 2007 for approximately 15 employees and 30 students;
- n) Hiring two persons as employees of the SRFN without authorization of Council;
- o) Demoting Dave Poitras, Band Administrator, without the authorization of Council;
- p) Purporting to cancel an upcoming by-election without authorization of Council;
- q) Calling a general meeting of members without authorization of Council;
- r) Terminating the employment of SRFN college student or students without authorization of Council;
- s) Terminating the position of sub-chief without authorization of Council;
- t) Terminating the services of TLE attorneys Jerome Slavic and Gary Laboucan without authorization of Council;
- u) Swearing herself into the office of Chief without prior authorization of Council and with the intention of governing the SRFN in an autocratic manner contrary to the democratic principles of the constitution of the SRFN.

RELEVANT PROVISIONS

[15] The relevant legislative and customary provisions are reproduced in Annex "A":

Customary Election Regulations, preamble (page 101 of the Applicant's Record);
Customary Election Regulations, Section 19 (pages 128-129 of the Applicant's Record);
Customary Election Regulations, Schedule "B" (pages 134-138 of the Applicant's Record);
Indian Act, subsection 2(3).

ANALYSIS

Standard of Review

[16] The general question at issue is whether the BCR passed by the SFRN Council on May 7, 2007 was valid pursuant to the powers conferred on the Council by the *Indian Act* and the SRFN *Customary Election Regulations*. When framed in this way, the question becomes one of whether the Council acted beyond its powers. As such, no deference is owed to the council in determining whether their powers were exercised in accordance with the *Customary Election Regulations*.

[17] The questions, however, are subdivided in the present application. The applicant submits that her right to procedural fairness was breached by the respondents' alleged failure to properly convene the May 7, 2007 meeting. Breaches of procedural fairness are reviewed on a standard of correctness.

[18] The respondents submit that the question of whether there exist grounds for removal is a determination of fact made within the scope of the powers of the Council, and as such should be reviewed on a standard of patent unreasonableness. I do not agree. If the Council removed the applicant from the office of Chief for a ground not enumerated in section 19 of the *Customary Election Regulations*, they acted beyond the powers prescribed to them. The question is therefore reviewable on a standard of correctness.

a) *Was the meeting of May 7, 2007 duly convened?*

[19] The applicant alleges that the meeting of May 7, 2007 was not duly convened in accordance with the principle mentioned in paragraph 2(3)(b) of the *Indian Act*. She raises three grounds upon

which she claims that procedural fairness was breached: failure to give notice to the applicant of the meeting and provide her with the opportunity to make representations on her own behalf; failure to proceed with the meeting in the absence of an agenda prepared by the Chief; and failure to give notice to councillor Joline Beaver. I will address each ground in turn.

i) *Did the Applicant receive notice of the May 7, 2007 meeting?*

[20] The applicant submits that proper notice of the meeting was not given to all members of the Council as required by subsections 3(a) and (b) of Schedule “B” of the *Customary Election Regulations*, and that a Council resolution passed at a meeting for which proper notice was not given is of no force or effect. She further submits that her right of procedural fairness was violated because she was not afforded the opportunity to make representations on her own behalf.

[21] The respondents submit that meetings of the SRFN are governed by the *Customary Election Regulations* and supplemented by unwritten custom, and that nothing in the written or customary code stipulates a particular form of notice. The respondents allege that oral notice is customary.

[22] The respondents submit that in *Assu v. Chickite*, [1999] 1 C.N.L.R. 14 at paragraphs 39-40, the British Columbia Supreme Court found that a meeting is duly convened where the meeting is called at the request of a majority of Councillors, when advance notice is given, and when the meeting is attended by a quorum of Council. This case related to a band under section 74 of the

Indian Act; however, it is noteworthy that neither the *Customary Election Regulations* nor the *Indian Act* set out prerequisites for giving notice of a meeting.

[23] I agree with the submissions of the respondents. I can find no requirement that notice must take any specific form. It is clear from the evidence that the applicant was given both oral and written notice. The fact that she refused to attend, or refused to accept service of the envelope containing the relevant information cannot subsequently be used to allow the applicant to argue that her right to procedural fairness was not respected. The evidence also reveals that the applicant knew that the general purpose of the meeting was to discuss the issues the respondents had with her conduct.

ii) *Does the fact that no agenda was prepared by the Chief invalidate the meeting?*

[24] The applicant submits that in order for a meeting to be “duly convened” as required by paragraph 2(3)(b) of the *Indian Act*, the requirements established in Schedule B of the *Customary Election Regulations* must be met. More specifically, the applicant believed that the words of paragraph 3(a), “the agenda shall be prepared by the Chief in advance of each meeting” must be construed in such a way that a meeting cannot be duly convened without compliance with this requirement.

[25] I do not agree with this position. Paragraph 3(a) also provides that the agenda can be approved or amended by Council. This stipulation suggests that in cases where the interests and priorities of Council may differ from those of the Chief, appropriate changes may be made to reflect

the disparity. While the use of “shall” is imperative, in my opinion, it is contrary to the purpose of the provision to apply a strict construction in the present case. It would be antithetical to the democratic intent of the *Customary Election Regulations* for the Chief to be able to frustrate the attempts of the Council to meet by simply refusing to prepare and provide an agenda.

iii) *Does the absence of evidence regarding the notice to Joline Beaver invalidate the meeting?*

[26] The applicant submits that because there is no evidence that Joline Beaver received notice of the meeting, the meeting was not duly convened. I cannot accept this argument. The respondents correctly submit that the onus of proving a procedural irregularity falls to the person who challenged the validity of the administrative act. No evidence is before me which suggests that Joline Beaver was not given any notice.

[27] The presumption of regularity of process applies in this case. The prescribed steps are presumed to have been taken (*Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] 1 S.C.R. 181 at paragraph 38; *Leth Farms Ltd. v. Alberta (Turkey Growers Marketing Board)*, [2000] A.J. No. 59, 2000 ABCA 32 at paragraph 77).

[28] It was open to the applicant to present evidence which might rebut the presumption; however, no such evidence has been presented to the Court.

b) *Were there any grounds for the removal of the Chief?*

[29] The applicant submits that none of the grounds listed in the impugned BCR are intended by section 19.1, which lists the grounds upon which a Chief or Councillor may be removed from office.

[30] In response, the respondents submit that the 13 grounds or 21 allegations in the BCR fall within the general allegation that the applicant conducted herself in an autocratic manner without regard for the lawful authority of Council, and that administration of the band was brought to a standstill by her conduct. It is submitted that this is a contravention of the duty of the Chief to “ensure a stable, competent and efficient administration of the First Nation”, as required by section 5. (a) and (b) of Schedule “B”. The failure to perform the duties and obligations set out in Schedule “B” is listed as a ground for removal at section 19.1.3 of the *Customary Election Regulations*.

[31] While it appears that there was substantial conflict, it is difficult to discern from the facts that it was all engendered by the applicant. It appears that both parties acted in such a way as to escalate the tensions. Further, I do not think that it can be said that the Chief failed in her duty to “ensure a stable, competent and efficient administration of the First Nation” within one week of her election. She has surely misinterpreted her functions as Chief, the role of Council as an elected body and the role of the other councillors. I agree with the respondents that this created confusion, tension, and stress. The other councillors cannot be faulted for trying to cope with such a difficult and delicate situation. In the end, the Band did not suffer financial losses and there was no misappropriation of funds. I cite here the words of Justice Hughes in *Qualicum First Nation v. Recalma-Clutesi*, 2006 FC 854, [2006] F.C.J. No. 1097 (QL) at paragraph 37:

It is the protection of the Band that is to be the guiding principle, not the protection of the Chief or Councillors, or what one or more of them might perceive as that which protects the Band.

[32] The *Customary Election Regulations* are an all-encompassing legal code which establish the grounds for which a Chief or Councillor may be removed from office. It would be incorrect to expand these grounds; the ground upon which the Chief may be removed from office must clearly correspond to the facts of the case.

[33] In *Bugle v. Lameman*, [1997] F.C.J. No. 560 (QL) at paragraph 2, Justice Campbell dealt with a similar matter:

First, I find that the Tribal Election Law is the all-encompassing code of legal authority to elect and remove a Chief and Council of the Beaver Lake First Nation. This, it is only within the words of the law itself that any authority can be found to remove Chief Lameman from his office. I find that the words of the Tribal Election Law must be strictly construed; that is, I cannot be liberal in interpreting their meaning because, in my view, the results of removal from office are so severe that a strict interpretation is required.

[34] It is my opinion that the passage above finds application in the case at bar.

[35] Further, I find that the purpose of the *Customary Election Regulations* is clearly to establish a democratic system of electing the Council; the preamble states:

WHEREAS the culture, values and development of the Salt River First Nation is best advanced by the values of democracy and the selection of leadership on the basis of democratic Elections; and

[...]

WHEREAS the customs and traditions of the Salt River First Nation require democratic, fair and open Elections for Chief and Council;

[36] In light of this purpose, it is imperative that the wishes of the electorate be given due consideration. It is best that the voice of the electorate be respected and that the election process be given a chance to take effect. It is difficult to conceive that the applicant had a chance to fulfill her mandate within a week. Similar reasoning was adopted in *Sault v. LaForme*, [1989] 2 F.C. 701 at paragraph 10. The following passage at para. 10 from *Sault* deals with Parliamentary intent; however, the SRFN is a Treaty 8 Band with a right of self-government, and analogous weight must be given to the democratic intent behind the *Customary Election Regulations*:

[...] One can see in this structure a desire by Parliament to guarantee certain democratic rights of the members of the band: namely that if they once elect a member of council he is entitled to serve, and they are entitled to be represented by him, for two years subject to such contingencies as him dying, being convicted of an offence, being involved in a corrupt practice, or absenting himself habitually from his duties. Only these specified events or misdeeds justify, in the view of Parliament, the vacating of his office. Yet the majority of this Band Council has taken upon itself to add to the criteria in subsection 78(2) such deficiencies as inexperience, critical and controversial conduct, disagreement with Band staff, imposition of work on staff, unilateral interference by persuasion or threats with respect to re-employment of a staff member, and lengthily disputatious conduct at meetings, as equally justifying what is in effect the vacating of a councillor's office. In my view Parliament intended to exclude all such criteria other than those mentioned when it enacted in subsection 78(1) that councillors were to hold office for two years and that this was to be subject only to the other provisions of section 78. To uphold the action taken by the defendants here would be to authorize the majority on band councils to suppress dissent by removing from council at any time in their statutory term of office those members who offend the majority.

[37] For these reasons, it is my opinion that there were insufficient grounds for removing the applicant from the office of the Chief so soon following her election.

[38] The respondents submit an alternative argument seeking a writ of *Quo Warranto* with respect to the applicant's claim of sole and autocratic authority to govern the affairs of the SRFN, as well as a declaration that SFRN governance is by majority decision of Chief and Councillors. It is my opinion that such a declaration is unnecessary since the constraint of majority decision-making on the Chief's power is clearly established by the *Customary Election Regulations*. Any actions by the Chief which violate the provisions of the *Customary Election Regulations* are independently reviewable.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. the application to quash the BCR dated May 7, 2007, removing the applicant from the Office of the Chief be allowed. The Band Council resolution dated May 7, 2007 is quashed.
2. the application in file number T-855-07 is dismissed.
3. due to the circumstances in this case, no costs are awarded to either party.

“Michel Beaudry”

Judge

ANNEX “A”

Customary Election Regulations, preamble (page 101 of the Applicant’s Record)

PREAMBLE

WHEREAS the Salt River First Nation has the inherent Aboriginal right and Treaty right as a First Nation with authority to govern relations among its Members and between the Salt River First Nation and other governments; and

WHEREAS the Aboriginal right of the Salt River First Nation to self-government was recognized and affirmed in Treaty No. 8 entered into between Her Majesty the Queen and the Salt River First Nation and confirmed by s. 35 of the *Constitution Act*, 1982; and

WHEREAS the adoption of these Customary Election Regulations is an exercise of the Aboriginal and Treaty rights of the Salt River First Nation to self-government and nothing in the Customary Election Regulations shall be construed as to abrogate or derogate from any Aboriginal and Treaty rights of the Salt River First Nation; and

WHEREAS the culture, values and development of the Salt River First Nation is best advanced by the values of democracy and the selection of leadership on the basis of democratic Elections; and

WHEREAS the customs, policy and laws of the Salt River First Nation in regard to governance have been established with the consent and participation of the Members of the Salt River First Nation; and

WHEREAS the customs and traditions of the Salt River First Nation require democratic, fair and open Elections for Chief and Council; and

WHEREAS by a Referendum held on the 23rd day of April, 2004, a majority of the Electors of Salt River First Nation approved who voted the Customary Election Regulations as outlined herein;

Customary Election Regulations, Section 19 (pages 128-129 of the Applicant's Record).

19. REMOVAL FROM OFFICE

19.1 Grounds for Removal

The removal of a Chief of Councillor from office may be determined by the Council on the following grounds:

- 19.1.1 They are absent for three (3) consecutive meetings of the First Nation or the Council for which they have been given a verbal and/or written notice and for which no valid reason for their absence is provided in writing to the Council; or
 - 19.1.2 They engage in drunk, drug related, disorderly, violent or other irresponsible conduct at Council meetings, community meetings, or in other public forms or functions which interferes with the conduct of business or brings the reputation of the Council or the First Nation into disrepute; or
 - 19.1.3 They fail to perform duties and obligations as set out in Schedule "B" or breach the Conflict of Interest Guidelines for Chief and Council as set out in Schedules "C"; or
 - 19.1.4 They have been charged with or convicted of an indictable offence under the Criminal Code; or
 - 19.1.5 They had engaged in Corrupt Election practices, the evidence of which were discovered and proven after the Appeal Period; or
 - 19.1.6 They failed to reside in the vicinity of Fort Smith during their term in office; or
 - 19.1.7 They have been suspended three (3) times pursuant to s. 18 during his terms of office; or
 - 19.1.8 They have failed to resign or resume their duties after a sixty (60) day leave of absence as required, pursuant to s. 16.3.
- 19.2 Upon satisfactory confirmation of the grounds for removal, the Council by Resolution which states the grounds for removal may remove the Chief or Councillor from their Office.

Customary Election Regulations, Schedule “B” (pages 134-138 of the Applicant’s Record).

SCHEDULE “B”

TO THE FIRST NATION CUSTOMARY ELECTION REGULATIONS

DUTIES OF CHIEF AND COUNCIL

1. GOVERNANCE AUTHORITY AND LEADERSHIP OF THE FIRST NATION

The Chief and Council (hereafter “The Council”) are elected leaders of the First Nation whose conduct, powers, duties and obligations are governed by the following:

- (a) The culture, traditions, and values as expressed by the elders of the Salt River First Nation people.
- (b) The Treaty, Aboriginal, and inherent rights and Governance powers of the First Nation.
- (c) The statutory and administrative authorities and responsibilities, as set out in the *Indian Act*.
- (d) The fiduciary obligation to manage and administer the property, funds, and other assets of the First Nation including the Trust property of the Nation in a reasonable and careful manner.
- (e) Contractual obligations and responsibilities set out in the terms of Contribution Agreements or other contracts with funding agencies of other governments.

2. COMMUNICATION WITH MEMBERS

The Council shall ensure on going and regular communication with Members regarding the governance and financial affairs of the First Nation by undertaking the following:

- (a) The Council shall consult regularly with Members by holding quarterly General Meetings in Fort Smith, Edmonton and Yellowknife and Special Band Meetings as necessary.
- (b) The Council shall review all proposed by-laws and major policies with the Members prior to their final approval by the Council.
- (c) The Council shall keep the Members informed of the financial circumstances of the First Nation through semi-annual financial reports to Members.

- (d) Minutes of First Nation meetings and Council meetings shall be posted and made available to Members at the Band office.
- (e) Council and staff shall not give confidential personal or employment related information to Members or to third parties.

3. ATTENDANCE AT COUNCIL AND PUBLIC MEETINGS

- (a) Regular Council meetings shall be held at least once per month and special Council meetings, as necessary. The agenda shall be prepared by the Chief in advance of each meeting and distributed to Councillors. The agenda shall be reviewed and approved or amended by the Council. Council shall prepare in advance for each meeting by reading reports and minutes of prior meetings.
- (b) The Councillors shall attend all First Nation and Council meetings unless due to sickness or other exceptional circumstances they are unable to attend. Notification of absence should be provided prior to the meeting and reasons for extended absences shall be provided in writing.
- (c) Council shall represent the First Nation at functions, meetings, and other occasions, both on and off Reserve, as required from time to time.
- (d) Council shall regularly attend at the First Nation office.

4. FINANCIAL MANAGEMENT AND RESPONSIBILITY

- (a) The Council shall develop and implement structures, by-laws, and policies to ensure the proper financial management, control and accountability of all funds.
- (b) The Council shall ensure the financial affairs of the First Nation are conducted in a prudent, responsible, and careful manner at all times keeping in mind the best long term interests of the First Nation.
- (c) The Council will take reasonable measures to keep Members informed about the financial affairs of the First Nation.
- (d) Each Councillor will be responsible for being fully informed about the financial responsibilities and resources of the First Nation.
- (e) The Council shall annually prepare a budget for expenditure of Nation Funds and present it to the Members for information purposes.

- (f) The Council shall meet quarterly to review variance reports and monitor the expenditures as being in compliance with the budget.
- (g) The Council shall ensure managers operate programs and deliver services of the First Nation in accordance with their annual budget.
- (h) The Council shall maintain a balanced budget by carefully and prudently monitoring all expenditures to ensure they are for the benefit of the First Nation and in accordance with the budget and the Band's financial capacity.
- (i) The Council shall ensure all funds received from Governments are expended in accordance with the program funding guidelines.
- (j) The Council will make the Annual Financial Audit of First Nation Funds and Trust Funds available for Members to review at the office but no copies of financial documents may be removed from the office. Audits shall be available for review at General Band Meetings in Edmonton and Yellowknife but audits shall not leave the meeting and be returned to the Council.
- (k) The Chief and Councillors shall fully and properly account in writing to the Council for any salary or travel advances within thirty (30) days of receipt of such advances. Salary advances shall only be provided to Councillors in exceptional circumstances.

5. ADMINISTRATION

- (a) The Council shall ensure the stable, competent, and efficient administration of the First Nation.
- (b) The Council shall develop and implement a personnel policy to cover all employees and consultants.
- (c) All hiring and termination of staff by managers and Council shall be fair, legal, and according to the Salt River First Nation personnel policy and Canada Labour Code.
- (d) The Council shall ensure all Councillors, managers and staff have clear job descriptions.
- (e) The Council shall develop and implement:
 - (i) a land and resource management by-law and policy;
 - (ii) a financial management by-law and policy;

- (iii) a housing by-law and policy;
 - (iv) a social and economic development by-law and policy;
 - (v) by-laws as necessary to promote and protect the safety, health, and properties of the Members.
 - (vi) other by-laws and policies as required from time to time.
- (f) The Council, through appointment of Directors, shall be responsible for the operation of Salt River First Nation Business Entities.

6. EXTERNAL RELATIONS

- (a) The Council shall honourably and effectively represent the interests of the First Nation, including Treaty and Aboriginal rights, to other levels of government, including the Federal, Provincial, municipal, and First Nation governments.
- (b) When engaged in external relations, the Council shall conduct themselves in a manner which properly, and fairly represents the interests of the First Nation.
- (c) The Council shall, from time to time, report to the Members about the topics and outcomes of their meetings outside the community.

7. PEACE AND ORDER

- (a) The Council and Members shall take such measures as necessary to ensure peaceful and lawful relations among Members residing on and off the Reserve.
- (b) The Council shall work with the RCMP, courts and legal system to ensure fair and just treatment of the Members.

8. RULES OF CONDUCT

- (a) The Council shall conduct themselves in a manner which does not bring themselves, the leadership, or the reputation and honour of the First Nation into disrespect and disrepute.
- (b) When conducting the business of the First Nation, with other governments, businesses, or third parties, the Council will act in a considerate, professional, and responsible manner.

- (c) Each Councillor shall be fully informed of their duties, responsibilities, and the rules and guidelines governing their conduct.

9. CONFLICT OF INTEREST

The Council shall strictly comply with the Conflict of Interest Guidelines set out in Schedule “C”.

Indian Act, L.R., 1985, ch. I-5, 2(3).

Exercise of powers conferred on band or council

2. (3) Unless the context otherwise requires or this Act otherwise provides,

(a) a power conferred on a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and

(b) a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

Exercice des pouvoirs conférés à une bande ou un conseil

2. (3) Sauf indication contraire du contexte ou disposition expresse de la présente loi :

a) un pouvoir conféré à une bande est censé ne pas être exercé, à moins de l'être en vertu du consentement donné par une majorité des électeurs de la bande;

b) un pouvoir conféré au conseil d'une bande est censé ne pas être exercé à moins de l'être en vertu du consentement donné par une majorité des conseillers de la bande présents à une réunion du conseil dûment convoquée.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-809-07 and T-855-07

STYLE OF CAUSE: **FRIEDA MARTSELOS and
SALT RIVER NATION #195 also known as
SALT RIVER INDIAN BAND #759,
SALT RIVER FIRST NATION COUNCIL and
COUNCILLORS CHRIS BIRD, TONI HERON,
SONNY MCDONALD and MIKE BEAVER
And Between:**

**MICHAEL BEAVER, SONNY MCDONALD,
TONI HERON and CHRIS BIRD
In their capacity as COUNCILLORS OF
THE SALT RIVER NATION #195 and
FRIEDA MARTSELOS**

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 12 and 13, 2007

**AMENDED REASONS FOR
JUDGMENT AND JUDGMENT:** Beaudry J.

DATED: January 17, 2008

APPEARANCES:

Colleen Verville
David Rolf

FOR APPLICANT

Christopher Harvey
Christopher Watson

FOR RESPONDENTS

SOLICITORS OF RECORD:

Parlee McLaws
Edmonton, Alberta

FOR APPLICANT

McKenzie Fujisawa
Edmonton, Alberta

FOR RESPONDENTS