**Date: 20081223**

**Docket: T-1778-08**

**Citation: 2008 FC 1413**

**Vancouver, British Columbia, December 23, 2008**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**FRIEDA MARTSELOS**
**GLORIA VILLEBRUN**
**BRADLEY LAVIOLETTE and**
**FREDERICK BEAULIEU**

**Applicants**

**and**

**DAVID POITRAS, TONI HERON**
**and RAYMOND BEAVER**

**Respondents**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Frieda Martselos, Ms. Gloria Villebrun, Mr. Bradley Laviolette and Mr. Frederick Beaulieu (the "Applicants") seek judicial review of a ruling made on November 6, 2008 by the Salt River First Nation Appeals Arbitrator, in connection with an appeal hearing undertaken pursuant to the *Salt River First Nation Customary Election Regulations* (the "CER").

[2] Mr. David Poitras, Ms. Toni Heron and Mr. Raymond Beaver (the "Respondents") are the appellants in the proceedings before the Appeals Arbitrator, and the Applicants in the within proceeding are the respondents in the appeal proceeding.

[3] The appeal proceeding before the Appeals Arbitrator relates to an election held on August 25, 2008. The Respondents were unsuccessful candidates in the election and on August 29, 2008, they filed a Notice of Appeal alleging certain corrupt election practices as their grounds of appeal.

[4] Ms. Katharine L. Hurlburt, a lawyer practising in Edmonton, Alberta, was appointed as the Appeals Arbitrator pursuant to the CER for the purpose of the appeal hearing. She convened a pre-hearing conference by teleconference with the representatives of the parties and by letter dated September 18 and emails exchanged on September 19, 2008, set out the pre-hearing procedure. This pre-hearing procedure set out timelines for the completion of certain steps, including the identification of witnesses, "will say" statements and documents to be relied upon in the hearing.

[5] The election appeal began at Fort Smith, Northwest Territories, on November 4, 2008. It was scheduled to be heard over three days, that is, November 4, 5 and 6.

[6] On November 6, 2008, the Appeals Arbitrator made an oral ruling that would allow the Appellants before her to ask questions in relation to an alleged fraud even though that ground was not identified in the Notice of Appeal. She subsequently prepared written reasons. She found that

Section 15.2.2 of the CER does not preclude an appellant in an election appeal from adducing additional evidence that was not described in the Notice of Appeal. At the same time, the Appeals Arbitrator refused to allow the election appellants to introduce copies of certain cheques as evidence in support of the alleged fraud.

[7] The hearing before the Appeals Arbitrator adjourned on November 6, 2008, to allow the Applicants herein to bring this application for judicial review. According to the Court file, the Applicants obtained an Order from Justice Snider on November 25, 2008, abridging the time for perfecting this application and setting the matter down for hearing at Vancouver, British Columbia, on December 16, 2008.

[8] By Direction issued on December 8, 2008, the parties were advised to address the nature of the decision underlying this application for judicial review in light of section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The parties filed supplementary submissions as to whether the decision is an interlocutory one.

[9] The Applicants argue that the Appeals Arbitrator has misinterpreted section 15 of the CER by effectively allowing the Respondents to amend their Notice of Appeal. They submit that she acted beyond her jurisdiction.

[10] The Respondents submit that the Appeals Arbitrator possesses jurisdiction to allow a new ground of appeal or to admit evidence that is not set out in the Notice of Appeal.

[11] The Applicants argue that in the event that the Court finds this decision to be an interlocutory decision, then special circumstances exist to justify a final decision on the application as they say that the Appeals Arbitrator can claim no special expertise since this is the first appeal pursuant to the CER.

[12] For their part, the Respondents submit that the decision is an interlocutory one and no special circumstances exist to justify intervention at this stage. Nonetheless, they ask that the Court make a determination that the allegation of fraud is within the scope of the Notice of Appeal and that subsections 15.2.2(c), (d) and (e) of the CER should be construed as permissive and not mandatory.

[13] The law is clear. As a general rule, judicial review of interlocutory decisions is not available. In that regard, I refer to the decisions in *Szczecka v. Canada (Minister of Employment and Immigration)* (1993), 116 D.L.R. (4th) 333 and *Canada (Minister of Citizenship and Immigration) v. Varela* (2003), 300 N.R. 183. More recently, in *CHC Global Operations, a division of CHC Helicopters International Inc. v. Global Helicopter Pilots Assn.*, 2008 FCA 344 the Federal Court of Appeal said the following at paragraph 3:

> 3. Even if one accepts Mr. Fairweather's proposition that the Canada Industrial Relations Board has made a final decision, it does not follow that we should intervene. The policy reasons which underlie the practice of declining to hear appeals from interlocutory decisions do not turn on whether the decision is right or wrong. Justice is better served if the tribunal below is allowed to complete its work (see paragraph 2 of *Prince Rupert Grain Ltd., supra*) so that appeals to this Court can proceed on the basis that

> all contested issues can be reviewed in one hearing on the basis of a comprehensive record.

[14] I am not persuaded that any special circumstances exist in the present case to justify a departure from the general rule that interlocutory decisions are not subject to immediate judicial review. At the end of the appeal process, the Appeals Arbitrator may ultimately dispose of the appeal on grounds other than the point in issue, that is, an alleged fraud.

[15] In any event, a remedy is available to the Applicants herein, that is, the appeal respondents once the Appeals Arbitrator renders her final decision. That remedy is an application for judicial review before this Court.

[16] In the result, this application for judicial review is dismissed with costs to the Respondents, such costs to be assessed in the full discretion of the assessment officer.

## JUDGMENT

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed, costs to the Respondents to be assessed in the full discretion of the assessment officer.

"E. Heneghan"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1778-08 |
| **STYLE OF CAUSE:** | FRIEDA MARTSELOS et al.<br>v. DAVID POITRAS et al. |
| **PLACE OF HEARING:** | Vancouver, BC |
| **DATE OF HEARING:** | December 16, 2008 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | HENEGHAN J. |
| **DATED:** | December 23, 2008 |

**APPEARANCES:**

| | |
|---|---|
| David C. Rolf | FOR THE APPLICANTS |
| Christopher Harvey, Q.C. | FOR THE RESPONDENTS |
| No appearance | FOR THE RESPONDENT<br>David Poitras (self-represented) |

**SOLICITORS OF RECORD:**

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| McKenzie, Fujisawa LLP<br>Vancouver, BC | FOR THE RESPONDENTS |
| n/a | FOR THE RESPONDENT<br>David Poitras (self-represented) |