

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160509

Docket: A-428-15

Citation: 2016 FCA 146

**CORAM: PELLETIER J.A.
WEBB J.A.
DE MONTIGNY J.A.**

BETWEEN:

ANDREW ORR AND PAUL HOULE

Appellants

and

PEERLESS TROUT FIRST NATION

Respondent

Heard at Edmonton, Alberta, on May 9, 2016.
Judgment delivered from the Bench at Edmonton, Alberta, on May 9, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on May 9, 2016).

PELLETIER J.A.

[1] This appeal concerns two (2) election appeals, which were heard together by the Elections Arbitrator under the Customary Election Regulations of the Peerless Trout First Nation. We have come to a conclusion with respect to each of those appeals.

[2] Given that this is an appeal from the Federal Court sitting in judicial review, we step into the shoes of the Federal Court: see *Agraira v. Canada (Public Safety and Emergency*

Preparedness), 2013 SCC 36, [2013] 2 S.C.R. 559, at paragraphs 45-46. Accordingly, we will focus our attention on the Election Arbitrator's decision.

[3] In the matter of the appeal by Paul Houle, counsel argues that the Election Arbitrator and the Federal Court erred in law in coming to factual conclusions for which there was no evidence. This argument focusses primarily on the period during which Mr. Laboucan was absent from the Trout Lake polling station.

[4] The statutory declaration of Albert Oostendorp and the Table attached to it, found at pages 108-111 of the Appeal Book, contain some evidence on which the Election Arbitrator could rely in coming to the conclusions that he did with respect to the regularity of the election procedure during that time period and the materiality of any irregularity, which he found. In the end result, he found that there were grounds to void or disqualify a single vote. This is insufficient to invalidate the election result.

[5] We have, as requested by counsel for Mr. Houle, carefully read the cross-examination of Mr. Oostendorp. With respect, we found nothing in that cross-examination that would have required the Election Arbitrator to set aside Mr. Oostendorp's statutory declaration.

[6] Counsel also argued that there were witnesses who could have been called to provide evidence, or better evidence, as to what took place during the relevant period. It was open to Mr. Houle to call that evidence. Having failed to do so, he cannot complain about any lack of evidence.

[7] As for Andrew Orr's appeal, we have not been persuaded that there is a constitutional limitation on the right of First Nations to establish reasonable limitations on who may present themselves as candidates for elected office. Section 3 of the *Canadian Charter of Rights and Freedoms*, R.S.C. 1985, App. II, No. 44, Schedule B, does not deal with band elections. Therefore, we are unable to agree that the preamble to *The Constitution Act 1867*, R.S.C. 1985, App. II, No.5, by implication, prohibits such limitations or, putting the matter another way, enshrines an untrammelled right to present oneself as a candidate for elected office in a First Nation.

[8] As a result, we will dismiss the appeal with costs to be assessed, payable jointly and severally by both appellants.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-428-15

**(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT FROM JUSTICE
CECILY STRICKLAND, DATED SEPTEMBER 8, 2015, NO. 2015 FC 1053).**

STYLE OF CAUSE:

ANDREW ORR AND PAUL
HOULE v. PEERLESS TROUT
FIRST NATION

PLACE OF HEARING:

EDMONTON, ALBERTA

DATE OF HEARING:

MAY 9, 2016

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.
WEBB J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY:

PELLETIER J.A.

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