

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20191016**

**Docket: A-244-17**

**Citation: 2019 FCA 253**

**CORAM: WEBB J.A.  
NEAR J.A.  
BOIVIN J.A.**

**BETWEEN:**

**HENRY MCKENZIE, DAVID RATT, MELISSA COOK,  
GEORGINA CHARLES, JEANNIE OLSEN, KEITH OLSEN, AND  
THOMAS RATT**

**Appellants**

**and**

**THE LAC LA RONGE INDIAN BAND AND  
THE LAC LA RONGE INDIAN BAND CHIEF ELECTORAL  
OFFICER, MILTON BURNS**

**Respondents**

Heard at Saskatoon, Saskatchewan, on September 26, 2019.

Judgment delivered at Ottawa, Ontario, on October 16, 2019.

**REASONS FOR JUDGMENT BY:**

**NEAR J.A.**

**CONCURRED IN BY:**

**WEBB J.A.  
BOIVIN J.A.**

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**REASONS FOR JUDGMENT**

**NEAR J.A.**

I. Overview

[1] The appellants, members of the Lac La Ronge Indian Band #353, appeal from a June 26, 2017 decision of the Federal Court, in which it declared that the Band's new election regulations were validly enacted by the Chief and Council and that the Band's Electoral Officer was not required to be a current or former chief of a Saskatchewan Indian Band.

II. Background

[2] The Lac La Ronge Indian Band is a “band” under the *Indian Act*, R.S.C. 1985, c. I-5. It conducts Band elections according to Band custom and the *Lac La Ronge Indian Band #353 Election Act*, Band 12, Treaty 6 (the Act), passed in 2001 and updated with typographical corrections in 2016. On or around February 13, 2017 the Band’s Chief and Council approved the *Lac La Ronge Indian Band #353: Regulations with Forms* (the Regulations), which introduced procedures, forms, and other administrative rules to govern Band elections. The Regulations also included certain eligibility requirements for candidates for Band elections. The Chief and Council appointed Mr. Milton Burns, one of the respondents in this appeal, as the Electoral Officer for the 2017 Band election. The election was held March 24-31, 2017 and saw the election of Tammy Cook-Searson as Chief as well as twelve Councillors. The Band and Mr. Burns are the respondents in this appeal.

[3] The appellants filed a notice of application for judicial review on March 27, 2017, after advance voting had taken place but before the close of polls, seeking declarations regarding the applicable version of the Act and the validity of the inclusion of the eligibility requirements for candidates in the Regulations for the purposes of the election. They also sought interim and interlocutory injunctions directing the Band to appoint a qualified and certified Electoral Officer, prohibiting and enjoining the Electoral Officer from disqualifying Band members from nomination pursuant to the Regulations, and prohibiting the Electoral Officer from disqualifying potential candidates based on a declaration that they are in a conflict of interest pursuant to the Regulations.

[4] The hearing before the Federal Court took place on May 31, 2017, two months after the election. The respondents moved to strike the application for procedural irregularities and mootness; their motion was heard at the same time as the hearing.

### III. Decision of the Federal Court

[5] The Federal Court Judge found that the relief sought by the appellants had become moot since the election had already taken place and there was no longer a live controversy. The Federal Court also found that there was no evidence before the Court that anyone had been disqualified from running in the 2017 election as a result of the Regulations. Despite finding that the matter was moot the Federal Court Judge exercised his discretion to hear certain issues on the grounds that Band members had an interest in knowing whether the Regulations were validly enacted for the next election.

### IV. Analysis

[6] I would characterize the issue on appeal as follows: Is the matter moot?

[7] At the hearing, the parties advised the Court that on July 5, 2019, the Lac La Ronge Indian Band had enacted a new *Lac La Ronge Indian Band #353 Election Act*, Band 12, Treaty 6. The candidate eligibility requirements that previously appeared in the Regulations, which the appellants had challenged as outside the purview of the Band's Council's regulation-making power, are now included in the new Act.

[8] In my view, this matter is now clearly moot. The Federal Court also found that the matter was moot, but decided to opine on the validity of the Regulations and whether they were properly utilized to set out certain eligibility requirements that the appellants alleged were used to make them ineligible to run in the 2017 election. Counsel for the appellants conceded at the hearing before this Court that the provisions for eligibility were now properly set out in the new Act. As a result, the basis of the appellants' challenge to the Regulations no longer exists and has been resolved by the new July 5, 2019 Act. Indeed, counsel for the appellants advised the Court that the only remedy now being sought was costs. Thus, in my view, there is no longer a live controversy between the parties and the matter is now moot. There is therefore no reason for us to consider the validity of the 2017 Regulations and nothing herein shall be interpreted as endorsing or criticizing the findings or reasoning of the Federal Court.

[9] As a result, the appeal should be dismissed. Given the circumstances of this case, I would have the parties bear their own costs.

"D. G. Near"

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J.A.

"I agree  
Wyman W. Webb J.A."

"I agree  
Richard Boivin J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED JUNE 26, 2017,  
CITATION NO. 2017 FC 559, DOCKET NUMBER T-322-17**

**DOCKET:** A-244-17

**STYLE OF CAUSE:** HENRY MCKENZIE et al. v.  
THE LAC LA RONGE INDIAN  
BAND et al.

**PLACE OF HEARING:** SASKATOON, SASKATCHEWAN

**DATE OF HEARING:** SEPTEMBER 26, 2019

**REASONS FOR JUDGMENT BY:** NEAR J.A.

**CONCURRED IN BY:** WEBB J.A.  
BOIVIN J.A.

**DATED:** OCTOBER 16, 2019

**APPEARANCES:**

Loretta J Pete Lambert FOR THE APPELLANTS

Anil K. Pandila, Q.C. FOR THE RESPONDENTS

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