

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20231220**

**Docket: A-152-22**

**Citation: 2023 FCA 250**

**CORAM: STRATAS J.A.  
WEBB J.A.  
DAWSON D.J.C.A.**

**BETWEEN:**

**KEHEWIN CREE NATION**

**Appellant**

**and**

**VERNON WATCHMAKER**

**Respondent**

Heard at Edmonton, Alberta, on December 20, 2023.

Judgment delivered from the Bench at Edmonton, Alberta, on December 20, 2023.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**STRATAS J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Edmonton, Alberta, on December 20, 2023).**

**STRATAS J.A.**

[1] Kehewin Cree Nation appeals from a judgment of the Federal Court (*per* Brown J.) allowing the respondent's judicial review: 2022 FC 909.

[2] The respondent, unsuccessful in his candidacy for re-election as Chief, appealed the result by filing documents with the Deputy Electoral Officer. The Electoral Officer rejected the respondent's filing because it was a few minutes late. In the Electoral Officer's view, the seven-day deadline for appeals under section 15 of the First Nation's *Election Act* expired on the exact minute the seven days ran out, rather than, for example, at the end of the seventh calendar day.

[3] The Federal Court quashed the Electoral Officer's decision. It also noted a problem with the composition of the Election Appeals Committee under the First Nation's *Election Act*. Therefore, the Federal Court ordered that the Election Appeals Committee be reconstituted within 30 days of its judgment in accordance with the First Nation's *Elections Act*. It added that once the Committee was reconstituted, the respondent could re-file his appeal.

[4] The Federal Court considered the matter before it to be procedural in nature and so it applied the standard of review of correctness. Here, the Federal Court erred. The issues before the Federal Court were not procedural; they were substantive. They turned on the interpretation of the First Nation's *Election Act*. Thus, the Federal Court should have engaged in reasonableness review: *Sturgeon Lake Cree Nation v. Hamelin*, 2018 FCA 131, 424 D.L.R. (4th) 366 at paras. 43-44; *Peters First Nation v. Engstrom*, 2021 FCA 243 at para. 14.

[5] Despite that error, in our view the Federal Court reached the proper outcome. The Electoral Officer unreasonably interpreted the *Election Act* in two ways: (1) by adding the condition that he screen appeals for validity and (2) by usurping the Election Appeal Committee's adjudicative role in the appeals process. The *Elections Act* provides no overlap

between the Electoral Officer's role in the election process and the Election Appeal Committee's role in the appeals process; it carefully assigns separate, independent responsibilities to the two: *Election Act*, ss. 3, 6, 7, 10, 11, 12, 13, 14, and Appendix E (Electoral Officer's roles) and ss. 4, 5, and 15 (Election Appeal Committee's roles). On no reasonable reading of the *Election Act* does the Electoral Officer have the authority to withhold appeals from the Committee or to interpret the seven-day deadline. Indeed, during oral argument, counsel for the appellant candidly and fairly conceded that there was no authority.

[6] On the issue of the remedy granted by the Federal Court, the standard of review in this Court is the appellate standard of review: *Canada v. Long Plain First Nation*, 2015 FCA 177, 388 D.L.R. (4th) 209 at para. 88-91; *Canada (Attorney General) v. Jodhan*, 2012 FCA 161, [2014] 1 F.C.R. 185 at para. 75; *Makivik Corporation v. Canada (Attorney General)*, 2021 FCA 184 at para. 65. Here, the Federal Court neither erred in law nor committed palpable and overriding error.

[7] After the Federal Court rendered its judgment, the thirty-day deadline set by the Federal Court in paragraph 2 of its judgment for the reconstitution of the Election Appeal Committee expired without anything being done. This had the effect of denying the respondent the ability to have his appeal considered by the Committee. As well, there is nothing in the record before us to suggest that the respondent attempted to enforce the Federal Court's judgment.

[8] We condemn the parties' inaction. Unless a legislative provision provides otherwise and unless stayed by court order—and there was no stay here—judgments are to be obeyed. Failure

to obey judgments and orders of the Court is most serious: among other things, those who do not obey may find their future access to courts blocked (see *Dickie v. Dickie*, 2007 SCC 8, [2007]1 S.C.R. 346) and they may be fined or jailed for contempt.

[9] We will dismiss the appeal. The 30-day period for reconstituting the Election Appeal Committee shall run from today's date. Following reconstitution of the Committee, the appeal shall be considered.

[10] As the parties did not take formal steps to comply with, enforce or stay the 30-day period set by the Federal Court, and to underscore that court judgments must be respected and obeyed, we will exercise our discretion against awarding costs of this appeal to anyone.

“David Stratas”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-152-22

**STYLE OF CAUSE:** KEHEWIN CREE NATION v.  
VERNON WATCHMAKER

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** DECEMBER 20, 2023

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
WEBB J.A.  
DAWSON D.J.C.A.

**DELIVERED FROM THE BENCH BY:** STRATAS J.A.

**APPEARANCES:**

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