

IN THE MATTER OF THE MARCH 29, 2022 STURGEON LAKE CREE NATION GENERAL ELECTION

DECISION OF THE ELECTION APPEAL COMMITTEE

APPEALS OF PATRICIA CAMPIOU AND GERALD MOSES

Received

APR 14 2022



Sturgeon Lake Cree Nation

INTRODUCTION

The Sturgeon Lake Cree Nation (SLCN) held a general Election for Chief and Councillors on March 29, 2022. A Band member Elector Patricia Campiou appealed the results. So did one of the candidates, Gerald Moses.

The appeals were separately heard by this Election Appeal Committee on April 11, 2022. The Appeal Committee reserved its decision on each appeal, advising a written decision would follow.

Because there was some overlap between the grounds of appeal relied upon by the two appellants, this Decision of the Appeal Committee covers both appeals.

DECISION SUMMARY

As explained in this Decision the Appeal Committee:

- a. Rejects a number of the grounds relied upon by the appellants.
- b. Upholds two grounds of appeal, namely:
 - i. The ground put forward by Ms. Campiou that the Appeal Committee was not appointed at the time it should have been.
 - ii. The ground put forward by Mr. Moses that Mr. Makokis did not meet one of the qualifications for Electoral Officer.
- c. Finds the Election results should nevertheless stand, as the two upheld grounds of appeal did not materially or directly affect the results of the Election.

CUSTOMARY ELECTION REGULATIONS

As a First Nation, SLCN is able to hold elections under its own community or customary elections system.

The evidence before the Appeal Committee is that SLCN's governing Customary Election Regulations were approved by a majority of SLCN voting Electors at a duly constituted Special General Meeting in 2009.

The recitals to SLCN's Customary Election Regulations refer to:

- a. SLCN's inherent Aboriginal right and authority to govern relations among its members;

- b. The customs, traditions and practices of the SLCN in relation to the ability and right to be self governing, having been established with the consent and participation of its members;
- c. The customs and traditions of SLCN requiring democratic, fair and open leadership elections; and,
- d. SLCN desiring that its customs and traditions in relation to the Election of Chief and Councillors be incorporated and recorded in written customary election regulations and procedures.

The Customary Election Regulations go on to establish procedures for SLCN elections including regarding the appointment and qualifications of the Electoral Officer; Nominations; Election Notices; the conduct of the Election; the counting of votes; and Election Appeals.

ELECTION AND APPEALS BACKGROUND

On February 11, 2022 Chief and Council passed a resolution that:

- a. The Election be held in accordance with SLCN's Customary Election Regulations.
- b. A Nomination Meeting for candidates seeking election be held on March 15, 2022.
- c. The Election be held on March 29, 2022.
- d. Bernie Makokis be appointed Electoral Officer.

The Electoral Officer issued a Notice of Nomination Meeting on February 15, 2022. The Notice was published on the SLCN website and a SLCN administration Facebook page. It was also, on that same date, physically posted at a number public locations in the community.

There were four candidates for Chief and 23 candidates for six Councillor positions. The Electoral Officer declared the Election Results on March 29, 2022.

With the receipt of the two appeals:

- a. The newly elected Chief and Councillors appointed the Appeal Committee, consisting of the following individuals as two SLCN Elders; two Electors 30 years of age or older but under 55, and two Electors 18 years of age or older, but under 30: Margaret Kappo, Gary Moostoos, Gretchen Calliou, Tammy Chowace, Aidan Goodswimmer, and Lorraine Chowace. Under the Customary Election Regulations the Electoral Officer is also a voting member of the Appeal Committee.
- b. The Electoral Officer issued a Notice of Appeal Meeting for April 11, 2022, the date the appeals were heard.

Section of 12.8 Customary Election Regulations says that within three days following the Appeal Meeting the Committee is to make one of the following three decisions:

1. *Deny the appeal on the basis that the evidence presented did not fully and properly establish the necessary ground for an appeal;*

2. Uphold the ground for appeal but allow the results of the Election in question to stand as the infraction did not materially or directly affect the result of the Election; or
3. Uphold the appeal and call for;
 - i) a new Nomination Meeting, Election, By-Election or Run-off Election;
 - ii) a new Nomination Meeting, Election, By-Election or Run-off Election for only those offices directly affected; or
 - iii) A Run-off Election.

GROUNDS OF APPEAL – Patricia Campiou

Ms. Campiou provided a written notice on April 4, 2022 setting out three grounds of appeal. On April 10, 2022 she sent to the Electoral Officer additional appeal materials. At her appeal she was also allowed to provide and refer to five additional grounds of appeal, as well as additional new materials. She spoke with the Appeal Committee in support of her appeal and answered Appeal Committee questions.

In summary:

- a. She alleged and argued that the Election did not comply with a different version of the Customary Election Regulations she said the Band office had previously provided to her. She specifically referred, in this regard, to this different version as requiring candidate criminal record checks and as establishing protocols and eligibility rules to be followed to address potential conflicts-of-interest.
- b. She alleged and argued that there was an irregularity in the conduct of the Election because the Appeal Committee was not appointed at the time it should have been.
- c. She alleged and argued that one of the members of the Appeal Committee should be disqualified because the individual elected as Chief was the brother-in-law of an Appeal Committee member.
- d. She alleged and argued that Notice of the Nomination Meeting was deficiently posted.
- e. She alleged and argued that the Electoral Officer should have disqualified one or more candidates who she thought might owe money to the Band.
- f. She alleged and argued that the Electoral Officer should have disqualified one of the candidates for Chief, who she said had previously resigned as a Councillor. She based the argument on section 16.3 of the Customary Election Regulations which says that a person who has been removed from Office by Council under section 15 is ineligible.
- g. She alleged and argued that the Electoral Officer should have disqualified a candidate for Councillor because she thought the candidate did not meet residency requirements.

- h. She argued that some ballots that were not counted should have been.

GROUNDS OF APPEAL – Gerald Moses

Mr. Moses provided a written notice of appeal, on April 6, 2022. At his appeal he was also allowed to refer to new additional grounds of appeal and additional materials. He spoke with the Appeals Committee in support of his appeal and answered Appeal Committee questions.

In summary:

- a. He alleged and argued that the Election did not comply with a different version of the Customary Election Regulations he said the Band office had previously provided to him. He referred to this different version as requiring candidate criminal record checks; as establishing protocols and eligibility rules to be followed to address potential conflicts-of-interest; and as establishing campaign rules governing Polling Stations including the presence of cell phones.
- b. He alleged and argued that there were irregularities in the conduct of the Election, as:
 - i. The security used at the Polling Station included off-duty police officers.
 - ii. A scrutineer was prevented re-entry after leaving the Polling Station.
- c. He alleged and argued that Mr. Makokis did not meet one of the qualifications in the Customary Election Regulations to be Electoral Officer as he was a member of another First Nation, and that his other staff assisting him were also not qualified for the same reason (as they too were First Nation members).

DECISIONS OF THE APPEALS COMMITTEE

1. Customary Election Regulations

When examined by the Appeal Committee, the differing version of the Customary Election Regulations relied upon by Mr. Moses and Ms. Campiou was, on its face, incomplete and in the form of a draft.

While it would be most unfortunate for the appellants to have been provided, in error, with a differing draft version, the Election was conducted under the community approved version of the Customary Election Regulations as relied upon by the Electoral Officer. The Electoral Officer took the step on behalf of the Appeal Committee of having the Department of Crown-Indigenous Relations and Northern Affairs (Canada) confirm that the version provided to the Electoral Officer was the approved version of record of the SLCN's Customary Election Regulations.

As in-force, SLCN's Customary Election Regulations does not call for candidates to provide criminal record checks, does not contain the same conflict-of-interest protocols referred to by the appellants, and does not contain the same campaign rules governing Polling Stations relied upon by Mr. Moses. The Election was properly conducted in these regards in accordance with the applicable Customary Elections Regulation.

The Appeal Committee further considered and concluded that in all events, no sufficient evidence of any Election irregularity in this regard had been brought forward by the appellants, be it concerning any alleged candidate criminality; any conflict-of-interest of concerns; any lingering presence at the Polling Station of vehicles with campaign materials; or any actual cell phone use at and during the vote count.

Section 8.9 of the Customary Election Regulations does provide for the removal from the Polling Station of any person who, in any way, interferes with, or attempts to influence, the orderly conduct of the vote. However:

- a. Only a bare allegation was made of a vehicle displaying campaign materials being parked at the Polling Station for longer than needed to vote. Mr. Moses also had no knowledge of any such allegation being brought to the attention of the Electoral Officer at the time of the Election.
- b. No allegation of actual cell phone use during vote counts was made.
- c. No evidence was brought forward of any resulting interference with the Election in any way.

The grounds of appeal relating to provisions in the differing, draft Customary Election Regulations put forward by the appellants are denied.

2. Appeals Committee Appointment

Section 12.4 of the Customary Election Regulations says that the Election Appeal Committee shall be appointed by Chief and Council immediately following the Nomination Meeting. Instead, this Appeal Committee was appointed by the elected Chief and Council when the appeals of the Election results came in.

The Appeal Committee finds this to be a significant irregularity. The Appeal Committee serves a vital electoral role. The obligation to appoint the Appeal Committee prior to the Election is part of demonstrating to the community an open and fair electoral process. This ground of appeal, as brought forward by Mr. Moses, is upheld.

Even though this appeal ground is upheld, the decision of the Appeal Committee, relying on section 12.4 of the Customary Election Regulations, is that the Election results should nevertheless stand, for the following reasons:

- a. The importance of having an Election Appeal Committee available to the community to address appeals arising from the Election sufficiently outweighs the mistake of its appointment not being made when it first should have.
- b. No evidence was brought forward that the late appointment of the Appeal Committee interfered in any way with the Election itself, and the Appeal Committee finds this mistake did not materially or directly affect the Election results.
- c. The Appeal Committee does not believe its late appointment interferes with its ability to impartially, truly and faithfully meet its obligation to hear and decide Election appeals. No evidence suggesting otherwise, nor any argument contending otherwise, was brought forward by the appellants.

3. Appeal Committee Eligibility

The individual elected as Chief is the brother-in-law of one of the Appeal Committee members. The Customary Election Regulations says that Appeal Committee members shall not be part of the immediate family who are the subject of the appeal. The Customary Election Regulations defines immediate family as meaning *"mother, father, brother, sister, son, daughter, wife, husband or common-law spouse and the mother, father, brother, sister, son or daughter of the common-law spouse."*

Even accepting, for sake of argument, the individual elected as Chief to be characterized as "the subject of" these appeals, the Appeal Committee member does not meet the definition of being part of the Chief's immediate family. In all events, the Appeal Committee considered whether a conflict-of-interest might otherwise exist. It decided none existed. Included in the reasoning of the Appeal Committee was that the expected (and welcomed) frequency and commonality of relations within the community and the absence, here, of any blood relationship.

4. Notice of the Nomination Meeting

Section 6.1 of the Customary Election Regulations says the Electoral Office shall post Notices of the Nomination Meeting in public places on the Sturgeon Lake Reserve.

Ms. Campiou said she did not receive sufficient notice of the Nomination Meeting and missed the opportunity to stand as a candidate. During her appeal she provided a letter from an individual who said she had not seen any posters or information in the "usual" information locations, giving as examples the Valleyview post office, the IGA store and the Coop store. She also provided a letter from an Elector complaining about the extent and style of notice. She also said two others had similar complaints.

During the appeal, the Electoral Officer shared a written "NOTICES and Locations Listing Log" identifying, by date of posting and time of posting, various locations where a Notice of Nomination Meeting was posted on February 15, 2022. The document included a confirming witness signature for each posting. The posting locations listed included the Valleyview post office, the IGA store, and the Coop store.

The decision of the Appeal Committee is that the Customary Election Regulations was complied with in this regard and this ground of appeal is denied.

5. Removal from Office

Section 6.4 and 16.3 of the Customary Election Regulations make ineligible any candidate previously removed from office under section 15. Ms. Campiou did not bring forward any evidence of an Election candidate having been previously removed from office under section 15. Instead, she said one of the candidates had previously resigned from Council. Even assuming such a resignation, the decision of the Appeal Committee is that sections 6.4 and 16.3 only make ineligible any individual who has been removed from office under section 15. This ground of appeal is denied.

6. Residency

Section 6.4 a) ii of the Customary Election Regulations requires that candidates "continuously reside" on the Sturgeon Lake Reserve for at least 12 months prior to the date of nomination. Ms. Campiou took

issue with whether one of the candidates met this requirement. During the appeal, the Electoral Officer said the residency of each candidate was reviewed with SLCN administration and its records, and all the candidates who stood for Election were found by the Electoral Officer to meet the continuous residency requirement. The Electoral Officer did not read the requirement as calling for sole or exclusive residency on the reserve, nor does the Appeal Committee. This ground of appeal is denied.

7. Money owed to the Band

Section 6.4 a) iii of the Customary Election Regulation makes ineligible any candidate who owes money to the Band if a repayment plan has not been set up three months prior to the Election (with payments having since been made continuously). Ms. Campiou speculated, without bringing forward any evidence, that one of the candidates, and perhaps others, did not meet this requirement. During the appeal the Electoral Officer said that as part of confirming eligibility to stand for election this requirement had been reviewed with SLCN administration and its records for each candidate, and that all the Election candidates met the requirement. This ground of appeal is denied.

8. Alleged irregularities in the conduct of the Election.

Sections 8.2 to 8.9 of the Customary Election Regulations identify a series of requirements for the Electoral Officer to abide by in the conduct of an election. Section 8.10 addresses Ballots and Section 9 addresses the counting of votes.

The irregularities in the conduct of the Election put forward as between Mr. Moses and Ms. Campiou were:

- a. An allegation that security at the Polling Station included off-duty Police Officers.
- b. A scrutineer was prevented re-entry after leaving the Polling Station.
- c. A group of ballots was not counted.

For the following reasons, the decision of the Appeal Committee is that the evidence presented did not establish any of these appeal grounds.

Security

The Electoral Officer's acceptance of the use of a security company to provide security at the Polling Station was within the discretion of the Electoral Officer and was not contrary to anything in the Customary Election Regulations. While there was no evidence beyond the bare allegation that the security detail of the company included off-duty police officers, even assuming or accepting this to be the case the Appeal Committee does not find this to be an Election irregularity. Nor was any evidence brought forward of an interference in this regard with the Election in any way.

Scrutineer

Mr. Moses argued that an Election irregularity arose because a scrutineer who had left the Polling Station was denied re-entry. During the appeal, the Electoral Officer confirmed this. The circumstances were that upon the individual leaving the Polling Station there was objection in

the remaining group of scrutineers to his re-entry (as part of maintaining their vigilance). Including taking the concerns raised into account, the Electoral Officer exercised his discretion to deny the scrutineer re-entry. No evidence was brought forward of a resulting interference in the Election in any way. The Appeal Committee views what happened as properly within the discretion of the Electoral Officer.

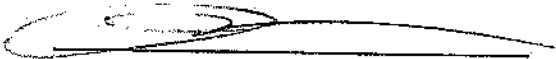
Uncounted Ballots

The Electoral Officer confirmed that, as reflected in his records, 10 ballots were put aside and not counted. This was because of a printing error on these 10 ballots which resulted in the printed names of each candidate for whom a vote could be cast not being clearly legible. The Appeal Committee accepts as reasonable the Electoral Officer's decision not to count the 10 ballots. The Appeal Committee further accepts and adopts the further reasoning of the Electoral Officer that, in all events, having regard to the vote count of the Election results, any counting of the 10 ballots would not have materially affected the results of the Election.

For a further Decision of this Appeal Committee concerning the remaining ground put forward by Mr. Moses relating to the Electoral Officer's qualifications, reference should be to Addendum "A" to this Decision.

DATED April 14, 2022

ON BEHALF OF THE ELECTION APPEAL COMMITTEE



Bernie Makokis

IN THE MATTER OF THE MARCH 29, 2022 STURGEON LAKE CREE NATION GENERAL ELECTION

**ADDENDUM "A" TO THE APRIL 14, 2022 DECISION OF THE ELECTION APPEAL COMMITTEE
APPEAL OF GERALD MOSES REGARDING THE QUALIFICATIONS OF THE ELECTORAL OFFICER**

This is Addendum "A" to the accompanying April 14, 2022 Decision of the Election Committee on the appeals of Patricia Campiou and Gerald Moses.

In speaking to the Appeals Committee during his appeal, Mr. Moses raised a ground of appeal that Mr. Makokis did not meet one of the Electoral Officer qualifications referred to in the Customary Elections Regulation.

The Electoral Officer thereupon advised he intended to recuse (remove) himself from any Decision on this ground, and he has done so. This Decision of the Appeal Committee on this ground of appeal has been reached without the participation of the Electoral Officer.

Section 5.2 of the Customary Elections Regulation says the Electoral Officer shall:

- a) Be over 30 years of age;
- b) Not be an employee of the Sturgeon Lake Cree Nation, First Nation owned Companies or Western Cree Tribal Council;
- c) Not be a member of the Sturgeon Lake Cree Nation or any other First Nation;
- d) Provide a clear Criminal Records Check and Child Welfare Check;
- e) Sign an Oath of Confidentiality; and
- f) Understand these Regulations and be able to administer them.

Bernie Makokis, the Electoral Officer appointed by Chief and Council, meets each of the qualifications, except for the fact that he is a member of another First Nation.

No external evidence was brought forward or available to the Appeals Committee about the intent and purpose of the requirement in section 5.2 c) of the Customary Election Regulations that the Electoral Officer not be a member of any other First Nation.

While there may be room to question whether, in the context of the section 5 and the Customary Election Regulations generally, section 5.2 c) should be interpreted otherwise, and while the purpose and efficacy of a "non-First Nations" requirement for the Electoral Officer may, in other settings, be a matter for community consideration and debate, the Appeals Committee accepts that under a plain and ordinary reading of the language used in section 5.2 c) Mr. Makokis did not meet the qualification as he is a member of another First Nation. This ground of appeal raised Mr. Moses is thus upheld.

At the same time, the Appeal Committee rejects a related ground of appeal Mr. Moses also raised that the Electoral Officer's other assisting staff were also not qualified because they too were First Nation members. The non-First Nations qualification of section 5.2 c) is confined to the Electoral Officer and nothing in the Customary Elections Regulations extends the requirement to others assisting with the electoral process. Nor did any Election irregularity otherwise result from those assisting the Electoral Officer being First Nation members.

Even though the appeal ground concerning the mistake with the Electoral Officer's own qualifications is upheld, the decision of the Appeal Committee, relying on section 12.4 of the Customary Election Regulations, is that the Election results should nevertheless stand. In arriving at this finding Appeal Committee has considered and relied upon the following:

- a. The Appeal Committee recognizes and accepts the fundamental role served by the Electoral Officer. This includes as part of ensuring both the perceived and actual sanctity of SLCN community elections.
- b. The Appeal Committee further sees the Electoral Officer, as well as Chief and Council in appointing Mr. Makokis, as having a responsibility to ensure compliance with the Customary Elections Regulation, including specifically in terms of Electoral Officer qualifications. This responsibility was not met.
- c. The mistake (irregularity) in the Electoral Officer's appointment is thus recognized and accepted as serious and significant.
- d. At the same time, the Appeal Committee relies upon the following, as brought out during the appeals:
 - o Mr. Makokis is highly qualified to serve in the role of Electoral Officer. He has served in this capacity for many years, for many First Nations.
 - o As acknowledged by Mr. Moses during the appeal, Mr. Makokis is recognized and respected in the community.
 - o Mr. Makokis served in the role of Electoral Officer for the two elections prior to this SLCN Election. He did so without objection or complaint to his serving in that role.
 - o As acknowledged by Mr. Moses during the appeal, it was not alleged, and no evidence was brought forward, that Mr. Makokis had any actual conflict-of-interest in serving as Electoral Officer.
 - o It was not alleged, and no evidence was brought forward, that the appointment of Mr. Makokis, or his status as a member of another First Nation, in any way interfered with the conduct of the Election itself, or its results.

- e. The Appeal Committee also takes note of the nature of the irregularity. All concerned should have paid attention to the requirement in the Customary Elections Regulations, and the confidence of the community in the electoral process may be wounded as a result. However, the irregularity of Mr. Makokis being a member of a First Nation has not been and cannot be cast as giving rise to corruption of the Election or the Election results. The Election results remain fair notwithstanding the mistake.
- f. The Appeal Committee also takes note of the serious consequences if the Election and the Election results were annulled because of the mistake. The expressed will of the voting community, wholly unimpeded by the mistake, would be displaced, and the significant expense and trouble of a new election incurred.

In all of the circumstances, the Appeal Committee exercises its discretion to allow the Election to stand notwithstanding the irregularity in Mr. Makokis' qualifications as Electoral Officer. It exercises this discretion with specific reliance on its conclusion that the mistake cannot reasonably be said to have materially or directly affected the result of Election.

Finally, the Appeal Committee respectfully takes this opportunity to highly recommend and express its hope, in the interests of the community, that the community soon revisit and consider this aspect of the Customary Election Regulations, as well other aspects generally, for the purposes and benefit of future SCLN elections.