

STURGEON LAKE CREE NATION APPEAL COMMITTEE

Appeal of the September 25, 2024, Removal Decision of Hugh Garbitt

Appeal heard October 21 and 22, 2024 at the Paradise Inn & Suites hotel in Valleyview and via Zoom

Decision dated October 31, 2024

Reasons dated November 8, 2024

Appeal Committee:

Elder Wilma Goodswimmer
Elder Gary Moostoos
Tammy Chowace
Lorraine Chowace
Cara Thomas
Tara Kappo (Chair)

Appellant

Councillor Hugh Garbitt

Represented by Lawyer Will Willier

Respondents

Sturgeon Lake Cree Nation Council

REASONS FOR DECISION

I. Overview

1. The Appellant Councillor Hugh Garbitt (“Hugh”) appealed the results of the September 25, 2024, decision by Council to remove him as a Councillor (the “Removal Decision”) pursuant to section 15.8 of the Customary Election Regulations of Sturgeon Lake Cree Nation (the “Regulations”).
2. Pursuant to the Regulations, the Sturgeon Lake Appeal Committee (the “Committee”) was tasked with determining the appeal in accordance with s. 15. 12 of the Regulations, and in particular the validity of the Removal Decision and whether it ought to be upheld or overturned.
3. A hearing was held on October 21 and 22, 2024 at the Paradise Inn & Suites hotel in Valleyview, Alberta and via Zoom, and the Committee heard submissions and evidence from the Appellant, the Respondents and their respective witnesses. The Committee members were selected in accordance with section 15.9 of the Regulations and came to the table having reviewed all the evidence provided by both parties, and with an open mind to offer both parties the opportunity to be heard.
4. The appeal and the hearing took place under challenging circumstances, including a very short appeal timeline, the need to find replacements for a number of Committee members who were unable or unwilling to participate (the Committee being originally composed of members of the Election Appeal Committee from the prior election), some uncertainty in the Regulations, adverse weather conditions on the day of the hearing, and high emotions around the Removal Decision and the appeal.
5. On October 28 and 30, 2024, the Committee met to deliberate and determine, in accordance with the Regulations and Sturgeon Lake Cree Nation custom whether to uphold or overturn the decision of SLCN Council to remove Councillor Hugh Garbitt.
6. During the deliberation meeting, a round table was conducted where each committee member shared their thoughts on whether the Removal Decision had been procedurally fair and reasonable. Each member had a chance to discuss the witness statements that had been provided, both orally and written.
7. In light of losses in the community, which had impacted all SLCN members, including members of the Appeal Committee and Nation business, on October 28, 2024, the Appeal Committee ordered that the timeline for the rendering of a decision on the removal appeal would be extended to November 8, 2024.
8. The Committee released its decision on October 31, 2024, with reasons to follow, finding that the grounds for the appeal were not established, and that the decision of SLCN Council to remove Hugh would be upheld, by majority vote of members of the Committee.

II. Facts

9. The basic and generally agreed upon facts underlying the appeal are as follows:

- a. On September 12, 2024, an altercation occurred between Hugh and Chief Sheldon Sunshine (“Sheldon”) concerning the wildfire victims, with Hugh telling Sheldon he would fight him “anytime, anywhere.” This incident happened in Council chambers after an official meeting with Council and CFS workers and was recorded;
- b. On or about September 15, 2024, a restraining order was filed by Sheldon against Hugh;
- c. On September 16, 2024, a meeting was held with Elders to provide an update on the situation. There was discussion of the situation and advice offered by the Elders but as this was an update meeting only, the advice was not taken as binding direction for Council;
- d. On or about September 17, 2024, pursuant to section 15.5 of the Regulations, Councillor Tracey McLean (“Tracey”) motioned for a Special Meeting in Council chambers to deliberate on Hugh’s conduct on September 12 and determine the appropriateness of his continued role as member of Council. Hugh was given the opportunity to attend that meeting by Zoom due to the restraining order against him. During that meeting, 2 councillors (Rosalyn Goodswimmer (“Rosalyn”), and Karl Moses) in addition to Sheldon, as the Chief, supported Tracey’s motion. Grant Goodswimmer (“Grant”) and Clyde Goodswimmer (“Clyde”) voted against the motion to have the Special Meeting; and
- e. On September 25, 2024, a Special Meeting was held. Hugh was given the opportunity to be heard and his wife Carol read his statement on his behalf. Elders were present at that meeting to witness the proceeding. During that meeting, 3 councillors voted for Hugh’s removal (Rosalyn, Karl and Tracey) and 2 voted against (Grant and Clyde). The Chief did not formally vote but clearly stated that he supported the removal.

III. Parties’ submissions

a. Appellant’s Notice of Appeal

10. On October 4, 2024, in correspondence filed by his legal counsel, Hugh appealed the Removal Decision on the basis that:
 - The Regulations provide that quorum is 4 people, and quorum should have been obtained to vote on this;
 - Affidavits were received for the motion of September 15, 2024, until September 19, 2024, and not provided until September 23, 2024;
 - Sheldon and Tracey were the complainants and should not have taken part in the vote;
 - The removal was based on allegations of Hugh “bumping” the Chief’s chair, which was never proven, and even if proven should not result in his removal by 3 councillors, when in fact his track record establishes that 349 people voted for him and he has a proven and positive track record for being a trustworthy and credible Councillor; and

- An issue was also raised regarding the involvement and conflict of interest of previous legal counsel, who are no longer involved in the matter.

11. Hugh also sought the following remedies in the notice of appeal:

- Immediate re-instatement to Council;
- An Order that the unlawful attempt to remove Hugh and to prohibit him from being able to run in the next Election be quashed;
- The immediate removal of Tracey, Shelon, Karl, and Rosalyn, for not following section 15.3 of the Regulations;
- A declaration that the alleged Restraining Order and process to unlawfully remove and portray Hugh in a false light to the community and court was done in bad faith, unfair, and false; these parties should be held accountable for enhanced costs and damages; and
- An order for an immediate stop to the by-election (this issue became moot as the By-election was postponed pending the outcome of the appeal).

b. Appellant's submissions at the hearing

12. At the outset of the hearing on October 21, 2024, Hugh through his legal counsel, raised the following preliminary objections:

- the Committee should have been constituted of the previous Election Appeal committee members;
- The committee should only be constituted of 2 voting elders, 2 voting adults, 2 voting youths amongst which a chair should be selected and not voting; and
- The removal process is not being done properly as it does not respect the 14-day deadline. Counsel for Hugh objected to the date chosen to hold the hearing. According to him, the last day to hold the hearing should have been October 18, 2024.

13. The Committee considered the objections raised and decided to proceed with the hearing of the appeal:

- a) Section 15.9 (a) sets out a process where former members of the appeal committee cannot take part in the removal committee due to being immediate family members of the appellant. This process was followed after some of the original Election Appeal Committee members declined to served on the Removal Committee: the replacement members were selected by the remaining members of the Appeal Committee, who were in this case Tammy Chowace, Lorraine Chowace and Gary Moostoos. The Committee was initially unable to secure a second Elder in time to prepare for the appeal and was obliged to include another adult member. Ultimately, the additional adult member decided to recuse herself to ensure that the appeal could proceed, and

the Committee was able to appoint an additional Elder as a voting member (Wilma Goodswimmer). The Committee notes that though an election appeal committee must include two Elders, it is not clear in the Regulations that the *removal committee* must also include two Elders. It was within the discretion of the Committee, given the short timelines and difficult circumstances, to select the remaining members of the Committee based on availability.

- b) Regarding the issue of the timing of the hearing, it is unclear as to whether it refers to business days or calendar days. In any event, the hearing was held at the first reasonable opportunity, and the challenges around the appointment of Committee members only further demonstrates the challenges caused by the short timelines in the Regulations.
14. On October 21, 2024, at around 4 PM, after the Committee had heard the objections and made an accommodation to the composition of the Committee in response, Hugh decided to leave and instructed his lawyer to proceed with his submissions.
 15. Hugh's legal counsel then came back in the hearing room and reiterated the following submissions:
 - While an incident did happen on September 12, 2024, it did not happen "during" a Council meeting;
 - Section 15.4 (b) of the Regulations was not followed appropriately;
 - Quorum was not obtained;
 - Hugh is a golfer, a good father, a good man, a loyal husband, a community leader who runs a successful company;
 - Pursuant to the Regulations, Hugh is now being kicked out for the rest of his life;
 - By-elections cannot be held before the appeal can be heard (this issue became moot as the By-election was postponed pending the outcome of the appeal); and
 - Hugh received the most votes during the previous Council election and therefore the Committee should respect the choice of community members.
 16. On October 22, 2024, on the second day of the hearing, Hugh decided to come back to provide his own testimony. The Committee agreed to Hugh's request as it felt strongly that it was important to hear from Hugh directly. In his statement, Hugh explained that the altercation with Sheldon came about because Sheldon had asked him how he would recover the money after paying for the rebuilding of the houses for community members who had been victims of the wildfires. He also stated that he was discussing this subject-matter with the intent of helping community members who had lost their homes.
 17. Hugh then went on to read the same statement that had previously been read by his wife at the September 25 Special Meeting. Hugh acknowledged the incident but clarified that the meeting was over when it happened and that he did not lay a hand on Sheldon.

18. During his testimony he also denied that there had been any aggressive behavior or demeaning speech on his part.
19. Hugh's appeal was supported by Grant, Clyde and former Councillor Kevin Hamelin ("Kevin") who all provided oral statements at the hearing:
 - Kevin testified that he had participated in the writing of the Regulations and stated that if only a dispute between the chief and council would allow someone to be in disrepute, it would set the bar low to remove someone from council which could be a dangerous precedent. He proposed that a "referendum" should be held to make a removal decision;
 - Clyde testified that this whole situation should have been brought to the Elders. He discussed the option of having a retreat as a remedy. He stated that he did not witness violence *per se*. He also stated that he had objected to the passing of the motion at the September 17, 2024, meeting and had also voted "no" for the removal decision on September 25; and
 - Grant testified that Hugh had not been "charged" with assault. He asked the committee to put themselves in Hugh's shoes where his accusers were determining the outcome of his removal. He stated that Hugh should have a fair trial, and that the Council was not given the chance to come together to make that decision. He also stated that Hugh was not at the September 17, 2024, meeting for the motion because of the Restraining Order, but had had the option of attending remotely.

c. Respondents' Motion Package

20. Sheldon, Rosalyn and Tracey as members of Council (the "Respondents") provided responses to the appeal.
21. Prior to the hearing, all three of them provided written statements. Tracey's affidavit was supported by letters from Brittiany Sunshine ("Brittiany"), Director of Child and Family Services Society, Trina Young ("Trina"), the Technical Services Director and Leah Savoie ("Leah"), the Executive Assistant for Sturgeon Lake Resources Ltd., the Construction company owned by SLCN. The letters provided by these three members of SLCN recount incidents/events where Hugh demonstrated aggressive behaviour, and the impact of that behaviour on the proper functioning of Council.
22. In her affidavit, Tracey recounts a previous incident in which she experienced Hugh's violent behaviour. The first one occurred shortly after their term began. She described this incident as Hugh "[becoming] agitated, [raising] his voice, [moving] aggressively toward her, and [invading] her personal space, shouting in[her] face" after raising an issue regarding the timeline of her daughter's driveway repairs.
23. Tracey then discusses in her affidavit the event of August 24, 2023, where Hugh "became angry over [her] position on a Council item and verbally abused [her] calling [her] a "fucking cunt." After stepping away, Hugh "[moved] his body and arms in a way that suggested he was about to strike [her]. Sheldon had to intervene standing up and telling [Hugh], "that's enough", which de-escalated the situation". She then further alleges in her affidavit that Hugh's

behaviour has been “aggressive, intimidating, threatening and violent” whenever he misconstrues information or disagrees with an issue.

24. In their respective affidavits, the Respondents also discuss the incident of September 12, 2024. They allege that a meeting occurred with Council and CFS workers, during which Hugh became aggressive and rolled his chair toward Sheldon. The CFS workers were in the room when this happened, and Sheldon wrapped up the meeting and asked them to leave. Council members then stayed in the room, and this is when the altercation between Hugh and Sheldon occurred.
25. Sheldon and Hugh were having a conversation regarding the financing of the wildfire recovery process when the conversation escalated to the point of becoming violent.
26. The statements provided by the three other SLCN members (Brittiany, Trina and Leah) also support the Respondents’ allegations of Hugh’s previous aggressive behavior and the impact it has had on the overall functioning of Council. Brittiany was also at the September 12, 2024, meeting and corroborated the aggressive behaviour, before she was asked to step out by Sheldon.

d. Respondents’ written submissions

27. The Respondents also provided written submissions in which they highlighted the following arguments in response to Hugh’s Notice of Appeal:
 - Council is not only the Councilors without Chief, pursuant to section 2 (g) of the Election Regulations;
 - Quorum is not limited to Councilors. The Chief is and has always been part of SLCN quorum. Section 2 (t) of the Regulations defines “Quorum of Council” as meaning four (4) members of Council;
 - The Decision was made with jurisdiction because a quorum of Council decided on the Removal and did so by way of Band Council Resolution (“BCR”);
 - The Removal was conducted in accordance with Section 15 of the Regulations. The requirement is that Quorum of Council (which is 4 individuals in the offices of Chief and Council) be obtained. According to the Code, the only exclusion from that vote is the person who is the subject of the removal (15d). In this case a quorum (3 councillors and the Chief voted for, and 2 against) of council as defined by the Regulations to remove Mr. Garbitt and communicated their decision by way of a BCR pursuant to sections 15.6 and 15.7;
 - Mr. Garbitt was provided procedural fairness throughout the process. He was provided with a meaningful opportunity to respond: advance notice of the decision to remove and the meetings, opportunity to make submissions in written or orally prior to the decision and the meetings, an opportunity to submit evidence through witnesses or in writing, without the strict rules of evidence, an impartial and unbiased decision-maker as circumscribed by the Regulations;

- The mere fact that a Chief or Councilor is a complainant, and a decision-maker does not give rise to a reasonable apprehension of bias. This is contemplated by section 15.6 which makes Council the decision-makers¹ unless they are the subject of the removal motion;
- The most credible, consistent and probative evidence supports the finding that the assault did happen, and that Mr. Garbitt called Councillor McLean a “fucking cunt”. The audio recording from September 12, 2024, confirms the testimony and evidence of Councillors Tracey McLean, Rosalyn Goodswimmer and Chief Sheldon Sunshine;
- Section 15.4 (b) makes it a removeable offence to commit disorderly or irresponsible conduct at Council meetings, among other things;
- Assault on the Chief and a violent conduct towards a woman leader is unacceptable;
- Council consulted with some Elders and members and staff, all of whom see this alleged behaviour as unacceptable; and
- The behaviour was contrary to Cree (*nêhiyaw*) law. Of note, the profanity directed at a woman leader is a violation of *pâstâmowin*. Moreover, Tracey and Rosalyn have obligations as women and Councillors to act when harm is done, including against the Chief. The Decision was consistent with and respectful of Cree law, while Mr. Garbitt’s conduct was contrary to our Cree law.

e. Respondents’ testimony at the hearing

28. On the first day of the hearing, Rosalyn reiterated how she witnessed the event of September 12, 2024. She emphasized that Tracey and herself were scared because they had previously witnessed this type of behavior from Hugh. Therefore, they both did not know what to do in the moment other than to record and therefore Tracey recorded the altercation.
29. Rosalyn became emotional during the hearing as she stated that this type of violent behaviour was triggering. She stated that Hugh’s actions put the nation into disrepute and that she assumed that he would eventually apologize but he did not. She reiterated, like the other Respondents that this decision was not made lightly as this was the first time a removal was occurring in the community.
30. On the second day of the hearing, Sheldon reiterated his version of the September 12, 2024, event. He apologized for not acting sooner considering the previous accounts of similar incidents.
31. He stated that at the end of the day, he and the Councillors did not do anything wrong, but take action against this type of behaviour which involved bully type tactic. Sheldon also stated that Hugh never denied the allegations, nor did he apologize. Sheldon also stated that when making the decision of removing Hugh, he and the other councillors took all of the other incidents into consideration. No decision was made on the 17 of September, as this was the day on which a motion was passed to have the Special Meeting.

¹ *Saulteaux v. Carry the Kettle First Nation*, 2022 FC 1435 at para 78; *Bellegarde v. Carry the Kettle First Nation*, 2024 FC 699 at para 150.

32. He acknowledged that the decision made on September 25, 2024, was a very difficult decision and that they knew Hugh would appeal it. They took this very seriously as they knew how it would affect Hugh.
33. After Sheldon's testimony, Tracey testified. She reiterated the fact that she was really hoping that Hugh would just come to her and apologize. She stated that his behaviour was against the seven sacred teachings and that her Elders had advised her that he should be removed. She also stated that she thought long about bringing that motion for removal, "because as a community we are supposed to be working as a collective". She also reiterated just like in her affidavit, that she had been in a state of constant fear since the August 2023 event and that she doesn't feel safe around him.
34. In response to a Committee's member's question about offering Hugh the opportunity to apologize, she stated that she was scared to bring it up herself.
35. On the second day of the hearing, after hearing Hugh's testimony, Rosalyn spoke again and clarified to the Committee that the councillors had a group chat in which Hugh could have apologized but that he did not, and that victims should not be expected to ask their aggressor for an apology.

IV. Issues

36. The following issue is raised by the appeal for the Committee to determine:

Should the decision to remove Hugh from Council under the Regulations be upheld or should it be overturned?

37. To make this finding, the Appeal Committee considered whether
 - a. the decision to remove Hugh was procedurally fair; and whether
 - b. the decision to remove Hugh was reasonable.

V. Analysis and Discussion

a. The Standard of review / Role of the Committee

38. As set out in s. 15.9 of the Regulations, "the appeal shall be heard by the [Appeal Committee]" and in s. 15.12 "the Appeal Committee shall render its decision on the appeal, by either upholding or overturning the removal."
39. As the matter involves a decision being challenged (and not being heard for the first time), the role of the Appeal Committee is therefore to look at whether the Removal Decision by Council was reasonable and procedurally fair, and not to re-decide the matter as if it were being heard for the first time.
40. If the Committee comes to the conclusion that the Removal Decision was unreasonable and/or procedurally unfair, or otherwise in significant error, then it must overturn the decision. If the Committee comes to the conclusion that the Removal Decision was reasonable and procedurally fair, then it must uphold the decision.

b. Should the decision to remove Hugh from Council under SLCN's Election Regulations be upheld or should it be overturned?

i) The Decision was procedurally fair

41. The majority of the Committee first found that, despite some issues that had been raised, overall, a fair process was followed and the requirements of the Regulations were observed in the decision of Council to remove Hugh Garbitt.
42. A motion for removal was presented by a member of Council at a duly convened special meeting of Council pursuant to section 15.5 of the Regulations, and a Special Meeting was then held pursuant to section 15.6 (a) of the Regulations in which the motion was presented.
43. At this Special Meeting, Hugh was given a fair opportunity to be heard. It was noted that Hugh did have a chance to make his case via a statement read by his wife, Carol Garbitt. There was an opportunity to persuade the Council to not support the motion for removal.
44. Pursuant to section 15.6 (b) of the Regulations, the Council considered all of the relevant evidence presented at the Special Meeting of Council as to whether the alleged incidents did occur and whether the stated grounds for removal fell within the provisions of sections 15.1, 15.2 or 15.4 of the Regulations.
45. Hugh was removed pursuant to section 15.6 (c) as a quorum of Council (Roselyn, Karl, Tracey and the Chief) determined that the incident did occur and fell within section 15.4 (b). Quorum was met, and the Chief and Councillors were entitled to participate in the determination of the motion for removal. The only exception set out in the Regulations is for Hugh's immediate family, and no immediate member of Hugh's family voted at the Special meeting pursuant to section 15.6 (d).
46. The removal decision was then made by BCR in which the grounds for removal and the effective date of the removal was stated and delivered to Hugh within the following 24 hours pursuant to section 15.7 (a).

ii) The Decision was reasonable

47. The majority of the Committee also found that the decision to remove Hugh was reasonable.
48. Section 15.4 (b) of the Regulations states that:

In addition to the grounds set forth in 15.1 and 15.2, the Chief or any Councillor shall be removed from office on any of the following grounds:

[...]

b) While in Office, the Chief or Councillor engage in drunk, disorderly or irresponsible conduct at Council meetings, community meetings or any other public place which

interferes with the conduct of business or brings the reputation of the First Nation and /or the council into disrepute

49. The majority of the Committee found that the audio recording of the September 12, 2024, was compelling evidence that corroborated the Respondents' testimony that Hugh had acted in a "disorderly" manner and found the Respondents' conclusion that this behaviour had brought the Council into disrepute to be reasonable.
50. In making its decision, the Committee considered whether or not these actions happened during an official meeting as argued by Counsel for Hugh. However, the Committee found that the setting and the fact that there were enough other councillors present meant that it could be understood as being in public and was enough to fit into the definition of section 15.4 (b) of the Regulations. In other words, any action taking place in council chambers need to be considered as taking place in a place of business, and there should always be a reasonable expectation of good behaviour even outside of official meetings.
51. Furthermore, the Committee considered the fact that CFS workers that were present at that meeting had been asked to leave once the initial confrontation and aggressive agitation had started. The Committee also considered the fact that the incident created further disruptions to how Council worked together after the incident and everything that followed.
52. Despite the fact that certain Committee members found that the incidents of concern should have been dealt with prior to the September 12, 2024, altercation, the majority of the Committee found that it was reasonable for the Council to have found that the incident of September 12, 2024, in light of past incidents constituted "disorderly" behaviour. Aggressive behaviour and Councillors trying to start physical fights should not be condoned.

VI. Decision

53. Following careful deliberations and a vote by secret ballot, the Committee finds that the grounds for the appeal were not established. The decision of SLCN Council to remove Councillor Hugh Garbitt is upheld.

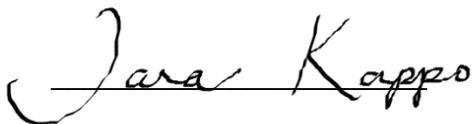
VII. Reflections regarding the decision and appeal process

54. The Committee members wish to state how difficult the whole appeal process has been, as it was the first time a Councillor has been removed and this decision appealed under the Regulations. A Councillor is first and foremost a member of the Nation, and a decision on a Councillor's removal would create a precedent for the Nation.
55. Each member of the Committee felt the division in the community and could feel this weight while coming into the appeal.
56. The Committee wants the community to know that each member came to the table, committed to see this through, with an open mind to ensure that a fair process was being held for Hugh.

57. The Committee wants the community to understand that this decision was not consensus based as each member understood the implications that such a decision would have for Hugh.
58. It is also worth noting that in making this decision, the Committee considered how it would affect and teach youth about what is acceptable behaviour. The Committee noted that according to the *Nehiyaw* teachings, we all need to be held accountable for our actions and to be mindful of what we portray to our youth who will become future leaders. Violence is an unacceptable response, and no one should have to fear going to work.
59. The Committee wishes to remind everyone that this decision is not about Hugh as a person, but rather about his conduct and that what happened cannot be ignored. Nevertheless, the Committee finds that there is room to grow, which is why a unanimous consensus was reached amongst the members of the Committee that the consequences of a lifetime disqualification for candidacy is not a fair consequence as it does not reflect the Cree traditional values or teachings as stated at section 16.3 of the Regulations. However, the committee does not have the authority to substantively change the Regulations and could only vote to uphold or overturn Council's decision.
60. The Committee therefore expresses its concern about the state of the Regulations and strongly urges that the Regulations be reviewed and amendments submitted to the membership promptly/in high priority in order to avoid future disagreements on interpretation and appeals, and for the benefit of the Nation and its membership as a whole.
61. A separate list of recommendations that came about following this difficult process will be provided by the Committee to Council.

DATED November 8, 2024

On behalf of the SLCN Removal Appeal Committee,

A handwritten signature in cursive script that reads "Tara Kappo". The signature is written in black ink and is positioned above the printed name.

Tara Kappo, Chair