

Federal Court



Cour fédérale

Date: **20190418**

Dockets: T-942-18
T-997-17

Citation: 2019 FC 124

Ottawa, Ontario, April 18, 2019

PRESENT: The Honourable Mr. Justice Favel

Docket: T-942-18

BETWEEN:

**ROSEAU RIVER ANISHINABE FIRST
NATION CUSTOM COUNCIL**

Applicant

and

**CHIEF AND COUNCIL OF ROSEAU RIVER
ANISHINABE FIRST NATION, CHIEF CRAIG
ALEXANDER, COUNCILLOR ZONGIDAYA
NELSON, COUNCILLOR KEITH HENRY,
COUNCILLOR LILLIAN PATRICK, AND
COUNCILLOR MAX SEENIE**

Respondents

Docket: T-997-17

AND BETWEEN:

**CRAIG ALEXANDER, ZONGIDAYA
NELSON, KEITH HENRY, IN THEIR
CAPACITY AND AS CURRENT MEMBERS
OF THE ELECTED CHIEF AND COUNCIL
OF THE ROSEAU RIVER ANISHINABE
FIRST NATION**

Applicants

and

**ROSEAU RIVER ANISHINABE FIRST
NATION CUSTOM COUNCIL AND RANDY
THOMAS AND LEO HAYDEN IN THEIR
PURPORTED CAPACITY OF
CHAIRPERSON AND CO-CHAIRPERSON OF
THE SAID ROSEAU RIVER ANISHINABE
FIRST NATION CUSTOM COUNCIL**

Respondents

AMENDED JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review, pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], of the following decisions emanating from two different branches of the government of Roseau River Anishinabe First Nation [RRAFN]. On April 18, 2017, Chief and Council passed a band council resolution to revoke the authority of Custom Council (“2017 BCR”). On May 16, 2017, Custom Council passed a resolution to remove the elected Chief and Councillors from office and to declare these people as ineligible to be nominated or to run as candidates for the positions of Chief or Councillor of RRAFN

thereafter (“2017 Resolution”). The following year on April 3, 2018, Chief and Council passed a second band council resolution confirming the 2017 BCR (“2018 BCR”).

[2] These two opposing applications for judicial review have been consolidated. For the reasons that follow, both applications for judicial review are granted.

II. Background

[3] There are longstanding tensions between Custom Council and Chief and Council. Over the years, the Federal Court has been called upon to review the RRAFN election process on numerous occasions (*Roseau River Anishinabe First Nation v Atkinson*, 2001 FCT 787; *Roseau River Anishinabe First Nation v Atkinson*, 2003 FCT 168; *Roseau River Anishinabe First Nation v Roseau River Anishinabe First Nation*, 2009 FC 655; *Roseau River Anishinabe First Nation v Nelson*, 2013 FC 180; *Henry v Roseau River Anishinabe First Nation*, 2014 FC 1215; *Henry v Roseau River Anishinabe First Nation Government*, 2017 FC 1038). In 2017 alone, there were proceedings that resulted in three Orders from this Court and in 2018 there was a contempt of court proceeding.

[4] Custom Council’s difficulty obtaining legal representation has been a persistent issue.

[5] Traditional practices of leadership selection were replaced by the *Indian Act* (RSC 1985, c I-5, s 74) [*Indian Act*] in 1952, but re-emerged in the early 1990s, following a community referendum on the matter. The *RRAFN Election Act* was ratified by the electorate on January 30,

1991 and was confirmed by a letter from Indian and Northern Affairs Canada (as it was then known) dated April 12, 1991. The custom election process is detailed in the *RRAFN Election Act* and there have been efforts to finalize a community Constitution. The validity of the Constitution is contentious and, due to a fire, the only version available is a draft version dated 1991 [*Draft RRAFN Constitution*]. To address these concerns, Custom Council claims that an updated version of the Constitution was approved by the community in 2016 [*Amended RRAFN Constitution*]. Only one change to the Constitution is worthy of note to the dispute between the parties. Under the *Amended RRAFN Constitution*, the impeachment of elected officials no longer requires consensus; a simple majority vote of the Custom Council suffices. According to members of Custom Council, this was supported by a majority of voters who participated in a referendum held on November 17, 2016. The Chief and Council dispute that neither the *Amended RRAFN Constitution* nor the *Draft RRAFN Constitution* are validly enacted. For this reason, the validity of the *Amended RRAFN Constitution* is also uncertain.

III. Issues

[6] The issues are as follows:

- A. *Are the decisions under review ultra vires?*
- B. *Do the decisions under review breach procedural fairness?*
- C. *Can and should the Court issue an order to prevent that steps be taken towards the First Nations Election Act?*
- D. *Can and should the Court strike portions of the affidavits of two members of Custom Council?*

E. *Should costs be awarded?*

IV. Standard of Review

[7] This Court notes that the issues of interpreting the *RRAFN Election Act* have been previously found to be governed by the reasonableness standard (*Henry v Roseau River Anishinabe First Nation*, [2014] FCJ No 1276 at para 29). In addition, “the standard of review applicable to the decision of the Band Council interpreting the Elections Regulations is reasonableness” (*Johnson v Tait*, 2015 FCA 247 at para 28). Therefore, this Court will apply the reasonableness standard to the decisions of the Custom Council and the Chief and Council.

[8] Correctness is the appropriate standard of review to examine questions of procedural fairness (*Canadian Union of Public Employees v Ontario (Minister of Labour)*, 2003 SCC 29; *Beardy v Beardy*, 2016 FC 383 at para 45; *Henry v. Roseau River Anishinabe First Nation*, [2014] FCJ No 1276 at para 29).

V. Relevant Provisions

[9] The relevant provisions of the *Federal Courts Act* are:

**Extraordinary remedies,
federal tribunals**

18.1 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ

**Recours extraordinaires :
offices fédéraux**

18.1 (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Mandamus, injunction, specific performance or appointment of receiver

44 In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a mandamus, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

Mandamus, injonction, exécution intégrale ou nomination d'un séquestre

44 Indépendamment de toute autre forme de réparation qu'elle peut accorder, la Cour d'appel fédérale ou la Cour fédérale peut, dans tous les cas où il lui paraît juste ou opportun de le faire, décerner un mandamus, une injonction ou une ordonnance d'exécution intégrale, ou nommer un séquestre, soit sans condition, soit selon les modalités qu'elle juge équitables.

[10] The relevant provisions of the *RRAFN Election Act* are appended to this decision as Appendix A.

[11] The *Mandate to the Custom Council From the Chief and Council* [Mandate] dated November 5, 1990 is appended to this decision at Appendix B.

VI. Analysis

[12] As a preliminary matter, this Court must determine whether the 2017 BCR should be included in the application along with the 2018 BCR. Custom Council did not apply to judicially review the 2017 BCR within the 30-day limitation period because Chief and Council denied them a budget to retain legal counsel. They did, however, pass a motion in April 2017 which establishes their position that the BCR was illegal, invalid, null and void.

[13] Custom Council submits that the 30-day limitation period only applies to decisions or orders, not to cases “where there is a continuing course of conduct that is illegal and will continue unless the Court intervenes” (*Canadian Broadcasting Corporation (Radio-Canada) v Canada (Attorney General)*, 2016 FC 933 at para 20). The 2017 BCR and the 2018 BCR, they argue, are part of a single continuing course of action and should therefore be included in the application.

[14] Chief and Council argue that the 2017 BCR should not be included in the application. They plead that the 2018 BCR is not a reconsideration of the 2017 BCR decision, but reiterates that it still stands. Even if the 2018 BCR were found to be a reconsideration of the 2017 BCR, this does not extend the delay in which the original decision may be challenged (*Teletech Canada, Inc v Canada (National Revenue)*, 2013 FC 572 at para 50). Furthermore, no motion to

extend the 30-day limitation was made, as is required by Rule 359 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*].

[15] On the record this Court finds that Custom Council continuously expressed their concerns about the decisions of Chief and Council which related to the revocation of the Custom Council's authority.

[16] Under these circumstances both the 2017 BCR and 2018 BCR amount to a single continuing course of conduct (*Crowchild v Tsuu T'ina Nation*, 2017 FC 861). Both BCRs are related to the same parties and identical relief is sought in relation to both BCRs. As a result, this Court will treat the 2017 BCR and the 2018 BCR together.

A. *Are the decisions under review ultra vires?*

[17] For the reasons that follow, this Court finds that both of the decisions of the Chief and Council and the Custom Council are not in accordance with the provisions of the *RRAFN Election Act* and are therefore invalid.

[18] Custom Council argues that the laws governing its elections and governance are indigenous laws of RRAFN as stated in *Henry v Roseau River Anishinabe First Nation Government*, 2017 FC 1038 at para 18. Support for the proposition that certain laws of First Nations are classified as indigenous law is also found in the judgment of Justice Sébastien Grammond in *Pastion v Dene Tha' First Nation*, 2018 FC 648. This Court would only add that

indigenous laws may encompass legislation including, but not limited to, election laws and constitutions. The significance and importance of indigenous laws lies in the broad community support for the laws, which are typically drafted with the guidance of respected knowledge keepers, as well as support and adherence to the bodies and the processes established by such laws. Indigenous laws may also encompass indigenous peoples' relationships with one another as well as with the world around them.

(1) The 2017 BCR and the 2018 BCR

[19] Custom Council submits that, based on the *RRAFN Election Act*, the *Amended RRAFN Constitution* and the *Indian Act*, Chief and Council cannot revoke the authority of Custom Council. Chief and Council plead that the Mandate enables them to do so.

(a) *RRAFN Election Act*

[20] The parties agree with one another that the *RRAFN Election Act* is valid law. The *RRAFN Election Act* defines the roles and responsibilities of Custom Council and the Chief and Council. As argued by Custom Council, it does not contemplate whether Chief and Council may revoke the authority of Custom Council. In fact, there is no provision to revoke the authority or to replace Custom Council.

[21] The *RRAFN Election Act* accurately reflects the wishes of a majority of the electors of the band because it was passed by referendum following consultations in 1991. The 2017 BCR and

the 2018 BCR contradict the governance rules laid out in the *RRAFN Election Act*. As such, they purport to exercise a power in violation of the wishes of the majority of electors. This finding is based on a plain reading of the *RRAFN Election Act*.

[22] If there is a desire expressed by the people of RRAFN, acting through the Custom Council, to amend the *RRAFN Election Act* to more clearly spell out the rights, responsibilities and powers of the parties along with clear processes for revoking the authority of the Custom Council or any other body, any such amendments would have to be approved by the people of RRAFN in accordance with the amendment provisions of the *RRAFN Election Act*. Aside from Custom Council's ability to amend the *RRAFN Election Act*, an important change to the governance structure of RRAFN, such as the revocation of the authority of Custom Council, requires a process that the people of RRAFN clearly endorse.

(b) *Constitution*

[23] Since neither the *Draft RRAFN Constitution* nor the *Amended RRAFN Constitution* are relevant to determine the jurisdiction of Chief and Council to pass the 2017 BCR and 2018 BCR, the validity of either the *Draft RRAFN Constitution* or the *Amended RRAFN Constitution* need not be reviewed further.

(c) *Indian Act*

[24] Custom Council submits that the 2017 BCR and the 2018 BCR are contrary to paragraph 2(3)(a) of the *Indian Act*. This provision requires the consent of a majority of the electors of the band to exercise a power conferred upon a band.

[25] Chief and Council argues that the interpretation section of the *Indian Act* only applies to powers bestowed through the *Indian Act*. Therefore, Chief and Council posit that subsection 2(3) of the *Indian Act* does not apply to this case.

[26] This Court agrees with Custom Council's position. The rules of interpretation set out in the *Indian Act* apply to RRAFN for the purposes of plugging legal gaps in regards to the powers conferred upon Chief and Council or Custom Council. However, as stated above, on a plain reading of the *RRAFN Election Act*, there is no authority for the revocation of authority of the Custom Council by the Chief and Council.

(d) *Mandate to Custom Council from Chief and Council*

[27] Chief and Council argue that the 2017 BCR and the 2018 BCR fall within Chief and Council's jurisdiction. They rely on a document passed by former Chief and Council on November 5, 1990 called the Mandate. Chief and Council argue that the Mandate authorizes them to revoke the authority of Custom Council in two ways. First, they submit that it is proof that the creation of Custom Council is subject to the will of Chief and Council. Second, Chief and Council plead that they can revoke the authority of Custom Council by virtue of their right to annually review the authority of Custom Council, as set out in the Mandate.

[28] Custom Council submits that they do not draw their authority from the Mandate, given that its creation predates this document.

[29] This Court is persuaded by the argument of Custom Council. The Mandate does not enable Chief and Council to revoke the authority of Custom Council, as it is not the source of its creation. The Mandate refers to “the family representatives known as the ‘Custom Council’”, without offering any additional explanation as to their structure, function or operation. This formulation demonstrates that Custom Council pre-existed the Mandate. There is insufficient evidence to support Chief and Council’s position.

[30] As for Chief and Council’s argument that they have the right to annually review the existence of Custom Council by virtue of the Mandate, this Court is not persuaded. The Mandate only authorizes Chief and Council to review “the responsibility to define research, plan, promote, and develop a traditional/contemporary government structure” on an annual basis. The *RRAFN Election Act*, which was adopted by referendum in 1991, confirms the existence and continuation of the Custom Council. There are no annual review provisions contained in the *RRAFN Election Act*.

[31] Chief and Council plead that the 2017 BCR was necessary in light of the 2017 general election process, during which some members of Custom Council were found to be in contempt of Court for defying two consent orders related to the date of the election and the nomination of an electoral officer. The illegality of these actions, which were dealt with previously by the

Federal Court, does not confer the right of Chief and Council to dismantle a branch of the RRAFN government.

(2) The 2017 Resolution

[32] Custom Council provided this Court with both versions of the Constitution and asked this Court to rule on their validity. The impeachment process in the *Draft RRAFN Constitution* differs from the process in the *Amended RRAFN Constitution* on one fundamental point: Whereas the *Draft RRAFN Constitution* requires consensus among Custom Council to impeach an official, the *Amended RRAFN Constitution* calls for a simple majority instead. This is a significant difference and could have a significant impact on the governance of RRAFN as is evident from the argument of the parties in these proceedings. However, this Court is not prepared to rule on the validity or invalidity of either constitution document based on the evidence presented by the parties in this proceeding. I strongly urge the parties to engage or re-engage the people of RRAFN to determine the way forward seeing as both parties purport to be guided by the people of RRAFN.

[33] Chief and Council plead that the removal of Chief and Council from office is *ultra vires* the authority of Custom Council. They argue that the issue of Custom Council's jurisdiction to remove elected officials was already settled by Justice Sandra Simpson in a case with very similar facts to those currently before the Federal Court (*Henry v Roseau River Anishinabe First Nation*, 2014 FC 1215).

[34] Chief and Council submit that, even if the Constitution was approved, the removal of Chief and Council does not rest on any of the reasons for which an official can be impeached.

[35] Custom Council disagrees. It claims that the current circumstances for the removal of Chief and Council are appropriate for the removal of Chief and Council, pursuant to both the *RRAFN Election Act* and the *Amended RRAFN Constitution*. The 2017 Resolution explains that Chief and Council “totally disregarded and ignored the authority of the Custom Council” by passing the 2017 BCR without giving them any prior notice.

[36] Custom Council draws attention to remarks made by Justice Michael Phelan and Justice James Russell in previous cases involving RRAFN. Justice Phelan found that it “was more than reasonable to remove from office persons who ignored Custom Council’s authority and undermined Custom Council’s ability to function” (*Roseau River Anishinabe First Nation v Roseau River Anishinabe First Nation*, 2009 FC 655 at para 68). Custom Council argues that their decision to remove Chief and Council was also “more than reasonable” because Chief and Council refused to meet with Custom Council and they were attempting to undermine the authority of Custom Council. Justice Russell also considered Custom Council to be duly authorized to remove the authority of Chief and Council, “The Custom governance process has been legitimately approved by membership and established the Custom Council as the prime authoritative body within the RRAFN’s governance structure with the full power to remove the Chief and Council of the Band” (*Roseau River Anishinabe First Nation v Nelson*, 2013 FC 180 at para 54).

[37] The *RRAFN Election Act* does provide that Chief and Council may be removed from office if they fail to uphold the Standards of Conduct, which include a duty to “[c]ommunicate and consult with, to hear and act on concerns of the Custom Council, in matters which affect said tribal members” (*RRAFN Election Act*, ss 12(c), 14(a)). Open dialogue with Custom Council is one of the main ways this is to be accomplished and is essential to the elimination of conflict. When sworn into office, Chief and Council must solemnly promise and declare that they shall resign if they fail to fulfill this duty (Appendix A to the *RRAFN Election Act*: “Declaration of Office for Elected Officials”).

[38] As “leaders who assist, support and counsel the Chief and Councillors in carrying out their duties as cited in the Declaration and Section 12 of this Act” (*RRAFN Election Act*, s 15), Custom Council may identify situations where Chief and Council must resign.

[39] While a justification for removal or demanding resignations of the Chief and Council may arise, as set forth in the provisions discussed above, the *RRAFN Election Act* contains no process on how this can be accomplished. As stated, it is not necessary for this Court to rule on the validity of the *Draft RRAFN Constitution* or the *Amended RRAFN Constitution* which purport to authorize processes to effect the removal of the Chief and Council. This Court’s only guidance is in reviewing the provisions of the *RRAFN Election Act*, the validity of which is not in dispute.

[40] The parties relied on different cases involving their community to justify their respective positions. The present applications afford the opportunity to provide some clarification on the interpretation or meaning of certain of the cases involving RRAFN. This Court adopts the summary of Justice Simpson in *Henry v Roseau River Anishinabe First Nation*, 2014 FC 1215 at paragraphs 50 to 63, where the Court clarified the perceived inconsistencies in the prior judgements of *Roseau River Anishinabe First Nation v Atkinson*, 2003 FCT 168; *Roseau River Anishinabe First Nation v Roseau River Anishinabe First Nation*, 2009 FC 655; and *Roseau River Anishinabe First Nation v Nelson*, 2013 FC 180. In *Henry v Roseau River Anishinabe First Nation*, 2014 FC 1215 at para 63, Justice Simpson concludes the following:

[63] My review of these decisions leads me to conclude that they are not helpful in the present case because the Court has never been called on to consider whether the Election Act gives the Custom Council the power to remove the RRAFN's elected Chief and Council. Mr. Justice Kelen dealt with the question in *obiter* and the issue was not argued before either Mr. Justice Phelan or Mr. Justice Russell.

[41] Justice Simpson then went on to determine that section 14 does in fact confer the power of removal on all members of the RRAFN through a referendum or some other form of vote. This Court agrees with this analysis and applies this to the present application.

[42] Justice Simpson considered that the power to remove the Chief and Council discussed at section 14 of the *RRAFN Election Act* must be exercised by a vote involving all members of the RRAFN, because Chief and Council are "accountable to all Tribal Members". However, what is the effect of the section immediately following it (section 15) which establishes that the Custom Council is "representative of the total tribal membership of the Tribe". Custom Council argued

that this provision provided them with authority to remove the Chief and Council since they are the representatives of the tribal membership. This was also answered by Justice Simpson when she wrote that the wording of section 15 “does not mean that it has the power to remove them.”

[43] Justice Simpson found that *RRAFN Election Act* does not create a power to remove Chief and Council. Rather, she found that “a referendum or some other form of vote would be needed to allow all members of the RRAFN to vote on a removal” (*Henry v Roseau River Anishinabe First Nation*, 2014 FC 1215 at para 64). Chief and Council argue that Justice Simpson’s conclusion should also be applied to the 2017 Resolution as well. This Court is persuaded by the arguments of Chief and Council.

B. *Did the decisions under review breach procedural fairness?*

[44] Given that this Court finds both the decisions of the Custom Council and the Chief and Council were not made in accordance with the *RRAFN Election Act*, the issue of procedural fairness need not be considered at this time.

[45] This Court makes only this brief observation: In the same way that the duty of fairness is triggered when an administrative decision made by Custom Council impacts Chief and Council, Chief and Council owe a duty of fairness to Custom Council when they pass BCRs that affect their rights, privileges or interests (*Roseau River Anishinabe First Nation v Atkinson*, 2003 FCT 168 at para 42).

C. *Can and should the Court issue an order to prevent that steps be taken towards the First Nations Election Act?*

[46] The question is not properly before this Court. This Court refuses to comment on this matter.

D. *Can and should the Court strike portions of the affidavits of two members of Custom Council?*

[47] Both parties cite various provisions of their respective laws. To the extent that the various provisions are improper this Court has not relied on those provisions in rendering its decision.

E. *Should costs be awarded?*

[48] This Court declines to exercise its jurisdiction to award costs under these circumstances. The administration and people of RRAFN should be spared any further financial impact arising by virtue of the litigation between these two parties.

[49] In this regard, I draw the parties' attention to the following passage of Justice Phelan in *Roseau River Anishinabe First Nation v Roseau River Anishinabe First Nation*, 2009 FC 655 at para 70:

[70] I would note, however, that the evidence suggests there were procedural irregularities in the actions of both Parties in the matters leading up to this litigation. Acknowledging that the Roseau River Anishinabe First Nation governs by custom and functions largely by consensus, and in that regard not wishing to make specific findings or recommendations, I would advise the

Band that following their self-chosen procedures, and if necessary amending or developing their Constitution and Election Act as the Band indicated they have contemplated doing, will help to avoid creating a situation where this Court becomes a regular recourse for Band election matters.

[Emphasis added.]

[50] The parties are well aware of the litigation that has occurred over the years. The parties have also submitted that they are acting in the interests of their community. This has not stopped the parties from initiating numerous costly legal proceedings related to governance issues. Justice Phelan provided useful guidance to the parties and this Court also urges the parties to engage with their community members and respected knowledge keepers to review their governance structure and laws in the spirit and good faith that their indigenous laws reserve. These worthwhile efforts may come at some financial cost to the community but any such costs will be well worth the effort in bringing the community together to ensure that the integrity of their indigenous laws are maintained.

VII. Conclusion

[51] The application for judicial review of Chief and Council's decision to revoke the authority of Custom Council is granted. The 2017 BCR and the 2018 BCR are *ultra vires* and therefore invalid.

[52] The application for judicial review of Custom Council's decision to remove Chief and Council from office is granted. The Custom Council's 2017 resolution is *ultra vires* and therefore invalid.

[53] To clarify matters for the upcoming 2019 election, the parties are governed by the *RRAFN Election Act* which both parties agree is a valid law of the RRAFN.

JUDGMENT in T-942-18 and T-997-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in T-997-17 is granted.
2. The application for judicial review in T-942-18 is granted.
3. There is no order as to costs in both proceedings.

“Paul Favel”

Judge

APPENDIX A

ASSUMPTION OF OFFICE

11. The procedure for assumption of office shall be:

- a) The newly elected Chief and Councillors shall take office exactly one (1) day after the day of election, and after taking an Oath of Office.
- b) There shall be a formal meeting of the former Chief and Council and the new Chief and Council within seven (7) days after the election, for the purpose of providing a thorough briefing by the former leaders on all matters affecting the tribe and tribal membership to assure an orderly transition to the new leadership and Custom Council.
- c) Any tribal member who is a civil servant of any level of government who is successful in being elected to office must resign from their employment immediately.
- d) A tribal member who is successful in being elected to office, may be required to move to the Roseau River Reserve 2 or 2A, within ninety (90) days, for the duration of his/her term of office.

STANDARDS OF CONDUCT BY CHIEF AND CONCILLORS

12. The elected Chief and Councillors, as trustees of all tribal members, their culture, their language, their Treaties and Reserved Land shall:

- a) Uphold the Declaration as cited in this Act.
- b) Provide credible and strong leadership which a majority of tribal members can respect and support.
- c) Communicate and consult with, to hear and act on concerns of the Custom Council, in matters which affect said tribal members.
- d) Demonstrate and practice fairness, honest and courage.
- e) Demonstrate and practice honor, respect, justice and acceptable conduct at all time.
- f) Uphold honestly by consistently working towards the elimination of rumour, deceit, distortion, and conflict while holding elected office.

- g) Enhance and safeguard the Treaties and Treaty Rights.
- h) Ensure all Tribal laws are followed, are consistent with Inherent Rights and the Spirit and Intent of Treaty Rights.
- i) Communicate and inform the Tribal members of all matters and ensure the people are aware of any initiative and gain their approval through quarterly reports – every three (3) months.
- j) Attend and remain at all official settings called by the tribal membership, Custom Council or Chief and Council.

REMOVAL FROM OFFICE

14. Once duly elected by tribal members the Chief and Councillors represent and are therefore accountable to all tribal members whereupon said Chief and Councillors may be removed from office if they:

- a) Fail to uphold the Standards of Conduct as cited in Section 12, subsection A – J inclusive, of this Act.
- b) Are absent from two (2) consecutive meetings without justifiable cause.
- c) Bring disrespect and dishonour upon themselves, their office or other tribal members through action(s) which is/are attributable to said Chief and Councillors.
- d) Are convicted of an indictable offense.
- e) Engage in actions and behaviour to the extent which causes failure to uphold the Declaration and Standards of Conduct as set out in this Act.
- f) Are fraudulent or criminal in their actions and are convicted of such.

AUTHORITY OF CHIEF AND COUNCILLORS

15. The Custom Council is the prime authority and representative of the total tribal membership of the Tribe. The Custom Council are leaders who assist, support and counsel the Chief and Councillors in carrying out their duties as cited in the Declaration and Section 12 of this Act.

AMENDMENTS

19. Amendments can be made to this Act, from time to time, by resolution of the Custom Council indicating the amendment required. A tribal meeting shall then be held to discuss the resolution for amend.

APPENDIX B

MANDATE TO THE CUSTOM COUNCIL

FROM THE CHIEF AND COUNCIL

For the better governance of the total Roseau River First Nation membership, the following mandate is hereby granted to the family representatives known as the "Custom Council" by the total tribal membership.

The Custom Council of Roseau River First Nation shall have the responsibility to define, research, plan, promote, and develop a traditional/contemporary government structure. To define, strengthen, reaffirm, and protect our inherent sovereignty through our policies and traditions, including the preservation of our culture and traditions under the guidance of our spiritual/traditional elders for the development of our political, economic, social, judicial and educational institutions.

The Mandate so granted shall be in force and reviewed annually.

Dated this fifth day of November, 1990

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-942-18

STYLE OF CAUSE: ROSEAU RIVER ANISHINABE FIRST NATION
CUSTOM COUNCIL v CHIEF AND COUNCIL OF
ROSEAU RIVER ANISHINABE FIRST NATION,
CHIEF CRAIG ALEXANDER, COUNCILLOR
ZONGIDAYA NELSON, COUNCILLOR KEITH
HENRY, COUNCILLOR LILLIAN PATRICK, AND
COUNCILLOR MAX SEENIE

AND DOCKET: T-997-17

STYLE OF CAUSE: CRAIG ALEXANDER, ZONGIDAYA NELSON, KEITH
HENRY, IN THEIR CAPACITY AND AS CURRENT
MEMBERS OF THE ELECTED CHIEF AND COUNCIL
OF THE ROSEAU RIVER ANISHINABE FIRST
NATION v ROSEAU RIVER ANISHINABE FIRST
NATION CUSTOM COUNCIL AND RANDY THOMAS
AND LEO HAYDEN IN THEIR PURPORTED
CAPACITY OF CHAIRPERSON AND CO-
CHAIRPERSON OF THE SAID ROSEAU RIVER
ANISHINABE FIRST NATION CUSTOM COUNCIL

PLACE OF HEARING: WINNIPEG, MANITOBA

DATES OF HEARING: OCTOBER 29-30, 2018

JUDGMENT AND REASONS: FAVEL J.

DATED: APRIL 18, 2019

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T-942-18

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T-997-17

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