Date: 20071102

Docket: T-899-07

Citation: 2007 FC 1137

Ottawa, Ontario, November 2, 2007

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

WAYNE STANDINGHORN, GABRIEL EAGLESHIELD, ELSIE WHITECALF, ARCHIE WEENIE, OMER WHITE, and EILEEN POOYAK

Applicants

and

GEORGE ATCHEYNUM, SWEET GRASS FIRST NATION and SWEET GRASS ELECTION TRIBUNAL CONSISTING OF BOB PELTON, Q.C., VIRGINIA FAVEL and MYRON PASKEMIN

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Sweetgrass First Nation Election Tribunal issued a decision on May 18, 2007 to remove the Chief and Councillors from office following a hearing on allegations of corrupt election practices. For the reasons that follow, I conclude that the decision must be set aside as the Tribunal exceeded its jurisdiction, procedural fairness was denied and a reasonable apprehension of bias arose from the manner in which the hearing was conducted.

BACKGROUND:

[2] Sweetgrass, a small Cree First Nation with a reserve located near North Battleford, Saskatchewan, held an election for Chief and six Headmen ("Councillors") in November, 2005 to serve a term of two years in accordance with the *Sweetgrass Band Election Act* (the "Act"). The Act was adopted in 1995 in accordance with an amendment to the *Indian Bands Council Election Order* dated December 14, 1989.

[3] The applicants are the successful candidate for Chief, Wayne Standinghorne, and five of the Councillors elected on that occasion. The incumbent Chief, Rod Atcheynum, and four of the sitting Councillors were deposed. The respondent George Atcheynum, who appeared on his own behalf on this application, is the brother of the former Chief and one of the unsuccessful candidates for Councillor. Bob Pelton, Q.C., Virginia Favel and Myron Paskemin, members of the Sweetgrass Election Tribunal (the "Tribunal"), were added as respondents by Order of the Court.

[4] Shortly after the 2005 election, George Atcheynum contested the results through appeals to the Tribunal, the mechanism under the Act for challenging an election where sworn allegations of corruption or other irregularities are brought either by a candidate or by an elector. The Act sets out a code of procedure for the resolution of disputes arising from elections, including the establishment and composition of the Tribunal. Council is required to appoint a solicitor, unrelated to any of the electors, to chair the Tribunal and to nominate one elector, who cannot be a candidate in the election and preferably should be an elder, when the election date is announced. Should a challenge to the

results be raised following the election, the Tribunal is to consist of those two persons together with an elector nominated by the party appealing the outcome, in this case Mr. Atcheynum.

[5] Section M of the Act provides that any candidate or elector who has reasonable grounds for believing that such irregularities have occurred may lodge an appeal within 30 days of an election by forwarding the particulars to the Tribunal and the Band Council "duly verified by affidavit." In an affidavit sworn November 16, 2005, Mr. Atcheynum alleged that Mr. Standinghorn and five of the elected Councillors had engaged in corrupt election practices. These are defined in section B(4) of the Act as follows:

> "corrupt election practices" includes any form of conduct which is intended by dishonest or illegal means to affect the outcome of an election and, includes, but is not limited to, offering or accepting a bribe, intimidation or coercion, false declaration, dishonesty and malfeasance.

[6] The Act authorizes the Tribunal to conduct such investigation into the matter as it deems necessary and in such manner as it deems expedient. Paragraphs N 4 and 5 of the Act then provide as follows:

> Once the Tribunal has obtained all of the material that it requires and has conducted its investigation, it then shall hold a hearing which shall be open to the public… and shall hear and consider all manner of evidence that it deems relevant to the appeal.
>
> Thereafter, the Tribunal shall meet in render a decision and make an appropriate recommendation based on the decision to the Chief and Council of Sweetgrass Band. That decision shall be binding on the Chief and Council in the event of a finding pursuant to paragraph Q 3.

[7] Paragraph Q 3 requires the Band Council to set aside the election of a Chief or Councillor on the recommendation of the Tribunal when they are satisfied that there was corrupt practice, a contravention of the act that might have affected the results of the election or ineligibility to be a candidate.

[8] The Act requires that every person lodging an appeal shall post at the Band Office the amount of $500 in cash, certified check or money order which shall be returned to them in the event that the appeal is successful. Council is required to forward a copy of the appeal together with all supporting documents to each candidate "who may be affected by the issue raised in the appeal". Any such candidate may then respond, within 14 days of the launching of the appeal, with a written answer and supporting documents, again "duly verified by affidavit."

[9] The Act does not indicate clearly whether an appeal may contest the election of more than one of the successful candidates. Nor do the operative provisions of the Act specify the form in which an appeal is to be initiated. A Notice of Appeal form is attached as Appendix 7. That form is set up in such a way as to indicate that it is to be used to contest the election of just one candidate, whether the Chief or a Councillor. In contrast, the candidate nomination and ballot forms attached as appendices to the Act clearly contemplate the insertion of multiple names.

[10] Mr. Atcheynum submitted six separate Notice of Appeal forms contesting the election of Chief Standinghorn and five of the Councillors supported by affidavits sworn November 16, 2005, and November 30, 2005 and December 12, 2005. An additional eight affidavits, sworn in November and December, 2005 by other band members were filed in support of Mr. Atcheynum's appeal. Affidavits sworn by the six persons named in the appeal were filed in response, denying any participation in corrupt election practices, together with an affidavit from a person who had not been a candidate.

[11] As originally constituted, the Tribunal named to hear this matter consisted of a solicitor, Lori Gollan, and an elector, Myron Paskemin, both named by the outgoing Council, and Virginia Favel, nominated by Mr. Atcheynum. The Tribunal so constituted began to hear Mr. Atcheynum's appeal but were enjoined from continuing by an injunction issued on January 12, 2006 by Justice Simon Noël. The matter then came on before Justice Robert Barnes on May 15, 2006 for a hearing on the merits of an application to remove Ms. Gollan and Mr. Paskemin from the Tribunal. Justice Barnes ruled that Ms Gollan was disqualified by reason of a reasonable apprehension of bias but there were no grounds for removing Mr. Paskemin: *Sweetgrass First Nation v. Gollan*, 2006 FC 778, [2006] F.C.J. No. 969.

[12] Justice Barnes declined an invitation to endorse the appointment of Mr. Pelton to replace Ms. Gollan as Tribunal chair as he considered that this was a matter for the Band Council to address. He noted that Mr. Pelton was a well-known and respected Regina lawyer. The Council subsequently did appoint Mr. Pelton as chair. No issue arose in these proceedings concerning that appointment.

[13] On July 31, 2006 the Council purported to replace Mr. Paskemin on the ground that he had a conflict of interest arising from work he had previously done for the Band. Justice Barnes dealt with that controversy in a decision released March 8, 2007: *Sweetgrass First Nation v. Favel* 2007 FC 271, [2007] F.C.J. No. 347. Justice Barnes concluded that there was no factual basis in the evidence before him to support the argument that Mr. Paskemin would be unable to participate impartially in the work of the Tribunal.

[14] The appeal hearing was finally scheduled to be heard March 28 to 30, 2007 by a Tribunal composed of Mr. Pelton, Ms. Favel and Mr. Paskemin, more than 15 months after the election. No investigation was conducted prior to the hearing. Mr. Atcheynum appeared on his own behalf. The applicants (respondents to the appeal) were represented by senior counsel. It was agreed between the parties that the hearing would be less formal than court proceedings but would remain open to the public, evidence would be called and a transcript would be prepared by a certified court reporter. That 326 page transcript forms part of the record on this application and discloses a proceeding that was marred by irregularities from the outset.

[15] At the opening of the hearing, Mr. Atcheynum was not prepared to proceed with his evidence and suggested the applicants proceed first. He indicated that some of his witnesses would be available on the 29th or 30th, that he intended to submit additional affidavit evidence and that the deponents would not present themselves for cross-examination, including himself. The applicants objected to being required to split their case, to the introduction of additional affidavit evidence given the deadlines set out in the Act and to the notion that no cross-examination would be allowed. The majority of the Tribunal, with the chair dissenting, agreed to receive the additional affidavit evidence without cross-examination. Mr. Atcheynum then filed his own additional affidavit on which he declined to be cross examined, together with that of an additional deponent, Wayne Paskiman. The Tribunal agreed to accept reply affidavits following the hearing and three were submitted during the week of April 9, 2007.

[16] Prior to evidence being called, the applicants raised a preliminary objection that the Tribunal lacked jurisdiction to hear appeals against all six persons named in Mr. Atcheynum's Notices of

Appeal as he had paid a deposit of just $500, rather than the $3000 which, they argued, was required to appeal the election of all six candidates. After conferring with the other members of the Tribunal, the Chair announced that they had accepted the jurisdictional argument and that Mr. Atcheynum would be required to choose which of the six appeals that he wished to proceed. Mr. Atcheynum requested a recess which was granted. He did not return to the hearing but sent word that he had been called away on urgent family business and would return the following morning. Accordingly, the hearing was adjourned at mid-day. The following morning Ms. Favel read a prepared statement and moved, supported by Mr. Paskemin, that the Tribunal reverse its ruling on the jurisdictional issue over the Chair's objections.

[17] There were several other motions presented by Ms. Favel, and endorsed by Mr. Paskemin, concerning the procedure to be followed by the Tribunal. This manner of decision making attracted expressions of concern from both counsel for the applicants and the Chair. It was suggested that such motions, if required, should be presented by the parties and ruled upon by the Tribunal. Mr. Atcheynum insisted that the Tribunal members were entitled to present and vote on such motions.

[18] Three witnesses provided oral evidence at the hearing. The evidence of one had nothing to do with the allegations of corrupt practices but concerned a complaint against certain actions of the Electoral Officer not relevant to the Tribunal proceedings. The evidence of the other two witnesses consisted of hearsay statements, including statements by persons at a party recorded on a DVD, and allegations of interference in the election by the Battlefords Tribal Council.

[19] The applicants elected not to call oral evidence before the Tribunal. Counsel for the applicants explained at the Tribunal hearing that this decision was a direct result of the procedural and evidentiary decisions and rulings made by the majority of the Tribunal. He stated that the duty of fairness had been breached, natural justice had been denied and the respondents' ability to make full answer and defence to the allegations against them had been irrevocably compromised. Further, he claimed that the action of bringing motions which directly benefited the appellant had given rise to a reasonable apprehension of bias.

[20] Ms. Favel tabled two further motions which were endorsed by Mr. Paskemin: one providing that the Tribunal's deliberations were to be conducted by teleconference; and the second to the effect that two signatures would be sufficient and that no information would be provided as to how they had come to their decision and /or recommendations.

[21] No oral submissions were received on the merits of the appeal at the conclusion of the hearing. The Tribunal indicated that it would receive written submissions. None were submitted by Mr. Atcheynum. Counsel for the respondents filed a written submission on April 18, 2007, the agreed deadline.

[22] On May 14, 2007, Mr. Pelton released a 54 page dissenting opinion in which he thoroughly reviewed the history of the proceedings, the nature of the evidence presented and analysed the issues that were before the Tribunal. He concluded that the principles of natural justice were breached and the elements of a fair hearing were absent in that a majority of the Tribunal held that it would accept the affidavits of Mr. Paskemin and Mr. Atcheynum without requiring those

individuals to present themselves for cross examination. Further, he concluded that the reversal by a majority of the Tribunal of its decision on the deposit issue and the fact that the tribunal brought forth its own motions to be passed by a majority vote left the applicants with a reasonable apprehension of bias. And finally, he concluded that on the evidence presented the appeals ought to have been dismissed on the merits as the appellant had failed to establish on a balance of probability that the applicants engaged in corrupt election practices.

[23] Ms. Favel and Mr. Paskemin issued a 13 point ruling on May 18, 2007 upholding Mr. Atcheynum's allegations, overturning the results of the November 2005 election, removing the successful candidates from office and barring them from standing as candidates for six years. This document is not framed in the form of recommendations to the Band Council as the Act requires but rather asserts authority to carry out a number of actions including an overhaul of the Election Act; a public inquiry into the actions of named third persons who were not parties to the appeal process; an audit into Band affairs, reversal of all decisions made by the removed Chief and Council and attachment of personal liability for any Band funds used in their defence.

[24] The majority ruling asserted that no reasons were to be provided by to explain how the members came to their finding that the respondents participated in corrupt election practices, and in fact none were issued.

[25] This application for judicial review was filed on May 25, 2007 initially naming just Mr. Atcheynum as respondent. The Sweetgrass First Nation and the Election Tribunal members were added as respondents by Order of the Court dated May 31, 2007. The decision of the Tribunal

majority was stayed pending the outcome of these proceedings by order dated June 13, 2007. Counsel for Virginia Favel and George Paskemin filed a record and made submissions at the hearing of this matter in Saskatoon on September 19, 2007. No one appeared for the Sweetgrass First Nation or Mr. Pelton. Mr. Atcheynum appeared and made oral submissions on his own behalf at the hearing. As he had not received the applicants' memorandum of fact and law prior to the hearing although it had been properly sent to his address, Mr. Atcheynum was given an additional week within which to submit written representations, which he exercised. The other parties did not reply to these additional representations.

ISSUES:

[26] 1. Did the Tribunal exceed its jurisdiction?

2. Were the applicants denied procedural fairness and does the appearance of bias arise from the Tribunal's conduct of the election appeal hearing?

ANALYSIS:

Standard of Review:

[27] While a pragmatic and functional analysis is normally required to determine what standard of review the Court should apply to decisions of a tribunal, that is not necessary in this case. The applicants submit that the majority of the Tribunal exhibited bias and exceeded its jurisdiction. The issue of whether the Tribunal acted within the scope of its authority under the Elections Act is a

question of law reviewable on the standard of correctness: *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476, at para. 66 and *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100, at para 37.

[28] Questions of procedural fairness are reviewed against a standard of correctness: *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 at para. 100. As was stated by Justice Linden in *Sketchley v. Canada (Attorney General)* 2005 FCA 404, [2005] F.C.J. No. 2056 at para.53:

> *CUPE* directs a court, when reviewing a decision challenged on the ground of procedural fairness, to isolate any act or omission relevant to procedural fairness (at para.100). This procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances or has breached this duty.

[29] As was also made clear in *CUPE*, at paragraphs 102 and 103, the content of procedural fairness goes to the manner in which the decision is made, whereas the standard of review is applied to the end product. Inevitably some of the same factors will be considered in determining whether the process was flawed and whether the decision satisfies the standard of review. Here, an additional factor which the Court must take into consideration is whether the procedures complained of were authorized by Band custom.

Did the Tribunal exceed its jurisdiction?

[30] The applicants submit that the Tribunal majority has purported to exercise authority which extends beyond the jurisdiction granted them in the *Sweetgrass Election Act*. The Tribunal is

entirely a creation of statute. It has no inherent jurisdiction and its powers are defined and circumscribed by the Act.

[31] Counsel for Ms. Favel and Mr. Paskemin conceded at the hearing of this application that the remedies ordered by the majority were not within the scope of their authority under the Act. They should be considered solely, it was submitted, as recommendations to the Band regarding the actions to be taken following a fresh election of a new Chief and Council. The Court was urged to uphold the essential elements of the Tribunal's decision and to "surgically excise" those parts which were beyond the scope of the Tribunal's decision. The difficulty I have with this submission is that the Tribunal was not authorized by the Act to oust the Council and call a new election. The sole determination that was open to them was to make a finding whether corrupt practices had been established. Anything beyond that was to be a recommendation, albeit binding on the Council to some extent.

[32] Mr. Atcheynum did not directly address the question of jurisdiction in his oral or written submissions. However he stressed that this was the first time in the history of the Sweetgrass First Nation that an election appeal had been launched and argued, in general, that the court should take into account customary practices and be cautious about applying rules and principles that may be inconsistent with such practices.

[33] Justice Luc J. Martineau addressed the content of band custom in the context of band elections in *Mohawk of Kanesatake v. Mohawk of Kanesatake (Council)*, 2003 FCT 115, [2003] F.C.J. No. 156, wherein he set out, at paragraph 36:

> For a rule to become custom, the practice pertaining to a particular issue or situation contemplated by that rule must be firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a "broad consensus" as to its applicability.

[34] In this instance, the sole evidence of what constitutes band custom is contained in the affidavit of Virginia Favel sworn July 5, 2007. The affidavit does not address the question of jurisdiction of the Tribunal but speaks of the decisions that were made to receive additional affidavit evidence, to permit the deponents to decline to be examined on those affidavits and the reasons why the decision on the deposit issue was reversed. Ms. Favel does refer, however, to the interpretation of "our Custom Election Act" but says nothing as to how customary practice may differ with respect to the decision she drafted and signed.

[35] I note here that Ms. Favel states in her affidavit that she and Mr. Paskemin wanted the Tribunal to do its voting in public and not in secret, as this was Band custom. It is difficult to see how that statement is consistent with the procedure the majority adopted.

[36] There is nothing before me to suggest that the Act is inconsistent with Sweetgrass customary practice respecting election appeals. It is clear from the record that the majority's decision went far beyond the scope of the Tribunal's jurisdiction. Under the Act, the tribunal is to make a recommendation to the Band Council, which is to be binding on the Council where, among other things, corrupt election practices are found (section N.5). At best they could recommend that the election of the Chief and Councillors be set aside and a new election called. If the Council refused to act on that recommendation, it would have been open to any person with standing to seek a remedy from the Court. Nothing in the Act, however, gives the Tribunal the authority which the majority purported to exercise.

[37] Had I not concluded in this matter that the entire proceedings were tainted by denials of procedural fairness and a reasonable apprehension of bias and the decision quashed as a result, I would have struck out virtually all of the majority's decision of May 18, 2007 as having exceeded the Tribunal's jurisdiction.

Procedural fairness and the appearance of bias.

[38] The applicants in this proceeding allege bias and a lack of procedural fairness on the part of the Tribunal majority in conducting the hearing. They submit that this is established on a balance of probabilities through the cumulative effect of the actions taken and decisions made by the majority, including the following:

- The introduction and adoption of procedural motions favourable to Mr. Atcheynum’s position during the hearing;
- reversing the decision on jurisdiction that had limited the scope of the appeals filed by Mr. Atcheynum;
- allowing affidavits to be filed throughout the proceedings;
- permitting deponents to decline to be cross-examined on their affidavits; and
- refusing to provide reasons for their decision.

[39] The respondents submit that the decision to permit the introduction of additional affidavits applied to all parties; that it is not Band custom to question people on their statements; that the reversal of the decision on jurisdiction was necessary to avoid unfairness; and, that it is not Band

custom that elders explain themselves when they have rendered a decision. They further submit that those instances where the applicants apprehend bias are largely the result of a conflict of cultures.

[40] At common law, the minimum level of procedural fairness required of an administrative tribunal has at least three requirements: notice of the case to be met, the opportunity to make submissions, and an unbiased decision maker: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650.

[41] As noted by the Supreme Court in *Wewaykum Indian Band v. Canada*, 2003 SCC 45, [2003] 2 S.C.R. 259,

> …public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so. (para. 57)

[42] The test for bias is whether, considering the context of the decision, a reasonably informed person would perceive bias: *Taylor v. Kwanlin Dun First Nation By-Election Appeals Board*, [1998] F.C.J. No. 1740. I accept Mr. Atcheynum's argument that the reasonably informed person in this instance would be a member of, or well-versed in the communal society of, the respondent First Nation. However, there is little evidence before me to show me how a reasonable person, informed of the contextual nature of the community, would perceive the actions of the tribunal members during the hearing. I cannot simply accept Mr. Atcheynum's assertions respecting such perceptions, particularly as they are vigorously refuted by the applicants who are also members of the community.

[43] In this instance, as I have noted, the sole evidence of what constitutes Sweetgrass custom is that contained in Ms. Favel's affidavit. I accept that she is an elder of the community and, as such, could be expected to have knowledge of the Band's customary practices. But she is also a party to these proceedings, and was Mr. Atcheynum's nominee to the Tribunal. I note that she is also his aunt but give no weight to that fact as it appears that virtually everyone involved in this matter is related to each other. Chief Standinghorn is Mr. Atcheynum's uncle. My point is that there is no independent, objective evidence before me as to what constitutes Sweetgrass Band custom on these matters.

[44] The adjudication of candidates' conduct during a Band election is central to the governance of the Band, and the interests at stake are such that the need for impartiality of the adjudicators is even greater. In the instant case, the outcome of the Tribunal hearing could affect the Band's governance for years to come, as a decision that there were corrupt election practices would require that a new election be called and would bar the persons affected from contesting elections of the Band for a six year period.

[45] Having reviewed the tribunal hearing in its context, I find that procedural fairness was denied and that there arises a reasonable apprehension of bias on the part of the majority members. I arrive at that conclusion reluctantly as I agree with Mr. Atcheynum that the Court should not be quick to interfere with a tribunal's decision reached in accordance with band customary procedures as set out in its election law. But the record of the Tribunal hearing suggests that the "deck was stacked" against the applicants from the outset.

[46] A Tribunal is free to determine its own procedure so long as it satisfies the duty of fairness. The content of that duty will vary. The Supreme Court has articulated a list of non-exhaustive factors relevant to determining the content of procedural fairness in the circumstances of a particular case: *Congrégation des témoins de Jéhovah*, above, at paragraph 5. These include the nature of the decision and the decision-making process employed, the nature of the statutory scheme, the importance of the decision to the individuals affected, the legitimate expectations of the party challenging the decision, and the choice of procedure made by the agency itself.

[47] In this instance, the Act set out a fairly detailed scheme for the reception of affidavit evidence and supporting documentation within fixed periods of time following the election. This was apparently intended to allow for a timely resolution of disputes and to give the respondents to an appeal fair notice of the allegations against them and an opportunity to reply with their own evidence in a prescribed manner. The Act also gives the Tribunal a very broad discretion "to hear and consider all manner of evidence that it deems relevant to the appeal". In my view, that may include both oral evidence from witnesses at the hearing and additional affidavit evidence. But where such evidence is received and considered, the duty of fairness requires that the opposing party be given an opportunity to challenge that evidence through cross-examination. It was not sufficient, in my view, to grant the opposing parties an opportunity to file further reply affidavits as was done in this case. The effect is to set up an exchange of allegations and denials without allowing the parties an opportunity to expose the truth.

[48] In this instance, the Tribunal majority permitted additional affidavit evidence to be filed and refused to require the deponents to submit themselves to cross-examination. I recognize that Ms.

Favel deposes and Mr. Atcheynum submits that this was in accordance with band custom as confrontation was not a practice encouraged by the community. But the evidence does not persuade me that this is a practice for which there is a broad consensus of support within the community. The applicants, for example, who had the most to lose by the adoption of this procedure, consider that their right to a fair hearing was infringed by the majority's position on this issue.

[49] With regard to the decision to reverse the ruling on the deposit issue, as a general rule once a tribunal has reached a decision that it lacks jurisdiction to hear an application it no longer has authority to deal with that matter. However, justice may require the reopening of administrative proceedings in certain circumstances: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848, 62 D.L.R. (4th) 577. I accept that the majority may have fairly come to that conclusion after reflecting on the subject overnight. It is also not clear to me based on my reading of the Act that the initial decision was correct. In my view, the Act is ambiguous and reasonably open to both interpretations. The form of the Appeal Notice is not sufficient to make that determination.

[50] If reversal of the jurisdictional determination was the sole issue on this application, I would not interfere with the Tribunal's decision. However, the manner in which it was done in this instance lends support to the applicant's contention of a reasonable apprehension of bias. The members of the Tribunal initially concurred on the decision. When the ruling went against Mr. Atcheynum he called for a recess and then forced an adjournment of the proceedings for the day. When the hearing resumed the following morning, his nominee Ms. Favel presented a motion to overturn the decision and called for an immediate vote by the Tribunal members. This could only present an appearance of unfairness to a reasonable observer.

[51] In my view, the tribunal breached its duty of procedural fairness in the majority's peremptory refusal to provide reasons for their decision over the strong objections of the applicants. Reasons are not required in every context and may be satisfied in many instances by the bare minimum of explanations. Where, however, as here, the decision has a strong impact on an individual's rights or interests there is a greater expectation that reasons will be provided. Without reasons explaining the means by which a tribunal reached the decision it did, the individual is left without an understanding of the factors the tribunal used in making its decision and any allegation of bias cannot be laid to rest.

[52] In *Preston Sound v. Swan River Nation*, 2003 FC 850, [2003] F.C.J. No. 1096, Heneghan J. stated that:

> Since this decision made such an important finding for an individual, impugning the Applicant's conduct and removing him from elected office, reasons for the decision should have been provided, despite the fact the Regulations do not expressly say that reasons should be given. (paragraph 64).

[53] The majority decision had a very significant impact on the applicants, tarnishing their reputations and purporting to remove them from elected office and to disqualify them from elections for six years. This is not a case in which there has been a good faith effort to explain the decision and the reasons are criticized for inadequacy. It is clear that the majority were determined not to provide any explanation for arriving at their decision. This invites speculation that they could not provide reasons that would withstand public scrutiny. Mr. Atcheynum submits that under Sweetgrass custom elders are not expected to explain their decisions. There is no independent and objective evidence before me to support that assertion.

CONCLUSION:

[54] I find that the applicants have established on a balance of probabilities that there is a reasonable apprehension of bias from the manner in which the majority of the Tribunal conducted the hearing, that they were denied procedural fairness and that the majority decision exceeded the Tribunal's jurisdiction. Accordingly, the Tribunal's decision must be quashed.

[55] With such a determination, the Court would normally return the matter for reconsideration by a differently constituted Tribunal. In the present circumstances and with the passage of time, to do so would be futile. A fresh election has been scheduled in accordance with the Election Act and a nomination meeting will take place in a few weeks. In my view, it would be preferable to let the election process run its course. I will add that Mr. Pelton's thorough analysis of the evidence presented to the Tribunal supports my conclusion that there is nothing to be gained from another hearing on that evidence. Accordingly, I decline to remit the matter for that futile exercise.

[56] As noted, the respondents Virginia Favel and Myron Paskemin were added as parties by Order of the Court. The applicants propose that, in the circumstances of this case, the costs of all of the parties in this matter be ordered to be paid by the Band on a full indemnity basis. As Mr. Atcheynum represented himself, he would be entitled to the cost of any disbursements he may have incurred.

JUDGMENT

IT IS THE ORDER OF THIS COURT that:

1. the application is granted;
2. the decision of the Sweetgrass Election Tribunal dated May 18, 2005 is quashed;
3. no further hearing shall be conducted by the Sweetgrass Election Tribunal on the Notices of Appeal which were the subject of the May 18, 2005 decision;
4. the Sweetgrass First Nation Band shall pay the costs of the applicants and the respondents Virginia Favel and Myron Paskemin on an indemnity basis and Mr. George Atcheynum's disbursements.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-899-07
STYLE OF CAUSE:	WAYNE STANDINGHORN, GABRIEL EAGLESHIELD, ELSIE WHITECALF, ARCHIE WEENIE, OMER WHITE, and EILEEN POOYAK AND GEORGE ATCHEYNUM, SWEET GRASS FIRST NATION and SWEET GRASS ELECTION TRIBUNAL CONSISTING OF BOB PELTON, Q.C., VIRGINIA FAVEL and MYRON PASKEMIN
PLACE OF HEARING:	Saskatoon, Saskatchewan
DATE OF HEARING:	September 19, 2007
REASONS FOR JUDGMENT:	MOSLEY J.
DATED:	November 2, 2007

APPEARANCES:

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Terry Zakreski	FOR THE RESPONDENTS (representing Virginia Favel and Myron Paskemin)
George Atcheynum	(Self-representated)

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