

Federal Court



Cour fédérale

Date: 20250501

Docket: T-2104-24

Citation: 2025 FC 791

Ottawa, Ontario, May 1, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

JAMIE MENEEN

Applicant

and

**TALLCREE FIRST NATION (also known as
TALLCREE TRIBAL GOVERNMENT 446),
RUPERT MENEEN, KATHLEEN AUGER,
DAVID BOW-NOSKIYE, MAVIS MENEEN**

Respondents

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by Chief and Council of Tallcree First Nation [TFN], also known as Tallcree Tribal Government, to remove the Applicant from his elected position as a TFN Councillor.

Background

[2] Mr. Jamie Meneen, the Applicant, was nominated, ran for, and won a seat on the TFN Council in the election held on September 28, 2023 [Election].

[3] TFN is a Band under section 10 of the *Indian Act*, RSC, 1985, c. 1-5.

[4] On September 19, 2023, TFN filed an application for judicial review of the Applicant's nomination, on the basis that he was not eligible to be a candidate in the Election as he did not meet a residency requirement contained in the 2013 *Tallcree First Nation Election Code* [Election Code]. Specifically, that members are required to be "ordinarily resident" on the TFN reserve for at least six months prior to their date of nomination.

[5] Justice Favel dismissed that application (*Tallcree Tribal First Nation v Meneen*, 2024 FC 1184).

[6] Justice Favel first noted that TFN had improperly named Mr. Meneen as the respondent. Mr. Meneen did not make the decision under review. Rather, it was the electoral officer who made the decision approving Mr. Meneen's nomination. Next, Justice Favel found that the application was premature as TFN had an adequate alternate remedy, the appeal procedure set out in the Election Code, which should have been exhausted before TFN brought its application for judicial review. Given the Court's lack of jurisdiction in those circumstances, Justice Favel held that the Court could not review the merits of the decision. Further, that the Court must

afford deference to law of the TFN “and let the process play out to a conclusion” before stepping in.

[7] Justice Favel issued his decision on July 26, 2024. TFN did not pursue an appeal of that order. Nor did it pursue an appeal, under the Election Code, of the electoral officer’s positive nomination decision. That is, it did not follow the applicable process as identified by Justice Favel.

[8] Instead, three days later, on July 29, 2024, it advised the Applicant by letter that effective immediately he was being removed from office, pursuant to s 17.8 of the Election Code, on the basis that he was not ordinarily resident on the reserve during his term of office. Further, that he had failed to perform his duties and obligations as a Councillor under s. 16.1 and had failed to attend more than three meetings of council, citing s. 17.1(a) of the Election Code.

[9] The Applicant seeks judicial review of that decision.

[10] The Applicant makes a number of submissions as to why the decision removing him from office should be quashed. These are whether the decision was: procedurally fair; a collateral attack on Justice Favel’s decision; reasonable; and, made without jurisdiction.

[11] In my view, this matter can, and must be disposed of on the basis of a lack of procedural fairness.

[12] The standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

Applicant's Position

[13] The Applicant submits that his removal from his position as Councillor breached his right to procedural fairness. He argues that the jurisprudence from this Court clearly establishes that any removed chief or councillor is entitled to procedural fairness prior to removal. All band councils are subject to the rule of law and minimum standards of natural justice must be met (citing *Thomas v One Arrow First Nation*, 2019 FC 1663 at para 35; *Sparvier v Cowessess Indian Band (T.D.)*, 1993 CanLII 2958 (FC), [1993] 3 FC 142; *Claxton v Tsawout First Nation*, 2024 FC 1546 at para 92). Further, that the duty of fairness in the context of the removal of a band councillor is also well established. This entails a notice and an opportunity to be heard before the decision is made (citing *Tootoosis v Poundmaker Cree Nation #345*, 2024 FC 1171 at paras 66-68; *McKenzie v Mikisew Cree First Nation*, 2020 FC 1184 at para 94 [McKenzie]; *Shirt v Saddle Lake Cree Nation*, 2022 FC 321 at paras 78-79, citing *Morin v Enoch Cree First Nation*, 2020 FC 696 at para 34 [Morin]). The Applicant submits that TFN Chief and Council's own affiant admitted that the Applicant did not receive notice of the meeting during which his removal was decided. Therefore, the Applicant was unable to respond to the allegations against him prior to his removal as councillor.

TFN's Position

[14] TFN's written submission is as follows:

There are no grounds to argue that removal after a failure of 8 months to fulfill the role of a Councillor, a very important democratic role for a First Nation, and to just collect the pay without even once fulfilling his duties as a Councillor which cannot be condoned, is a breach of procedural fairness by Tallcree or with it be by any Council.

[15] When appearing before me, counsel for TFN made the same argument, being that the alleged failure to attend was an "affront to democracy", which was sufficient to ground removal without more. Specifically, without the need to afford the Applicant procedural fairness.

Analysis

[16] TFN Chief and Council held a meeting on Monday, July 29, 2024. Meeting Minutes were provided in an "uncertified" Certified Tribunal Record, which contains no other materials. The relevant portions state as follows:

4. Federal Court – Jamie Meneen

- TTG Application against Jamie Meneen has been dismissed
- Options discussed included:
 - o Appeal
 - o Bring forward an Appeal Arbitrator Process
 - o Removal of Jamie Meneen
- Options were discussed at length
- Jamie Meneen was not eligible to stand for an elected position with Tallcree Tribal Government as he DID NOT

and DOES NOT live on reserve in accordance with Section 8.3 (b) of the Tallcree Tribal Government Custom Election Code of 2013 (rev. 2023)

- Jamie has not been to Chief and Council Meetings since his swearing-in-ceremony on October 17, 2023
- Has failed to engage with the Nation Leadership
- Has been paid since his election in September 2023 and has done nothing to engage with the Chief and Council
- Has failed to carry out the duties of his office for which he is being paid

Motion: Jamie Meneen was not eligible to stand for an elected position with Tallcree Tribal Government as he DID NOT and DOES NOT live on reserve in accordance with Section 8.3 (b) of the Tallcree Tribal Government Custom Election Code of 2013 (rev. 2023), therefore he is not a recognized member of the Chief and Council and must be removed from his position as a member of this Council. Moved By: Kathleen Auger. Seconded: David Bow Noskiye. Carried Unanimously.

Motion: Further, on the basis of failing to attend 3 consecutive Chief and Council Meetings without excuse or reasonable cause and failing to engage in his role as a Member of Council; it is moved that Jamie Meneen be removed from Council effective immediately. Moved By: Kathleen Auger. Seconded: David Bow Noskiye. Carried Unanimously.

[17] What is immediately obvious from these minutes is that TFN Chief and Council chose to disregard Justice Favel's decision and made the choice not to proceed with the appeal process found in the Election Code. It is also clear that, in the absence of an appeal hearing, Chief and Council made its own decision, contrary to and essentially overruling that of the electoral officer, that the Applicant was not eligible to run for office and, based on its own decision, determined that the Applicant should be removed from office.

[18] Chief and Council also resolved to remove the Applicant from office based on an alleged failure to attend Council meetings and to engage in his role as a Councillor. While there has been evidence submitted by the Applicant in response to those allegations, I need not address it here, as it is apparent from the Respondents' own evidence that the Applicant was not afforded the opportunity to know the case against him and to respond to same before the decision was made.

[19] In that regard, Mr. Michael Cardinal, TFN Band Manager, swore an affidavit dated September 19, 2024, and was cross-examined on his affidavit. He testified that Justice Favel's decision was issued on late on Friday, July 26, 2024, and that the first available date for a Chief and Council meeting to discuss it was Monday, July 29, 2024. With respect to the question of whether the Applicant was advised of the July 29, 2024, Chief and Council meeting, Mr. Cardinal's evidence was crystal clear:

Q You said earlier that Council meetings are held every three weeks?

A They are scheduled for every third Wednesday of the month.

Q This meeting was on a Monday?

A Correct.

Q Did you invite Jamie to the meeting?

A I did not.

Q Did you give him prior notice of the meeting?

A I did not.

Q Did you give him prior notice that he would be removed at that meeting?

A I did not.

Q Did you give him an opportunity to respond to the allegations against him?

A He responded.

Q When?

A He hired you.

Q Before the decision was made?

A Before what decision -- before he was asked to leave, no.

[20] Mr. Cardinal did not suggest that any other person gave notice to the Applicant of the July 29, 2024, meeting. None of the members of Chief and Council filed an affidavit in response to the Applicant's application for judicial review. The unchallenged affidavit evidence of the Applicant is that he was not invited to the meeting and that he was not given an opportunity to respond to the allegations against him.

[21] The Applicant also points out that the Election Code contains a section dealing with removal from office of a Chief or Councillor, which describes the process to be followed to affect a removal. This is true, being s. 18.1. I note that there is also a provision under s. 18.8, which states that if Chief or a Councillor fails to remain "ordinarily resident" on the reserve during their term of office, they may be removed by a resolution of Council without the normal (s. 18.1) requirement for a petition or special hearing.

[22] In any event, as the Applicant submits, the jurisprudence is well established that, in decisions to remove or suspend chief or councillors from office, procedural fairness demands at a minimum that the individual who is the subject of such an intended decision be given notice of same and an opportunity to make representations in response to the allegations levied against them. As I have previously stated in *McKenzie*:

[88] Further, while the level and content of the duty of fairness varies and is determined by context, as the Respondents submit, it is well established that in the context of councillor suspensions procedural fairness requires the right to be heard and the right to make representations (*Tourangeau* at para 57; *Beardy* at paras 128 – 129). Indeed, even where only minimal procedural rights are required, those rights include notice and an opportunity to make representations (see, for example, *Peguis First Nation v. Bear*, 2017 FC 179 at para 62; *Minde v. Ermineskin Cree Nation*, 2006 FC 1311, at para 44; *Orr v Fort McKay First Nation*, 2011 FC 37 at para 12; *Blois v Onion Lake Cree Nation*, 2020 FC 953 at para 73). And, even if the decision to suspend a councillor is well-founded or reasonable, the decision will be set aside if the procedure was unfair (*Laboucan v Little Red River # 447 First Nation*, 2010 FC 722 at para 37 [*Laboucan*]).

[89] It is also well established that First Nations custom cannot override principles of natural justice or procedural fairness (*Beardy* at para 126, citing *Felix v Sturgeon Lake First Nation*, 2014 FC 911 at para 76 and *Sparvier v Cowessess Indian Band No 73*, 1993 CanLII 2958 (FC), [1993] 3 FC 142 at para 47 (WL); *Laboucan* at para 36).

[23] And, in *Morin*:

[34] Significantly, notice and an opportunity to make representations have been characterized as the most basic requirements of the duty of fairness (*Orr v Fort McKay First Nation*, 2011 FC 37 at para 12 (“*Orr*”); *Gadwa* at paras 48-53). Further, the Federal Court of Appeal has stated that, “No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to

meet and had a full and fair chance to respond” (*Canadian Pacific* at para 56).

(see also *Tsetta v Band Council of the Yellowknives Dene First Nation*, 2014 FC 396 at para 39; *Carry The Kettle First Nation v Kennedy*, 2021 FC 462 at para 68; *Crowchild v Tsuut'ina Nation*, 2017 FC 861 at paras 27-29).

[24] I do not accept the Respondents’ submissions that, because the Applicant did not attend Council meetings, this is sufficient to cause his removal, without more. That is, that there was no duty of procedural fairness owed in these circumstances.

[25] I also note the Applicant’s argument that the Election Regulations were not in force and, accordingly, that Chief and Council had no jurisdiction or authority to remove him from office based on same. On this point, Mr. Cardinal’s affidavit states that in 2013 a vote was held, and the Election Code was ratified. However, when cross-examined on his affidavit, his evidence was that there was no vote; rather, that there had been a petition which brought the Election Regulations into effect. When TFN’s counsel was asked to undertake to provide the petition, she refused.

[26] For purposes of this procedural fairness analysis, whether the Applicant’s removal from office was by way of the Election Regulations (including under s.18.8), or by way of some other authority, the basic requirements of notice and an opportunity to respond must still be met, and there is no evidence that this was done.

[27] Accordingly, as the Applicant was not afforded procedural fairness, his application for judicial review shall be granted. It is therefore not necessary to address the Applicant's other arguments.

Remedy

[28] Given the circumstances of this matter, the question of the appropriate remedy is not straightforward.

[29] The Applicant requests that his application be granted in accordance with the relief set out in his Notice of Application. Further, given TFN's failure to follow the Court's direction in Justice Favel's decision, that this is a circumstance where the matter should not be remitted to Chief and Council for re-determination. Instead, Chief and Council should be subject to a writ of prohibition against further and ongoing removal (citing *Tallman v Whitefish Lake First Nation* #459, 2023 FC 1411 (CanLII), at para 71).

[30] I note that the Notice of Application contains a long list of the relief sought and that many of the declarations requested are not relevant to the basis of my decision. Those that are relevant are:

- a) An Order of certiorari or Declaration quashing and setting aside the Removal and an Order reinstating the Applicant to his position as Councillor including repayment of all his remuneration from the date of Removal within 45 days of the Court's Order.
- b) In the alternative, an Order of certiorari quashing the Removal and remitting the Decision for re-determination in accordance with the reasons of this Court.

- c) A Declaration that the Decision was made contrary to Tallcree's customary law or election code, without jurisdiction, unreasonable, unfair, in bad faith and/or otherwise unlawful.
- i) An Order providing for expedited timelines so that the relief claimed is capable of being effective.
- j) An Order of costs from the Respondents on a solicitor-client basis and/or party and party costs in any event of the cause.
- k) Such further and other relief that this Court deems just.

[31] I will order that the July 29, 2024, decision of TFN Chief and Council is quashed.

[32] As the Applicant submits, there is a very real concern here that Chief and Council have clearly made up their minds that the Applicant must be removed from office, as evidenced by their disregard of Justice Favel's nomination decision and the Meeting Minutes. The submissions of TFN's counsel at the hearing were also clear that, in TFN's view, the Applicant did attend Council meetings and that this was determinative.

[33] That said, I am not persuaded that this is a circumstance where remitting the matter back for redetermination would necessarily stymie the timely and effective resolution of the matter (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 142). However, and to ensure that it does not, the re-determination will be conducted in accordance with these reasons.

[34] In that regard, the removal decision will be remitted back to TFN Chief and Council for re-determination. In effecting that redetermination, Chief and Council will afford the Applicant procedural fairness. He will be provided with notice and a full opportunity to respond. On this

point, I also note that a reading of the transcript of the cross-examination for Mr. Cardinal shows that reasonable requests for undertakings were refused by counsel for TFN, who also refused to permit Mr. Cardinal to answer reasonable and relevant questions that were put to him. Such an approach obstructs the information gather process. Similarly, TFN did not provide a certified tribunal record, and what it did provide (Meeting Minutes) did not even include the decision letter. My point here is that TFN Chief and Council, when effecting the re-determination, must ensure that every reasonable effort is made to give the Applicant notice of, and to permit him to fully respond to, the allegations against him. This includes that TFN will respond to reasonable requests to provide records relevant to this matter.

[35] The redetermination by Chief and Council will be commenced and concluded within four months of the date of my order.

[36] If, following the completion of the removal process, the Applicant is not removed from office, then he will be immediately reinstated and shall be paid, within 30 days of reinstatement, all remuneration due and owed to him from the date of his removal.

[37] If the removal process has not been commenced and concluded within four months of the date of my order, then the Applicant will be immediately reinstated and shall be paid, within 30 days of reinstatement, all remuneration due and owed to him from the date of his removal.

[38] If the Applicant is reinstated, then Chief and Council shall ensure that he is provided with the same notices, communications (including the provision to him of his Council member email

address) and information, and shall be afforded the opportunity to participate in Council matters, as all other Council members.

[39] I would also observe that a decision to remove the Applicant from office on the basis that Chief and Council do not agree with the electoral officer's decision that the Applicant was eligible to be nominated to run for office, without first utilizing the Election Code appeal process, could very well be seen to be an abuse of process given Justice Favel's decision. While that nomination decision is not the subject of this judicial review, the failure of TFN Chief and Council to properly address this issue, and any resultant consequences to the Applicant, must be taken into account when the removal decision is being redetermined.

[40] In the alternative to the above, Chief and Council could elect to appoint an independent panel to make the redetermination, which, in these circumstances, would be the better course of action to avoid any real or perceived bias on the part of TFN Chief and Council. In that event, the above requirements will also be adhered to by that panel.

[41] Finally, as to costs, in his written submissions, the Applicant requested costs "based on the established principles in similar cases" citing *Tootoosis v Poundmaker Cree Nation*, 2024 FC 1577 at para 21. However, here and unlike that case, the Applicant has not proposed a lump sum or other cost figure. Accordingly, the Applicant shall have his costs based on Tariff B, Column III.

JUDGMENT IN T-2104-24

THIS COURT'S JUDGMENT is that

1. The July 29, 2024, decision of TFN Chief and Council removing Jamie Meneen, the Applicant, from the office of Councillor is quashed;
2. The removal decision will be remitted back to TFN Chief and Council for redetermination in accordance with these reasons. In effecting that redetermination Chief and Counsel will afford the Applicant procedural fairness.
3. That removal redetermination process will be commenced and concluded within four months of the date of my order.
4. If, following the completion of the removal redetermination process, the Applicant is not removed from office, then he will be immediately reinstated and shall be paid, within 30 days of reinstatement, all remuneration due and owed to him from the date of his removal.
5. If the redetermination of the removal process has not been commenced and concluded within four months of the date of this order, then the Applicant will be immediately reinstated and shall be paid, within 30 days of reinstatement, all remuneration due and owed to him from the date of his removal.
6. If the Applicant is re-instated, Chief and Council shall ensure that he is provided with the same notices, communications (including the provision to him of his Council member email address) and information, and shall be afforded the same opportunity to participate in Council matters, as all other Council members.

7. In the alternative to the above, Chief and Council may elect to appoint an independent panel to make the redetermination. In that event, the above requirements will also be adhered to by that panel.
8. The Applicant shall have his costs based on Tariff B, Column III.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2104-24

STYLE OF CAUSE: JAMIE MENEEN v TALLCREE FIRST NATION
(ALSO KNOWN AS TALLCREE TRIBAL
GOVERNMENT 446), RUPERT MENEEN,
KATHLEEN AUGER, DAVID BOW-NOSKIYE,
MAVIS MENEEN

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: APRIL 16, 2025

JUDGMENT AND REASONS: STRICKLAND J.

DATED: MAY 1, 2025

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