

Federal Court



Cour fédérale

**Date: 20250509**

**Docket: T-1446-22**

**Citation: 2025 FC 859**

**Ottawa, Ontario, May 9, 2025**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**GERALD PAPAQUASH AND  
GLENN PAPAQUASH**

**Applicants**

**and**

**THE COUNCIL ELECT: DAVE COTE,  
KIMBERLY KESHANE,  
SIDNEY KESHANE, FERNIE O'SOUP AND  
SOLOMON REECE OF THE KEY FIRST  
NATION AND DREW SHAW,  
ONE FEATHER ELECTION SERVICES  
IN THEIR CAPACITY AS  
ELECTORAL OFFICER**

**Respondents**

## **JUDGMENT AND REASONS**

[1] This Application for judicial review concerns the June 12, 2022 election held at Key First Nation (KFN). Although the judicial review Application was filed on July 12, 2022, moving this Application to a hearing has been delayed on multiple occasions primarily due to the Applicants' failure to meet filing deadlines imposed through the case management process.

[2] At the opening of the hearing of this Application, Applicants' legal counsel requested an adjournment, stating that she had not spoken to her clients in a couple of months and needed to confirm their intention to proceed. Respondents' counsel objected to the matter being adjourned.

[3] I note the parties were advised of the March 27, 2025 hearing date by an Order dated January 8, 2025. Notwithstanding having notice of the upcoming hearing date, the Applicants' legal counsel did not file a Motion for an adjournment, nor did she make a formal request for an adjournment in writing in advance of the hearing. The request was only made at the opening of the hearing on March 27, 2025.

[4] I advised the Applicants' legal counsel that I was not granting the adjournment request as it had not been made in a timely manner and there were no new developments or change in circumstances that would justify an adjournment (*UHA Research Society v Canada (Attorney General)*, 2014 FCA 134 at para 9). A lack of communication with clients does not justify the waste of court resources that would result from an adjournment and does not justify the prejudice to the Respondents who were prepared to proceed. I note as well that the parties filed their

application records in July 2023, and there were no outstanding prehearing steps to be undertaken. In my view, further delay in this matter was not in the interests of justice, and the hearing proceeded.

[5] The Applicants, Gerald Papaquash and Glenn Papaquash, seek to annul the June 12, 2022 KFN election under section 31 of the *First Nations Elections Act*, SC 2014, c 5 [Act]. They allege that the nomination of candidates contravened subsection 9(4) of the Act and they claim that one of the elected Councillors, Sidney Keshane, was ineligible to run in the election because of a finding in an earlier Federal Court decision.

[6] For the reasons that follow, I am dismissing this Application. Even if the nomination irregularities were a contravention of the Act, any contravention was of a technical nature. Further, there is no evidence that the alleged contravention likely affected the results of the 2022 election. Finally, there is no evidence before the Court that Sidney Keshane was not eligible to run in the 2022 election.

#### I. Background

[7] In their Notice of Application, the Applicants request that the 2022 election be overturned and that the Chief and Council be enjoined from acting as recognized authority of the KFN.

[8] On February 24, 2023, the Applicant Clarence Papaquash discontinued the Application, leaving Glenn Papaquash and Gerald Papaquash as the remaining named Applicants.

[9] On April 14, 2023, the Applicants discontinued the Application against the Respondent Chief Elect Clinton Key, leaving the individual councillors elected at the June 2022 KFN election and One Feather Election Services and Drew Shaw Electoral Officer as the remaining Respondents.

[10] The Respondents One Feather Election Services and Drew Shaw did not respond to the Application, have not filed written submissions, and did not appear at the hearing of the Application.

[11] KFN is a Band as defined in the *Indian Act*, RSC 1985, c I-5 and a signatory to Treaty No. 4. The population of KFN is 1532 registered members, 250 of whom reside on the Key 65 Reserve lands located within Treaty 4 territory in Southeastern Saskatchewan.

[12] Gerald Papaquash and Glenn Papaquash are members of KFN. Glenn was an unsuccessful candidate for Councillor in the June 2022 KFN election.

[13] The issues raised in this Application relate to the events of May 7, 2022, at the nomination meeting at the Saulteuxplex Hall on the Key 65 Reserve lands in Saskatchewan. At that meeting, several electors nominated more than one candidate to run in the 2022 KFN election.

[14] On June 12, 2022, the KFN election was held, and the following were elected as Chief and Council:

- A. Chief: Clinton Key
- B. Council Elect:
  - i. David Cote
  - ii. Kimberly Keshane
  - iii. Sidney Keshane
  - iv. Fernie O'Soup
  - v. Solomon Reece

[15] Each of the five elected KFN Council members, who are named as Respondents in this Application, were nominated by a person who also nominated at least one other candidate. The Applicants refer to this as “double nominating” and claim that it is a contravention of subsection 9(4) of the *Act*.

## II. Issues

[16] The following are the issues to be addressed based upon the arguments made by the Applicants:

- A. Were the 2022 Election candidate nominations in contravention of subsection 9(4) of the *Act*?
- B. Did the alleged contraventions likely affect the result of the election?
- C. Was Sidney Keshane ineligible to run in the election?

## III. Analysis

A. *Were the 2022 Election candidate nominations in contravention of subsection 9(4) of the Act?*

[17] During oral submissions, the Applicants narrowed their challenge, seeking only the removal of three (3) candidates, namely: Kimberly Keshane, Sidney Keshane, and

Fernie O'Soup. The Applicants argue that these candidates were not eligible pursuant to subsection 9(4) of the *Act* because they had been nominated by an elector who also nominated at least one other candidate.

[18] Subsection 9(4) of the *Act* states:

**Candidates**

**Limitation**

**9(4)** An elector must not nominate more than one candidate for each position to be filled.

[19] The Applicants say that subsection 9(4) prohibits an elector from nominating more than one candidate. This position is reflected in the August 26, 2022, Affidavit of Glenn Papaquash where he states:

7. I was a councillor candidate and I saw voters nominating more than one candidate. Ester Papaquash nominated not only me but also David Cote, Lyman Papaquash seconded Gilda Dokuchie's nomination and seconded David Cote's nomination. Edna Keshane nominated Richard Crane and seconded Kimberly Keshane's nomination. Desiree Brass nominated Rob Brass and nominated Nolan Keshane. These double nominations are not allowed in the *Act* [...]

[20] In his Affidavit sworn on March 21, 2023, the Respondent Solomon Reece recounts the events at the nomination meeting as follows:

11. At the nomination meeting held on May 7, 2022:
  - a. Desiree Brass nominated two candidates who were ultimately included on the Final List of Candidates for the Office of Councillor, namely Bob Brass and Solomon Reece;

- b. Marlene Brass nominated two candidates who were ultimately included on the Final List of Candidates for the Office of Councillor, namely Kenneth Brass and Esther Papequash;
- c. Cornelia Keshane nominated two candidates who were ultimately included on the Final List of Candidates for the Office of Councillor, namely Dustin Keshane and Kimberly Keshane;
- d. Lorraine O'Soup nominated two candidates who were ultimately included on the Final List of Candidates for the Office of Councillor, namely Fernie O'Soup and Percy O'Soup; and
- e. Esther Papequash nominated two candidates who were ultimately included on the Final List of Candidates for the Office of Councillor, namely David Cote and Glenn Papequash.

[21] It is not disputed that at the May 7, 2022 meeting, individual electors nominated more than one candidate.

[22] Legal counsel for the Respondent Council Member Solomon Reece (who is represented separately from the other Respondents), concedes that the double nominations contravened the *Act*. He argues, however, that the double nominations were inconsequential as it did not likely affect the results of the election.

[23] Legal counsel for the other four Respondent Council Members contends that subsection 9(4) does not in fact prohibit double nominations but limits an elector to nominating no more candidates than there are available positions. In the 2022 KFN election as there were five council positions, they argue that an elector could nominate up to five candidates—one candidate

for each position to be filled. They argue that since there is no evidence that any elector nominated more than five candidates, there is no contravention of subsection 9(4) of the *Act*. Regardless, they argue that there is no evidence that the nomination of candidates likely affected the results of the election.

[24] Aside from the statement in paragraph 7 of the Affidavit of Glenn Papaquash (above), the Applicants do not explain how their interpretation of subsection 9(4) is the correct interpretation as compared to the interpretation offered by legal counsel for the four Council Members. In response to the question from the Court, the Applicants' legal counsel states that it is for the Court to determine if subsection 9(4) was contravened. While this is a fair statement, the Court does not make findings on statutory interpretation in a vacuum. The burden is on the Applicants to prove that their interpretation of the legislation is the correct one. Here however, other than the bald statement in an Affidavit that the legislation does not permit "double nominations", the Applicants have not offered any case law or interpretative approaches to subsection 9(4) of the *Act* to support their position. In other words, the Applicants have not met their evidentiary burden as there is no evidence upon which the Court can conclude that the nominations were in contravention of subsection 9(4) of the *Act*.

[25] In the circumstances, the Applicants have not established that the nominations at the meeting of May 7, 2022, were in contravention of subsection 9(4) of the *Act*.



B. *Did the alleged contraventions likely affect the result of the election?*

[26] Even if the Applicants could establish that double nominations are a contravention of subsection 9(4) of the *Act*, that is not the end of the matter. The Applicants must still establish that the alleged contravention of the *Act* likely affected the election.

[27] Section 31 of the *Act* states:

**Contestation of election**

**31** An elector of a participating First Nation may, by application to a competent court, contest the election of the chief or a councillor of that First Nation on the ground that a contravention of a provision of this Act or the regulations is likely to have affected the result.

[28] The only reference to the impact of the nominations on the election result is the following in the Affidavit of Glenn Papaquash:

8. At the election, I did receive 89 votes but the inclusion of the questionable candidates which could also include me did affect the outcome of the election. See attached the statement of individual candidate ballot counts. It is attached as **Exhibit D**.

[29] Aside from this assertion by Glenn Papaquash that the inclusion of questionable candidates “did affect the outcome of the election”, the Applicants offer no other evidence that the alleged double nominations likely affected the election result. I note for example, there is no evidence that the five candidates elected were not otherwise eligible to stand for election either because of age or because their names were not on the KFN band list.

[30] Even if the double nominations are considered a contravention of the *Act*, there must still be evidence that the contravention impacted the election results. Otherwise, the contravention would be considered a technical contravention that would not justify interfering with the election results. As noted by Justice Barnes in *Papequash v Brass*, 2018 FC 325:

[34] Not every contravention of the Act or regulations will justify the annulment of a band election. A distinction is not infrequently made between cases involving technical procedural irregularities and those involving fraud or corruption. In the former situation, a careful mathematical approach (eg reverse magic number test) may be called for to establish the likelihood of a different outcome. However, where an election has been corrupted by fraud such that the integrity of the electoral process is in question, an annulment may be justified regardless of the proven number of invalid votes. One reason for adopting a stricter approach in cases of electoral corruption is that the true extent of the misconduct may be impossible to ascertain or the conduct may be mischaracterized. This is particularly the case where allegations of vote buying are raised and where both parties to the transaction are culpable and often prone to secrecy: see *Gadwa v Kehewin First Nation*, 2016 FC 597, [2016] FCJ No 569 (QL).

[31] To be persuaded that the contravention at issue justifies intervention in the election results, the Court requires “persuasive evidence” because the ramifications of ordering a new election are severe (*Bird v Paul First Nation*, 2020 FC 475 at para 30). As noted in *Paquachan v Louison*, 2017 SKQB 239, annulling an election has sweeping consequences as it disenfranchises voters, increases the potential for future litigation, undermines the certainty in democratic outcomes, and may lead to disillusionment and voter apathy (paras 19-20).

[32] There is no evidence that the five candidates, who were elected, were not eligible to be nominated for the position of a councillor with KFN. This means that even if there was a

contravention of subsection 9(4) of the *Act*, the contravention was of a technical or procedural nature and does not warrant interfering with the election results. The Applicants' section 31 challenge to the 2022 KFN election cannot succeed.

C. *Was Sidney Keshane ineligible to run in the election?*

[33] The final issue I will address is the argument raised in the Application, that Mr. Keshane was not eligible to run in the election. During oral submissions, counsel for the Applicants suggested they are no longer challenging Mr. Keshane's eligibility to run in the election; however, for the sake of completeness, I will address this issue.

[34] Section 40 of the *Act* states:

Any person who is convicted of an offence under paragraph 37(2)(a), or any candidate who is convicted of an offence under paragraph 37(2)(b), in addition to any other punishment for that offence prescribed by this Act, is not eligible to be elected as chief or councillor of a participating First Nation during the five years after the date of conviction.

[35] In his Affidavit Glenn Papaquash states:

11. The [Act], under Section 40 establishes a limitation as to who can be a candidate. Sidney Keshane was found to be in contravention of the *Act* in T-1856-16 and therefore should not have been an eligible candidate in this election. [...]

[36] The "T-1856-16" Mr. Papaquash refers to is the *Papequash* reported decision referred to above. In *Papequash*, Mr. Justice Barnes found as follows:

[39] In this case, there is clear evidence of widespread and openly conducted vote buying activity carried out by Rodney Brass, Glen O'Soup, Sidney Keshane, and Angela Desjarlais. None of the several affiants who witnessed these events was cross-examined and their evidence stands unchallenged. It is also of some significance that Rodney Brass attempted to buy-off the Applicants from proceeding further with this application by offering each of them substantial sums of money in return for dubious offers of work. Those actions arose after the election and are not directly relevant to the issues raised on this application. This evidence is, however, relevant to Mr. Brass' credibility. It is also corroborated by documentation signed by him.

[40] I am satisfied on the evidence before me that the integrity of the Key First Nation Band election conducted on October 1, 2016 was sufficiently corrupted by the misconduct of Rodney Brass, Glen O'Soup, Sidney Keshane, and Angela Desjarlais that the election must be annulled and a new election conducted. I would add that the corrupt practices employed by several of the Respondents during the 2016 Band election appear to reflect a long-standing tradition and acceptance by some members of vote buying and other dishonest attempts to influence electoral outcomes. These practices appear to be sufficiently entrenched that, in the election to follow, rigorous efforts will be required to ensure the integrity of the process. [emphasis added]

[37] Justice Barnes' finding that Mr. Keshane's misconduct (and the misconduct of others) was sufficient to find that the 2016 election was corrupted, is a serious finding. However, this finding is not a criminal "conviction" within the meaning of section 40 of the *Act* and Justice Barnes did not make any findings regarding section 37 of the *Act* in relation to Sidney Keshane's conduct. Further, there is no evidence in the record before me that Mr. Keshane has been convicted of an offence under section 37 of the *Act*.

[38] In the absence of evidence demonstrating a criminal conviction, there is no merit to the Applicants' argument that Mr. Keshane was not eligible to run for office.

IV. Conclusion

[39] This Application for judicial review is dismissed.

[40] The Respondents David Cote, Kimberly Keshane, Sidney Keshane, Fernie O'Soup and Solomon Reece are entitled to costs. I decline to award any costs to the Respondents One Feather Election Services and Drew Shaw as Electoral Officer as they did not participate in this Application.

[41] If the parties cannot agree on costs, they can make written submissions. The Respondents may file and serve written submissions on costs by May 16, 2025. The Applicants may file and serve their submissions on costs by May 23, 2025. All written submissions shall not exceed five (5) pages, double spaced.

**JUDGMENT IN T-1446-22**

**THIS COURT'S JUDGMENT is that:**

1. This Application for judicial review is dismissed.
2. The Respondents David Cote, Kimberly Keshane, Sidney Keshane, Fernie O'Soup and Solomon Reece are entitled to costs. They may file and serve written submissions on costs by May 16, 2025. The Applicants may file and serve their responding written submissions on costs by May 23, 2025. All written submissions on costs shall not exceed five (5) pages, double spaced.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1446-22

**STYLE OF CAUSE:** PAPAQUASH ET AL V THE COUNCIL ELECT:  
DAVE COTE, KIMBERLY KESHANE, SIDNEY  
KESHANE, FERNIE O'SOUP AND SOLOMON  
REECE OF THE KEY FIRST NATION AND DREW  
SHAW, ONE FEATHER ELECTION SERVICES IN  
THEIR CAPACITY AS ELECTORAL OFFICER

**MOTION HELD BY  
VIDEOCONFERENCE AT:** OTTAWA, ONTARIO

**DATE OF HEARING:** MARCH 27, 2025

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** MAY 9, 2025

**APPEARANCES:**

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