

ID42

T-601-21

**IN THE FEDERAL COURT OF CANADA**  
**BETWEEN:**

**VERNETTA CAMPEAU**

**AND:**

**MUSKOWEKWAN FIRST NATION BAND COUNCIL, REG BELLEROSE,  
 LEON WOLFE JR., CALVIN WOLFE, JAMIE WOLFE, CYNTHIA  
 DESJARLAIS, ERNEST MOISE, HOLLY GEDDES, TERRYOLE WOLFE,  
 KAREN MARIE DESJARLAIS and the ATTORNEY GENERAL OF  
 CANADA**

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May 10, 2021		
<b>Applicant</b>		
Taylor Baron		
Edmonton, AB	18	

**Respondents**

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**NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Applicant, Vernetta Campeau, will make a motion for an interlocutory injunction at a special sitting of the Federal Court in Edmonton, Alberta, on June 17, 2021 pursuant to Rules 359, 364 and 373 of the *Federal Court Rules*.

**THE MOTION IS FOR:**

1. An interlocutory injunction pursuant to Rule 373 staying the Decision(s) of the Muskowekwan Respondents to postpone and/or cancel the Election required to be held on April 4, 2021;
2. In the alternative, an Order obligating the Respondents to comply with their duty to hold an Election in accordance with the mandatory provisions of the *Muskowekwan First Nation Custom Election Act* ("**Custom Election Act**");
3. An Order that the Respondents follow the Declaration of invalidity in T-1274-20;
4. Costs of this motion in any event of the outcome; and/or
5. Such further and other relief that this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

6. The Applicant, Vernetta Campeau, is a Member of the Muskowekwan First Nation. She was a candidate for Councillor, nominated on March 2, 2021, for an Election scheduled for April 4, 2021 (“**2021 Custom Election**”).
7. The Custom Election Act mandates that the Election for Muskowekwan’s Council be held on the first Sunday every four years, which, this time around is April 4, 2021.
8. The Respondents, Muskowekwan Band Council, and in particular a quorum of Reg Bellerose, Jamie Wolfe, Ernest (Timmis) Moise, Calvin Wolfe and Terryole Wolfe voted to postpone and then completely cancel the 2021 Custom Election.
9. The postponement decision is dated March 27, 2021. The cancellation decision is not dated, but was announced on March 29, 2021 (collectively referred to as the **Decision**).
10. The Decision is purportedly based on section 4 of the *First Nations Election Cancellation and Postponement Regulations (Prevention of Diseases)*, SOR/2020-84.
11. On April 1, 2021, the Federal Court declared section 4 invalid. The Declaration of invalidity was suspended until June 1, 2021.
12. The Applicant brought this application for judicial review on April 9, 2021.
13. The Applicant brings the within motion for interlocutory relief to preserve the *status quo* of the 2021 Custom Election; ensure compliance with the Custom Election Act and/or ensure compliance with the Declaration of this Court in T-1274-20.
14. An interlocutory injunction is warranted.
15. The underlying application raises many serious issues, including that:
  - (i) the Decision was plainly made without jurisdiction, contrary to the Declaration in T-1274-20;
  - (ii) the Decision was made without jurisdiction in the Custom Election Act;
  - (iii) the Decision was procedurally unfair in failing to notify or consult Muskowekwan members;
  - (iv) the Decision was made in bad faith and/or constituted a conflict of interest;

(v) the Decision was not made at a duly convened Band Council meeting;

(vi) the Decision was unreasonable and, and specifically the 2021 Custom Election cancellation was completely disproportionate to the risk of COVID-19 on reserve.

16. Without relief in this Court, the Applicant will suffer irreparable harm. Her vote will be destroyed. Her nomination and candidacy will be irreparably harmed. Forfeiting hundreds of cast mail-in-ballots would cause and forcing candidates to take further time off work/engage in another costly campaign would cause further irreparable harm.

17. The balance of convenience favours the Applicant, the preservation of the *status quo*, preserving votes, compliance with the ratified customary law of the Muskokwan First Nation and Declaration of this Court.

18. Costs should be award to the Applicant in any event of the outcome and/or in the approximate lump sum of \$10,000, including for the following reasons:

(i) The Respondents had an opportunity to avoid any or all of this proceeding by consulting their members or complying with their obligations in the Custom Election Act;

(ii) The individually named Respondents have received their salary and per diems notwithstanding their unlawful actions;

(iii) The Attorney General of Canada enacted an invalid law, as found by this Court, which denied the Muskowekwan members, such as the Applicant, the opportunity to vote;

(iv) The Respondent and the Applicant have unequal resources.

19. *Federal Courts Act*, RSC 1985, c F-7, sections 18 (1), 18.1, 18.2;

20. *Federal Courts Rules*, SOR/98-106, Rules 359, 364, 373, and 385;

21. Such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at for this motion:

a. The Affidavit of Vernetta Campeau sworn May 10, 2021;

b. The Affidavit of Karen Penacie sworn May 10, 2021;

- c. The Affidavit of Alberta Penacie sworn May 10, 2021;
- d. The Affidavit of Dory OoChoo sworn May 10, 2021;
- e. The Certified Tribunal Records filed in T-601-21;
- f. Any other material as counsel may advise and this Court may permit.

**Dated** at Edmonton, Alberta, this 10th day of May, 2021.




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**FIELD LLP**

Barristers & Solicitors

2500 – 10175 101 St SW

Edmonton AB T5J 0H3

**Attention: Orlagh O'Kelly**

Phone: 780-423-3003

Fax: 780-428-9329

**Counsel for the Applicant /Moving Party**

**TO: Nikita Rathwell, Lorne Fagnan**  
 McKercher LLP  
**Counsel for the Respondents, Muskowekwan First Nation Band Council et. al.**  
 374 3rd Avenue South, Saskatoon, SK S7K 1M5  
 Direct Line: (306) 664-1384  
[n.rathwell@mckercher.com](mailto:n.rathwell@mckercher.com)

**AND TO: Karen Jones**  
**Counsel for the Respondent, Attorney General of Canada**  
 Ms. Nathalie G. Drouin  
 Deputy Minister of Justice and Deputy Attorney General of Canada  
 Prairie Regional Office (Saskatoon)  
 410 – 22<sup>nd</sup> Steet East, Suite 410, Saskatoon, SK S7K 5T6  
 National Litigation Sector  
 Department of Justice Canada / Government of Canada  
[karen.jones@justice.gc.ca](mailto:karen.jones@justice.gc.ca) /Tel: 306-518- 0745 / Fax: 306-975-4030

COURT NO. T-601-21

## IN THE FEDERAL COURT OF CANADA

BETWEEN:

VERNETTA CAMPEAU

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F I L E D	FEDERAL COURT COUR FÉDÉRALE  June 8, 2021  Jennifer Sorvisto Edmonton, AB
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Applicant

AND:

MUSKOWEKWAN FIRST NATION BAND COUNCIL, REG BELLEROSE, LEON WOLFE JR., CALVIN WOLFE, JAMIE WOLFE, CYNTHIA DESJARLAIS, ERNEST MOISE, HOLLY GEDDES, TERRYOLE WOLFE, KAREN MARIE DESJARLAIS and the ATTORNEY GENERAL OF CANADA

Respondents

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AFFIDAVIT OF VERNETTA CAMPEAU  
(Sworn May 10, 2021)

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I, **Vernetta Campeau**, of the City of Regina, in the Province of Saskatchewan, SWEAR AND SAY THAT:

1. I am the Applicant in this proceeding, a life-long member and eligible voter of the Muskowekwan First Nation. I have voted in the Muskowekwan elections since I was eligible to vote. I am an engaged member of Muskowekwan. As such, I have personal knowledge of the matters deposed to herein, except where stated to be based on information and belief, in which case I believe the same to be true.
2. Prior to 2017, Muskowekwan elections were held every two years, in accordance with the *Indian Act*. In April of 2017, we had our first election under the *Muskowekwan First Nation Custom Election Act*. The Custom Election Act was ratified by a majority of members. There is now a 4 year term in office. An election is required to be held every 4 years, on the first Sunday of April. Attached my affidavit as **Exhibit A** is the Custom Election Act ratified in March of 2016.

3. According to our Custom Election Act, we had a review in April 2020. It was held off because of COVID-19. However, eventually and as part of this review, we had Zoom band membership meetings on November 26, 2020, and December 7, 2020. Members had until December 17, 2020 to send suggested changes.
4. The process was stalled until February 16, 2021 when another Zoom meeting was held. However, I sent a letter to Chief and Council January 28, 2021. Attached to my affidavit as **Exhibit B** is a copy of my Letter sent to Chief and Council.
5. On February 25, 2021, we had an online referendum on proposed amendments to the Custom Election Act. The referendum failed to reach the required members which was an equation of:
  - a. eligible voters of  $1412/2$  equalling 50% of voters = 706
  - b. 706 plus 1 = 707 to participate
  - c. out of those  $707/2$  equalling 353 plus 1 must be in favour to change the Custom Election Act.

Unfortunately, after all that, we failed to get enough participants and no changes were made. A big concern was mail-in ballots and one proposed amendment was to have online voting because Covid-19 was a concern to all membership.

6. Five days after the referendum, on March 2, 2021, I submitted my nomination to run for Councillor. I paid \$250 to be eligible. I was looking forward to the election required to be held on April 4, 2021. Attached to my affidavit as **Exhibit C** is the List of Candidates.
7. There was a 2-3 day delay in sending out mail-in-ballots because a couple nominees allegedly owed money to Muskowekwan. Ultimately, they did not owe any money, so the mail-in-ballots were sent out on or about March 5 or 6.
8. To my knowledge, members were required to update their address with the electoral officer in order to receive a mail-in-ballot.
9. The Electoral Officer, Burke Ratt told me that over 500 mail-in-ballots were sent out. I understand there are approximately 1412 eligible voters. Some of the off reserve members plan to vote on reserve even if they don't live there.
10. Before March 29, I spoke with approximately \_\_\_\_ off reserve members who received mail-in-ballots and who intended to cast a vote by mail.

11. I received my mail-in-ballot on or about March 18, 2021. I cast my mail-in-ballot on or about March 29 2021. by priority post. (OK.)
12. During the campaign, I understood from speaking to membership that they wanted a change of leadership. Some of us candidates were excited about the opportunity, after 15-20 years, to finally change the leadership of Muskowekwan. Many members expressed their desire for a change directly to me.
13. Everything was going well until March 27. On that day, I was informed by Leon Wolfe Jr. - a candidate for the 2021 election of Chief and an outgoing Councillor - that a quorum of Council voted to postpone the election.
14. I was very disappointed about this. I told Leon Wolfe Jr. that I was disappointed. I told him that the Council could not postpone an election without consulting members. After all, we had a referendum to try to change the election process on February 25, 2021.
15. Had I been consulted, I would have agreed that a short postponement was justified due to one of the candidates testing positive for COVID-19 variant. However, I did not see it necessary to postpone the election 90 days.
16. The members whom I spoke with also did not agree with a 90 day postponement. However, the outgoing Chief and Council, to my knowledge, did not consult with any members prior to their March 27 postponement decision.
17. Leon Wolfe Jr. also informed me and I do believe that he did not have notice of the proposed postponement prior to March 27 and that the quorum of Council arrived at the Council meeting with a Band Council Resolution already prepared. I asked Councillor Wolfe Jr. to swear an affidavit in support of my application. He told me he was willing to do so. He supports this application. However, I am informed by my legal counsel, Orlagh O'Kelly, and do believe that the lawyers acting for the Band Council will not allow any communication between my legal counsel and Councillor Wolfe Jr.
18. Then, on March 28, 2021, I learned through Leon Wolfe Jr. that Chief and Council had another meeting. This time they came prepared and determined to cancel the election, fire the electoral officer, and get rid of the votes that were already cast. They wanted to start all over. Councillor Wolfe Jr. told me that only 5 Members of Council voted in favour of the cancellation.
19. I believe that this is where the outgoing Chief and Council silenced membership by not honouring those ballots that were already cast. This is the reason why I wrote a letter



dated March 29, 2021 to Chief and Council. Attached to my Affidavit as **Exhibit D** is my Letter to the Chief and Council. They never responded to my letter.

20. To my knowledge, no members were consulted prior to the election being cancelled. Many members spoke to me, called me and wrote on my Facebook. All of them did not support a cancellation. Attached to my Affidavit as **Exhibit E** are Facebook comments from individuals whom I know to be Muskowekwan members asking about the election cancellation.
21. I asked Burke Ratt to confirm how many votes were received by March 29 and April 4. Following March 29, Mr. Ratt asked that our communications go through his lawyer. As of May 10, I have not received confirmation from Mr. Ratt of how many votes were cast. However, his lawyer on April 13, 2021, agreed that Mr. Ratt would preserve all of these votes pending this proceeding. Attached to my affidavit as **Exhibit F** is a copy of Mr. Ratt's lawyer's confirmation dated April 13, 2021.
22. On April 13, 2021, I saw a post by Janice Bellerose. Janice Bellerose is a relation of the outgoing Chief Reg Bellerose. Reg Bellerose has been in power for 15-20 years and he voted to cancel the election this year. Janice's post notified me that a completely new election was in fact being proposed, again without consultation. This was posted to Facebook. Attached to my affidavit as **Exhibit G** is a copy of Janice Bellerose's post of the new Notice of Nominations.
23. I believe that this new election process is an attempt by Chief and Council to shore up their chances for re-election. Prior to March 29, I believed the candidates who were supporting a change of leadership, including myself, Karen Penacie, Albert Penacie and Dory OoChoo, were gaining momentum and had a good chance of winning the election. This is the only explanation I can see for why they would completely throw out the election process and votes cast by our membership. There is no other reason why there would be a need to change the list of candidates as Janice Bellerose proposes.
24. Between March 27 and May 10, Chief and Council did not consult members. They did not explain why a Zoom meeting or online voting/consultation were not possible.
25. To the best of my knowledge, the outgoing Chief and Council were receiving their salary after March 2, 2021 and will continue to receive their salary until July 11, 2021.
26. I make this Affidavit in support of, but not limited to the application for judicial review and any motion for interlocutory relief that may be necessary.



*The affiant, Vernetta Campeau, was not physically present before the commissioner, Orlagh O'Kelly, but was linked with the commissioner utilizing video technology and the protocol in Court of Queen's Bench of Alberta Notice to the Profession and Public #2020-02 was utilized for the remote commissioning of this Affidavit.*

SWORN BEFORE ME at the City of )  
Edmonton of Alberta, this 10th day of May, )  
2021. )

  
\_\_\_\_\_  
Orlagh O'Kelly  
Barrister & Solicitor

\_\_\_\_\_  
Vernetta Campeau

**ORLAGH O'KELLY**  
Barrister & Solicitor

*The affiant, Vernetta Campeau, was not physically present before the commissioner, Orlagh O'Kelly, but was linked with the commissioner utilizing video technology and the protocol in Court of Queen's Bench of Alberta Notice to the Profession and Public #2020-02 was utilized for the remote commissioning of this Affidavit.*

SWORN BEFORE ME at the City of )  
Edmonton of Alberta, this 10th day of May, )  
2021. )

\_\_\_\_\_)  
Orlagh O'Kelly )  
Barrister & Solicitor )

\_\_\_\_\_)   
**Vernetta Campeau**

