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Wolfe v. Ermineskin, 2001 FCA 199 (CanLII)

Date: 2001-06-07
Docket: A-5-00
Parallel citations: 208 F.T.R. 159
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Date: 20010607

Docket: A-5-00

CORAM: DÉCARY, J.A.

EVANS, J.A.

SHARLOW, J.A.

BETWEEN:

GORDON WOLFE

Appellant

and

JOHN ERMINESKIN

Respondent

and

**THE CHIEF AND COUNCIL
OF THE ERMINESKIN FIRST NATION**

Intervener

Heard at Calgary, Alberta on Thursday, June 7, 2001.

Judgment delivered at Calgary, Alberta on Thursday, June 7, 2001.

REASONS FOR JUDGMENT BY: EVANS, J.A.

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Neutral Citation: 2001 FCA 199

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REASONS FOR JUDGMENT

(Delivered from the Bench at Calgary, Alberta

on Thursday, June 7, 2001)

EVANS, J.A.

The appellant is a resident member of the Ermineskin First Nation. He made an application for judicial review requesting an order of *quo warranto* to challenge the validity of the respondent's election to the Ermineskin First Nation Council in 1998. He also sought an order of *mandamus* against the returning officer, and the Chief and Council of the Ermineskin First Nation, on the ground that they had failed both to consider evidence adduced by the appellant purporting to show that the respondent had bought votes during an election in the previous year, and to declare the respondent guilty of corrupt practices and thereby ineligible to be a candidate for election to the Council.

This is an appeal from the decision of MacKay J. of the Trial Division dismissing the application, now reported as *Wolfe v. Ermineskin* 1999 CanLII 9181 (F.C.), (1999), 178 F.T.R. 60. Despite the able submissions of counsel, we are not persuaded that the reasons of MacKay J. contain any error.

The principal argument advanced before us by counsel for the appellant was that MacKay J. erred in the exercise of his discretion to refuse the relief sought, because he failed to consider whether the right of appeal to the Election Appeal Board provided by the Ermineskin Tribal Election Regulations was an *adequate* alternative remedy to judicial review.

The relevant provision is Regulation 27(c). It provides that, within 14 days after the holding of an election, *a candidate* in the election (which the appellant was not) may appeal to the Board on the ground that a person nominated to be a candidate was ineligible to be a candidate. Under Regulation 2(a) a candidate shall be determined ineligible and disqualified from nomination and election who was guilty of corrupt practice in connection with Ermineskin Tribal Affairs, dishonesty or malfeasance. Decisions of the Board are subject to the judicial review jurisdiction of the Federal Court under sections 18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7.

Although the reasons of MacKay J. do not expressly address the issue of the adequacy of the alternative remedy, we are satisfied that, on the evidence before him, it was open to him to conclude that the right of appeal to the Board contained in the Regulations, which codify the customary practice of the Ermineskin First Nation, is a reasonably adequate remedy which the appellant should have pursued before making his application for judicial review.

While the right of appeal to the Board is limited to candidates in the election, there is no evidence that the appellant had taken any steps to see whether a candidate was willing to take his concern to the Board. Further, we are not persuaded by counsel's argument that the right of appeal is not an adequate remedy because the procedures of the Board for examining a complaint that are prescribed in Regulations 28 and 29 are unsatisfactory. In our view, the Regulations do not preclude the Board from properly investigating a complaint in a fair manner, including, where appropriate, by providing an opportunity for a person who was not a candidate in the election to put before the Board evidence in support of the complaint.

We would only add that, if this litigation has revealed gaps, obscurities or other unsatisfactory features in the Regulations with respect to the process for determining a candidate's eligibility to stand for election to the Council, the more appropriate remedy is for electors to seek to have the Regulations amended by Council in accordance with the procedure provided in Regulation 35.

For these reasons, the appeal will be dismissed with costs to the respondent.

Evans"

"John M.

J.A.

Calgary, Alberta

June 7, 2001

FEDERAL COURT OF APPEAL

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF

RECORD

DOCKET:

A-5-00

STYLE OF CAUSE:

Gordon Wolfe v. John Ermineskin et al.

PLACE OF HEARING:

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DATE OF HEARING:

June 7, 2001

by



for the



Federation of Law Societies of Canada