

ABORIGINAL PEOPLES

ELECTIONS

Reasons for order dismissing election appeal concerning allegation successful candidate in elections for chief and councillors bought vote of an elector by giving her money on day of election — Proceeding herein offering opportunity to address intersection of Indigenous law with Canadian case law, alternative Indigenous process of seeking resolution through agreement as contrasted with process of litigation, adjudication — Roseau River Anishinabe First Nation (RRAFN) selecting their leaders by RRAFN Constitution, RRAFN Election Act — Custom Council consisting of family representatives; Chief, Council consisting of elected First Nations representatives — In 2015, applicants applying for urgent injunctive order relating to election for chief, council, conduct of RRAFN election — Agreement between parties resulting in consent order providing for two co-electoral officers to decide electoral matters jointly, to seek binding direction or order from judicial officer if no consensus reached — All parties consenting to Federal Court's (F.C.) jurisdiction as proper authority for consideration, determination of election appeal — Order specifying F.C. may consider relevant sources of law, including but not limited to RRAFN Election Act, RRAFN Constitution, Canadian legislation, case law — Issues whether vote buying valid ground of appeal, whether facts disclosing vote buying in election — Vote buying valid ground for appeal under RRAFN Election Act — Modern statutory interpretation approach having application with custom governance legislation enacted by First Nations — Reading of RRAFN Election Act disclosing Act having as purpose holding of fair elections that reflect free choice of RRAFN electors in deciding their leadership — Vote buying corrupt practice, contrary to holding of fair elections — Those not having characteristics of fairness eligible for removal from office under RRAFN Election Act, s. 14(a) — Prohibition against unfair, corrupt practice for those in office, but not for those in process of seeking election to that office, illogical, contrary to overall purpose of RRAFN Election Act — As a result, immoral, corrupt practice of vote buying is contrary to the public interest of the RRAFN to have free, fair elections and is therefore contrary to the RRAFN Election Act — Term “corrupt practice” as included in RRAFN Election Act's ss. 4(i), 10(b)(ii) reference to “criminal” actions or activity such that vote buying ground for appeal in RRAFN election appeal — “Criminal” to be interpreted as including scandalous or deplorable conduct such as corrupt practices, including vote buying — In present case, allegation that candidate intending to buy elector's vote not supported by preponderance of evidence — As a result, Electoral Officer recommending dismissal of appeal — Recommendation accepted — Election appeal dismissed .

HENRY V. ROSEAU RIVER ANISHINABE FIRST NATION GOVERNMENT (T-199-15, 2017 FC 1038, Mandamin J., reasons for order dated November 15, 2017, 62 pp.)