



[2022] 1 F.C.R. D-1

ABORIGINAL PEOPLES

ELECTIONS

Application pursuant to *First Nations Elections Act*, S.C. 2014, c. 5 (FNEA), ss. 31, 35(1) seeking order to set aside Ts'il Kaz Koh Burns Lake (Burns Lake) by-election for Chief — Applicant Kelsey Lorentz member, elector of Burns Lake — Respondent Loreen Suhr electoral officer for by-election; respondent Clayton Charlie successful candidate for Chief (collectively, respondents) — Applicant submitting that procedural/technical irregularities contravened FNEA regime and as a result, some members were either not given Notices of Election, were denied mail-in ballot packages or were denied their right to vote — Applicant alleging, *inter alia*, that respondents intentionally obstructed by-election through Delivery and Collection Arrangement (created to deliver, collect ballots to electors chosen by respondent Clayton Charlie) — Also alleging that FNEA regime only allowing electoral officer to personally deliver mail-in ballot packages to electors and that accordingly, mail-in ballot packages delivered by respondent Clayton Charlie and completed by three members invalid — Whether contravention of FNEA regime likely affecting result of by-election — Violations pointed out by applicant technical or procedural in nature — Therefore, reverse magic number test appropriate in circumstances — Applicant having to demonstrate that each technical allegation impugned a vote, that enough impugned votes likely affected result of by-election — Absent allegation of fraud or corruption, Court may not look to conduct of election as whole and decide to set aside election — Incorrect date on Notice of Nomination materials not likely affecting outcome of by-election — Respondent Suhr not contravening *First Nations Elections Regulations*, SOR/2015-86 (Regulations), s. 16(2) — Legislature intended to give electors chance to vote even when they have failed to request their mail-in ballots within the 30-day timeline prescribed by Regulations, s. 16(1) — S. 16(2) not going so far as to impose positive obligation on electoral officers to ensure electors receive mail-in ballot packages by certain time — No way to read s. 16(2) such that words “as soon as feasible” describe timing of when a mail-in ballot package received — Word “mail”, in its ordinary sense, referring to regular postal service — S. 16(2) only empowering an electoral officer to mail or personally deliver urgent mail-in ballots to electors — Permitting personal delivery by electoral officer as expressed through language “at an agreed time and place” — S. 16(2) unequivocal in that only person who may facilitate delivery of urgent mail-in ballot is electoral officer — Regulations, s. 17(2) only permitting an elector to enlist help of “another person” when returning their completed mail-in ballot — Delivery component of Delivery and Collection Arrangement violated Regulations, ss. 14(b), 16(2) — Votes of three members invalid — Those votes likely to have affected outcome of by-election — Here, risk of diminishing public confidence in electoral process if Court declines to set by-election aside — Results of by-election set aside, new election ordered — Application allowed.

LORENTZ V. SUHR (T-821-21, 2022 FC 1138, Favel J., reasons for judgment dated September 8, 2022, 41 pp.)