

Court File No.: T-808-21

**FEDERAL COURT**

LORNA JACKSON-LITTLEWOLFE

Applicant

- and -

WHITEFISH LAKE FIRST NATION #128 and SADDLE LAKE CREE NATION #462

Respondents

APPLICATION UNDER Sections 18(1) and 18.1 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules*.

**NOTICE OF APPLICATION**

TO THE RESPONDENTS: WHITEFISH LAKE FIRST NATION #128 and SADDLE LAKE CREE NATION #462

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: May 14, 2021

**ORIGINAL SIGNED BY  
JENNIFER SORVISTO  
A SIGNÉ L'ORIGINAL**

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: Scotia Place  
10060 Jasper Avenue  
Tower 1, Suite 530  
Edmonton, Alberta  
T5J 3R8

TO: Whitefish Lake First Nation #128  
Administration Building  
PO Box 271  
Goodfish Lake, Alberta  
T0A 1R0  
Phone: 780-614-1353  
Fax: 780-636-3534

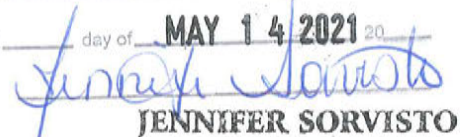
AND TO: Saddle Lake Cree Nation #462  
PO Box 100  
Saddle Lake, Alberta  
T0A 3T0  
Phone: 780-726-3829  
Fax: 780-726-3788

AND TO: The Attorney General of Canada  
Prairie Regional Office - Edmonton  
10423 101 Street  
3rd Floor, Epcor Tower  
Edmonton, Alberta  
T5H 0E7  
Phone: 780-495-2983  
Fax: 780-495-2964  
Email: alb.fc@justice.gc.ca

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the

day of MAY 14 2021 A.D. 20

Dated this 14 day of MAY 14 2021 20

  
**JENNIFER SORVISTO  
REGISTRY OFFICER  
AGENT DU GREFFE**

## APPLICATION

1. This is an Application for Judicial Review pursuant to sections 18(1) and 18.1 of the *Federal Courts Act* regarding a decision of the Respondent, Whitefish Lake First Nation #128 ("WLFN") which deemed that Lorna Jackson-Littlewolfe (the "Applicant") was "not an eligible candidate" for Council and Chief in the Whitefish Lake First Nation 2021 Elections ("2021 Elections") held on April 29, 2021 and May 6, 2021 respectively. This decision to deny the Applicant's candidacy (the "Decision") was made in reliance on section 1(c) of the Saddle Lake Tribal Customs (the "Election Regulations"), which states that "[n]o person living in a Common Law marriage shall be eligible for nomination" (the "Common Law Marriage Prohibition").

2. Pursuant to section 52(1) of the *Constitution Act, 1982*, the Applicant challenges the constitutionality of the Common Law Marriage Prohibition on the basis that it unjustifiably discriminates against her based on marital status, contrary to section 15(1) of the *Charter*.

### **The Applicant makes this application for:**

3. The Applicant seeks the following relief:

- (a) An Order abridging the time for the service of this application, if necessary;
- (b) A Declaration pursuant to section 52(1) of the *Constitution Act, 1982*, that the Common Law Marriage Prohibition unjustifiably discriminates based on marital status contrary to section 15(1) of the *Charter* and is therefore of no force or effect;
- (c) A Declaration pursuant to section 24(1) of the *Charter* that the Decision infringes the Applicant's section 15(1) *Charter* rights;
- (d) An Order in the nature of *mandamus* pursuant to 18(1) of the *Federal Courts Act* and section 24(1) of the *Charter* setting aside the 2021 Elections and directing Whitefish Lake First Nation #128 to immediately hold a new Election

for Council and Chief using the *onihcikiskwapowin* – Tribal Customs Elections Code;

- (e) In the alternative, an Order in the nature of *mandamus* pursuant to section 18(1) of the *Federal Courts Act* and section 24(1) of the *Charter* setting aside the 2021 Elections and directing Whitefish Lake First Nation #128 to forthwith adopt *Charter*-compliant election regulations and immediately hold a new Election for Council and Chief thereafter;
- (f) An Order that this Court retain jurisdiction of this matter until a new election is held in compliance with the law and the judgment rendered by this Court;
- (g) Costs; and
- (h) Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

**THE GROUNDS FOR THIS APPLICATION ARE:**

**The Parties and Overview**

4. The Applicant is a Cree woman, a mother and a grandmother, and a member of WLFN, where she lives with her common law spouse. She is also a keen observer of local and national politics, particularly in relation to matters that affect her community. After being encouraged to run for office by several members of her community, including Elders, the Applicant sought nomination as a candidate in the 2021 Elections for Council and Chief.

5. The Respondent, WLFN, is part of the Saddle Lake Cree Nation #462, which includes both the WLFN and Saddle Lake First Nation #125 ("SLFN"). WLFN and SLFN are recognized as a single band called Saddle Lake Cree Nation #462 pursuant to the *Indian Act*, RSC 1985, c I-5, but they retain separate chiefs and councils. The WLFN territory is located approximately 90 km northeast of St. Paul, Alberta. This Application impacts the election codes and customs of Saddle Lake Cree Nation #462; accordingly they are also named as a Respondent.

4. In 1955 and 1960, band meetings were held on the Saddle Lake Reserve. From these band meetings, the Saddle Lake Tribal Customs (“Election Regulations”) were created. These Election Regulations, which included the disputed Common Law Marriage Prohibition, applied to the Saddle Lake Reserve, now known as SLFN, and the Goodfish Lake Reserve, now known as WLFN.

6. In 2017, the Federal Court determined that the Election Regulations were inadequate, largely on the basis of their failure to address issues such as the nomination of an election/appeals committee. The Court required Saddle Lake Cree Nation to develop a new process to determine the eligibility of candidates for election. Subsequently, Saddle Lake Cree Nation created and adopted the *onihcikiskwapowin* – Tribal Customs Elections Code, which does not contain the Common Law Marriage Prohibition.

7. Despite this fact, the WLFN Election Committee applied the old Election Regulations and held that the Applicant was ineligible to run in the 2021 Election for Council and Chief on the basis of the Common Law Marriage Prohibition. This application seeks to have this Decision and the Common Law Marriage Prohibition struck down on the basis that they violate section 15(1) of the *Charter*, which recognizes marital status as an analogous ground of prohibited discrimination.

#### **Decision to deem the Applicant an ineligible candidate for the 2021 Elections**

8. The Applicant attended the nomination meeting for the 2021 Elections on April 15, 2021, where she provided nomination documents signed by a nominator and seconder, and also made a sworn statement as requested by the electoral officer. At the nomination meeting, the officer asked the Applicant if she had a marriage certificate, and she replied in the affirmative, and added that she also had a death certificate, attesting to the death of her children’s father and former husband. The Applicant’s nomination was accepted at the nomination meeting.

9. On April 20, 2021, at 4:35 pm, the Applicant received an e-mail from Ed Cardinal, the Chair of the Election Appeals Committee. The e-mail stated:

Please be advised that there has been a written letter of appeal forwarded to the Appeals Committee regarding your elibility [sic] run in in the 2021 Whitefish Lake First Nation #128 Elections. Section 1 ( C ) of the Nations Electoral By-law has been cited and referenced as the basis for your eligibility.

To this end , we are seeking an audience with you today April 29th/2021 in the Tribal Council Chambers to discuss our decision relative to this matter.

Kind Regards  
Ed Cardinal  
Chairman Appeals Committee

10. When the Applicant attended the Committee meeting that evening, she was provided with a new letter, signed by all the members of the Committee, which stated:

To: Loma Jackson-Littlewolfe

Please be advised that the Appeals Committee held a duly convened meeting on April 19, 2021 in the Council Chambers to address letters protesting candidates. In accordance to the Tribal Custom Electoral Bylaw Section I(c), it has been determined that you are not an eligible candidate for the 2021 Elections, as you are in a common law relationship.

Also, the proxy letters that you presented to the Electoral Officer appear to be presumptuous and ambiguous in nature and have not been notarized or commissioned by a Commissioner of Oath.

Based on the above, the Appeals Committee have ruled that you are not an eligible candidate; signed by the signatures below appearing:

11. The Applicant told the Committee that she felt that the second paragraph of the letter was not appropriate as she had been called to the Committee meeting only to discuss the issue of her eligibility regarding section 1(c) of the Elections Regulation, which is the Common Law Marriage Prohibition.

12. The Committee then retired *in camera* to discuss the Applicant's position. When the meeting reconvened, the Committee provided the Applicant with a revised letter, which entirely omitted the second paragraph of the previous letter. Mr. Cardinal then told the Applicant that her eligibility for candidacy was being appealed only on the basis that she was in a common law relationship.

13. The Applicant stated that a court decision in 2017 had struck down the Election Regulation, and that Saddle Lake Cree Nation had implemented new election rules.

14. The Applicant requested that the Election Appeals Committee do the right thing in reference to her position that it was not appropriate to follow the Election Regulations and specifically the Common Law Marriage Prohibition. However, Mr. Cardinal responded that "it's already done," indicating that in fact the Appeal Committee had already made its decision the previous day.

15. The next day, the Applicant asked Mr. Cardinal for a letter outlining the Decision. Mr. Cardinal provided a letter later that day, which stated:

To: Loma Jackson-Littlewolfe

Please be advised that the Appeals Committee held a duly convened meeting on April 20, 2021 in the Council Chambers to address your eligibility.

As discussed last evening in the Council Chambers that you are not eligible to run in the Whitefish Lake Band #128 Elections 2021 pursuant to Section I(c) of the Tribal Custom Election Bylaw.

We have come to a conclusion that we are going to uphold the requirement of the Tribal Custom Elections, which deems that you are not eligible.

Based on the above, we have made a final decision to omit your name from the list of candidates who are eligible to run.

**The Decision and the Common Law Marriage Prohibition violate section 15(1) of the Charter**

16. The Decision is expressly based on the Applicant's marital status, which is a recognized ground of prohibited discrimination under section 15(1) of the *Charter*. As a corollary, the distinction imposed by the Common Law Marriage Prohibition perpetuates prejudice on the basis of stereotyping and offends the Applicant's essential worth and dignity as an individual.

**The Applicants rely on the following statutory provisions, rules and principles:**

17. *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, including the *Canadian Charter of Rights and Freedoms*.

18. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.

19. *Federal Courts Rules*. SOR/98-106.

**This Application will be supported by the following material:**

20. The Affidavit of Lorna Jackson-Littlewolfe, to be filed;

21. Such further and other affidavits and material as counsel may advise and this Honourable Court permits.

**Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicant requests that the Respondents send the following material that is not in the possession of the Applicant but is in the Respondent's possession, to the Applicant and to the Registry:**

22. The record of all documents and other materials before the Respondents informing the Decision.

23. The record of all documents and other materials related the adoption, review and continued utilization of the Election Bylaw, including specifically the Common Law Marriage Prohibition.



24. Such further and other material that may be in the possession, power or control of the Respondents and which may be relevant to these proceedings.

Date: May 14, 2021

[REDACTED]

---

**Jocelyn Gerke and Marty Moore**  
Lawyers for the Applicant

Justice Centre for Constitutional Freedoms  
#253, 7620 Elbow Dr SW  
Calgary, Alberta T2V 1K2

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]