

Decision of the Elections Appeal Board
in Relation to a Notice of Appeal received May 30, 2023
Regarding an Appeal of Election Results of the Samson Cree Nation
Election for Councilors

June 15, 2023

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INTRODUCTION

Initiation and Purpose

1. The Appeal Board was created for the purpose of deciding any appeals arising from the 2023 nominations and elections of the Chief and Council of the Samson Cree Nation ("SCN"). Members of the Appeal Board are Kurt Burnstick, Ron Lameman, and Paula Hale (Chair).
2. All members of the Appeal Panel are impartial reviewers. They have no interest in the outcome of the elections and performed their tasks as Appeal Board members with professionalism and to the best of their abilities.
3. The Election for Chief was held on May 9, 2023. No appeals were filed in relation to nominations or the election for Chief.
4. Nominations for the 12 Council positions occurred on May 16. There were initially 69 candidates and one candidate withdrew. The election for Council was held on May 23, 2023. The results from the election were declared on May 25, 2023.
5. A Notice of Appeal was received on May 30, 2023, prior to the deadline of 6:00pm June 1, 2023. The appeal was filed in time and the \$1,000 appeal fee was paid to the SCN Finance Department in advance of submitting the appeal to the Chair. The Chair of the Appeal Board accepted the Notice of Appeal in person on May 30, 2023.
6. No additional Notices of Appeal were received before, or after the deadline of 6:00pm, June 1, 2023.

Relevant Legislation

7. The key piece of legislation relevant to these elections, this Appeal and the Appeal Board's jurisdiction is the Samson Cree Nation Election Law, as amended by referendum held February 27, 2013 (the "Election Law").

PART 1 – NOTICE OF APPEAL

8. The Notice of Appeal established the following grounds of appeal:

Notice of Appeal Paragraph	Election Law Section reference	Allegation
Intro	20 and 20.1	
1.	5.5 (20.1(a), (b), and or (c))	...the Electoral Officer shall be recognized as the authorised person to conduct the entire administration and process of election in accordance with the Terms of Reference adopted by Chief and Council. This includes (g) knowing the entire content of Election Law and related regulations and (h) ensuring compliance with SCN Election Law. However, the Electoral Office failed to do so as follows herewithin.
2.	5(2) (20.1(c))	The Election Officer and Assistant shall be recognized as persons of good character and reputation, shall be fluent in and comprehend Cree, and shall not be members of the Samson Cree Nation. This law is designed to prevent arm's-length election interference when ballots are overseen and counted. The spirit and intent of the law was broken
3.	15(1) (20.1(a) and (c))	...the Electoral Officer and Assistant did not count the ballots and assigned members of Samson Cree Nation to read them which included SCN staff. This created the appearance of election interference and corrupt practice, seriously undermining public confidence in fair elections.
4.	10(2) (20.1(a) and (c))	As stated above, there is acutely serious concern that people counting ballots were not just Samson Cree Nation members, but SCN staff and allies of the Chief, which undermines confidence in SCN Elections Law. This creates the concern of corrupt practice.
5.	3(9) (20.1(a) and (c))	...candidates are prohibited from engaging in corrupt practice, and can be removed as Chief or Council.
6.	2.4 (20.1(a) and (c))	As per Terms of Reference, Interpretation, 1.1 (f) corrupt practice includes (i) falsification of a Ballot Count, vote result or declaration of a vote result, (ii) threatening adverse consequences, intimidating or coercing an election official for the purpose of influencing an election vote, and (iii) forging documents or providing false or misleading

Notice of Appeal Paragraph	Election Law Section reference	Allegation
		<p>information for the purpose of influencing an election vote, or ballot count, vote result, or declaration of an election.</p> <p>Section 21 states that any member of elected Chief and Council may be removed from office in accordance with Terms of Removal of elected Chief and Council as set out in Schedule D.</p>
7.	<p>2.4(c) 3.1(c)</p> <p>(20.1(b) and (c))</p>	<p>As per Section 3.1 (c) if they have been convicted on an indictable offence, they are ineligible.</p> <p>There is concern that one or more Councillors who ran, and who were elected, have serious criminal records for assault and other crimes.</p> <p>There is concern that criminal records were not pardoned, nor disclosed. Luci Johnson who ran for Council, and worked in courts for 26 years claims there are members who have had criminal records and should show proof of a pardon in which the Queen herself and her office has made this pardon approved. Several nation members have ran as leadership and were / are now in council, who have ran have had a criminal record for serious indictable violent offences.</p>
8.	<p>5.5(f)</p> <p>(20.1(a) and (c))</p>	<p>...if a tabulator is to be used the Election Committee has a duty to ensure that the tabulator has been calibrated and in good-working order. This did not occur. The Electoral Committee knew several days in advance of the Election that the tabulator was broken, as per their claim, yet they failed to replace or fix the tabulator within the fair amount of time, creating the perception of lax duty and perhaps election interference.</p>
9.	<p>15</p> <p>(20.1(a) and (c))</p>	<p>...the Electoral Officer must open the ballot box and (a) reject any ballots that are not clearly marked.</p> <p>However, there are samples of ballots that were unfairly rejected. For example, a ballot was rejected because the pencil scribbled only slightly outside the circle, but the circle was filled. This should not be classified as an invalid ballot.</p>

Notice of Appeal Paragraph	Election Law Section reference	Allegation
10.	14(6) (20.1(a) and (c))	<p>The person who has cast his ballot shall in the presence of the Electoral Officer or his Assistant, deposit the ballot into the Ballot Box or tabulator, if a tabulator is to be used.</p> <p>However, there were 4 voting stations occurring at the same time in Samson Cree Nation, Pigeon Lake, Edmonton and Calgary. There is concern that the Electoral Officer and Assistant would have failed to be at two locations, and failed to ensure that legal oversight was conducted by non-members, and non-residents at all locations.</p>
11.	14(8) (20.1(a) and (c))	<p>...all ballots cast by eligible voters shall be initialled by the Electoral Officer or his Assistant. There is concern that oversight of this law failed, for the above reason which can cause election interference.</p>
12.	14(9) (20.1(a) and (c))	<p>...any eligible voter inside the voting station after closing shall be permitted to cast their vote, but no other eligible voter shall be allowed to enter the polling station. There is concern that members were allowed into the polling station after closing.</p>
13.	13(4) (20.1(a) and (c))	<p>...at the conclusion of the Election, the Electoral Officer shall deposit all ballots, including rejected ballots, in a sealed envelope at a designated lawyers office, or at a safe, secure alternative location. However, there is concern that the ballots were not put in a safe alternate location and were kept in the company of SCN staff and members.</p>
14.	20 (20.1(a) and (c))	<p>SCN advertised the date of the Election as May 29th in the SCN May newsletter. However, the correct date was May 23rd. This is a critical error that would have affected the outcome of the Election result.</p>
15.	20 (20.1(a) and (c))	<p>There is concern that unjust COVID mandates were applied at the Ballot Stations, which created unjust barriers affecting the outcome and the oversight of the election. Lucy Johnson's daughter who is a professor attempted to act as a scrutineer at a Ballot Station, to oversee fair and democratic elections processes. However, she was denied due to COVID mandates being applied even though COVID mandates have been largely dropped in Canada. Importantly, at the SCN Chief's elections one week prior, COVID mandates were not in place, so there exists a double standard which could have affected the outcome of the elections by limiting rights. SCN Election Law, Preamble states "Whereas case law affects Samson Cree Nation's obligations at law". As per the Canadian Charter law, members have a right to participate in democratic elections without unjust barriers.</p>

Notice of Appeal Paragraph	Election Law Section reference	Allegation
		Moreover, Alberta Health Services, AHS has lifted COVID mandates in the entire province for all public and work settings.
16.	Charter, section 3	SCN Elections occurred in Pigeon Lake and SCN from 9am-9pm. However, members were not allowed to vote in Edmonton after 6 pm which could have affected the outcome of the election, by placing limitations on workers, students, individuals and families.

9. After reviewing the Notice of Appeal and hearing from the Appellant, the Appeal Board summarized the grounds of appeal as follows:

- a. The Electoral Officer did not appoint delegates to carry out the roles and responsibilities of the Electoral Officer at all four voting locations, or if there were delegates, they were unknown and did not meet the requirements of being able to speak fluent Cree and may have been SCN members;
- b. Ballots were not counted by the Electoral Officer and the Assistant Electoral Officer; they were counted by SCN band members including SCN staff which brought into question the integrity of the results;
- c. There were candidates with criminal records that should have disqualified them, including candidates that were elected;
- d. If a tabulator is to be used the Electoral Officer has a duty to ensure that the tabulator has been calibrated and in good-working order; this did not occur and created at least the appearance of election interference;
- e. The Electoral Officer failed to oversee the casting of ballots at all 4 voting places;
- f. Ballots were rejected unfairly and inconsistently;
- g. All ballots were not initialed;
- h. SCN members were allowed into voting stations after the voting stations had closed;
- i. The ballots were not securely stored;
- j. SCN incorrectly advertised the date of the Election as May 29 in the SCN May newsletter when the correct date was May 23;
- k. COVID rules were improperly applied and prevented scrutineers from attending the ballot count;
- l. SCN Elections occurred in Pigeon Lake and SCN from 9:00 am-9:00 pm. However, members were not allowed to vote in Edmonton after 6:00 pm which could have affected the outcome of the election, by placing limitations on workers, students, individuals and families;
- m. Candidates attended a funeral on May 20, 2023 in contravention of sections 3.7 and 3.8 of the Election Act.

10. The Appeal Board has reviewed the Election process to address these specific allegations and consider the voting and counting processes as a whole.

PART 2 – EVIDENCE

Evidence Summary of Luci Johnson

11. Luci Johnson appeared before the Appeal Board on June 6, 2023. The key points of her testimony and submissions are summarized in the following paragraphs.

Ballot Counting for the Council Election

12. With respect to ballot counting for the first portion of the ballot counting, the first 22 minutes of counting as can be seen on the Samson YouTube video is unsupervised. There appear to be about 10 staff counting, which is also a concern as the staff members may be biased towards the current and former Chief. It gave the impression that the election was ‘rigged’ because there were so many staff members.

13. There were also problems and errors with counting at 73:45 of the live feed Facebook video, there is a vote to Casey Yellowbird Currie, which does not appear to have been marked down. In another instance, 13 names were read off a ballot instead of 12. This can be viewed at 7.03.30 on the Facebook live feed. That ballot should have been spoiled.

14. The ballot counting was not accessible. First, people could not get in, and then once scrutineers were allowed in, there were obstructions where the box was situated in a way that people could not see the ballots coming out of the box and it was difficult to see them read. People repeatedly asked to see because they could not see ballots. They also could not see them on the video – there is no reason that if they are going to video tape it, they cannot do it properly, perhaps with an overhead video.

The Use of SCN Employees

15. In her view, Schedule A sets out the roles and responsibilities and all of the staff support processes. There is a structural problem where there is at least the appearance or perception that staff may be threatened with losing their jobs unless they vote for the incumbent Chief and Councilors, who are their employers. Ms. Johnson is of the view that SCN employees could easily be coerced and we do not know if that is happening.

16. More specifically, Ms. Johnson claimed that there were a number of SCN employees who were tallying votes and they should not have been. One of those people was the current Chief’s sister. In Ms. Johnson’s view, SCN employees should have only been involved in a support role.

17. There were also non-SCN people counting ballots. For example, non-member Verne Spence, the husband of a band member was counting ballots at one point; Ms. Johnson was told non-members were not allowed to participate in the count and questions why the Electoral Officer allowed Verne Spence to count ballots.

Eligibility and Criminal Records

18. Ms. Johnson stated that as a result of her work with the Court, she is aware that several people nominated, including some that were elected, have criminal records, including convictions for an indictable offence. Further, she believed that they have not been pardoned or if they were relying on tribal pardons granted from Elders, that would be a breach of the Election Law. The Election Law says pardons must be criminal code pardons.

19. Ms. Johnson provided a letter from Cheyne Crier-Jamerson (Exhibit 1) alleging ineligible individuals were allowed to be nominated. Ms. Johnson testified that leadership with criminal records sends the wrong message to the next generation if they can't follow their own law. Both Ms. Crier-Jamerson and Ms. Johnson declined to provide any specific names.

Tabulator

20. Ms. Johnson noted that the tabulator worked for the Chief election but for some unknown reason no longer worked for the Council election. In her view, a tabulator could have easily been borrowed from the MLA in Wetaskiwin or the County of Ponoka, even on a fee-for-service basis. To the best of her knowledge, nobody even asked. This problem was imminently resolvable and the Electoral Officer is responsible for having proper working equipment. This failure by the Electoral Officer resulted in a hand count for council positions that lasted over 20 hours.

Electoral Officer Oversight

21. Ms. Johnson argued that there was not Electoral Officer oversight at all for voting places, it was unclear who, if anyone, was in charge, which left the impression that SCN staff were in charge. This is not transparent and gives the appearance of interference.

Ballot Rejections

22. Ms. Johnson submitted that during the hand count, there were unfair rejections. At times ballots with slight shading outside the circle were rejected, sometimes not. Ms. Johnson provided screen shots from the count video in support of this statement (Exhibit 2). More specifically, slightly marking outside a bubble was spoiled, but listing 13 names was not spoiled. As another example, at approximately 4-8 minutes into the Facebook Live feed, it shows an example of a ballot where one mark was outside a bubble and it was not spoiled.

Ballots Not Initialed

23. According to Ms. Johnson, ballots were not initialed at the time of voting. One Elder told her that nobody even talked to her. In her view, each ballot should have been initialed by the Electoral Officer.

Entry After Poll Closing

24. Ms. Johnson stated that people entered the poll after closing and were allowed to vote. Ms. Johnson did not provide particulars.

25. The scrutineers were not allowed in, but when the polls were closed, there was a candidate left in. At 9:00pm, scrutineers were called in. The ballots were left unattended for at least half an hour.

Ballots Not Securely Stored

26. Ms. Johnson expressed concern that the ballots have not been secured and protected from interference and noted that this is the responsibility of the Electoral Officer under the Election Law.

27. Similarly, although it is hearsay, Ms. Johnson was told that an SCN staff person was given a ballot box from HBMS and travelled with it alone. She was seen taking the ballot box. This person did not need to travel alone, she could have easily travelled with a security officer. Again, this raises questions with respect to the continuity and integrity of the ballot boxes, which should have been sealed.

Notice Error

28. Ms. Johnson noted that SCN incorrectly advertised the date of the Election as May 29 in the SCN May newsletter when the correct date was May 23.

29. Ms. Johnson pointed out that there was an error in the election notice incorrectly stating the times that the polls were open. Ms. Johnson provided a video of an unknown person attempting to attend the voting location in Edmonton after 6:00 pm only to find it closed.

Inconsistent Application of COVID Rules

30. With respect to the COVID rules, Ms. Johnson noted that there were no COVID rules in place for the Chief's Election, so it was very odd that COVID precautions were then applied for the Council Election. In her view, COVID rules were applied to prevent people from attending the vote count.

31. More specifically, as a result of the COVID rules for the Council election, Ms. Johnson stated that there was a limited number of observers and observers were turned away. This seemed improper as COVID precautions have been dropped across the province. The state of emergency has been lifted and this gave the appearance they were using COVID as an excuse.

32. Ms. Johnson submitted that the Edmonton polling place should have stayed open until 9:00pm, and there is a video of someone going to the polling place at 7:00pm to find that it was closed. This is inconsistent with section 9.4; that poll should have stayed open.

33. Exhibit 7 are screenshots from YouTube and snapshots of ballots. Exhibit 8 are screenshots from Facebook Feed showing the captions and wrong names. In Ms. Johnson's view, this is unprofessional and creates a suspicion when the names are not corrected. If this is how candidates are being named, the process is not correct.

34. Ms. Johnson also presented submissions on behalf of her daughter. Her written submission included the following points; not all voting booths displayed photos of all candidates, and there was concern that the ballots were not stored properly or properly initialed and that clearly marked ballots should be counted, for example, a check mark instead of a filled circle should be counted. These are Elders who need better support.

35. She also raised issues of privacy as her and her two sisters have similar names, and it was very difficult to vote as she was told she was not a member, made to feel incompetent, and intimidated. She is aware that corruption is hard to establish, but is aware of one candidate who approached poor and vulnerable people and threatened them. This is criminal harassment.

Candidates in a SCN Buildings

36. Finally, Ms. Johnson raised a potential breach of section 3.7 and 3.8 of the Election Law with respect to her sister-in-law's funeral, which was held at an SCN building. Ms. Johnson did not go to the service because of the rules against candidates attending public buildings. However, she is aware that 3 successful candidates did attend: Holly Johnson, Vinnie Saddleback, and Danny Buffalo. It was very difficult for her to miss this funeral, but she thought she was complying with the rules and it is unfair that she complied with the rules while others did not. Enforcement of these rules should be consistent.

37. In response to questions from the Appeal Board, Ms. Johnson clarified that she thought the Appeal Board should review the criminal record check of each successful candidate, she thought there should be a recount of the ballots and she acknowledged that it was possible that the ballots were initialed by the Electoral Officer in advance.

Evidence Summary of Mavis Rowan

38. Mavis Rowan provided evidence in conjunction with Ms. Johnson with respect to improper ballot counting. Ms. Rowan was a scrutineer for her son who ran in the Council election. Ms. Rowan recalls that early in the morning Verne Spence made mistakes reading out the names on ballots and these mistakes were not corrected - he should have corrected them and started again from the top, but he did not, although the names had already been 'ticked'.

39. Further, during the counting, SCN staff and others were interfering, and the Electoral Officer failed to do their job. In her view, this is a corrupt practice, and it was improper that some of the counters were not SCN members. She suspects that they may have been allies to the Chief.

Evidence Summary of Brenda Vanguard and Stephanie John

40. Brenda Vanguard and Stephanie John appeared together before the Appeal Board on June 7, 2023.

41. Ms. Vanguard is the Electoral Officer. Ms. John is the Assistant to the Electoral Officer. At the start of her submissions, Ms. Vanguard noted that there was an extremely large number of SCN staff members working and that the SCN staff members and the Election Technician undermined her and caused confusion. Ms. Vanguard noted that the staff were already in place and appointed when she arrived; she had no control over input with respect to the staff.

42. Ms. Vanguard confirmed that both she and Stephanie John are fluent in Cree and confirmed that she appointed 3 Deputy Electoral Officers: Halena Montour, Lydia Quinney and Ernestine Northwest.

43. Ms. Vanguard delegated Electoral Officer responsibilities at the Pigeon Lake voting place to Lydia Quinney, Ernestine Norquest in Edmonton and Helena Montour in Calgary. They were properly deputized and Ms. Vanguard produced those documents. Those delegates were present when ballots were issued for each voting place. The issued ballots were double counted to ensure accuracy and initialed in advance.

44. With respect to the tabulator, Ms. Vanguard stated that it worked fine for the ballot count for the Chief election, however, at some point during transport, the stick in the tabulator with the coding for the ballots melted and they could not get a replacement in time; they had no other option but to count manually.

45. Ms. Vanguard noted that the USB stick is specifically coded for a particular ballot and requires advance notice to the tabulator manufacturer to create. Ms. Vanguard immediately requested a replacement stick to be delivered but that took several days.

46. Where she was voting, the doors closed and 9:00pm, and those that were in could vote, and nobody came in after.

47. In terms of counting, Ms. Vanguard said that she was unable to count herself because she recently had surgery on her eye, so Ms. John stepped in. When they started counting, the in-house lawyer requested a band member to oversee the process which they implemented.

48. The process that she followed was that the sealed ballot boxes were unsealed in front of everyone. They started tabulating but it was not working; Ms. John held the ballots that had been removed from a ballot box in a folder and as soon as possible deposited those ballots in a ballot box. Ms. Vanguard noted that with the tabulator working, it would have taken 15-20 minutes to count the results.

49. The ballot boxes were sealed and travelled with 1 delegated person each and were all walked in together.

50. To the best of her knowledge, the reason for increased COVID precautions was because one person tested positive for COVID during the Chief's election and as a result, and knowing that the vaccination rate is approximately 30%, an emergency manager came in and imposed some precautions, such as voting day masks.

51. Ms. Vanguard understood that there were COVID rules in place but gave explicit instructions to security that scrutineers and candidates were allowed in. She later learned that some were not allowed in because of COVID rules, as imposed by security. As soon as she learned of this, she corrected the situation and made sure that security was letting in scrutineers and observers.

52. In terms of the spoiled ballots, the ballots were shown on both cameras. If they were marked with an 'X' or a checkmark instead of filling in the bubbles, they were spoiled.

53. Ms. Vanguard did not stop anyone from entering the count. In fact, at one point she saw a candidate sitting in their truck and went out of her way to invite them in.

54. The election staff were up at 5:30 am on Council election day and stayed until the next day at 10:30pm. Everyone was very tired. At one point, they needed somebody to call out the ballots and she asked Verne Spence to do it. She is aware that he is not a band member. He did it for 3-4 hours. No band members were calling out ballots, although SCN staff did do most of the tallying. As they opened the ballots, the scrutineers were in front. To make sure they were counting correctly, there was a shadow- someone standing behind the person calling out the votes.

55. The Appeal Board notes that there is no evidence that anyone in attendance made objections to how ballots were being counted or why ballots were rejected as spoiled.

56. According to Ms. John, the ballots were spoiled if the voter

- marked too many candidates;
- used 'X's or 'checks'; or
- had writing or scribbling instead of just filling in the bubbles.
- The spoiled ballots were returned in a separate envelope and locked here in the vault.

57. Ms. Vanguard emphasized that the ballots were transported back and are securely locked up here in the vault.

58. Ms. Vanguard stated that Ida picked up the ballots in Calgary. She (Ms. Vanguard) initialed them in advance with Ms. John and Valerie was present to double count and double check for initials.

59. With respect to criminal record checks, Ms. Vanguard said she has the nomination packages for all of the candidates and would make them available to the Appeal Board for review. She had reviewed them and they all had the required criminal record checks.

60. In Ms. Vanguard's view, the election and nomination meetings went well, but counting was difficult and really took a toll on the people doing it. She feels bad because of the tabulator issue and immediately upon learning that the coded memory stick for the tabulator was damaged, she requested another one, but it takes 4-5 days. She now has one and could use that tabulator if the Appeal Board were to order a recount.

Evidence Summary of Cynthia Swampy

61. Cynthia Swampy attended before the Appeal Board on June 13, 2023.

62. Ms. Swampy initially requested that Luci Johnson be present with her for moral support and as a witness. The Appeal Board noted this was an unusual request as her evidence was being collected in a gathering of information, but initially advised this would be fine, as long as Ms. Johnson did not speak. Upon reflection, Ms. Swampy rescinded her request, as she wanted the process to follow the normal course of interviews, and did not want to in any way jeopardize her evidence, or the process as a whole.

63. Ms. Swampy had requested to speak to the Appeal Board, as she was working at both the May 9 election for Chief, and May 23 election for Council, and had firsthand knowledge of the events that occurred at her polling station, HBMC, on both dates. She also stated that she had been involved in previous SCN elections and had knowledge of previous election processes. Her concern was that a fair and just election was not carried out.

64. Ms. Swampy reviewed her email dated June 6, 2023, which was previously marked as Exhibit 5, and had already been reviewed by the Appeal Board.

65. Ms. Swampy described the caution tape that was present at HBMC during the May 9, 2023 Chief election. Caution tape was positioned directly outside of the west doors of the HBMC polling station, which blocked off parking accessibility to the entrance. There was an entire parking lot that was not accessible for voters. She provided a photo showing the caution tape which was viewed by the Appeal Board and marked as Exhibit 10.

66. Ms. Swampy voiced her concern to senior officials, who made no attempts to remove the caution tape. In her view, the result of this caution tape blocking accessibility was that it prevented a fair voting process.

67. Ms. Swampy stated that she became aware that the tabulator was not working around 9:30 am from a member of the triage staff. At this point, she became aware that a hand count was going to be required. Ms. Swampy said that there was no notice from the Electoral Officer that the tabulator was not working. Only individuals who were inside the gymnasium were aware. She recalled that one candidate was registering at her location at 8:00 pm on May 23, and at that point, was still not aware that there would be a hand count.

68. In her view, it was improper that the Electoral Officer did not immediately notify candidates that a hand count would be required. As a result, candidates did not have time to arrange for scrutineers to be present.

69. Ms. Swampy took issue with how SCN staff were hired for the election. She described the conversations she had with different managers and staff at SCN in late April about how she wanted to be part of the staff working the election. Multiple people told her that it was not their job to make these decision and hiring was the responsibility of someone else.

70. It wasn't until she spoke to the Electoral Officer and advised her that this was her duty to run the election that she got hired. The following day, she was told that she would be working triage at HBMC. She also indicated that she had friends that wanted to be hired as election staff as well, but were not hired, as they were not as aggressive as she was.

71. Ms. Swampy noted that she was the only staff present that was not an employee of SCN. She indicated that all other polling stations were run completely by SNC staff. She stated that this is important, because having elections completely run by SCN staff creates a pathway for the elections to be corrupt, open for intimidation, and are not free and fair.

72. Ms. Swampy noted that SCN staff were sent on retreats by the Chief. When questioned by the Appeal Board, Ms. Swampy confirmed that in her view, it is improper to have election staff be the same people who are employed by SCN, and who have been provided trips and benefits by the Chief. In her view, the practice should be to hire more people who are not SCN staff, for example, hiring SCN members who are students from university or high school that are on break.

73. Ms. Swampy then outlined her concern that the Electoral Officer was not properly appointed; she had asked for the appointment documents but didn't receive them and doesn't believe they exist. Ms. Swampy questioned why there would be an Electoral Officer appointed from outside SCN.

74. Ms. Swampy also stated that the way that election staff were switched off for breaks during the lengthy count was improper because it was done by SCN senior administration instead of by the Electoral Officer. In short, she did not think the Electoral Officer was in control of the hand counting process.

75. Ms. Swampy expressed to the Appeal Board her appreciation of their time, and was grateful for the opportunity to share her information.

Evidence Summary of Dorothy Simon

76. Dorothy Simon is the Election Technician appointed by Band Council Resolution 2023-2024-774-#001 dated April 24, 2023. She presented her draft Election Technician Report to the Appeal Board. The Election Technician Report was marked as Exhibit 11.

77. Ms. Buffalo's report covered both the election for Chief and the election for Council and need not be repeated here in full; the key general points and points regarding the council election are as follows:

- The election budget is likely understated given the large number of staff employed and there are concerns that some staff may be being paid both as an SCN employee as well as being paid to work at the election (i.e. double dipping).
- Poor planning led to limited applicants in response to the RFP for an Electoral Officer and Election Technician.
- It is unusual practice for First Nations to use their own employees to administer election events; these services are normally contracted out in their entirety to ensure they are unbiased and neutral.

PART 3 – ANALYSIS

Overview

78. As a starting point, several people provided commentary with respect to previous elections or the most recent election of the Chief. The Appeal Board notes that no appeal was filed with respect to the election for Chief and the Appeal Board has no jurisdiction to make a finding with respect to the election for Chief.

79. It must also be noted that Ms. Johnson's submission contained multiple broad grounds of appeal, many of which were expressed as "concerns", relied on unidentified hearsay or were bare allegations, based on speculation but not supported by any objective evidence. Other witnesses similarly provided evidence of circumstances which "could have" led to corruption or may have given the appearance of election interference. For example, suggesting that candidates should be ineligible because of their criminal records without actually identifying a particular candidate makes the Appeal Board's task very difficult.

80. With that said, the Appeal Board acknowledges that multiple people came forward to express dissatisfaction and concern with various aspects of the nomination and election processes. This evidence included a letter signed by six elders and the evidence on these points was largely consistent. It is not lost on the Appeal Board that such a loss of confidence in the democratic system is in itself a terrible problem. If people don't have confidence in the system, it simply will not function.

81. In response, and notwithstanding the challenging grounds of appeal and short timelines, the Appeal Board has attempted to examine all of the concerns brought forward to the extent possible in an effort to restore confidence in SCN elections.

Candidate Criminal Record Checks

82. One of the consistent impressions of individuals that came before the Appeal Board is the belief that candidates with criminal records that should have made them ineligible were elected.

83. The eligibility requirements to be nominated are found at section 3.1 of the Election Law:

3.1 A person is eligible to become a candidate for the position of Chief or Councillor if:

- a) his name appears on the Samson Cree Nation's Voters list.
- b) he is of the full age of twenty-one (21) years;
- c) he has not been convicted of an indictable offense or, if he has been convicted of an indictable offense, he has received a pardon through the Canadian legal system; and
- d) he has been a resident on or within a 100 km radius of the boundaries of the Samson Cree Nation Indian Reserve #137 or Pigeon Lake Indian Reserve# 138A for a period of not less than six (6) months immediately preceding an election.

84. The Appeal Board reviewed the nomination packages for all 12 candidates that were elected. Each package contained a search form from the RCMP. The RCMP form had 4 possible outcomes:

- 1) Negative,
- 2) Incomplete,
- 3) Possible Match, or
- 4) Local Conviction not added ...

85. All of the candidate forms reviewed were either “Negative” or “Possible Match”. If the report said negative, no further documentation was sought. However, if the RCMP ticked “Possible Match” the individual had to undergo a CPIC (Canadian Police Information Check) based on their fingerprints.

86. On review, none of the individuals with criminal records had records that included an “Indictable Offence” **as that term is defined in the Election Law.** The Election Law defines Indictable Offence” in section 1.1 as follows:

Indictable offence means:

1.1p “**Indictable Offences**” means an indictable offence as defined under the Criminal Code of Canada but does not include hybrid offences.

87. First, the *Criminal Code* does not contain a definition of “Indictable offence”. Second, the Election Law definition excludes “hybrid” offences.

88. There are 3 types of offences in the *Criminal Code*. The least serious is called a “summary offence”, the most serious type is called an “Indictable offence”, but the vast majority are called “hybrid offence”. A hybrid offence can be prosecuted as either a summary offence or an indictable offence depending on the severity of the conduct in a particular case.

89. Examples of hybrid offences include assault, impaired driving, driving “over 80” and theft over \$5,000. As a result of the Election Law definition above, a conviction of a hybrid offence does not make a person ineligible to be a candidate, even if the conviction resulted from the prosecution of that hybrid offence by indictment.

90. In short, as a result of the definition, only pure indictable offences will make a person ineligible. These are the most serious offences but there are very few of them. Indictable offences include first degree murder, aggravated sexual assault and kidnapping.

91. Seven of the 12 elected candidate forms were marked “Negative” and 5 were marked “Possible Match”. All five individuals that were marked “Possible Match” also had CPIC records dated shortly before the election. Some were dated as early as March 9, 2023 and the latest was dated May 18, 2023.

92. None of the records reviewed indicated convictions that were Pardoned or required a Pardon and none of the candidates elected relied on a pardon provided by Elders.

93. Based on this review, the Appeal Board finds that the complaint of elected candidates breaching section 3.1(c) is not valid; none of the 12 elected candidates should be disqualified on this ground.

COVID Restrictions

94. Ms. John provided a series of emails between her, Ms. Vanguard and Allison Adams-Bull. The emails demonstrate that the COVID restrictions arose due to an individual on the Electoral Officer’s team testing positive for COVID following the election for Chief.

95. The emails also indicate that the COVID restrictions were initiated by the Electoral Officer and may have been met with some resistance from Council. It is also apparent that live streaming the count was contemplated from the start to mitigate the restrictions on attending the count.

96. The Appeal Board finds that the concerns expressed that the COVID restrictions were put in place at the behest of the Chief or Council to prohibit electors from watching the count to be invalid.

Voting Process

Appointment of Electoral Officer and Delegates

97. Ms. Vanguard provided the Band Council Resolution (“BCR”) 2023-2024-774-#001 dated April 24, 2023 appointing her as Electoral Officer.

98. Ms. Vanguard provided the appointment documents appointing Halena Montour, Lydia Quinney, and Ernestine Northwest as Deputy Electoral Officers. All were appointed on May 22, 2023.

99. Based on the undisputed testimony of Ms. Vanguard, the Appeal Board accepts that the Deputy Electoral Officers were properly appointed and qualified and each provided oversight at voting place.

100. The Appeal Board notes that BCR 2023-2024-774-#001 dated April 24, 2023, properly appoints the Electoral Officer and Election Technician but does not appoint the Assistant to Electoral Officer as required by section 5.1 of the Election Law. In the Appeal Board’s view, this oversight did not impact or effect the outcome of the election as both the Electoral Officer and Assistant to the Electoral Officer acted within their terms of reference.

101. The Appeal Board finds that the complaint that the Electoral Officer was not properly appointed and did not appoint delegates to oversee voting at all four voting places to be invalid.

Notice Errors

102. The Appeal Board asked Ms. John if an incorrect Election Notice had been posted and she agreed that it had. However, Ms. John also noted that as soon as the error was noticed it was corrected and it was corrected approximately 1 month before the election.

Voting Issues

103. The Appellant provided video evidence and took issue with the voting places in Edmonton and Calgary closing at 6:00 pm. However, this is the correct closing time set out in section 9.4 of the Election Law.

104. The Appeal Board also viewed the ballot marking instructions and found them to be clear.

105. The Appeal Board accepted the evidence of Ms. Vanguard and Ms. John that the ballots were initialed by Ms. Vanguard in advance.

106. The Appeal Board considered Ms. Swampy’s evidence with respect to caution tape present in the parking lot for the Chief election but not for the Council election. The Appeal Board notes that this is not an appeal of the election for Chief and since the caution tape was not present on election day for council, the Appeal Board finds that it did not impact voting for council.

Candidate Attendance in a Public Building

107. The Appeal Board considered Ms. Johnson's testimony with respect to candidates attending a funeral in a SCN public building. Sections 3.7 and 3.8 of the Election law address this issue as follows:

3.7 With the exception of entering specified voting locations for the purpose of voting, all candidates are to refrain from entering any public buildings during the date of the election.

3.8 All candidates are prohibited from campaigning inside public buildings for the duration of the campaign period.

108. The Election Law also defines a public building at section 1.1(t):

t. **"Public Buildings"**, include all Samson Cree Nation program and service buildings.

109. The Appeal Board notes that while candidates are prohibited from campaigning in a public building throughout the campaign period, they are only prohibited from entering a public building on the date of the election.

110. **As the date of the funeral was not the date of the election, and in the absence of any evidence that candidates were campaigning while they attended the funeral, the Appeal Board finds this complaint to be invalid.**

Ballot Counting

111. The Appeal Board considered all of the allegations with respect to the counting of ballots. Based on statements from Ms. Johnson and Ms. Vanguard, the Appeal Board finds the Electoral Officer did not count the ballots; the majority were called out by the Assistant to the Electoral Officer as well as a non SCN member and then tallied by SCN staff. In fact, most if not all of the other individuals involved in the count were SCN staff.

112. The Appeal Board considered Ms. Johnson's concerns that the ballots have not been stored securely. In the absence of any evidence to the contrary, or anything beyond a bare allegation, the Appeal Board has no reason to reject Ms. Vanguard's statement that the ballots were transported to the SCN vault where they remain.

113. The Appeal Board also accepts Ms. Vanguard's statements, that were supported by Ms. John's recollection, that the ballots for each voting place were carefully counted and initialed in advance.

114. The Appeal Board agrees with Ms. Johnson that the Electoral Officer was responsible to ensure a working tabulator was available. This did not occur. However, based on the statements of Ms.

Vanguard, Ms. John and Ms. Swampy, the Appeal Board finds that the tabulator stick was damaged during transport rendering the tabulator unusable. While this incident is regrettable, there is no evidence to suggest that Ms. Vanguard was negligent or acted in bad faith. In fact, she immediately took steps to order a new stick however that stick did not arrive for several days.

115. The Appeal Board reviewed the ballot marking instructions and finds that they are clear. However, on review of the videos, the Appeal Board agrees with Ms. Johnson that the ballot counting process was hard to see, and that the ballots were difficult to visualize on the videos that were intended to compensate for restricted attendance.

116. The Appeal Board also agrees that ballots appear to have been rejected inconsistently. In some cases, a slight coloring outside of the line resulted in a rejection and sometimes not.

117. The Appeal Board also reviewed a particular example in the video where the names of 13 candidates were called – this is clearly an error in counting. It does appear in the first You Tube video that at the start, there was not a second person standing behind the Assistant Electoral Officer to verify the names being called out.

118. Finally, the Appeal Board considered the consistent commentary from all of the individuals that the number of SCN staff present to administer the election caused confusion and inconsistencies and these individuals were not under the direction or control of the Electoral Officer.

119. The Appeal Board notes that no fewer than 79 SCN staff were engaged to assist with administering the election. In the Appeal Board's view, this is double or potentially even triple the number of people required.

120. The Appeal Board is also concerned about the restriction of scrutineers during the ballot counting by security. This circumstance was acknowledged by both Ms. Johnson and Ms. Vanguard.

121. The Appeal Board acknowledges that a surprise hand count of an election with 68 candidates will be challenging in any circumstances but especially so when the hand count process goes on continuously through the night.

122. However, without suggesting any bad faith, the ballot counting errors noted, admitted and viewed, combined with the fact that all witnesses reported some level of confusion and disruption caused by too many election workers brings the integrity of the count into question.

123. For all of these reasons, the Appeal Board is not confident that the ballot count is reliable and finds this complaint to be valid.

124. In accordance with the Election Law section 20.3, and Schedule B section 6.5(b)(ii) the Appeal Board orders a recount of all ballots under the following conditions:

- a) **The recount shall be carried out by the Electoral Officer appointed by SCN BCR 2023-2024-774-#001 dated April 24, 2023;**
- b) **The recount shall be by tabulator on or before June 22, 2023, on Samson Cree Nation territory;**
- c) **The recount should include all ballots, including spoiled ballots;**
- d) **The Electoral Officer shall publish a Notice of the time and place of the recount at least 2 days in advance of the recount; and**
- e) **The recount location shall be sufficient to allow scrutineers and SCN members to observe the proceedings.**

CONCLUSION AND FINAL WORDS

125. The Appeal Panel would like to thank all the interviewees for their time and engagement in this process.

126. Due to the timelines imposed by the Election Law, the Appeal Board initiated and ran its investigation in an expedited manner.

127. The Appeal Board acknowledges the importance of this Election to the Members of Samson Cree Nation. Every effort was made to allow as much information to be presented to the Appeal Board as could reasonably be completed.

Signed by the Chair, on behalf of the Appeal Board



Paula Hale, Chair

June 15, 2023

Errata and corrections:

Para 32 – the words “Ms. Johnson submitted that” inserted at the beginning of the paragraph to clarify that this was Ms. Johnson’s position

Para 50 – the word “impotence” was changed to “reason” for clarity

Para 76 – the name Dorothy Buffalo was corrected to Dorothy Simon

APPENDIX A

RECOMMENDATIONS

After having familiarized themselves with the Election Law and Schedules and having now applied the Election Law in the face of a variety of complaints, the Appeal Board makes the following recommendations:

- 1) The 14-day period to carry out a single Appeal can be challenging; if there are multiple appeals, 14 days will not suffice to make an informed decision.
- 2) The statutory procedures must be followed and BCR's must be in place and followed in order to avoid suspicion and build confidence and trust in the election system.
- 3) Use of SCN staff should be minimized and the Electoral Officer should be in charge of recruiting, selecting and employing all people needed to carry out an election. The Electoral Officer should not be subject to direction by any SCN staff or council.
- 4) Ensure that the Schedules to the Election Law are consistent and subordinate to the Election Law itself. More specifically, the schedules that set out roles and responsibilities must acknowledge that it is the (independent and impartial) Electoral Officer who is in charge of administering the election. The schedules must be consistent but subordinate with the Election Law.

By way of example, section 5.5 of the Election Law clearly empowers the Electoral Officer to run the election:

5.5 The **Electoral Officer shall be recognized as the authorized person to conduct the entire administration and process of the election** in accordance with the Terms of Reference, adopted by Chief and Council. These include:

...

However, on review of the Electoral Officer contract the Appeal Board was troubled to find the following provisions:

1.2 The Electoral Officer shall report to Allison Adams-Bull, SCN Band Administrator.

1.3 Allison Adams-Bull, SCN Band Administrator, has authority to authorize any changes or amendments to this Contract for Services.

- 5) Tabulator use should continue but the Appeal Board recommends that an extra spare coded USB stick be ordered with every election in order to avoid the type of technical issues that arose in this election.
- 6) The Election Technician should not be part of appeal process to ensure transparency and minimize opportunities and appearance of bias. However, the Appeal Board does need administrative support in order to coordinate meetings on SCN territory and to facilitate communication. Selection of the recording secretary shall be by the Chair, in accordance with Schedule B, section 6.6(a) of the Election Law.
- 7) The Criminal Code eligibility provisions should be clarified and SCN should communicate exactly what they capture or don't capture so that SCN members do not suspect corruption when the Election Law is being followed and so that the eligibility requirements can be consistently and transparently enforced.
- 8) Election notices are communicated sufficiently in advance to enable potential candidates to meet the nomination requirements, including criminal record checks that are completely verified in advance of their accepted nomination. The Appeal Board strongly recommends that potential candidates acquire the criminal record check 30 days in advance of nomination day to avoid any doubt with respect to their eligibility.
- 9) The provisions addressing service of a Notice of Appeal on the Appeal Board Chair should be revised to allow service by email or by fax on consent of the recipient and that this information is provided in advance, to ensure access to appeals.

APPENDIX B

DOCUMENTS REVIEWED BY THE APPEAL BOARD

A. Exhibits Marked by the Appeal Board During Interviews

<i>Exhibit Number</i>	<i>Document Description</i>
Exhibit 1	June 5, 2023 letter from Cheyenne Crier-Jamerson
Exhibit 2A	Pictures of spoiled ballots
Exhibit 2B	Note re YouTube Part 1 spoiled
Exhibit 3	Newsletter showing incorrect date
Exhibit 4	January 1, 2006 article regarding spoilage
Exhibit 5	June 6, 2023 email from Cynthia Swampy
Exhibit 6	Notice of 2023 Election Polling Stations including posted comments
Exhibit 7	Screenshots from Part 1 YouTube
Exhibit 8	Screenshots from Facebook
Exhibit 9	June 5, 2023 Letter of Support to Election Appeal Board
Exhibit 10	Pictures of caution tape in parking lot at HBMC on May 9
Exhibit 11	May 29, 2023 Election Technician Report
Exhibit 12	Video – Showing closure of Edmonton voting station at 7:00pm

B. Additional Documents Reviewed by the Appeal Board

1. List of Staff who worked the May 23 Election (including May 24)
2. Report on the May 2023 Elections of the Samson Cree Nation, May 30, 2023, Brenda Vanguard
3. Appointment of Deputy Electoral Officers Documents
4. Electoral Officer Agreement
5. April 4, 2023 Samson Cree Nation Council Resolution
6. Candidate packages for elected Members of Council
7. Photos of the Edmonton polling station on May 23 at 7:00pm.
8. Funeral pamphlet for Jacqueline Johnson
9. May 23 instructions for voting
10. Samson Cree Nation 2023 Election for Council COVID 19 Restrictions Notice and emails regarding COVID protocols
11. Notice – Samson Cree Nation - 2023 Election – Polling Stations showing Edmonton Polling Station time for May 23 Election of 9:00am-9:00pm – Posted April 25, 2023
12. Notice – Samson Cree Nation - 2023 Election – Polling Stations showing Edmonton Polling Station time for May 23 Election of 9:00am-6:00pm – Posted May 10, 2023
13. April 24, 2013 Minutes of General Meeting
14. Samson Cree Nation Notice - 2023 Election signed by Electoral Officer
15. Election Tip Sheet and Checklist for Individuals Seeking Candidacy
16. 2023 SNC Councillor Elections - Final Ballot count