



FROG LAKE FIRST NATION ELECTION APPEALS COMMITTEE

NOTICE OF APPEAL

Please be advised that an appeal has been filed in relation to the election for Chief and Council held on April 26th. It has been determined this appeal has been filed in accordance with the Frog Lake Election Code and will be heard by the Election Appeals Committee. A copy of the appeal is attached to this notice.

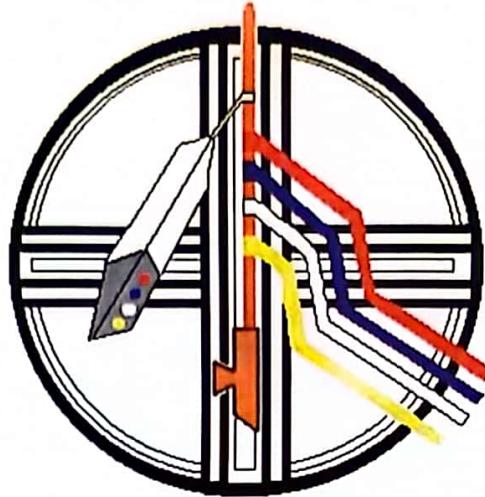
The Appeal Committee will be exercising their discretion under Section 9.6(b) of the *Frog Lake First Nations Election Code* to schedule an appeal hearing after the appeal filing period (May 26th) has expired. Other appeals may still be filed and this will avoid the need for multiple appeal hearings.

The hearing for this will take place in person. The date, time, location and the manner in which the appeal hearing where both complainant and respondents publicly present their evidence, will be set out in a further notice.

In accordance with section 9.6, this notice will be posted at the Band office as well as on: 1) Frog Lake First Nation's website; (2) Frog Lake First Nation's mobile app; and (3) facebook.

Further notices in relation to this appeal will be posted in the same manner.

Chair of the Election Appeal Committee,
Elaine Ross



Frog Lake First Nations Election Appeal Application Form

This form must be submitted to the Clerk of the Election Appeals Committee.

Glenna Walker

Office: (780) 943-3737 | Cell: (780) 210-4446

Submit digitally to: glennawalker@froglake.ca

Or

Mail / In Person: General Delivery, Frog Lake, Alberta T0A 1M0

Frog Lake First Nations Band Administration Attn: Glenna Walker

Frog Lake First Nations Election Appeal Application

Grounds for Appeal - Please check at least one of the following

Vote or Candidate Eligibility and Omission	<i>Applicable?</i>
Electoral officer improperly included on or left off a persons name on the Voter List (9.2.a.i)	
A nominee meets requirements, but left off Candidate list by the Electoral Officer (9.2.a.iii)	
A nominee did not meet all requirements but was declared a Candidate by the Electoral Officer (9.2.a.ii)	
An ineligible person nominated or seconded the nomination of a nominee (9.2.a.iv)	
Post-Election and Other Appeals	
A candidate violated the Candidate code of conduct (9.3.a.i.b)	
An error was made in the application of the Election Code procedures (9.3.a.i.a)	✓
Sufficient number of <u>ineligible individuals</u> voted that impacts the outcome of this election (9.3.a.i.c)	
Sufficient number of rejected or spoiled ballots were cast that impacts the outcome of this election (9.3.a.i.d)	

Describe, briefly, the nature of the violation or infraction:

Code 5.10 was broken.

The appellant(s) agree to or acknowledges:

Initials

✓ To pay the \$100 appeal filing fee, using a method outlined in supplementary information.

✓ Submit this form only to the current Clerk of the Election Appeals Committee

Sworn Affidavit

I, Hans McCarthy of Wetaskowin AB
(Name of Appellant) (Place of Residence) (Province)



SWEAR / AFFIRM AND SAY THAT:

1. I have personal knowledge of the grounds of Appeal, the description of the violation or infraction, and the evidence attached to this affidavit, except where stated to be based on information and belief.
2. To the best of my knowledge, all the information and evidence included in this Appeal is true and all of the evidence attached is presentable at an appeal hearing.

SWORN / AFFIRMED BY: Hans McCarthy
(Name of Appellant)

SWORN / AFFIRMED ON: April 28, 23
(Date Sworn/Affirmed)

SWORN / AFFIRMED BEFORE ME

at Elk Point, Alberta

on April 28, 2023

Commissioner of Oaths in and for Alberta,
Justice of the Peace or Notary Public


(Signature of Person Swearing/Affirming)

CHRISTOPHER J. MELNYK
A Commissioner for Oaths
in and for Alberta
My Commission expires June 1, 2025

Evidence

In the box below, briefly describe the evidence supporting the indicated grounds of appeals with this document. Where possible, attach evidence with this application.

Examples, but not limited to:

- Relevant photos or videos of alleged actions or violations
- Testimony from individuals witnessing alleged actions or violations
- Records of written decisions, digital or otherwise,
- Any other relevant documents

#	Description of Evidence
1	Affidavit by Hans McCarthy and Exhibit A.
2	
3	
4	
5	

Should an appeal be granted, the committee will provide a mechanism for defendant and appellant to submit further evidence. For Appeals under section 9.3 of the Code: Evidence will be shared with all parties 24 hours prior to a hearing.

COURT OF APPEAL OF ALBERTA

Form 49
[Rule 13.19]

COURT OF APPEAL FILE NUMBER:

TRIAL COURT FILE NUMBER:

REGISTRY OFFICE:

PLAINTIFF/APPLICANT: Hans Preston McCarthy

STATUS ON APPEAL:

DEFENDANT/RESPONDENT: Greg Desjarlais, Stoney Dion,
Clifton Cross, Colin Quinney,
Preston Faithful, and Jason
Quinney.

STATUS ON APPEAL:

DOCUMENT: **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: 11-5716 50 Ave Wetaskiwin Alberta, T9A 2V1

Registrar's Stamp

AFFIDAVIT OF Hans Preston McCarthy

Sworn (or Affirmed) on April 27, 2023

I, Hans Preston McCarthy, of Wetaskiwin, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. The defendants violated the Frog Lake elections code, specifically section **5.10 Council Activities during an Election Period: (a) During an Election Period, Council shall not directly or indirectly do any of: (i) enter into any contracts or agreements that are not in the ordinary course of the FLFNs' business;**
2. This has Implicated our entire election process.
3. On the March 23, 2023 two days after nominations, the defendants which are Frog Lake Chief and Council, and Waskonaman Askih, filed a legal lawsuit. The Band lawyer must be given direction by past leadership, and Waskonaman Askih to commence the filing if the lawsuit of the lawsuit on this date. Furthermore, they must be advised whenever the lawyer meets or talks to the sued party. A meeting was held by both the Band lawyer and sued party's lawyer on April 21, 2023, and again today, April

25, 2023. This confirms a violation of the election code has taken place. Specifically, the section outlined in number 1 of the affidavit.

4. **Exhibit A:** A Statement of Claim against 2250657 Alberta LTD which was brought about by WITTEN LLP.

SWORN (OR AFFIRMED) BEFORE ME at
Wetaskiwin, Alberta, this 27 day of April,
2023.



(Commissioner for Oaths in and for the
Province of Alberta)

Laurel Ann Wheeler
A Commissioner for Oaths
in and for Alberta
My Commission Expires Aug. 28, 2024

PRINT NAME AND EXPIRY OR
LAWYER/STUDENT-AT-LAW

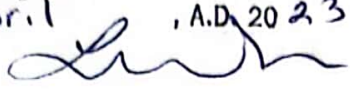
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(Signature)

Hans McCarthy
Print Name

This is Exhibit " A " referred to in
the affidavit of Hans Preston McCartney
Sworn before me this 27 day
of April, A.D. 2023



Laurel Ann Wheler
A Commissioner for Oaths
in and for Alberta
My Commission Expires Aug. 28, 2024

Form 10
[Rule 3.25]

Clerk's Stamp



COURT FILE NUMBER

COURT

**COURT OF KING'S BENCH OF
ALBERTA**

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS

**FROG LAKE FIRST NATION and
WASKONAMAN ASKIH
(MOVING EARTH)
CONSTRUCTION LIMITED
PARTNERSHIP BY ITS
GENERAL PARTNER
WASKONAMAN ASKIH
(MOVING EARTH)
CONSTRUCTION GP LTD.**

DEFENDANT

2250657 ALBERTA LTD.

DOCUMENT

STATEMENT OF CLAIM

**ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT**

WITTEN LLP
Barristers & Solicitors
2500, 10303 Jasper Avenue
Edmonton, AB T5J 3N6

Attention: Justine Mageau
Phone: (780) 428-0501
Fax: (780) 429-2559
File No.: 106618.65 JM

Email: jmageau@wittenlaw.com

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff Frog Lake First Nation ("FLFN") is an Indian band within the meaning of the *Indian Act*, RSC 1985 c I-5.

2. The Plaintiff Waskonaman Askih (Moving Earth) Construction Limited Partnership ("Waskonaman Askih") carries on business throughout Alberta as a construction company and is registered pursuant to the laws of Alberta. Its general partner is Waskonaman Askih (Moving Earth) Construction GP Ltd.
3. The Defendant 2250657 Alberta Ltd. (the "Defendant") is a corporation incorporated pursuant to the laws of the Province of Alberta and carries on business throughout the province as a construction company.
4. In or around March 2021, FLFN and the Defendant entered into discussions regarding a business opportunity whereby the Plaintiffs, or either of them, would own and operate an asphalt company in collaboration with the Defendant (the "Asphalt Venture").
5. In anticipation of entering into an agreement with the Defendant regarding the Asphalt Venture:
 - a. on or about April 8, 2021, FLFN advanced \$500,000 to the Defendant; and
 - b. on or about May 31, 2021, Waskonaman Askih advanced \$250,000 to the Defendant(together, the "Deposit").
6. The Deposit was made on the condition that it would be returned to the Plaintiffs if the parties could not agree on terms for the Asphalt Venture, in the form of a standard commercial purchase, partnership or joint venture agreement, within a reasonable amount of time.
7. Discussions between the parties broke down and no agreement was reached between the parties with respect to the Asphalt Venture.
8. On or about June 29, 2022, demand was made for the return of the Deposit, however the Defendant has refused and/or neglected to do so.
9. The Defendant has been unjustly enriched by retaining the Deposit and the Plaintiffs have suffered a corresponding deprivation for which there is no juristic reason.
10. Further or in the alternative, the Deposit constitutes a debt for which demand for repayment has been made and the Defendant has failed and/or neglected to pay same to the Plaintiffs.

Remedy sought:

11. Judgment against the Defendant, or alternatively damages from the Defendant, or alternatively an order for restitution against the Defendant in the sum of \$750,000;
12. An order declaring that the Defendant has been unjustly enriched and therefore holds the sum of \$750,000 pursuant to a constructive trust in favour of FLFN;
13. Interest pursuant to the *Judgment Interest Act*, RSA 2000 c J-1;
14. Costs of this action; and
15. Such further and other relief as counsel shall advise and this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.