

e-document	T-3157-24-ID 1	
F I L E D	FEDERAL COURT COUR FÉDÉRALE November 15, 2024 15 novembre 2024	D É P O S É
Lindsay Krieger		
EDM	1	

Court File No.

FEDERAL COURT

B E T W E E N:

**ROBERT HUNTER, SHELDON QUINN, JARED HUNTER and
BRENDEN HUNTER**

APPLICANTS

and

SADDLE LAKE CREE NATION and ANTHONY HUNTER

RESPONDENTS

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 and Rule 301 of the *Federal Court Rules*, SOR/98-106

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants. The relief claimed by the Applicants appears below.

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 Applicants. The Applicants request 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 file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor or, if the Applicants are self-represented, on the Applicants, 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 _____ Issued by _____
(Registry Officer)
Address of local office: Rice Howard Place
10060 Jasper Avenue
Tower 1, Suite 530
Edmonton, Alberta T5J 3R8

TO: Saddle Lake Cree Nation
PO Box 100,
Saddle Lake, AB T0A 3T0

AND TO: Anthony Hunter
PO Box 93,
St. Brides, AB T0A 2Y0

APPLICATION

This is an application for judicial review in respect of a decision of the Respondent Saddle Lake Cree Nation (the “**Nation**”) allocating lands occupied by Robert Hunter to Anthony Hunter (the “**Decision**”). The Applicants are not aware of the date of the Decision as they have not been provided with a copy of the Decision, despite repeated requests.

THE APPLICANTS MAKE APPLICATION FOR:

1. An order quashing the Decision;
2. A declaration that the Nation breached its duty of fairness owed to the Applicants when making the Decision;
3. A declaration that the Decision was unreasonable;
4. An order directing the Nation to have the lands under dispute surveyed and mapped;
5. An order directing the parties to appoint an independent mediator to resolve any remaining disputes regarding the subject matter of this application;
6. Costs; and
7. Such further and other relief as this Honourable Court may deem just and appropriate.

THE GROUNDS FOR THE APPLICATION:

PART 1: Factual Background

The Parties

1. The Applicants are registered band members of the Nation. Robert Hunter is the youngest son of George Hunter. Sheldon Quinn, Jared Hunter and Brenden Hunter are Robert Hunter’s sons.

2. The Nation has a custom electoral system, which has a three-year election cycle. The elected Chief, Terry Cardinal, passed away suddenly in January 2024, and interim-Chief Jason Whiskeyjack's appointment expires on June 14, 2025. The other elected Councillors of the Nation include Charles Cardinal, Mary-Jane Cardinal, Kevin Delver, Pauline Hunter, John Large, Eric Shirt and James Steinhauer.

3. The Respondent Anthony Hunter is the son of James Hunter, nephew of Robert Hunter and one of George Hunter's grandchildren.

History of Land Allocation to Robert Hunter

4. The lands forming the subject matter of the Decision are within Saddle Lake Cree Nation #125 (the "**Reserve**"), located approximately 180 km northeast of Edmonton and 30 km west of St. Paul, Alberta.

5. The majority of the lands occupied by Robert Hunter were first allotted to him in 1989. The lands were originally occupied by Robert Hunter's eldest brother, Raymond Hunter.

6. On March 28, 1989, upon the death of their brother Raymond Hunter, then Chief Eugene Steinhauer wrote to Raymond Hunter's brothers Robert Hunter and James Hunter to offer them possession of Raymond Hunter's lands in consideration for assuming all of the debts and encumbrances held by Raymond Hunter, including his funeral expenses. At that time, the Nation had a policy of paying for the funeral expenses of all of its members, and would have otherwise paid for Raymond Hunter's funeral expenses absent this agreement between the parties.

7. At the time of payment of Raymond Hunter's debts and funeral expenses, James Hunter was already in the possession of at least 1,600 acres of lands on the Reserve. Robert Hunter personally and solely paid for all debts and funeral expenses of the late Raymond Hunter. In recognition of Robert Hunter's payment, James Hunter agreed to, and was supportive of, allocating the following 506 acres entirely to Robert Hunter:

- a) NE-22-57-11W4M (68 acres);

- b) NW-22-57-11W4M (127 acres);
- c) NE-27-57-11W4M (142 acres);
- d) SW-27-57-11W4M (79 acres); and
- e) SE-27-57-11W4M (90 acres).

8. Natural Resources Canada prepared a Land Use Area map of these lands and provided the map to Robert Hunter and the Nation, which are identified on the map as **“Parcel B”**.

9. In 2002, Robert Hunter acquired a further parcel of land by purchasing land from James Hunter in exchange for compensation of \$50,000. The parcel purchased by Robert Hunter is a 157-acre parcel consisting of the following:

- a) SE-21-57-11W4M (37 acres); and
- b) NE-21-57-11W4M (120 acres).

10. The Natural Resources Canada Land Use Area map identifies these lands as **“Parcel A”**. The allotment of Parcel “A” lands to Robert Hunter was recognized by the Nation in Band Council Resolution 33/2002-03 (the **“Robert Hunter 2002 BCR”**).

11. Robert Hunter has held exclusive occupation of the above lands since the Nation recognized his interest in Parcel “B” in 1989 and in Parcel “A” in 2002. There are no residents or residences located on either Parcel “A” or Parcel “B”, which have been bare agricultural lands since the time that they were occupied by Robert Hunter. At no time did James Hunter or any other Nation member claim any interest in these lands. James Hunter never disputed the sale of Parcel “A” with Robert Hunter or requested to purchase it back. No other Nation member has ever offered to purchase Parcel “A” or Parcel “B” from Robert Hunter.

History of Land Allocation to James Hunter

12. The Applicants have not obtained access to all the land records that were formerly in the possession of James Hunter. However, the Nation's Land Department has provided Robert Hunter a copy of Band Council Resolution 55/82-83 (the "**James Hunter 1982 BCR**"), which confirmed the use and occupation of 1,600 acres by James Hunter. The James Hunter 1982 BCR related to the following lands:

- a) NE-21-57-11W4M (acreage not listed);
- b) SE-21-57-11W4M (acreage not listed);
- c) NE-22-57-11W4M (acreage not listed);
- d) SE-22-57-11W4M (acreage not listed);
- e) NW-23-57-11W4M (acreage not listed);
- f) SW-23-57-11W4M (acreage not listed);
- g) NW-27-57-11W4M (acreage not listed); and
- h) Section 28-57-11W4M (640 acres).

13. There is no overlap between the lands allocated to Robert Hunter in Parcel "B" and the lands allocated to James Hunter under the James Hunter 1982 BCR. While both Robert Hunter and James Hunter each have respective allocations within NE-22-57-11W4M, they do not overlap. This was confirmed in James Hunter's will (the "**James Hunter Final Will and Testament**"), where he provided a drawing showing 51 acres within NE-22-57-11W4M in which he claimed an interest, which is separate and distinct from the 68 acres in this quarter section occupied by Robert Hunter.

14. Under the James Hunter 1982 BCR, Parcel "A" is identified as belonging to James Hunter. This portion of the BCR predates the transfer of Parcel "A" from James Hunter to Robert Hunter in 2002 for compensation of \$50,000, and, as such, is no longer valid.

Death of James Hunter and Attempted Reallocation of Lands

15. On November 27, 2020, James Hunter passed away. In the James Hunter Final Will and Testament, he named Robert Hunter as his executor and personal representative.

16. After the death of James Hunter, Robert Hunter repeatedly requested a meeting with Chief and Council to address the reallocation of James Hunter's lands pursuant to his responsibilities as executor of the James Hunter Will. Robert Hunter also sought to reallocate his interest in lands to his son Brenden Hunter, for the purpose of later allocating the lands to all three of his sons. In response to Robert Hunter's requests, former Chief Terry Cardinal advised Robert Hunter that a meeting was being delayed to allow for similar land reallocations to be addressed together.

17. On November 6, 2023, Robert Hunter and Brenden Hunter attended a meeting with then Chief and Council that had been scheduled in response to Robert Hunter's requests to meet as executor and personal representative of James Hunter. Without notice to Robert Hunter or Brenden Hunter, Anthony Hunter and his sisters, Ann Hunter and Kathy Hunter, were also in attendance. At the meeting:

- a) Anthony Hunter requested that Chief and Council transfer an unspecified portion of Robert Hunter's lands to him;
- b) Chief and Council asked several questions of Robert Hunter. Robert Hunter explained that he had been allocated Parcel "B" by the Nation upon the death of Raymond Hunter in consideration of paying for Raymond Hunter's debts and funeral expenses, and had been allocated Parcel "A" upon purchasing it from James Hunter in 2002;
- c) Chief and Council asked whether the family had discussed Anthony Hunter's requests. Brenden Hunter explained that no such previous discussion had taken place and stated that he and Robert Hunter would be willing to commence such discussions and report back to Chief and Council, as Chief

and Council's time should only be taken up as a matter of last resort. A follow-up meeting was scheduled with Chief and Council for November 30, 2023; and

- d) The former Chief assured Robert Hunter and Brenden Hunter that the lands would stay within the family. Councillor Pauline Hunter stated that Council for the Nation was looking for a "win-win".

18. After the meeting with Chief and Council on November 6, 2023, Robert Hunter and Brenden Hunter met with Anthony Hunter and Ann Hunter. At the meeting, Brenden Hunter stated that it was in everyone's best interests to find a mutually acceptable agreement. Anthony Hunter indicated that there were portions of his lands that would be more efficiently farmed if they were contiguous to one another. At the end of the meeting, everyone agreed that the next step would be for Anthony Hunter to contact Finlay Moses, the Nation's Land Department Manager, and request that James Hunter's lands be surveyed and mapped. Anthony Hunter confirmed that he would follow up with Robert Hunter and Brenden Hunter prior to the November 30, 2023 meeting for further discussion.

19. The planned November 30, 2023 follow-up meeting was cancelled by Chief and Council without a reason being communicated to Robert Hunter and Brenden Hunter for the cancellation.

Subsequent meetings with the interim-Chief and Council excluding the Applicants

20. On March 12, 2024, the interim-Chief and Council held a subsequent meeting with Anthony Hunter, Ann Hunter and Kathy Hunter. Robert Hunter and Brenden Hunter were not given notice of the meeting, nor were they invited to attend.

21. On March 13, 2024, Finlay Moses called both Robert Hunter and Brenden Hunter to inform them of the meeting that had occurred between Anthony Hunter, Kathy Hunter, Ann Hunter and interim-Chief and Council. At the request of Robert Hunter and Brenden Hunter, Finlay Moses emailed Robert Hunter and Brenden Hunter a brief summary of the meeting, stating that at the March 12, 2024 meeting:

- a) Anthony Hunter presented the interim-Chief and Council with the James Hunter 1982 BCR;
- b) Anthony Hunter requested that the interim-Chief and Council transfer the entirety of lands allocated to James Hunter under the James Hunter 1982 BCR to him, including the Parcel “A” lands rightfully purchased by Robert Hunter from James Hunter in 2002 at James Hunter’s request; and
- c) Anthony Hunter told the interim-Chief and Council that he had concerns with a potential solar farm being established on lands occupied by Robert Hunter.

22. In his email, Finlay Moses asked if Robert Hunter and Brenden Hunter would like to prepare a response for the interim-Chief and Council. On March 14, 2024, Brenden Hunter emailed Finlay Moses and indicated that he had reviewed the materials and would provide a response.

23. On April 12, 2024, Robert Hunter hand-delivered eight hard copies of a response (dated April 11, 2024) addressed to the interim-Chief and Council summarizing the respective land allocations between him and James Hunter to the Nation’s band office. The letter also contained an offer from Robert Hunter and Brenden Hunter to pay to have all of the lands surveyed so that the parties could continue discussions in respect of contiguous parcels.

24. On May 2, 2024, the Nation’s Land Department executed a two-year Cultivated Land Lease Agreement (the “**2024 Cultivated Land Lease**”), which included both Parcel “A” and Parcel “B”, with Robert Hunter, Brenden Hunter and third-party renter Chris Sloan. The terms of the 2024 Cultivated Land Lease expressly prohibited other persons from entering the subject lands with any farming equipment.

25. On May 20, 2024, interim-Chief Jason Whiskeyjack called Robert Hunter to inform him that Council was planning on having a meeting on May 22, 2024 at the Nation’s band office and wanted to have both Robert Hunter and Anthony Hunter in attendance to discuss Robert Hunter’s lands. Robert Hunter explained that he was out of town visiting

family for the long weekend, that he wanted to have Brenden Hunter with him at any such meeting, and asked that the interim-Chief speak with Brenden Hunter. In the ensuing phone conversation, Brenden Hunter and the Nation's interim-Chief discussed the following:

- a) The interim-Chief told Brenden Hunter that he and Council had received the 1982 James Hunter BCR from Anthony Hunter and wanted to know what documents Robert Hunter had to support his land allocation;
- b) Brenden Hunter asked the interim-Chief whether he had reviewed the April 11, 2024 letter, which explained that there was no overlap between the James Hunter 1982 BCR and Parcel "B". Brenden Hunter also explained that the same letter included a copy of the 2002 Robert Hunter BCR that pertained to his purchase of Parcel "A";
- c) The interim-Chief requested that Robert Hunter and Anthony Hunter discuss the matter before Council. Brenden Hunter explained that his father Robert Hunter was 76 years old and was still in the process of grieving for his late wife, who had died just days earlier. Brenden Hunter requested that Chief and Council allow him to attend any such meeting to support his father;
- d) Brenden Hunter stated that after the November 6, 2023 meeting, Anthony Hunter had agreed to approach the Nation's Lands Department for survey work so that the family could further discuss any reallocations involving potential land swaps;
- e) Brenden Hunter explained that he wished to respect the interim-Chief and Council's time and only use time before them to resolve issues as a last resort. Brenden Hunter also told the interim-Chief that prior to meeting with Anthony Hunter in relation to the lands, it would be helpful to have the Nation's Land Department maps to facilitate the conversation;

- f) The interim-Chief stated that they had hired a new interim Land Development Manager, and that he would direct the interim Manager to locate the Land Department's maps and other documents related to the relevant lands and contact Brenden Hunter about them within one week. The interim-Chief said that if the Nation's maps matched the land allocations contained in the April 11, 2024 letter, the matter would essentially be settled;
- g) The interim-Chief informed Brenden Hunter that he had advised any third-party farmers, including Chris Sloan, that they were not to enter the lands until the matter was resolved. He offered to help facilitate any further conversations through a third-party mediator, to which Brenden Hunter agreed;
- h) The interim-Chief asked that Brenden Hunter contact Anthony Hunter to discuss the matter. Brenden Hunter indicated that he had tried to contact Anthony Hunter multiple times, but that Anthony Hunter had not returned his calls and continued to contact Robert Hunter instead;
- i) The interim-Chief requested that in the event that Brenden Hunter was not able to contact Anthony Hunter, he text Anthony Hunter and provide the interim-Chief with screenshots of any texts to Anthony Hunter to show these failed attempts to begin discussions. Brenden Hunter agreed to do this and report back to the interim-Chief.

26. Later, on May 20, 2024, Anthony Hunter called Brenden Hunter in response to multiple attempts by Brenden Hunter to contact him about the issue. During that phone call:

- a) Brenden Hunter reminded Anthony Hunter that he had agreed to review maps of the disputed lands with Brenden Hunter and again requested that they do so. Anthony Hunter refused this request, and instead stated that he intended to claim any and all of the lands as his;

- b) Brenden Hunter asked Anthony Hunter to confirm whether he was renting his lands to a non-band member, to which Anthony Hunter did not respond;
- c) Brenden Hunter challenged Anthony Hunter's claim to all of the lands in dispute, reminding Anthony Hunter that Parcel "A" had been purchased by Robert Hunter; and
- d) Anthony Hunter ended the conversation.

27. After the call on May 20, 2024, Brenden Hunter texted the interim-Chief and indicated that Anthony Hunter was not willing to discuss the matter in good faith. Brenden Hunter reaffirmed the request for assistance from a third-party mediator, to which the interim-Chief responded affirmatively.

28. On May 24, 2024, Brenden Hunter sent a follow-up email to the interim-Chief, which re-attached the April 11, 2024 letter and the 2024 Cultivation Lease. No response was received.

The Meeting

29. On June 4, 2024, interim-Lands Department Manager Frank Cardinal left a voice mail for Brenden Hunter requesting that Brenden Hunter email him a copy of the 2024 Cultivation Lease. The voice message was left at 11:03 a.m., and indicated that a meeting was planned with Council at 1:00 pm that same day. There was no invitation to Brenden Hunter or Robert Hunter to attend or make further submissions or to attend the meeting.

30. On June 4, 2024, Brenden Hunter emailed the interim-Lands Department Manager the April 11, 2024 letter and 2024 Cultivation Lease. No response was received.

31. On June 4, 2024, Brenden Hunter sent a follow-up email to the interim Lands Department Manager, requesting the agenda for the meeting, the names of the persons who would be in attendance, and any other information about what would be discussed. No response was received.

32. On June 7, 2024, counsel for the Applicants, Karey Brooks, KC, wrote to the Nation requesting clarification of whether a Band Council Resolution allocating the Robert Hunter lands had been issued. If so, the letter further requested the information and documents that Council had relied on, the reasons for the Decision, if any, as well as whether the survey request had been undertaken. No response was received.

33. On June 12, 2024, Robert Hunter visited Parcels “A” and “B” and found that they had been cultivated. Robert Hunter called Chris Sloan. Chris Sloan stated that it was Neil Kupchenko, who is not a Nation member, that had farmed the lands. Chris Sloan had been advised this directly by Neil Kupchenko.

34. On July 2, 2024, counsel for the Applicants wrote a second letter to Nation informing the interim-Chief and Council that Parcel “A” and Parcel “B” were being farmed by an unauthorized third party and requested further information. No response was received.

PART 2: Legal Basis

35. The Decision should be set aside as it was made in a procedurally unfair manner and is unreasonable.

Decision Process was Unfair

36. Given the importance of the Decision to the Applicants, as well as the legitimate expectations arising from representations of the process that would be followed by the interim-Chief, the Applicants were entitled to a high degree of procedural fairness. Under these circumstances, the duty owed by the interim-Chief and Council to the Applicants included, but was not limited to, a high degree of participatory rights, the use of procedures as represented by the Chief, and then the interim-Chief and Council, and detailed written reasons demonstrating consideration of the claims and concerns of the Applicants.

37. The interim-Chief and Council failed to provide the requisite degree of procedural fairness by:

- a) Failing to hold a meeting after November 6, 2023 with all parties involved to discuss the matter despite representations and assurances that this meeting would take place;
- b) Failing to facilitate mediation through a third-party mediator despite multiple representations by the interim-Chief that this would take place;
- c) Failing to invite the Applicants or give adequate notice allowing for participation by the Applicants in multiple meetings held *ex parte* with Anthony Hunter leading to the Decision;
- d) Failing to provide the Land Department's maps and other documents related to the disputed lands to the Applicants despite representations from the interim-Chief that any decision would be based on the contents of these maps as they compare with the contents of Brenden Hunter's April 11, 2024 letter to the Nation;
- e) Failing to provide a sufficient opportunity for the Applicants to present evidence to the interim-Chief and Council in advance of the Decision;
- f) Failing to provide an opportunity for the Applicants to attend the meeting at which the Decision was made and to provide an opportunity to be heard at such a meeting; and
- g) Failing to provide written notice of the Decision or written reasons despite multiple written requests to do so.

The Decision is Substantively Unreasonable

38. Band Council Resolution passed by Chief and Council are subject to a reasonableness review. Since written reasons have not been provided, the rationale for the Decision needs to be inferred from the record before interim-Chief and Council and the outcome of the Decision.

39. On the basis of the record before the interim-Chief and Council, the Decision is unreasonable and unjustified in relation to the relevant facts because it:

- a) Fails to account for the evidence before the interim-Chief and Council as outlined in the April 11, 2024 letter;
- b) Fails to meaningfully consider and respond to key issues and central concerns raised in submissions of the Applicants; and
- c) Fails to provide justificatory reasons that reflect the impact of the Decision on the Applicants.

Request for Materials in the Possession of the Nation

40. The Applicants request that the Nation send a certified copy of all material in its possession that is relevant to the Application, including but not limited to:

- a) A copy of the Decision;
- b) Copies of any band council resolution(s) relating to the Decision;
- c) Copies of any band council meeting minutes relating to the Decision;
- d) Copies of any documents or written rationales that were relied upon in reaching the Decision;
- e) Copies of any written communications with Anthony Hunter or his siblings relating to the Decision or the lands, including without limitation any emails, letters, or text messages;
- f) Copies of any bylaws, policies, or other governance documents relating to the Decision or relied upon in reaching the Decision;
- g) Copies of the Nation's Land Departments records, including all maps, surveys, band council resolutions, and other documents pertaining to the allotments of lands to George Hunter, Raymond Hunter, James Hunter, Robert Hunter, Greg

Hunter, Jeremy Hunter, Ann Hunter, Kathy Hunter, Barbara Delver, Kevin Delver, Beverly Whiskeyjack, Jocelyn Stone and/or Robert White, and/or any of their children, descendants or issue; and

- h) Documentation and details of any consideration paid by Anthony Hunter and/or Neil Kupchenko to the Nation, the interim-Chief, and/or any member of the Council in relation to the Decision.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:

1. The Record of Chief and Council in respect of its Decision;
2. The Affidavit of Robert Hunter, sworn 7 November 2024;
3. The Affidavit of Brenden Hunter;
4. The Affidavit of Chris Sloan, sworn 7 November 2024; and
5. Such further and other materials as counsel may advise.

Dated: November 15, 2024



JFK LAW LLP
Barristers & Solicitors
260 – 200 Granville Street
Vancouver BC V6C 1S4

Karey Brooks, KC
Tel: 604-687-0549
kbrooks@jfkllaw.ca

Tim Pritchard
Tel: 604-687-0549 Ext. 304
tpritchard@jfkllaw.ca

Solicitors for the Applicants