

Federal Court



Cour fédérale

Date: 20200629

Docket: T-648-20

Citation: 2020 FC 732

Ottawa, Ontario, June 29, 2020

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

**MARVIN YAHEY, WAYNE YAHEY AND
SHERRY DOMINIC**

Applicants

And

**ROBIN EWASKOW, TROY WOLF AND
SHELLEY GAUTHIER**

Respondents

ORDER AND REASONS

[1] **UPON** Motion by the Applicants pursuant to Rule 373(1) of the *Federal Courts Rules*,

SOR 98-106, for:

- a. An interlocutory injunction staying Blueberry River First Nation [BRFN] Band Council Resolutions #2020-012 and #2020-013 until the final determination of this Application on the merits;
- b. An interlocutory injunction restraining the Respondents, until a final determination of this Application on the merits, from making representations that Chief Marvin Yahey has been removed from office;

- c. An interlocutory injunction restraining the Respondents, until a final determination of this Application on the merits, from acting on behalf of the BRFN, or representing that they have the authority to do so, including, *inter alia*, the convening of Council meetings and sending communications on the letterhead of BRFN;
- d. Costs, including special costs; and
- e. Such further or other relief as to this Court deems just.

[2] **AND UPON** considering that Band Council Resolution #2020-012 purports to remove Chief Marvin Yahey from office, whereas Band Council Resolution #2020-013 instructs BRFN's bank to provide them with the band's financial statements and replaces Chief Yahey's signing authority with that of Respondent Robin Ewaskow, as well as suspends BRFN's Director of Operations;

[3] **AND UPON** considering that in order to be successful, the Applicants had to demonstrate that their Application raises a serious issue to be tried, that they will suffer irreparable harm if an injunction is not granted, and that the balance of convenience favours granting the injunction (*RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311);

[4] **AND UPON** finding that the Respondents failed to abide by the *Blueberry River Custom Election By-law [Custom Code]*, duly adopted in 2017, when they convened and held the June 10th and June 17th meetings where both resolutions were adopted, specifically because:

- i. Only the Chief can convene a special urgent meeting with a 24-hour notice;
- ii. The proper quorum of 4 Council members were not present at the meeting (and the Respondents have not demonstrated that the *Blueberry First Nations*

Governance Manual, which they relied on to hold the meeting with only 3 Council members, has been properly adopted or that it has not been superseded or replaced by the *Custom Code*); and

- iii. The petition by more than 60% of band members and the Section 188 Report were not properly presented and the petitioners were not present, in person or by teleconference/videoconference, at the meeting;

[5] **AND UPON** finding that the Applicants and the First Nation as a whole will suffer irreparable harm if an injunction is not granted, as “each member of the First Nation will suffer by having such conflict and uncertainty in their power structure, particularly, the tension and uncertainty as to who holds office” (*Lower Nicola First Nation v The Council*, 2012 FC 103, at para 35). I agree with the Applicants that the removal of a Chief or Council members from office prior to the expiration of their normal term of office generally constitutes irreparable harm (*Assiniboine v Meeches*, 2013 FCA 114, at para 23), especially when the rules the First Nation has adopted for itself and chosen to abide by have not been followed;

[6] **AND UPON** finding last, and subject to what follows, that the balance of convenience favours maintaining the status quo as that is in the best interests of the BRFN who, along with third parties who interact with it, need certainty and predictability in their governance;

[7] **AND UPON** considering, however, that serious allegations were made against Chief Marvin Yahey both by members of the BRFN in a petition allegedly signed by more than 60% of the First Nation and in a Section 188 Report against Chief Marvin Yahey, as well as

through an ongoing police investigation concerning certain misconduct by the Chief and by the BRFN's Director of Operations;

[8] **AND UPON** considering that the Court was informed that since April 2020, the Band Council has failed to conform to its *Custom Code* by holding two regular meetings a month;

[9] **AND UPON** finding that in these circumstances, it is imperative that a regular meeting of the Band Council be held within 30 days of the present order; that all 6 members of the Band Council be ordered to attend, and that the petition and Section 188 Report be properly put on this meeting's agenda;

ORDER in T-648-20

THIS COURT ORDERS that:

1. Band Council Resolutions #2020-012 and #2020-013 are stayed until the final resolution of this Application on its merits;
2. Until a final determination of this Application on its merits, the Respondents are restrained from making representations that Chief Marvin Yahey has been removed from office;
3. Until a final determination of this Application on its merits, the Respondents are restrained from acting on behalf of the BRFN in any other capacity than Council Members, or representing that they have the authority to do so, including, *inter alia*, the convening of special urgent Band Council meetings;
4. Chief Marvin Yahey is ordered to convene a meeting of the Band Council, or to instruct the Chief Operating Officer to convene a meeting, to be held within 30 days of the present order, and to put on the agenda of that meeting the band members' petition and Section 188 Report to be duly dealt with in accordance with the *Blueberry River Custom Election By-law*;
5. Both parties are restrained from threatening or intimidating the band members who signed the petition during the verification process provided for in Part 22 of the *Blueberry River Custom Election By-law*;
6. The undersigned remains seized of the matter until the next meeting of the Band Council is held and/or until this case is settled through mediation or otherwise, which ever comes first;

7. Costs in the total amount of \$3,000.00 are payable forthwith by the Respondents to the Applicants.

“Jocelyne Gagné”
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-648-20

STYLE OF CAUSE: MARVIN YAHEY, WAYNE YAHEY AND, SHERRY DOMINIC v ROBIN EWASKOW, TROY WOLF AND, SHELLEY GAUTHIER

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN VANCOUVER, BRITISH COLUMBIA AND OTTAWA, ONTARIO

DATE OF HEARING: JUNE 26, 2020

ORDER AND REASONS: GAGNÉ A.C.J.

DATED: JUNE 29, 2020

APPEARANCES:

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Mark Underhill FOR THE RESPONDENTS

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