

Federal Court



Cour fédérale

**Date: 20230822**

**Docket: T-2206-22**

**Citation: 2023 FC 1124**

**Ottawa, Ontario, August 22, 2023**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**CECILIA (TONI) JOSEPHINE HERON**

**Applicant**

**and**

**SALT RIVER FIRST NATION NO. 195**

**Respondent**

**ORDER AND REASONS**

I. Overview

[1] In a Notice of Motion dated June 20, 2023, Cecilia (Toni) Josephine Heron [Chief Heron or Applicant] seeks the following relief:

- (1) Interim injunctive relief reinstating her to her position as Chief pending the disposition of this matter for judicial review;

- (2) An Order permitting her to amend her judicial review application filed on January 10, 2023 to include the Respondent's decision to suspend her as Chief on February 2, 2023, March 3, 2023, and June 1, 2023;
- (3) An Order in the nature of prohibition restraining the Respondent from their conduct of repeatedly suspending her for the same allegations;
- (4) Costs on a solicitor-client basis; and
- (5) Such further and other relief as counsel may advise and this Court deems just.

[2] In the underlying judicial review application challenging an October 13, 2022 decision suspending her without pay for 60 days, the Applicant seeks the following relief:

- (1) An Order in the nature of certiorari, quashing and setting aside the October 13, 2022 decision;
- (2) An Order or Declaration that the Applicant remains Chief of the Salt River First Nation [SRFN];
- (3) An Order or Declaration that the Applicant is entitled to be paid all salary and remuneration that was withheld from her during her unlawful suspension without pay;

- (4) Interim injunctive relief reinstating the Applicant to her position as Chief pending the disposition of this application for judicial review; and
- (5) An order for Costs.

[3] In another application, T-97-23, the Applicant seeks to challenge the Respondent's December 4, 2022 decision to suspend her for an additional 60 days.

[4] In application T-2191-22, SRFN challenges the Applicant's October 18, 2022 decision to convene a Special Meeting of electors on October 23, 2022, to address the removal of two Councillors, Brad Laviolette and Kendra Bourke. On October 21, 2022, SRFN brought a motion seeking injunctive relief prohibiting Chief Heron from holding the October 23, 2022 Special Meeting, confirming the existing governance of SRFN consisting of the six Councillors with Councillor Laviolette as acting Chief, and confirming the 60-day suspension of Chief Heron. On October 23, 2022, Justice McDonald ordered that Chief Heron be prohibited from exercising, performing or purporting to exercise or perform any of the duties of Chief pending the expiry of her 60-day suspension.

[5] In November 2022, the Applicant sought injunctive relief of the October 13, 2022 decision to suspend her. She also sought a stay of T-2191-22 pending proof that SRFN's Councillors had the authority to bring the application. On November 25, 2022, Justice McDonald dismissed the Applicant's motion for injunctive relief and the Applicant's motion for a stay of T-2191-22, cited as 2022 FC 1628 [November 25 Order]. The facts of this matter are the same facts as those outlined in the November 25 Order, save for the additional extensions of suspensions

made on December 12, 2022, February 2, 2023, March 30, 2023 and June 1, 2023. A more recent extension was made on August 3, 2023, with notice to the Applicant.

[6] On February 28, 2023, the Court issued, on consent, an Order consolidating T-2206-22 and T-97-23 which are scheduled to be heard with T-2191-22 on September 13, 2023.

## II. Background

[7] On September 19, 2022, the Applicant was elected Chief of SRFN. The six Councillors were acclaimed on August 17, 2022 and immediately took office. Within several weeks, issues arose between the Applicant and several of the Councillors related to, among other matters, a bid for a fire centre project [Bid] and whether a Special Meeting of the electorate should be held.

[8] At a scheduled Band Council meeting on October 6, 2022, Councillor Laviolette presented the Applicant with a letter signed by five Councillors setting out certain matters that they viewed as pressing to SRFN and which they felt the Applicant was not responsive to. In response, in an October 7, 2022 letter addressed to Councillors Laviolette and Bourke, the Applicant took issue with their conduct in having the letter signed by five Councillors outside of the Band Council chambers and advised them that their conduct warranted a Special Meeting to consider their removal as Councillors.

[9] On October 13, 2022, the Council suspended the Applicant without pay for 60 days pursuant to Section 153A of the SRFN Election Code. The band council resolution [BCR] set forth the following concerns: that her brother-in-law was working on a construction bid that

SRFN was also working on; that the Applicant wanted to publicly discuss the Bid which could prejudice SRFN's economic interests; that the Applicant failed to respond to lawyers reports or provide instructions on legal cases; that she convened a Special Meeting of the Electors to remove Councillors Laviolette and Bourke; and that the Applicant mistreats Council and others who disagree with her. This BCR also cancelled the October 22, 2022 Special Meeting to remove Councillors Laviolette and Bourke and affirmed Councillor Laviolette as the acting Chief.

[10] On October 18, 2022, the Chief called a Special Meeting of the electors of SRFN for October 23, 2022 to consider the removal of Councillors Laviolette and Bourke. At this meeting, electors purported to remove Councillors Laviolette and Bourke. The Councillors challenged this decision to convene a Special Meeting in T-2191-22 and, on October 23, 2022, successfully sought a stay of the October 23, 2022 decision until the application could be heard on the merits.

[11] As set out above, the Councillors issued extensions of the suspension, each for an additional 60 days as permitted under the Election Code. The most recent extension was provided to the Applicant by way of a detailed BCR on August 3, 2023.

[12] In support of this motion, the Applicant filed her own affidavit setting out a timeline of events.

[13] The Respondent filed an affidavit, a supplemental affidavit and a further supplemental affidavit of Councillor Laviolette and an affidavit of Councillor Bourke.

III. Issue

[14] The sole issue is whether the Applicant has satisfied the conjunctive tri-partite test for the granting of interlocutory injunction as set forth in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 and as recently modified in *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 [CBC]:

12. At the first stage, the application judge is to undertake a preliminary investigation of the merits to decide whether the applicant demonstrates a “serious question to be tried”, in the sense that the application is neither frivolous nor vexatious. The applicant must then, at the second stage, convince the court that it will suffer irreparable harm if an injunction is refused. Finally, the third stage of the test requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits.

[15] All three parts of the test must be satisfied in order for the Court to grant the extraordinary discretionary remedy of injunctive relief.

IV. Analysis

A. *Applicant’s Position*

[16] There is a strong prima facie case that the October 13, 2022 suspension and the extensions are without merit as some of the allegations relate to past actions occurring several years ago. In addition, the Applicant was not given reasonable notice of the grounds for the suspension. Lastly, the extensions of the suspensions are essentially an indefinite extension akin

to a removal, which can only be undertaken by the calling of a Special Meeting pursuant to section 153A of the Election Code.

[17] Although it was submitted that the Applicant had to put forward a strong prima facie case, in oral submissions the Applicant submitted that this stage of the test contains a low threshold as the continuous suspension is akin to a removal (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 129 at paras 21-23). In this regard, though not appealed, the Applicant submitted that the standard for finding a serious issue as set out in the November 25 Order was incorrect.

[18] In the November 25 Order, Justice McDonald found that the Applicant had not satisfied this stage of the test because the suspension was definite and the Applicant had not been removed from office (at para 21). However, the extensions illustrate that the suspension is actually an indefinite suspension.

[19] The Applicant will suffer irreparable harm as she will not be eligible for damages and that she has suffered damage to her reputation as a result of her inability to fulfill the prestigious role of the Chief (*Frank v Bottle et al* (1993), 65 FTR 89 at paras 26-28). The extensions run contrary to what was before the Court in the November 25 Order in that the Court noted that there is a relatively short period remaining before her suspension expires (at para 27). Here, based on what followed after the October 13, 2022 suspension, there have been continued extensions, making the suspensions of an indefinite duration.

[20] The balance of convenience favours the Applicant as the indefinite nature of the suspensions raise serious concerns regarding the democratic process of the SRFN. The Applicant was only able to serve as Chief for 24 days despite being democratically elected by the electorate of SRFN.

B. *Respondent's Position*

[21] The Applicant is seeking mandatory interlocutory relief and, therefore, the Respondent submits that the Applicant is required to demonstrate a strong prima facie case (*CBC* at paras 15-16), which she has not. Other than establishing that the Councillors have extended her suspensions in December 2022, February, March, June, and now August 2023, the Applicant has used the same evidence that was insufficient to meet her burden as demonstrated by the November 25 Order. The evidence in this motion is the same as set out in the November 25 Order, namely, after receiving 48 hours notice of her right to be heard at the October 13 Council meeting, the Applicant chose not to attend or make representations. Accordingly, the Respondent exercised its discretion under section 153A to suspend her.

[22] This matter is factually similar to *Martselos v Salt River First Nation*, 2008 FC 8, affirmed in *Salt River First Nation #195 (Salt River Indian Band #759) v Martselos*, 2008 FCA 221, where the applicant in that case waived her right to make submissions. In this case the Applicant also waived her right to attend and make submissions at the October 13 meeting and she is estopped from submitting that there was a breach of procedural fairness.



[23] The suspension extensions are administrative steps authorized by section 153A of the Election Code to preserve the status quo pending the final determination of T-2191-22. The extensions are not a removal from office. The reasonableness of the suspensions extensions is more appropriately left to the Court hearing those issues on the merits on September 13, 2023.

[24] The Council most recently extended the suspension for a further period of 60 days on August 3, 2023. The Applicant was provided notice of this meeting but also did not attend.

[25] The Applicant has not established that she will suffer irreparable harm. She has merely repeated her assertions and arguments that were rejected in the November 25 Order. Since the November 25 Order, the Applicant has not brought forward any new evidence of irreparable harm or any irreparable harm that she can expect to suffer before the hearing on September 13, 2023.

[26] The balance of convenience favours preserving the status quo until the hearing of September 13, 2023. SRFN faced public uncertainty about the lawful governing authority both internally and with external institutions as a result of the Applicant refusing to accept the October 13 suspension. These circumstances were sufficient to demonstrate irreparable harm to the SRFN, as set out in this Court's October 23, 2022 injunction in favour of the SRFN.

[27] SRFN should not be put at risk of the same uncertainties in the month before the legal issues raised in the consolidated application and in application T-2191-22 are heard on September 13, 2023 and until the Court gives judgment.

C. *Conclusion*

[28] Much of the evidence of the parties relate to the merits of the applications that will be heard on September 13, 2023. Accordingly, I will be careful not to delve too much into what I consider to be issues related to the merits.

[29] The Applicant has established that there is a serious issue. Although the Respondent is correct that Justice McDonald found that the Applicant had not satisfied this part of the test as set out in the November 25 Order, I also agree with the Applicant that the November 25 Order contemplated the limited duration of the October 13, 2022 suspension. The fact that there have been several extensions of the suspensions gives rise to a serious issue on the elevated standard as set out in *CBC*.

[30] That said, I am of the view that the Applicant has not established that she will suffer irreparable harm. The hearing of her consolidated applications will be heard on their merits on September 13, 2023, approximately one month away from the date of this hearing. I appreciate that, from the perspective of the Applicant, the extensions of the suspensions are in effect indefinite suspensions; however, that is a matter for the hearing on the merits. That will be one of the issues to be determined at the hearing on September 13, 2023. The limited time before the hearing of the applications on their merits, and the fact that the SRFN will continue to be governed by a quorum of the Band Council until then, leads me to make this finding.

[31] I also find that the balance of convenience favours SRFN in that the SRFN will benefit from the maintenance of the status quo until the matters are heard in September 13, 2023.

V. Conclusion

[32] For the above reasons, the Applicant's motion for interim injunctive relief is dismissed in its entirety. I also decline to award the additional remedies set out in the Notice of Motion.

[33] The additional remedies sought in the motion can be more appropriately addressed at the September 13, 2023 hearing. They need not be addressed in this Order.

**ORDER in T-2206-22**

**THIS COURT ORDERS that:**

1. The Applicant's motion for injunctive relief is dismissed.
2. There is no order for costs.

"Paul Favel"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2206-22

**STYLE OF CAUSE:** CECILIA (TONI) JOSEPHINE HERON v SALT RIVER  
FIRST NATION NO. 195

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 14, 2023

**ORDER AND REASONS:** FAVEL J.

**DATED:** AUGUST 22, 2023

**APPEARANCES:**

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