

Federal Court



Cour fédérale

Date: 20250708

Docket: T-1446-22

Citation: 2025 FC 1212

Ottawa, Ontario, July 8, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

**GERALD PAPAQUASH AND
GLENN PAPAQUASH**

Applicants

and

**THE COUNCIL ELECT: DAVE COTE,
KIMBERLY KESHANE,
SIDNEY KESHANE, FERNIE O'SOUP AND
SOLOMON REECE OF THE KEY FIRST
NATION AND DREW SHAW,
ONE FEATHER ELECTION SERVICES
IN THEIR CAPACITY AS
ELECTORAL OFFICER**

Respondents

SUPPLEMENTARY JUDGMENT AND REASONS

[1] In *Papaquash et al v The Council Elect et al*, 2025 FC 859 [Judgment], the Respondents David Cote, Kimberly Keshane, Sidney Keshane, Fernie O'Soup and Solomon Reece, as the successful parties, were awarded costs.

[2] The parties were invited to make written submissions on costs. Only the Respondent Solomon Reece provided submissions.

I. Cost Submissions of Mr. Reece

[3] Mr. Reece seeks a heightened cost award against the Applicants, arguing that the case involved complex and important issues related to First Nations governance. He seeks party-and-party costs under Column V of Tariff B of the *Federal Courts Rules*, SOR/98-106, which represents a higher scale of costs than the default Column III per Rule 407. He provides the following breakdown of costs, for each Column under Tariff B:

- A. Column III: \$15,370.00
- B. Column IV: \$20,230.00
- C. Column V: \$25,450.00

[4] He argues that an award of costs under Column III would be an unsatisfactory contribution towards actual solicitor-client costs (citing *Consorzio del Prosciutto di Parma v Maple Leaf Meats Inc*, 2002 FCA 417 at paras 8–10).

[5] He submits that costs under Column V are justified because:

- A. He was the successful party.
- B. The Applicants caused significant delays by missing at least six court-ordered deadlines. These delays caused solely by the Applicants were improper and unnecessary. The steps required for the Respondents to sufficiently address unnecessarily lengthened the duration of the proceedings and, in many instances, this Honourable Court had to issue a Direction or an Order so that the matter might proceed forward. This was not an efficient, effective, or respectful use of the Respondents', or this Honourable Court's, limited and valuable time and efforts;
- C. The case involved complex and important issues related to First Nations governance.
- D. The Respondents incurred substantial legal work due to procedural motions and hearings. Namely, there were several procedural motions and case management meetings prior to the hearing, each of which required preparation, attendance, and argument.

II. Analysis

[6] Rule 400(1) provides that the Court retains full discretion over the amount and allocation of costs. Rule 400(3) sets out various factors that the Court may consider in exercising its discretion, which include the importance and complexity of the issues and any conduct that tended to shorten or unnecessarily lengthen the duration of the proceeding.

[7] Although the underlying judicial review was relating to a First Nations governance dispute, the issue raised was not complex. The sole issue was whether the Respondent First Nation councillors were elected in contravention of subsection 9(4) of the *First Nations Elections Act*, SC 2014, c 5, which states:

9(4) An elector must not nominate more than one candidate for each position to be filled.

9(4) Un électeur ne peut présenter plus d'une candidature par poste à combler.

[8] While the parties advanced differing interpretations of this provision, this issue was ultimately decided based on the Applicants' failure to provide evidence or legal authority to support their interpretation of subsection 9(4). On this issue, I found as follows at paragraph 24 of my Judgment:

[...] Here however, other than the bald statement in an Affidavit that the legislation does not permit "double nominations", the Applicants have not offered any case law or interpretative approaches to subsection 9(4) of the *Act* to support their position...[T]he Applicants have not met their evidentiary burden as there is no evidence upon which the Court can conclude that the nominations were in contravention of subsection 9(4) of the *Act*.

[9] With respect to the judicial review application itself, the Applicants' conduct did cause delays as they repeatedly failed to abide by Court-ordered deadlines. This necessitated several procedural motions and case management conferences which required the preparation, attendance, and argument on behalf of legal counsel for the Respondents.

[10] In *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119, Justice Grammond

outlined broader costs considerations in First Nations governance disputes:

- In First Nations governance cases, as in other cases, an award of costs is in the trial judge's discretion, which must be exercised after taking all relevant factors into consideration;
- The imbalance between the financial resources of an applicant and those of the First Nation, or a party whose legal fees are paid by the First Nation, is a relevant factor;
- Taken in isolation, however, the resource imbalance is not a sufficient factor to justify an award of costs on a solicitor-client basis;
- The fact that an application contributed to clarify the interpretation of a First Nation's laws or governance framework may be taken into account when making a costs award; but not every application falls in that category.

[11] In other First Nations governance matters, this Court has typically awarded lump sum costs between \$2,500.00 to \$5,000.00 (see *Lecoq v Peter Ballantyne Cree Nation*, 2020 FC 1144; *Whitstone v Onion Lake Cree Nation*, 2022 FC 399; *Duckworth v Caldwell First Nation*, 2021 FC 648; *Halcrow v Kapawe'no First Nation*, 2021 FC 219; *Anderson v Nekaneet First Nation*, 2021 FC 843).

[12] In considering these precedents and in the exercise of my discretion, I award the Respondents—David Cote, Kimberly Keshane, Sidney Keshane, Fernie O'Soup and Solomon Reece—lump sum costs of five thousand dollars, all-inclusive (\$5,000.00).

JUDGMENT IN T-1446-22

THIS COURT'S JUDGMENT is that the Respondents David Cote, Kimberly Keshane, Sidney Keshane, Fernie O'Soup and Solomon Reece are awarded costs in the all-inclusive sum of five thousand dollars (\$5,000.00).

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1446-22

STYLE OF CAUSE: PAPAQUASH ET AL V THE COUNCIL ELECT:
DAVE COTE, KIMBERLY KESHANE, SIDNEY
KESHANE, FERNIE O'SOUP AND SOLOMON
REECE OF THE KEY FIRST NATION AND DREW
SHAW, ONE FEATHER ELECTION SERVICES IN
THEIR CAPACITY AS ELECTORAL OFFICER

**SUBMISSIONS ON COSTS
CONSIDERED AT:** OTTAWA, ONTARIO

**SUPPLEMENTARY
JUDGMENT AND REASONS:** MCDONALD J.

DATED: JULY 8, 2025

WRITTEN REPRESENTATIONS BY:

Ed Picard

FOR THE RESPONDENT
THE COUNCIL ELECT

SOLICITORS OF RECORD:

LJ Pete Lambert Law
Saskatoon, Saskatchewan

FOR THE APPLICANTS

Alberta Counsel
Edmonton, Alberta

FOR THE RESPONDENT
THE COUNCIL ELECT

Bailey, Wadden & Duffy LLP
Edmonton, Alberta

FOR THE RESPONDENTS