Federal Court  Cour fédérale

Date: 20250728

Docket: T-2182-24

Citation: 2025 FC 1336

Ottawa, Ontario, July 28, 2025

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

RYAN RABBITSKIN

Applicant

and

BIG RIVER FIRST NATION, AS REPRESENTED BY CHIEF JONATHAN BEAR, AND COUNCILLORS CLIFFORD BEAR, SANDRA BEAR, MICHAEL CROOKEDNECK, LARRY JOSEPH, LARRY KEENATCH, WALLY MCADAM, CURTIS MORIN, EUCLID MORIN, ROBERT RABBITSKIN, ISADORE WEENONIS AND AL WHITEFISH; AND MYRNA O'SOUP-BUSHIE, IN HER CAPACITY AS ELECTORAL OFFICER

Respondents

JUDGMENT AND REASONS

[1] The Applicant's application for judicial review was granted in part at a hearing held in Saskatoon on July 24, 2025. Oral reasons were given, and these brief written reasons follow.

[2] The Applicant, Ryan Rabbitskin, is a registered member of the Big River First Nation [BRFN], a Cree First Nation and a signatory of Treaty 6. Its members are inhabitants of two reserves (118 and 118A) located in northern Saskatchewan.

[3] The BRFN held an election on October 9, 2023 [Election] in accordance with its custom election code, the *Big River Band Election Act*, which was passed at some point in the early 1980s [*Election Act*].

[4] The Applicant resides off-reserve in Saskatoon. He is an "elector" entitled to vote in the Election within the meaning of section 2, the interpretation section of the *Election Act*. However, the same section prevents off-reserve members from running as candidates to serve as chief or councillor, specifying that only a "resident elector" may be nominated. A resident is defined as "a BRFN member who has resided on Big River Indian Reserve 118 or 118(a) for 12 complete and consecutive months prior to the current election."

[5] Paragraph 5(1)(a) of the *Election Act* provides that a nomination meeting is held in advance of every election. At every nomination meeting held since 2011, a motion has been put forward by BRFN members in attendance for off-reserve members to run as candidates and the motion has been approved by informal show of hands or verbal agreement.

[6] The Applicant and other off-reserve members who were interested in seeking office in the Election decided not to attend the nomination meeting to be held on October 2, 2023, because a notice of the Election sent to members on September 15, 2023, highlighted the residency

requirement in order to be eligible to stand as a candidate. They claim that they were not aware that the residency requirement was not being enforced.

[7] The Applicant sent a letter "on or about October 19, 2023" to the BRFN and the Electoral Officer to appeal the Election. In his letter, the Applicant raised concerns about the payment of $1,000 the day following the Election to each of the elders appointed to the Council of Appeal Elders [Appeal Panel] for their services. The Applicant stated that the payments "may constitute a violation of the election rules, as it could have influenced the outcome of the election." The appeal went unanswered.

[8] Ten months later, the Applicant brought the present application seeking to challenge the residency requirement for candidacy under the *Election Act* as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. In terms of relief, the Applicant requests: (1) a declaration that the definition of candidate in section 2 of the *Elections Act* violates the Applicant's s. 15(1) *Charter* rights and is therefore invalid and of no force and effect; and (2) a writ of *mandamus* and/or specific performance requiring a newly appointed Appeal Panel to determine if the *Election Act* prohibition on non-residents from running as a candidate in the Election impacted the results and, if so, to order a new election.

[9] At the hearing, I advised counsel for the parties that I was not inclined to grant the relief requested by the Applicant, starting with the request for prerogative relief.

[10] Counsel for the Applicant conceded that there is no evidence before me that the Applicant complied with s. 13 of the *Election Act,* which states that "an appeal may be received no later than 10 days from the date of the election." The Applicant fails to state in his affidavit what exact date he sent his appeal letter, what method he used to send it, or what address it was sent to. Nor does he provide any proof of delivery. There is uncontradicted evidence that the BRFN and the members of the Appeal Panel were not even aware of the appeal letter until recently. In the circumstances, the Applicant failed to establish that his appeal was filed within the deadline fixed in s. 13.

[11] In order to obtain a writ of *mandamus*, the Applicant was required to show that he has the legal right to the performance of a legal duty imposed by statute upon the party against whom the *mandamus* is sought (*Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742). The Applicant failed to do so. The Appeal Panel did not unlawfully fail or refuse to do anything. In fact, there is nothing that the Appeal Panel was obligated to do in relation to an appeal that was not filed in a timely manner. This is dispositive of the matter.

[12] Although not strictly necessary in light of the finding above, I would add that I would not be inclined to grant prerogative relief for two additional reasons. First, the Applicant's appeal letter only mentions payments made to members of the Appeal Panel as potentially being in violation of the *Election Act*. It is not clear how such payments could be viewed as a corrupt practice, let alone a violation of the *Election Act*. As for the other allegations of election impropriety made by the Applicant in this proceeding, this Court has no jurisdiction to entertain them at first instance. They ought properly to have been raised in his letter of appeal. Second, the

equities are not in the Applicant's favour. There has been a significant and unexplained delay by the Applicant in coming to this Court for extraordinary relief. By the time the Applicant brought the present application, it was almost one year after the Election took place.

[13] Turning to the Applicant's challenge to the constitutional validity of the residency requirement in the *Election Act*, I note that the BRFN takes no position since the requirement has not been strictly enforced over the course of several elections. The evidence shows that BRFN members have routinely waived the requirement at nomination meetings since at least 2011. Off-reserve members were permitted to run as candidates, and some were elected without challenge.

[14] While I appreciate that a practice has developed over time of waiving the residency requirement, presumably in response to changing BRFN population dynamics, the BRFN has failed to establish that this informal arrangement "facilitated wider access to the democratic process." It remains, after all, at the whim of members who happen to attend the nomination meetings.

[15] The Applicant has raised serious issues regarding the constitutionality of the residency requirement in the *Election Act*. It appears to have been passed before and without the benefit of the decision in *Corbière v Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC), [1999] 2 SCR 203 [*Corbière*]. In that case, the Supreme Court of Canada held that subsection 77(1) of the *Indian Act*, RSC 1985, c. I-5, which provided that only Indians who were resident on the reserve could vote in band elections, was a violation of section 15 of the *Charter*. As stated more recently by the Supreme Court of Canada in *Dickson v Vuntut Gwitchin First*

Nation, 2024 SCC 10, at para. 196: “While Corbiere is not directly applicable in the case of an impugned provision enacted by a self-governing First Nation, this Court’s discussion of disadvantage faced by non-resident Indigenous people was not constrained to the context of Indian Act provisions and provides helpful guidance.”

[16] The Applicant and the BRFN agree that the *Election Act* should be revamped at the earliest opportunity to ensure that it is *Charter* compliant with the current case law. However, they disagree on how to go about it.

[17] In my view, it is clearly not the role of this Court at first instance. As stated by Justice Sébastien Grammond in *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at para. 19: “If Indigenous self-government is to be encouraged, it follows that judicial intervention in Indigenous decision-making processes should be avoided whenever possible.” Respect for self-government necessitates ensuring that governance disputes are first dealt with by Indigenous decision-making processes (*Linklater v Thunderchild First Nation*, 2020 FC 899, at para 20).

[18] In the present case, there were adequate and clearly preferable alternatives that the Applicant could have pursued before turning to this Court for relief. However, there is no evidence that the Applicant approached the BRFN to conduct a plebiscite to amend the *Election Act*, a procedure provided in its preamble. Nor did he raise the constitutionality of the residency requirement in his appeal letter.

[19] I must stress that applicants who seek to challenge an election code or to contest election results are required to exhaust all internal recourses available to them and that court proceedings are appropriate only as a last resort.

[20] Counsel for the parties were given an opportunity to seek instructions from their clients after hearing my views. They agreed to the terms of judgment set out below, other than the matter of costs. Despite the divided success, given that the Applicant was instrumental in bringing the constitutionality of the *Election Act* to the forefront on behalf of off-reserve members, I consider his request for costs in the amount of $4,000 to be justified and reasonable.

JUDGMENT IN T-2182-24

THIS COURT'S JUDGMENT is that:

1. The declaratory relief sought by the Applicant with respect of the definition of candidate in the *Big River Election Act* is suspended for a period of twelve months, to permit Big River First Nation to convene a plebiscite of Big River First Nation's members for the purposes of amending the *Big River Election Act* in a manner that is consistent with the will of the Big River First Nation's membership and the parameters of section 15(1) and section 25 of the *Canadian Charter of Rights and Freedoms*.

2. The Court shall remain seized of the within matter.

3. The Respondent Band Council shall provide a status update to the Court every three months after review by the Applicant.

4. The first of the aforementioned status updates shall be provided within three months of the date of this Judgment.

5. The Applicant's application for *mandamus* and/or specific performance is dismissed.

6. The Applicant shall be entitled to costs in the fixed amount of $4,000.00, inclusive of disbursements and taxes.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2182-24
STYLE OF CAUSE:	RYAN RABBITSKIN v BIG RIVER FIRST NATION, AS REPRESENTED BY CHIEF JONATHAN BEAR, AND COUNCILLORS CLIFFORD BEAR, SANDRA BEAR, MICHAEL CROOKEDNECK, LARRY JOSEPH, LARRY KEENATCH, WALLY MCADAM, CURTIS MORIN, EUCLID MORIN, ROBERT RABBITSKIN, ISADORE WEENONIS AND AL WHITEFISH; AND MYRNA O'SOUP-BUSHIE, IN HER CAPACITY AS ELECTORAL OFFICER
PLACE OF HEARING:	SASKATOON, SASKATCHEWAN
DATE OF HEARING:	JULY 24, 2025
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	JULY 28, 2025

APPEARANCES:

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