Federal Court Cour fédérale

Date: 20250821

Docket: T-1239-24

Citation: 2025 FC 1397

Ottawa, Ontario, August 21, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

CASSANDRA KAYSAYWAYSEMAT

Applicant

and

RAINY RIVER FIRST NATIONS, AND CHIEF MARCEL MEDICINE-HORTON AND COUNCILLORS KAREN OSTER-BOMBAY, KIMBERLY BOMBAY DETWEILER, ROBERT BOMBAY AND DOROTHY HUITIKKA AS REPRESENTATIVES OF THE BAND COUNCIL OF RAINY RIVER FIRST NATIONS

Respondents

JUDGMENT AND REASONS

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I. Overview

[1] The Applicant, Cassandra Kaysaywaysemat, is a Councillor with Rainy River First Nations [RRFN]. She challenges a decision made by a quorum of RRFN Chief and Council dated April 24, 2024, to suspend her from Council without pay for two months for a breach of confidentiality [Suspension Decision].

[2] For the reasons that follow, I find that: (a) the Federal Court has jurisdiction over this application for judicial review; (b) the judicial review is granted; (c) the Suspension Decision is set aside, and (d) the matter will be remitted back to Chief and Council to redetermine in accordance with these reasons.

[3] The Applicant has established that the Suspension Decision was unreasonable and was arrived at in a procedurally unfair manner.

II. Background

A. *RRFN Election Code*, *Governance Policy and Harassment Policy*

[4] Since July 30, 2019, RRFN's Chief and Council have been chosen in accordance with the *Custom Election Code of Rainy River First Nations* [Election Code] which was approved by a community vote.1

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1 *Indian Bands Council Elections Order*, SOR/97-138, amendment SOR/2019-281.

[5] Those elected to a position on Council must swear an Oath of Office committing to, amongst other things, uphold and comply with the Election Code, the RRFN Code of Conduct "and all laws of the community", and to "keep confidential, both during and after his/her term of office, any matter or information which, under this [Election] Code, the laws of the community or Rainy River First Nations policy, is considered confidential" (Election Code, s. 160).

[6] Paragraph 12 of the Election Code states that Council shall govern pursuant to the procedures and stipulations set out in the RRFN Governance Policy [Governance Policy].

[7] The Governance Policy includes the Code of Conduct (Governance Policy, Policy No. 3). The Governance Policy and any amendments to it are approved by a quorum of Council.

[8] While the Election Code includes provisions governing the removal of councillors from office, the Code itself does not include provisions concerning the suspension of councillors.

[9] As noted, paragraph 12 of the Election Code incorporates by reference the Governance Policy. The parties agree that the Code of Conduct in the Governance Policy contemplates the suspension of councillors in certain circumstances, including when a councillor divulges confidential information. Policy No. 3, s. 3.6(f) of the Governance Policy states that: "[i]n the event that a Council member or Committee Member divulges confidential information, that person shall be suspended from his or her position for a period of not less than 4 (four) months or as determined by a quorum of Council."

[10] Section 3.2(g) of the Code of Conduct requires Council members to respect and comply with all policies, rules, regulations, and codes. Ostensibly, this includes the RRFN's Workplace Harassment and Violence Prevention Policy [Harassment Policy].

[11] The Harassment Policy states that it applies to Chief and Council, as well as employees and contractors, amongst others. Unlike the Governance Policy, the parties agree that the Harassment Policy itself does not authorize the suspension of Council members under any circumstance.

[12] According to the Respondents, the Suspension Decision was made pursuant to the Governance Policy, not the Harassment Policy. The letter communicating the Suspension Decision to the Applicant does not reference either Policy by name.

[13] The provisions from the Election Code, the Governance Policy and the Harassment Policy referenced in this decision are set out below.

> **ELECTION CODE**
>
> **Governance**
>
> **12.** Chief and Council shall govern pursuant to the procedures and stipulations set out in the Rainy River First Nations Governance Policy which shall include but is not limited to the inclusion of a Code of Conduct for Chief and Council.
>
> **Chief and Councillor Oath of Office**
>
> **160.** A candidate who has been elected Chief or Councillor shall, within seven (7) days of the Electoral Officer's declaration under section 155 and the preparation of the election report, swear an oath of office before either the Electoral Officer, a justice of the

peace, notary public or duly appointed commissioner for taking oaths, swearing to:

(a) uphold and comply with this Code (including the Election Code of Ethics contained herein), the Rainy River First Nations Code of Conduct, and all laws of the community;
(b) fulfill the duties and responsibilities of his/her office under this Code, the Rainy River First Nations Code of Conduct, and all laws of the community;
(c) carry out his/her duties faithfully, honestly, impartially and to the best of his/her abilities;
(d) keep confidential, both during and after his/her term of office, any matter or information which, under this Code, the laws of the community or Rainy River First Nations policy, is considered confidential; and
(e) act always in the best interests of the community in carrying out his/her duties.

GOVERNACE POLICY

POLICY NO. 1.0 GOVERNANCE STRUCTURE

1.1 Governance Context

Rainy River First Nations is taking steps to become a sustainable and self-governing nation. Council believes in the power of working together to achieve our ideal future. As a Council we will work tirelessly to gather resources and overcome obstacles. We will respect our elders, believe in our youth and, most importantly, believe in ourselves as we create our ideal future.

This governance policy has been developed as an important step towards self-determination and self-government. By setting out our governance policies and principles we will be better positioned to pursue economic development opportunities and protect our rights.

The following laws and policies should be considered as companions to this governance policy:

- Rainy River First Nations Membership Code
- Custom Election Code of Rainy River First Nations
- Rainy River First Nations Land Code (under development 2019)

POLICY NO. 3.0 RAINY RIVER FIRST NATIONS CODE OF CONDUCT FOR CHIEF AND COUNCIL

This Code of Conduct may be referred to in full as the "Rainy River First Nations Code of Conduct for Chief and Council", or alternatively as the "Rainy River First Nations Code of Conduct found in the Rainy River First Nations Governance Policy" or simply the "Code of Conduct for Chief and Council."

Each Council member, including the Chief, is expected to conduct himself or herself in a respectful, ethical, and professional manner in compliance with all Rainy River First Nations policies and all applicable laws. Our peoples have been taught self-discipline and respect for the land and have passed on our knowledge through the generations. Our peoples are guided by the teachings that have been passed down, and gifts that describe our way of life, especially the Seven Grandfather Teachings.

Upon adoption of this Governance Policy, all Council members must swear the oath of office found at Appendix D before a justice of the peace, notary public or duly appointed commissioner for taking oaths. Thereafter, upon election to Council, all Council members must swear the oath of office found at Appendix D before either the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths and sign Rainy River First Nations' Client/Community Member Code of Conduct which is found at Appendix E.

3.2 Council Leadership Expectations

By agreeing to take a position on Rainy River First Nations' Council, Council members accept the responsibility of representing themselves and the community in a positive manner at all times (i.e. both during and outside of regular work hours, both on and off duty). Chief and Council are expected to uphold Rainy River First Nations values and serve as leadership role models within the community. This includes:

…

(f) Ensuring that decision-making complies with Rainy River First Nations' policies, and that these policies are in compliance with all applicable laws;

(g) Respecting and complying with all Rainy River First Nations policies, rules, regulations and codes;

…

(l) Treating others with the utmost respect and dignity, and maintaining an environment free from discrimination and harassment of any kind, as further detailed in the Client/Community Member Code of Conduct at Appendix E; and

3.3 Loyalty

…

(d) Defamatory or otherwise false statements made by Council members regarding other Council members, Rainy River First Nations staff or operations must result in disciplinary measures to be determined by a quorum of Council.

3.4 Conflict of Interest

…

(h) If a Council member breaches the above conflict of interest rules, Council may elect, in addition or as an alternative to instituting proceeds [sic.] for removal from office in accordance with the Custom Election Code of Rainy River First Nations, to suspend the Council member from his or her position for a period of time to be determined by a quorum of Council

3.6 Confidentiality

…

(f) In the event that a Council member or Committee Member divulges confidential information, that person shall be suspended from his or her position for a period of not less than 4 (four) months or as determined by a quorum of Council.

3.9 Drug and Alcohol Use

…

(b)

iii. Refusal to test: A Council member who refuses to submit to a drug test upon being ordered to do so by a quorum of Council will be suspended from his or her position until he or she undergoes testing;

…

v. Contacting Addictions Team: If a council member fails to contact the Addictions Team within the required timeframe after giving a positive test result, the Council member shall be suspended from his or her position for a period of not less than 4 (four) months or as determined by a quorum of Council;

3.10 Consequences of Breach

Any Council member who breaches this Code of Conduct may by subject to proceedings for removal from office, as set out in the Custom Election Code of Rainy River First Nations, in addition to any other consequences set out in this Code of Conduct

WORKPLACE HARRSSMENT AND VIOLANCE PREVENTION – POLICY AND PROCEDURES

Application

This policy and procedures applies to all employees and contractors of RRFNS who are engaged in work, work-related activities and/or work-related relationships both on company property and outside of company property, including all (current and applicable former) employees, contractors, interns, students, and volunteers, chief and council. [emphasis added]

Substantiated Occurrences

Should an occurrence be substantiated, resolution for the principal party [complainant] may include:

- An apology;

- Compensation for lost time;
- Medical or mental health support;
- Training and/or coaching

> Corrective action for an employee found to have engaged in workplace harassment or violence will be consistent with RRFNS's discipline or corrective action policy and practices and may include immediate dismissal. [emphasis added]

B. *The Harassment Complaint*

[14] On February 7, 2024, a complaint was filed against the Applicant under the Harassment Policy [Harassment Complaint] by an employee of the RRFN [Complainant].

[15] The Applicant was contacted by RRFN's Human Resource Manager on February 20, 2024, who informed her she was being investigated for the Harassment Complaint. The Applicant maintains that she was not advised about any alleged breach of confidentiality at this time.

[16] On the same day, the Applicant was contacted by a third-party investigator who advised that she would be conducting a formal investigation of the Harassment Complaint and provided the Applicant with a copy of the Harassment Policy.

[17] The Applicant had a videoconference meeting with the investigator on February 21, 2024. During the call, the investigator provided the Applicant with the Harassment Complaint statement. This statement was dated February 20, 2024.

[18] The Harassment Complaint statement alleges that, on February 1 (presumably, in 2024), the Complainant overheard a conversation being held in a nearby office between the Applicant and another employee (who is also the Applicant's brother) about a trust fund he was involved in administering. It was alleged that the Applicant made inappropriate comments about an application the Complainant made to the trust, suggesting that the Complainant did not understand the application process. According to the Harassment Complaint statement, the Applicant said that the Complainant should not have applied to the trust, made false statements about her application, and suggested that the application was only partially approved because it was deficient.

[19] The Complaint alleged the Applicant "engaged in conversations that discredited me unfairly and created fear that I am being targeted by a powerful council member. This was a serious breach of confidentiality that was inappropriate in the workplace – any discussion of my judgement or knowledge should be with me and my Manager, the Manager of Administration". The Harassment Complaint continues, "[p]articipating in discussions that involve criticizing and demeaning my work, especially by a member of leadership, constitutes lateral violence. Such behavior undermines the trust and respect necessary for a healthy working environment" and "[i]t is inappropriate for a member of leadership, namely Cassandra Kaysaywaysemet, to discuss my employment matters with a member of their family in the presence of other coworkers."

[20] During the February 21, 2024 call, the investigator also showed the Applicant the first page of the two-page "original complaint" dated February 7, 2024 made by the Complainant, but refused to provide her with a full copy of the original complaint.

[21] Council received a copy of the final report from the investigator, dated March 17, 2024 [Harassment Report]. The Applicant received a copy of the Harassment Report on March 20, 2024.

[22] The Harassment Report states that the investigator's mandate, confirmed on February 28, 2024, was to "examine the allegations against [RRFN's] Workplace Harassment and Violence Prevention Policy."

[23] The Harassment Report concluded that "[i]t is more likely than not that the Applicant **did breach** [RRFN's] Workplace Harassment and Violence Prevention policy – commitment to a work environment that treats all individuals with dignity and respect, and its definition of harassment" (emphasis in original). The Report made the following findings:

- The Applicant "more likely than not, did speak in a disparaging manner" about the Complainant and her work. On a balance of probabilities, the conversation alleged likely occurred, substantively as the Complainant described it.

- There was a power differential between the two parties, and a reasonable person in a similar situation to the Complainant would feel intimidation and fear for their position upon overhearing the disparaging remarks.

- The investigator confirmed that it was well-known that the offices lack soundproofing. The humiliation, hurt, and intimidation the Complainant felt was due, in part, to the ease with which the conversation could be heard outside the office.

- The Investigator observed that the Applicant holds a "strong commitment to the community and to their role", but the distinction between her role and the evaluation of employees "appeared to have been blurred" for the Applicant.

- Communication between the Applicant and the Manager of Administration should have been more robust, allowing the Applicant to voice her opinion about the issue and discuss it.

- Whether it was a conflict of interest for the Applicant to have had that conversation with her brother was "outside the scope of the policy being considered."

[24] The Harassment Report recommends the following:

- Training the Applicant and her Council colleagues to ensure the distinctions between Council and employee direction and leadership is well understood, and that they know who is authorized to speak on any employee matters.

- Adding signage in the office about how confidential discussions should not take place in certain rooms, as employees know they are not soundproof, but visitors may not.

- Prompting the Applicant to reconsider her stance that she did nothing wrong and apologize to the Complainant, regardless of the Applicant's lack of intent.

- Having an Elder or experienced facilitator support the parties with a facilitated conversation to express, process and move past the hurt felt.

[25] The Harassment Report makes no mention of a breach of confidentiality.

[26] It bears mentioning that around the same time, in March of 2024, Council received at least two different complaints that alleged a breach of confidentiality: one complaint was made by Councillor Oster-Bombay against the Applicant. The other was made by the Applicant against Councillor Oster-Bombay [Confidentiality Complaints]. A formal investigation was carried out and the resulting investigation report was provided in June 2024. This report concluded the Confidentiality Complaint against the Applicant was unfounded.

[27] It is common ground between the parties that the Suspension Decision was the result of the Harassment Complaint and not the Confidentiality Complaint.

C. *The Applicant's Suspension*

(1) Notice of April 19 Special Meeting

[28] On or around April 11, 2024, the Applicant received an Outlook meeting invitation for a special meeting of the Chief and Council to be held on April 19, 2024. The Applicant maintains that she was not advised of the purpose for the special meeting nor provided with an agenda.

[29] The Applicant provided evidence of a text message she sent to another councillor on April 18, 2024, asking the other councillor if she knew what the special council meeting was about or who called it. The other councillor's response was: "Not a clue," and "[m]ore than likely Marcel…"

[30] The Respondents assert that the Applicant was informed of the purpose of the April 19 meeting. They do not provide any evidence to support this assertion beyond the April 11 Outlook meeting invite, which contains no details beyond the title: "Special Chief and Council Meeting."

(2) April 19 Special Meeting

[31] At the April 19 special meeting, the Applicant was asked by the rest of Council to provide her opinion on the Harassment Complaint. The Applicant raised her concerns about the lack of notice of that she would be speaking on the Harassment Complaint at the special meeting.

[32] A transcript of the meeting generated by Microsoft Teams was entered into evidence by the Respondents. While an imperfect transcript, it provides a general sense of the discussion with the Applicant as well as the deliberations by the remainder of Council that followed after the Applicant left the meeting. I note that there was no objection to the admission of this evidence.

[33] At the meeting, the Applicant acknowledged she made some, but not all of the statements attributed to her in the Harassment Complaint statement. She also appears to have acknowledged that she should not have made the statements in the band office and that she may have blurred some lines. She continued to express concern about the Complainant's understanding of the trust fund and accessing funding from Jordan's Principle.

[34] Specifically with respect to any alleged breach of confidentiality, not much is said. The Applicant suggests there may have been others who breached confidentiality in the context of the Harassment Investigation. As well, the transcript shows the Applicant took the position that the Harassment Complaint fails to particularise the breach of confidentiality that it alleges:

> "That's kind of what the extent of the conversation was, but I I didn't have concerns with the initial complaint that there was these allegations of things that were not being substantiated or or any proof of anything or not even proof. Like, if you're gonna say someone is making demeaning comments, say what? The comments are if you're gonna say that there's a breach of confidentiality, say what that breach is." [emphasis added]

and;

> "… I think that it it should have been handled way better and it wasn't and that's my whole issue with this and I should have been able to bring some of my concerns about what I think is a breach of confidentiality to the table at the time and I've been presented with the facts at the time. But now its what, almost three months later"

[35] Based on the transcript, it does not appear that the Applicant was provided any particulars about the alleged breach of confidentiality at the special meeting.

[36] Following the meeting, the Applicant was advised that no decision would be made on the Harassment Complaint that day and she was asked to attend another meeting on April 24, 2024.

(3) Council Deliberations

[37] After the Applicant left the meeting, Council carried out its deliberations. The RRFN Manager of Administration and the Human Resources Manager were present. According to affidavit evidence filed by the Respondents, these Managers recommended a three-month suspension of the Applicant.

[38] Following its deliberations, Council passed a motion to "Suspend Councilor Cassandra Kaysaywaysemat for 2 months based on the results of investigation" [Suspension Motion].

[39] The Respondents' evidence (which the Applicant did not object to) is that Council's decision to suspend the Applicant was based on the findings in the Harassment Report, the impacts on the work environment and staff, the recommendation of a three-month suspension from Administration, the Applicant's submissions at the April 19, 2024 special meeting and her lack of remorse, and that Council members needed to be held accountable for any maltreatment of staff.

(4) April 24 Special Meeting

[40] At the April 24, 2024 special Chief and Council meeting, the Applicant was provided a letter from Chief Marcel Medicine-Horton that stated she was being suspended for two months due to a breach of confidentiality [Suspension Letter]. The Suspension Letter states that the

Applicant's "conduct in sharing private information in an area that others could overhear" was contrary to her obligation to act with the highest level of integrity and her confidentiality obligations. It further sets out three expectations for the Applicant on a "go forward basis":

a) "Not disclose information that may be confidential to third parties, except as expressly permitted
b) Not discuss or permit the discussion around confidential information in a place that may be overheard
c) Be sensitive in discussing topics that may be perceived as disparaging"

[41] Upon receiving the Suspension Letter, the Applicant asked Council for clarification about how she breached confidentiality, but was told by the Human Resources Manager that they were not willing to discuss the matter further, and that the allegation of a breach of confidentiality was in the Harassment Report.

(5) Notice to RRFN Members

[42] On May 3, 2024, Chief and Council sent a notice to all RRFN members stating that the Applicant had been issued a two-month suspension [May 3 Notice]. The notice states that there were two complaints made against her, and that a third-party firm was hired to investigate the occurrences. It further states that, upon conclusion of "this investigation", the Chief and Council was advised of the findings and the Applicant was provided an opportunity to speak to the matter.

[43] The Applicant served her two-month suspension and returned to her position on Council on June 24, 2024.

[44] The Applicant states that, contrary to what members may have understood from the May 3 Notice, the investigation into the Confidentiality Complaint was not yet completed at that point. As noted above, the Confidentiality Report was not issued until June 2024, and it concluded the Confidentiality Complaint against the Applicant was unfounded.

[45] The Applicant's evidence is that the RRFN on-reserve membership is a small and tight knit community where rumors and speculation travel quickly through word of mouth. She asserts that the inaccurate and broad manner that her suspension was communicated in the May 3 Notice caused and continues to cause damage to her reputation and standing as a councillor.

III. Issues

[46] This application raises the following issues:

a) Whether the Federal Court has jurisdiction to hear this application?

b) If this Court has jurisdiction,

    a. whether the Suspension Decision is unreasonable?

    b. whether the Suspension Decision was made in a procedurally fair manner?

c) Remedy

[47] Should this Court have jurisdiction, the parties agree on the applicable standard of review. A substantive review of the merits of the Suspension Decision is subject to a reasonableness review: *Bellegarde v Carry the Kettle First Nation*, 2024 FC 699 at para 28 [*Bellegarde*], citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*].

[48] Issues of procedural fairness are considered on a standard akin to correctness. As explained by the Federal Court of Appeal, "[w]hen engaging in a procedural fairness analysis, [the] Court must assess the procedures and safeguards required, and, if they have not been met, the Court must intervene": *Caron v Canada (Attorney General)*, 2022 FCA 196 at paragraph 5; see also *Bellegarde* at para 27.

A. *Jurisdiction of the Court*

(1) Respondents' Argument

[49] The Respondents argue that the Federal Court does not have jurisdiction to determine a judicial review of an RRFN Chief and Council decision to suspend a councillor. They submit there is a distinction between: (1) the selection and removal of Council members, and (2) internal discipline, which they say includes the suspension of Council members. The Respondents argue that this Court may have jurisdiction over the former (removal), but not the latter (internal discipline, including suspension).

[50] It is not necessary for me to express an opinion on the Court's jurisdiction over Chief and Council's power to discipline councillors short of suspension or removal. Accordingly, this decision only addresses the Court's jurisdiction over decisions to suspend council members under RRFN's laws and policies.

[51] The Respondents do not dispute that First Nation councils recognized under the *Indian Act*, RSC 1985, c I-5 [*Indian Act*] are "federal boards, commissions or other tribunals" for the

purpose of s. 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, so long as they are exercising powers under federal statute, such as the *Indian Act*.

[52] They argue that, in making the Suspension Decision, RRFN Council did not exercise powers grounded in federal statute, but exercised powers pursuant to the Governance Policy. They say the Governance Policy is an Indigenous law passed by the RRFN Council which does not find its source of authority in the *Indian Act* or another federal statute: *George v Heiltsuk First Nation*, 2023 FC 1705; *Sioui v Huron-Wendat Nation Council*, 2023 FC 1731.

[53] The Respondents rely on *Anisman v Canada (Border Services Agency)*, 2010 FCA 52 at para 29 [*Anisman*]. According to the Respondents, the fact RRFN is a band under the *Indian Act*, and that its Election Code has been confirmed pursuant to s. 42 of the *First Nations Elections Act*, SC 2014, c 5 is not sufficient to consider RRFN's Council "a federal board, commission or other tribunal" with respect to the Suspension Decision. Rather, they argue that the legislative recognition of RRFN's Election Code should be understood to encompass only those matters covered in sections 74 to 80 of the *Indian Act*, in an applicable RRFN bylaw under the *Indian Act*, or in another federal statute. In the Respondents' view, because councillor suspensions are not contemplated in sections 74-80 of the *Indian Act*, another federal statue, or in an *Indian Act* bylaw passed by RRFN, the suspension power does not find its origin in federal statute and therefore is beyond the jurisdiction of the Federal Court.

(2) Applicant's Argument

[54] The Applicant argues that this Court has repeatedly taken jurisdiction over judicial reviews of a council's decision to suspend a councillor: *Shirt v Saddle Lake Cree Nation,* 2022 FC 321 [*Saddle Lake*]; *Tourangeau v Smiths Landing First Nation* 2020 FC 184 [*Tourangeau*]; *McKenzie v Mikisew Cree First Nation,* 2020 FC 1184 [*McKenzie*]; *Whalen v Fort McMurray No 468 First Nation,* 2019 FC 732 [*Whalen*].

[55] She argues that the analysis by Justice Régimbald in *Bellegarde* on the jurisdictional issue in that case is a full answer to the Respondent's arguments (*Bellegarde* at paras 29–90).

(3) Analysis

[56] I conclude that the Federal Court has jurisdiction to review a decision made by the RRFN Chief and Council to suspend one of its councillors.

[57] Section 18(1) of the *Federal Courts Act* provides that, subject to certain exceptions (that are not relevant here) this Court has "exclusive original jurisdiction" to grant prerogative relief against any "federal board, commission or other tribunal". Section 2(1) of the *Federal Court Act* defines "federal board, commission or other tribunal" as "any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made under a prerogative of the Crown …." [emphases added].

[58] The parties agree, as do I, that the RRFN Council is a "federal board, commission or other tribunal". I note that this is distinct from the facts in *Buffalocalf v Nekaneet First Nation*, 2024 FCA 127 [*Buffalocalf*] which involved a challenge to a declaration approved by the *membership* of the First Nation, not Chief and Council.

[59] The two-step test to determine if a decision-maker is "a federal board, commission or other tribunal" as contemplated in sections 2(1) and 18(1) of the *Federal Courts Act* is set out in *Anisman* at paragraph 29 and *Innu Nation v Pokue*, 2014 FCA 271 at paragraphs 11 and 17:

> 1. What is the nature of the power that the body or person seeks to exercise?
>
> 2. What is the source or the origin of the power that the body or person seeks to exercise?

[60] Applying the first step of *Anisman*, there is no dispute that the nature of the power here is the suspension of a council member. The parties' dispute centres on the second step of *Anisman* – the source or origin of the Council's power to suspend.

[61] I conclude that the caselaw and RRFN's custom election system confirm that the source of Council's power to suspend one of its council members is grounded in both RRFN's inherent Indigenous jurisdiction and the recognition of that Indigenous jurisdiction in the *Indian Act*.

[62] Section 2(1) of the *Indian Act* defines "council of the band" as follows:

Definitions	**Définitions**
2 (1) In this Act,	**2 (1)** Les définitions qui suivent s'appliquent à la présente loi.
[…]	

council of the band means

(a) in the case of a band to which section 74 applies, the council established pursuant to that section,

(b) in the case of a band that is named in the schedule to the *First Nations Elections Act*, the council elected or in office in accordance with that Act,

(c) in the case of a band whose name has been removed from the schedule to the *First Nations Elections Act* in accordance with section 42 of that Act, the council elected or in office in accordance with the community election code referred to in that section, or

(d) in the case of any other band, the council chosen according to the custom of the band, or, if there is no council, the chief of the band chosen according to the custom of the band; (*conseil de la bande*)

[emphasis added]

[…]

conseil de la bande

a) Dans le cas d'une bande à laquelle s'applique l'article 74, le conseil constitué conformément à cet article;

b) s'agissant d'une bande dont le nom figure à l'annexe de la *Loi sur les élections au sein de premières nations*, le conseil élu ou en place conformément à cette loi;

c) s'agissant d'une bande dont le nom a été radié de l'annexe de la *Loi sur les élections au sein de premières nations* conformément à l'article 42 de cette loi, le conseil élu ou en place conformément au code électoral communautaire visé à cet article;

d) s'agissant de toute autre bande, le conseil choisi selon la coutume de celle-ci ou, en l'absence d'un conseil, le chef de la bande choisi selon la coutume de celle-ci. (*council of the band*)

[je souligne]

[63] With respect to the federal source of a council's power over leadership selection, the Federal Court of Appeal in *Buffalocalf*, at paragraphs 19 and 20, recently endorsed the analysis in *Bellegarde*, and explained:

> … Pursuant to the definition of "council of the band" found in subsection 2(1) of the *Indian Act*, a band council is not necessarily selected as a result of an election under the specific procedure set out in an Act of Parliament such as subsection 74(1) of the *Indian Act* or in the *First Nations Elections Act*, S.C. 2014, c. 5. It can also be chosen according to the unwritten custom of the Band or by their own Election Codes, as is the case here: *Ratt v. Matchewan*, 2010 FC 160 at paras. 104-106 (*Ratt*).

> When selected through custom, the powers exercised by First Nations in relation to the selection of their leaders are incorporated by reference in the *Indian Act*; as such, they are conferred by an Act of Parliament, and fall within the ambit of "federal board, commission or other tribunal": *Canatonquin v. Gabriel*, [1980] 2 F.C. 729 (FCA), 1980 CanLII 4125; *Ermineskin First Nation v. Minde*, 2008 FCA 52 at para. 33 (*Minde*); *Bellegarde v. Carry the Kettle First Nation*, 2024 FC 699 at paras. 50-52 (*Bellegarde*).

[64] See also Justice Favel's analysis in *McCarthy v Whitefish Lake First Nation #128*, 2023 FC 220 at paragraphs 117 to 124.

[65] As I understand it, the Respondents seek to distinguish these authorities and take the position that under the second branch of the *Anisman* test, the source of Council's power to suspend the Applicant here is solely on the Governance Policy. The Respondents characterize the Governance Policy as an internal stand-alone policy separate from the Election Code and the *Indian Act*.

[66] First, the Respondents' characterization of the Election Code as independent from the provisions of the Governance Policy at issue is entirely inconsistent with the plain wording in those documents. Section 12 of the Election Code expressly incorporates the Governance Policy by reference. As well, the Governance Policy, under Policy No.1, paragraph 1.1, explains that the Election Code should be considered as a companion to the Governance Policy.

[67] It is worth noting that without section 12 of the Election Code which incorporates by reference the Governance Policy, it is questionable if RRFN Council would have any legal authority to suspend a leader elected by its membership.

[68] Second, the Respondents' characterization is at odds with the caselaw on point: *Bellegarde* at paras 50–52; *Buffalocalf* at paras 19 and 20; *Lafond v Muskeg Lake First Nation*, 2008 FC 726 at paras 17–18 [*Lafond*].

[69] Actions taken by Council, including actions under the Governance Policy, that effect the tenure of a Council member, such as the suspension or removal of a councillor, are part of the RRFN's custom election system. The Council that results from a custom election is recognized under s. 2(1) of the *Indian Act* and is fundamentally connected to Council's powers recognized under the *Indian Act*.

[70] I am not persuaded by the Respondents' argument that this Court's jurisdiction over a Council elected by custom is limited to only those election related matters covered by sections 74 to 82 of the *Indian Act*, another federal statute or an RRFN *Indian Act* bylaw.

[71] The *Indian Act*'s recognition of a custom leadership selection process, "incorporates by reference all customs followed by First Nations to democratically select their leaders, and then recognizes those leaders as the 'council of the band' for the purposes of subsection 2(1) of the *Indian Act* and the discharge of the powers existing within the [Federal Courts] Act": *Bellegarde* at para 50 [emphasis added]. Included are matters that are incidental or ancillary to elections such as removals or suspensions of those elected: *Lafond* at paras 17–18. RRFN's custom process includes the removal and suspension of Council members, all of which is recognized as federal law for the purposes of the *Federal Courts Act*.

[72] As explained in *Bellegarde* at paragraphs 51–52:

> The incorporation by reference of the "custom" leadership selection processes "recognizes" those customs as federal law for

> the purposes of the Act, alongside the other election processes under section 74 of the Act and the *First Nations Election Act*. By analogy, and even if not as specifically provided under subsection 2(1) of the *Indian Act* and the definition of the term "council of the band," those leadership selection processes are incorporated in the Act in a manner similar to laws adopted by Indigenous Nations in relation to child and family services, which have the force of federal law because they have been incorporated by reference under subsection 21(1) of the *Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 (*Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at paras 122–130 [Bill C-92 Reference]).
>
> Consequently, the powers exercised by First Nations in relation to the selection of leaders, even through custom (and including the removal of members from office), are incorporated by reference in the *Indian Act*, are therefore in part conferred by an "Act of Parliament," and fall within the meaning of "federal board, commission or other tribunal" as those terms are defined in subsection 2(1) of the FC Act (see by analogy *Ratt*; *Minde* at para 33).

[73] Having determined that this Court has jurisdiction over this application, I turn now to the grounds for judicial review.

B. *Grounds for Judicial Review*

[74] The Applicant's grounds for judicial review can be summarized as follows: 1) Council did not have the authority to suspend the Applicant, and even if it did, that authority was not reasonably exercised, and 2) the Applicant was not afforded the requisite level of procedural fairness.

C. *Reasonableness of the Suspension Decision*

(1) Parties' Positions

[75] The Applicant submits that Council did not have the power to suspend her. First, she maintains that suspension is tantamount to removal because it deprives electors of the right to

choose their leaders and had the practical effect of overturning the results of the election, citing *Whalen* at paragraphs 49 and 55.

[76] Second, she argues that rules of removal should be narrowly construed and that no customary or traditional authority to suspend or remove should be found where custom election rules, such as the Election Code, "cover the field," or contain "explicit discipline procedures": *Basil v Moses*, 2009 FC 741 at para 64.

[77] Third, she notes that the Election Code does not provide for the suspension of councillors, and only states that Council shall govern pursuant to the Governance Policy, which itself provides for limited instances where suspension may occur, none of which are a breach of the Harassment Policy.

[78] Therefore, the Applicant says that in the absence of a power to remove or suspend under the Election Code, and where no custom has been established, her suspension was issued by Council without authority.

[79] In the alternative, the Applicant argues that, even if Council had the power to suspend her, the decision was unreasonable because the Harassment Report did not make findings or draw conclusions on a breach of confidentiality; rather, it focused on a potential breach of the Harassment Policy.

[80] The Respondents' arguments are grounded in the RRFN's written laws. They do not rely on any unwritten custom.

[81] They submit that *Whalen* is distinguishable because the First Nation's laws at issue in that case had no equivalent to s. 3.6(f) of the RRFN Governance Policy which expressly provides for the suspension of councillors.

[82] The Respondents characterize Council's actions as "discipline" of a councillor undertaken pursuant to the Governance Policy. They argue that the Applicant was not, as she suggests, suspended under the Harassment Policy. Rather, they say she was suspended under the Governance Policy, pursuant to the information Council received from the investigation into the Harassment Complaint. The Respondents say Council was authorized to apply the findings from the Hasrassment Report and submissions in the Harassment Complaint to the Governance Policy and determine whether there have been any breaches and the appropriate means to address them.

[83] It is common ground between the parties that the Harassment Policy by itself does not authorize the suspension of council members.

(2) Analysis

[84] I agree with the Applicant's argument in the alternative. While Council has the authority to suspend a member of council based on a breach of confidentiality, the exercise of that authority in rendering the Suspension Decision was unreasonable.

(a) *Scope of Chief and Council's power to suspend*

[85] I conclude as follows:

a) RRFN Chief and Council have the power to suspend a councillor in the circumstances described in subsections 3.4(h) (conflict of interest), 3.6(f) (breach of confidentiality), 3.9(b)(iii) (refusing a drug test) and 3.9(b)(v) (failure to contact addictions team following a positive test) of the Code of Conduct in the Governance Policy;

b) Apart from the limited circumstances set out above, Chief and Council do not have the power to suspend a councillor. Where the power to suspend a councillor is conferred, it is done so expressly;

c) Accordingly, it would be unreasonable for Chief and Council to suspend on the basis of a breach of the Harassment Policy, or as a matter of "discipline"; and

d) While Chief and Council have the authority to suspend the Applicant for a breach of confidentiality, based on the circumstances here, it was unreasonable to do so.

[86] The Election Code includes a process to remove but not suspend a member of council. However, s. 12 of the Election Code incorporates by reference the Governance Policy.

[87] The incorporation by reference of the Governance Policy into the Election Code distinguishes this judicial review from cases such as *Laboucan v Little Red River # 447 First Nation*, 2010 FC 722.

[88] It is reasonable to interpret s. 12 of the Election Code, together with those provisions in the Governance Policy that expressly contemplate a suspension (ss. 3.4(h), s. 3.6(f), and 3.9(b)(iii) and (v)), as conferring authority on Council to suspend a councillor. These provisions from the Election Code and the Governance Policy are an "all-encompassing legal code" governing RRFN councillor suspensions: *Martselos v Salt River Nation #195*, 2008 FC 8 at para 32 [*Martselos*].

[89] It would be unreasonable to expand the grounds for suspension beyond those circumstances where a suspension is expressly contemplated: *Martselos* at para 32. Therefore, it would be unreasonable for Chief and Council to suspend a councillor under the guise of "discipline" or for breaching the Harassment Policy.

[90] I agree with the Applicant that Council's power to remove or suspend an elected leader is strictly construed: *Basil v Moses*, 2009 FC 741 at para 64; *Day v Tahltan Central Government*, 2025 BCSC 1363 at paras 81–87 and the cases cited therein. The suspension of an elected leader has serious consequences, both for the individual suspended and the First Nation as a whole. It usurps the will of the members, and removes the voice of certain electors, albeit temporarily.

[91] The concept of "discipline" runs through the Respondents' submissions. Discipline in relation to council members, is mentioned only once in the Governance Policy, at s. 3.3(d). Section 3.3(d) does not reference a power to suspend. A general power to discipline a council member, in the absence of an express power to suspend, does not authorize Council to suspend one of its members.

[92] As noted by the Respondents, the Governance Policy requires councillors to comply with RRFN's various policies (s. 3.2(g)). However, s. 3.2(g) does not specifically grant Council the authority to suspend a councillor for *any* breach of *any* policy. In the absence of an express grant of authority, it is unreasonable to rely on section 3.2(g) of the Governance Policy to suspend a councillor for a breach of the Harassment Policy.

[93] Therefore, while Council may have had the power to suspend the Applicant for a breach of confidentiality pursuant to s. 3.6(f) of the Governance Policy, nothing gave it the authority to suspend her for a breach of the Harassment Policy.

(b) *Was breach of confidentiality finding unreasonable?*

[94] The next question is whether it was reasonable for Council to base the Suspension Decision on a breach of confidentiality. A holistic review of the record reveals that this conclusion was unreasonable.

[95] The exercise of Council's power "must be justified, intelligible and transparent" (*Vavilov* at para 95). A reasonable decision is based on internally coherent reasoning and is justified in light of the applicable legal and factual constraints (*Vavilov* at para 99). A decision will be unreasonable "if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point" (*Vavilov* at para 103). In short, a decision-maker's reasoning must "add up" (*Vavilov* at para 104).

[96] The Suspension Decision, when reviewed in conjunction with the record, is unintelligible and does not "add up" (*Vavilov* at paras 104). The Suspension Decision is therefore unreasonable.

[97] The reasons are set out in the Suspension Motion and the Suspension Letter. The Motion says the suspension was based on the investigation. The Suspension Letter says it was based on a breach of confidentiality. The Respondents' argument, as I understand it, is that the findings of

the harassment investigation substantiated the conclusion that the Applicant breached confidentiality. Based on a review of the record, I am not persuaded that this conclusion is reasonable.

[98] It is clear from the Harassment Complaint, its investigation and resulting Harassment Report, the April 16 special meeting, Council's deliberations, and the Suspension Motion, that the issue grappled with was whether there was a breach of the Harassment Policy, not a breach of confidentiality.

(c) *Investigation and Harassment Report*

[99] There is nothing in the record that would demonstrate there was any, or any meaningful, discussion between the Applicant and the investigator about a breach of confidentiality.

[100] The Harassment Report contained no findings in relation to a breach of confidentiality. The purpose of the investigation was clearly to consider a possible Harassment Policy violation, and not an independent allegation of a breach of confidentiality.

[101] The Harassment Report states under the heading "Background and Investigation Mandate" that the investigator "was engaged to undertake a formal investigation into an allegation, which if proven, may be in violation of Rainy River First Nation's (RRFNS) Workplace Harassment and Violence Prevention – Policy and Procedures" [emphasis added].

[102] This section of the Harassment Report further states that "[t]he investigation mandate, confirmed on February 28, 2024, requires the investigator to examine the allegations against RRFN's Workplace Harassment and Violence Prevention Policy…the investigator will make

findings of fact and draw conclusions in this matter using the "Balance of Probabilities" standard and will provide recommendations as required by RRFNS Workplace Harassment and Violence Prevention Policy [emphasis added]."

[103] Indeed, the investigator specifically refuses to make findings or draw conclusions in the Harassment Report which exceed her mandate pursuant to the Harassment Policy. For example, the Harassment Report states that a finding on any conflict of interest would be "outside the scope of the policy being considered."

[104] The findings of fact and conclusions drawn in the Harassment Report were limited to breaches of the Harassment Policy.

(d) *April 16 Special Meeting, Council Deliberations and Suspension Motion*

[105] The discussion with the Applicant at the April 16 meeting centred on the Harassment Complaint and Report, not on a breach of confidentiality. She was asked to speak to the Harassment Complaint.

[106] At the special meeting, the Applicant noted she had no particulars to support the alleged breach of confidentiality. No details were provided in response from the other meeting attendees.

[107] Likewise, Council's deliberations focused on the harassment allegations. The Respondents' own evidence is that Council's decision to suspend the Applicant was based on the findings in the Harassment Report, the impacts on the work environment and staff, and that Council members needed to be held accountable for any maltreatment of staff. These are the type

of concerns dealt with in the Hasrassment Policy. There is no evidence that Council's deliberations in any meaningful way dealt with an alleged breach of confidentiality.

[108] The wording of the Suspension Motion confirms this and suspends the applicant "on the results of the investigation", which must refer to the Harassment Report, as the report in relation to the Confidentiality Complaints had not been issued yet. As outlined above, the Harassment Report did not consider whether there was a breach of confidentiality.

[109] Perhaps when passing the motion, Council assumed that it had the power to suspend based on a breach of the Harassment Policy, perhaps through s. 3.2 of the Governance Policy. As explained above, it did not.

(e) *Suspension Letter*

[110] The April 24, 2024 Suspension Letter explains that the "suspension is being implemented as discipline for breach of confidentiality".

[111] The reasons provided in the Suspension Letter about a breach of confidentiality bear no relation to the investigation, the Harassment Report, the discussions at the April 16 special meeting, Council's deliberations, or the Suspension Motion. Put another way, the reasons for suspension provided in the Suspension Letter when read in conjunction with the record do not make it possible to understand how or why the Applicant was suspended for a breach of confidentiality.

[112] I am not convinced by the Respondents' argument that Council used the Harassment Report to suspend the Applicant for a breach of the confidentiality under the Governance Policy.

[113] Relying on the Harassment Report to ground a breach of confidentiality finding would have been unreasonable because it fails to respect the factual constraints at play; namely, the limited mandate and use that the Harassment Report confines itself to, and the absence of any finding in the Report regarding a breach of confidentiality.

[114] I note in passing that had the Confidentiality Complaint resulted in a substantiated allegation against the Applicant, it may have been reasonable to suspend the Applicant pursuant to the s. 3.6(f) of the Governance Policy. However, the same is not true with respect to the Harassment Complaint, which was the actual complaint giving rise to the sanction at issue here.

D. *Breach of Procedural Fairness*

[115] In addition to being unreasonable, I conclude that Council failed to meet the procedural fairness requirements owed to the Applicant. This ground alone is a sufficient basis to set aside the Suspension Decision.

[116] The Applicant sets out several alleged breaches of procedural fairness in her argument. I address only the strongest argument: namely, that the Applicant did not know the case to be met and had no fair chance to respond to the breach of confidentiality allegation.

[117] It is common ground between the parties that the level and content of procedural fairness owed to the Applicant depends on the following non-exhaustive factors: *Giroux v Swan River First Nation*, 2006 FC 285 at para 33, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 at paras 23–27:

> a) the nature of the decision being made and the process followed in making it;
>
> b) the nature of the statutory scheme and the terms of the statute pursuant to which the decision-maker operates;
>
> c) the importance of the decision to the individual or individuals affected by the decision;
>
> d) the legitimate expectations of the person challenging the decision; and
>
> e) the choices of procedure made by the decision-maker.

[118] As set out in *McKenzie* at paragraph 88:

> [I]t is well established that in the context of councillor suspensions procedural fairness requires the right to be heard and the right to make representations (*Tourangeau* at para 57; *Beardy* at paras 128 – 129). Indeed, even where only minimal procedural rights are required, those rights include notice and an opportunity to make representations (see, for example, *Peguis First Nation v.Bear*, 2017 FC 179 at para 62; *Minde v. Ermineskin Cree Nation*, 2006 FC 1311, at para 44; *Orr v Fort McKay First Nation*, 2011 FC 37 at para 12; *Blois v Onion Lake Cree Nation*, 2020 FC 953 at para 73). And, even if the decision to suspend a councillor is well-founded or reasonable, the decision will be set aside if the procedure was unfair (*Laboucan* v *Little Red River # 447 First Nation*, 2010 FC 722 at para 37 [*Laboucan*]).
>
> [emphasis added]

[119] This Court has repeatedly held that notice and an opportunity to make representations are the most basic requirements of the duty of fairness: *Saddle Lake* at para 78; *Morin v Enoch Cree*

First Nation, 2020 FC 696 at para 34 [*Morin*], citing *Orr v Fort McKay First Nation*, 2011 FC 37 at para 12 and *Gadwa v Kehewin First Nation*, 2016 FC 597 at paras 49 and 53.

[120] These "most basic requirements…apply regardless of whether the decisions were for removal or suspension": *Saddle Lake* at para 79; see also *Da'naxda'xw First Nation v Peters*, 2021 FC 360 at para 170.

[121] Therefore, to base its decision on a breach of confidentiality as Council did here, procedural fairness mandates, at a minimum, that in advance of the decision being made, the Applicant know the case to be met and have a full and fair chance to respond: *Saddle Lake* at para 78. Based on the record before me, she had neither.

[122] Knowing the case to be met is a fundamental requirement for a fair opportunity to respond. There can be no fair chance to respond without knowing the facts upon which an allegation is based. Here, the Applicant did not know the case to be met and so did not have a full and fair chance to respond.

[123] While the Harassment Complaint contained a statement alleging a serious breach of confidentiality, it provided no particulars and none were provided thereafter.

[124] An alleged breach of confidentiality was not a topic canvassed in the investigation or the Harassment Report.

[125] The Applicant did not receive adequate notice of the purpose of the April 16 meeting. Further, the focus of discussions at the April 16 special meeting was the Applicant's actions found by the investigator to breach the Harassment Policy (for example, intimidation). No details about the breach of confidentiality allegation were provided to the Applicant during the meeting.

[126] A bare allegation with no details meant the Applicant did not know the case to be met. This falls short of the requisite level of procedural fairness owed to the Applicant.

[127] While it is arguable that she knew the case to be met with respect to the harassment allegations and had some opportunity to respond to those allegations, the same cannot be said for the breach of confidentiality allegation. It was not until the Suspension Decision was communicated to the Applicant in the Suspension Letter that the alleged breach of confidentiality became central.

[128] In oral argument, counsel for the Respondents submit that whether or not the Applicant knew of the allegation against her, she knew a breach of confidentiality would have been a cause for discipline. The Respondents' point to the Oath of Office sworn by the Applicant following the election. The Oath acknowledges she will comply with the Governance Policy, which provides for the possibility of suspension for a breach of confidentiality. The Respondents further question whether procedural fairness required that the Applicant know that suspension was a potential consequence and query if it would have changed her response to the Harassment Compliant.

[129] To accept these arguments would be to turn first principles governing procedural fairness in administrative law on their head: *Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643 [*Cardinal*].

[130] The general rule is that a denial of procedural fairness renders a decision invalid. Unless the outcome is legally inevitable (which is not the case here), it is not for a reviewing court to speculate if the outcome would have been different had the process been fair: *Cardinal* at para 23; *Shull v Canada*, 2025 FCA 25 at paras 32–33; *Canada (Attorney General) v McBain*, 2017 FCA 204 at paras 8–10.

[131] Further, it is irrelevant that the Applicant may have known *in the abstract* that a breach of confidentiality could result in a suspension. Procedural fairness demands that in advance of suspending a councillor, the councillor know the facts that are said to ground the specific allegation at issue which could justify a suspension. Having the Applicant swear an Oath of Office at the beginning of her term committing to follow the RRFN's laws and policies is no substitute for knowing the specifics of the allegation that was said to ground her suspension.

[132] For the reasons set out above, this application is allowed.

IV. Remedy

[133] The Applicant seeks the following remedies:

a) An order setting aside the April 24, 2024 decision to suspend the Applicant without pay.

b) A *mandamus* order compelling the Respondents to:

i. Notify RRFN members that the Applicant's suspension has been quashed;

ii. Permit the Applicant to exercise all functions and duties as councillor; and

iii. "Reinstate the Applicant's financial compensation and benefits and pay arrears of financial compensation and benefits for the period of suspension".

c) Costs.

[134] The Respondents argue that if the Suspension Decision is quashed, the case law directs the matter be remitted to Chief and Council for redetermination. I agree. Save for limited scenarios that do not arise here, *Vavilov* confirms that the matter ought to be referred back to decision-maker to reconsider with the benefit of the Court's reasons: *Vavilov* at paras 141-142.

[135] Accordingly, the Suspension Decision is set-aside, and the matter sent back to Council to redetermine in light of the reasons here, and in accordance with the Election Code and the relevant RRFN policies as they existed on February 1, 2024 (the date the incident giving rise to the Harassment Complaint occurred).

[136] During oral submissions, the Respondents advised that if I granted the application, they would not oppose issuing an updated notice to the RRFN membership, drafted in cooperation with the Applicant, advising that the decision to suspend her was set-aside by the Federal Court. A direction to this effect is included in the Court Order below.

[137] My understanding is that the Applicant was fully reinstated as a councillor on June 24, 2024, so there is no need to address (b)(ii).

[138] While the reconsideration is pending, I direct RRFN to reimburse the Applicant for the pay and benefits she would have earned from April 24, 2024 to June 24, 2025 but for the Suspension Decision: *Heron v Salt River First Nation No. 195*, 2024 FC 413 at para 85; *McKenzie* at para 99; *Tsetta v Band Council of the Yellowknives Dene First Nation*, 2014 FC 396 at para 43. This is not a damage award. Having found the Suspension Decision unreasonable and unfair, it would be inequitable for the Applicant to continue to be deprived of these funds while the redetermination runs its course.

[139] If the parties cannot agree on costs, the Applicant may, within seven days of receipt of these reasons, file and serve written submissions on costs. The Respondents may, within fourteen days of receipt of these reasons, file and serve written submissions on costs. Costs submissions shall not exceed three pages double-spaced, excluding any bill of costs or breakdown of fees. No book of authorities is required. Hyperlinked cases and authorities within the submissions will suffice.

THIS COURT'S JUDGMENT is that

1. This application for judicial review is allowed and the decision of the Rainy River First Nations Chief and Council to suspend Councillor Cassandra Kaysaywaysemat on April 24, 2024, without pay, is quashed.

2. The matter is remitted to the Chief and Council for redetermination.

3. The Respondents shall, as soon as reasonably possible, issue an updated notice to the RRFN membership, drafted in cooperation with the Applicant, to advise that the decision

to suspend Councillor Kaysaywaysemat on April 24, 2024 was set-aside by the Federal Court.

4. Rainy River First Nations shall, **within 7 days of receipt of this judgement**, reimburse Cassandra Kaysaywaysemat for the pay and benefits she would have received from April 24, 2024 to June 24, 2024 had she not been suspended.

5. If the parties cannot agree on costs, they shall file and serve costs submissions as set out in the reasons for judgment.

"Meaghan M. Conroy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Jacob Thompson	FOR THE APPLICANT
Meghan F. Payment	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Weiler, Maloney, Nelson LLP	FOR THE APPLICANT
Fillmore Riley LLP	FOR THE RESPONDENTS