



Date: 20221023

Docket: T-2191-22

Ottawa, Ontario, October 23, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

SALT RIVER FIRST NATION NO. 195

Applicant

and

CECILIA (TONI) JOSEPHINE HERON

Respondent

ORDER AND REASONS

[1] On October 21, 2022, the Salt River First Nation No. 195 (SRFN) filed this Motion seeking emergency injunctive relief pursuant to Rules 35(2) and 373(3) of the *Federal Courts Rules*, SOR/98-106 for the following:

- (i) an Order for an injunction prohibiting the Respondent and all other individuals who received notice of the Order from holding any meeting called by the Respondent on October 23, 2022 at Roaring Rapids Hall in Fort Smith, in the Northwest Territories, or on any other date and in any other location pending the court's determination of the issues in these proceedings; and
- (ii) an order confirming that, until the court otherwise orders, the existing government structure of salt River first nation No. 195 is:

(a) the counsellors of SRFN are councillors Don Beaulieu, Kendra Bourke, Freda Emile, Brad Laviolette, Levi MacDonald, and Warren Sikyea;

(b) the chief, Cecillia Josephine (Toni) Heron is suspended for 60 days from October 13, 2022; and

(c) Councillor Laviolette is acting chief for those 60 days.

[2] The Applicant has also filed an Application for Judicial review seeking similar relief.

[3] The Applicant's Motion is supported by an Affidavit of Acting Chief Brad Laviolette sworn on October 21, 2022.

[4] In response, the Respondent filed an Affidavit of Chief Cecilia Toni Josephine Heron sworn on October 22, 2022.

[5] The Motion was heard via Zoom videoconference on October 23, 2022.

Background

[6] Ms. Heron was elected Chief of the Salt River First Nation on September 19, 2022. The six (6) Councillors acclaimed in the election are: Don Beaulieu, Kendra Bourke, Freda Emile, Brad Laviolette, Levi MacDonald, and Warren Sikyea.

[7] On October 13, 2022, four members of SRFN Council issued a Band Council Resolution (BCR) suspending Chief Heron from exercising any and all of the duties and powers of the Chief of SRFN for 60 days pursuant to Section 153A of the Election Code.

[8] The BCR also resolved to cancel the “special meeting” that had been previously called by Chief Heron to take place on October 22, 2022 for the removal of councillors Laviolette and councillor Bourke.

[9] The Respondent acknowledges the October 13, 2022 BCR but disputes the validity of the process which led to the enactment of the BCR.

[10] Despite her suspension as the Chief of SRFN, the Respondent continued to act as the “Chief” by attending at the SRFN offices and calling a Special Meeting.

[11] The urgent nature of this Motion relates to a “Notice of Special Meeting” posted by the Suspended Chief on October 18, 2022 for a meeting to take place on October 23, 2022 at the Roaring Rapids Hall in Forth Smith purportedly to remove two councillors.

Test for Injunctive Relief

[12] The Court can only grant an Order for interim injunction if the applicant satisfies the well-known three-part test laid out in *RJR – Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, and *R v Canadian Broadcasting Corp*, 2018 SCC 5, [2018] 1 SCR 196. To

obtain such an injunction the Applicant must demonstrate that there is (i) a serious issue to be tried; (ii) that it will suffer irreparable harm if the order is not granted; and (iii) that the balance of convenience favours making the Order considering all the circumstances.

[13] The elements of the injunction test are conjunctive meaning the Applicant must satisfy all three parts of the test. An injunction is an extraordinary remedy that the court grants only at its discretion.

Is there a serious issue?

[14] In considering the first part of the test, whether there is a serious legal issue, the Applicant argues that the validity of the special meeting called for October 23 is a serious issue as the Respondent Chief is currently suspended from her office and therefore is acting without authority in calling this meeting.

[15] The Applicant submits that the current state of governance at SRFN is as noted in the Band Council Resolution (BCR) dated October 13, 2022 which states:

1. That chief Heron is immediately suspended from exercising and performing any and all duties and powers as chief of salt River first nation for 60 days from today without pay
2. The special meeting called by chief Heron for October 22, 2022 for removing councillor Laviolette and councillor Bourke is cancelled.

3. During the suspension of chief Heron, the acting chief of SRFN will be councillor Brad Laviolette.

[16] The BCR was signed by a quorum of Council – being four (4) members of council. The Election Code at section 2 (dd) defines a quorum for a Council meeting to mean four (4) members of the Council.

[17] The Respondent challenges the validity of the October 13, 2022 BCR suspending the Chief, and argues that the meeting during which the BCR was enacted was not properly convened for the purposes of considering a motion to suspend the Chief. Furthermore, the Respondent argues that the Chief was denied procedural fairness.

[18] Although the Respondent challenges the process by which the BCR was enacted, the Respondent has not taken any steps to challenge the legality of the BCR or her suspension.

[19] The decision to suspend a Chief from officer is a serious decision with significant ramifications to the Chief and the community. It is a decision which should not be undertaken lightly or for alternate purposes. However, unless and until a court determines otherwise after a full hearing, for the purposes of this Motion, I must accept that the BCR of October 13, 2022 signed by a quorum of councillors, is a valid and binding BCR.

[20] In light of this and considering the evidence, it is clear that Chief Heron has not respected the BCR to suspend her as Chief and has acted in open defiance of the BCR.

[21] I am satisfied that a serious issue has been established in relation to the current status of the governance at SRFN and who has the legal authority to speak on behalf of the Chief and Council of SRFN.

Is irreparable harm established?

[22] Irreparable harm refers to the nature of the harm suffered rather than its magnitude. It is harm that cannot be quantified in monetary terms or which cannot be cured (*RJR* at page 341). Evidence of harm must be categorical and not speculative.

[23] I accept the evidence as contained in the Affidavit of Brad Laviolette that after the October 13, 2022 suspension, Chief Heron attempted to continue to act as the Chief of SRFN, including continuing to attend at SRFN offices necessitating the involvement of the RCMP.

[24] Furthermore, the Respondent's actions in calling a "special meeting" in her capacity as "Chief" despite her suspension from the office of Chief is an act of open defiance. This act has the potential to disrupt the community as it raises governance issues on who has the proper legal authority to make decisions for the SRFN.

[25] Legal counsel for the Respondent argues that the "special meeting" scheduled for today should proceed as the meeting had been called for at a time when the Respondent was still the Chief. However, this submission fails to recognize that the validly enacted BCR issued on October 13, 2022 specifically cancelled the "special meeting". Therefore, the Respondent's

steps to reconvene the “special meeting” were done when she was suspended as Chief and therefore cannot be convened by the Respondent in her capacity as “Chief”.

[26] There are clearly disagreements between the parties and the suspension of Chief Heron has caused tension at the SRFN offices. This can have a serious impact on the ability of the SRFN to operate and conduct its day-to-day operations.

[27] In the circumstances, I am satisfied that the actions of the Respondent following her suspension as Chief constitute irreparable harm to the SRFN.

Balance of Convenience

[28] In my view, the balance of convenience favors granting in part, the relief sought by the Applicant and in favour of upholding the terms of the October 13, 2022 BCR pending any further Order of the Court.

[29] Although I am not prepared to issue an Order that prohibits members of the SRFN from convening or attending a meeting, I am prepared to Order that the Respondent be prohibited from exercising or performing or purporting to exercise or perform any of the duties and powers of the Chief of SRFN during the term of the suspension.

THIS COURT ORDERS that the Applicants motion for an interim injunction is granted in part as follows:

1. Until the Court orders otherwise, or until the 60 day suspension expires, the Respondent Cecillia Josephine (Toni) Heron is hereby prohibited from exercising or performing or purporting to exercise or perform any of the duties and powers of the Chief of Salt River First Nation; and
2. No costs are awarded to either party.

"Ann Marie McDonald"

Judge