

Court File No.

**FEDERAL COURT**

B E T W E E N:

*(Court Seal)*

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

APPLICATION UNDER section 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985  
Chapter F-7.

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Thunder Bay, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN  
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
(Registry Officer)

Address of  
local office: 180 Queen Street West, Suite 200  
Toronto, Ontario  
M5V 3L6

TO: Rainy River First Nations  
P.O. Box 450  
Emo, Ontario  
P0W 1E0

AND TO: Chief Marcel Medicine-Horton  
P.O. Box 450  
Emo, Ontario  
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AND TO: Karen Oster-Bombay  
P.O. Box 450  
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AND TO: Kimberly Bombay Detweiler  
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AND TO: Robert Bombay  
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AND TO: Dorothy Huitikka  
P.O. Box 450  
Emo, Ontario  
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## APPLICATION

This is an Application for judicial review in respect of Rainy River First Nations Chief and Council and Rainy River First Nations.

With respect to the decision dated April 24, 2024 to suspend the Applicant from the Council of Rainy River First Nations from April 24, 2024 to June 24, 2024 as discipline for breach of confidentiality and to suspend the Applicant's financial compensation and benefits.

### **The Applicant makes Application for:**

1. An order in the nature of *certiorari* quashing or setting aside the decisions of the Rainy River First Nations and/or the Rainy River First Nations Chief and Council dated April 24, 2024 to suspend the Applicant from the Council of Rainy River First Nations from April 24, 2024 to June 24, 2024 as discipline for breach of confidentiality and to suspend the Applicant's financial compensation and benefits.
2. An order in the nature of *mandamus* compelling the Rainy River First Nations and/or the Rainy River First Nations Chief and Council:
  - a. To forthwith notify the Members of Rainy River First Nations that the Applicant's suspension has been rescinded and that such suspension was quashed;
  - b. To permit the Applicant to exercise all functions and duties as councilwoman of Rainy River First Nations.
  - c. To re-instate the Applicant's financial compensation and benefits and paying arrears of financial compensation and benefits for the period of suspension.
3. Such further and other relief as Counsel advises and this Honourable Court allows.
4. Costs to the Applicant of this Application.

**The grounds for the Application are:**

1. The Applicant was elected as a councillor of Rainy River First Nations pursuant to the Custom Election Code of Rainy River First Nations in November of 2022.
2. On February 7, 2024, a complaint was filed against the Applicant under the Rainy River First Nations Workplace Harassment and Violence policy.
3. On February 20, 2024, the Applicant was contacted by Rainy River First Nations Human Resources Manager, Chris McNab, and was advised that she was being investigated for a workplace harassment and violence complaint. Later that day, a third-party investigator, Deanna Lanoway, contacted the Applicant to advise her that a complaint had been made against her under the Rainy River First Nations Workplace Harassment and Violence policy (the "Harassment Complaint"). The Applicant was provided with a copy of the Rainy River First Nations Workplace Harassment and Violence policy by email. The investigation for the Harassment Complaint did not investigate a breach of confidentiality.
4. On February 21, 2024, the Applicant met with the investigator who provided a complaint statement with respect to the Harassment Complaint. The complaint statement for the Harassment Complaint does not allege breach of confidentiality. The Applicant requested a copy of the original complaint for the Harassment Complaint but was only shown the first page of the complaint for a brief moment via screenshare.
5. On March 20, 2024, the Applicant was sent the final investigation report of Deanna Lanoway dated March 17, 2024 for the Harassment Complaint. The investigation report concluded that the Rainy River First Nations Workplace Harassment and Violence policy had been breached by the Applicant. There were no recommendations for discipline in the final investigation report. The report did not make a finding of a breach of confidentiality.

6. On or around March 28, 2024, the Applicant was contacted by a third-party investigator, Fay Wasylyniuk, regarding a second complaint made against her by councilwoman Karen Oster-Bombay (the “Second Complaint”). The investigator advised that she would contact the Applicant at a later date to discuss the details of the Second Complaint.
7. On April 19, 2024, the Applicant was provided notice of a special meeting of the Council of the Rainy River First Nations. The Applicant was not given a meeting agenda or otherwise advised of the subject matter of the meeting.
8. At the April 19, 2024 special meeting, Chief and Council of the Rainy River First Nations told the Applicant to give her “opinion” on the Harassment Complaint without providing her notice or allowing her to prepare for the meeting. The Second Complaint or an alleged breach of confidentiality was not addressed at the meeting.
9. Following the April 19, 2024 special meeting, Alex Larson, Executive Assistant to the Chief and Council of Rainy River First Nations contacted the Applicant to advise her that a decision on the Harassment Complaint would not be made on that day due to a death in the community. The Applicant was asked to attend a meeting on April 24, 2024.
10. At the meeting on April 24, 2024, the Applicant was given a letter from Marcel Medicine-Horton, Chief of Rainy River First Nations, stating that the Applicant was suspended for a period of two months for breach of confidentiality.
11. On May 3, 2024, Chief and Council of Rainy River First Nations sent a notice to all members of Rainy River First Nations stating that the Applicant had been issued a two month suspension. The notice to members of Rainy River First Nations stated that there were two complaints received and a third-party investigator was hired for both occurrences and the investigations were completed.
12. The Applicant was not advised of or provided with notice of the Second Complaint until March 28, 2024, was not provided with particulars of the Second Complaint

until April 24, 2024 after the decision was made to suspend her, was not given an opportunity to know the case to be met, an opportunity to question the evidence presented, or given the opportunity to make submissions on the complaint.


13. The Applicant is aware that there were at least two (2) meetings of the Council of the Rainy River First Nations of which she was not provided notice.
14. The Applicant was not provided with notice of a meeting of the Council of the Rainy River First Nations related to a proposed suspension, an opportunity to attend, an opportunity to know the case to be met, an opportunity to question the evidence presented or the opportunity to make submissions prior to the declaration that she was being suspended for a period of two months.
15. The Band Council Resolution or resolutions passed to suspend the Applicant was not enacted at a duly convened meeting of the Rainy River First Nations Band Council.
16. The Respondents did not purport to act pursuant to any code or policy implemented by the Rainy River First Nations. The Respondents are in breach of the Rainy River First Nation Governance Policy and Workplace Harassment and Violence Prevention Policy.
17. The Respondents failed to observe principles of natural justice, procedural fairness or its own procedure when it suspended the Applicant from the Council of Rainy River First Nations from April 24, 2024 to June 24, 2024 as discipline for breach of confidentiality and to suspend the Applicant's financial compensation and benefits.
18. The Respondents erred in law when it purported to suspend the Applicant from the Council of Rainy River First Nations from April 24, 2024 to June 24, 2024 as discipline for breach of confidentiality and to suspend the Applicant's financial compensation and benefits.

19. The Applicant denies that she breached confidentiality and denies that the Respondents had cause or basis to issue a two month suspension.
20. The Respondents made its decision without giving the Applicant notice of the Second Complaint, notice of a proposed suspension, an opportunity to know the case to be met, an opportunity to question the evidence presented or the opportunity to make submissions.
21. The Respondents acted in manner that is contrary to law.
22. Sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985 Chapter F-7.
23. Part 5 of the Federal Court Rules.

**This Application will be supported by the following material:**

1. The Affidavit of the Applicant Cassandra Kaysaywaysemat, to be sworn;
2. The Affidavit of Brian Cochrane Sr., to be sworn;
3. The Affidavit of Brian Cochrane Jr., to be sworn.

May 24, 2024



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**WEILER, MALONEY, NELSON LLP**  
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