

Court File No.

FEDERAL COURT

BETWEEN:

RUBY JOHNNY

APPLICANTS

AND:

DEASE RIVER FIRST NATION

RESPONDENT

NOTICE OF APPLICATION

TO THE RESPONDENT: DEASE RIVER FIRST NATION

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

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 Vancouver.

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 prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the Applicant's solicitor, or where 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.

June _____, 2024

Issued by: _____
(Registry Officer)

Address of local office: Pacific Centre P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO: DEASE RIVER FIRST NATION
P.O. Box 79
Good Hope Lake, BC V0C 2Z0
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EMAIL ADDRESS OF CHIEF MYLES MANYGREYHORSES:
drfn@gmail.com

APPLICATION

THIS IS AN APPLICATION IN RESPECT OF Sections 18 and 18(1) of the *Federal Courts Act* for a judicial review of the Band Council's Decision to the continuing course of conduct to extend their term of office (the "Decisions") and pursuant to Rule 302 of the Federal Court Rules. The final Decision was communicated to the Applicant on or about May 25, 2024.

THE APPLICANT MAKES THIS APPLICATION FOR THE FOLLOWING RELIEF:

- (a) An Order of certiorari of Declaration quashing the Decisions;
- (b) An Order remitting the Decision for re-determination in accordance with the Direction of this Court;
- (c) An order in the nature of *mandamus* compelling the Band Council to comply forthwith with their obligation to vacate office and call an Election;
- (d) A Declaration that
 - I. The Decision was null and void;
 - II. That the Band Council declare an election for the office of all five (5) Councillors as soon as possible thereafter with any necessary procedural modifications to Order in the nature of *certiorari* quashing and setting aside the Decision;
 - III. The Respondent, Dease River First Nation, breached their fiduciary duty by extending their office term;
 - IV. The Decision was procedurally unfair, biased and/or unreasonable;
 - V. The Respondent, Dease River First Nation, is required to call an Election under the *Regulations for the Custom Elections of the Chief and Council of the Dease River Band* in accordance with such direction as this Court may give;
 - VI. The Decision violates the Member's rights to be protected;
 - VII. *Quo warranto*, or a declaration in the nature of *quo warranto*, that the offices of the current DRFN Council is vacated immediately;
- (e) Interim Order
 - I. Restraining the Respondents from executing any Band Agreements until this Application for judicial review is heard on the merits
- (f) An Order for costs; and
- (g) Such further and other relief as the Court deems appropriate.

THE GROUNDS FOR THE APPLICATION ARE:

The Parties

1. The Applicant, Ruby Johnny, is a registered member of the Dease River First Nation ("DRFN"), which is a "band" within the meaning of the *Indian Act*. The Applicant previously held the DRFN leadership position of Chief from July 2014 to July 2016 and July 2016 to July 2018.
2. The Applicant states that this Application for judicial review is being brought in her capacity as a DRFN member given there has been no election called in respect of the *Regulations for the Custom Elections of the Chief and Council of the Dease River Band*, and to ensure the democratic rights of the DRFN members are respected and protected.
3. The Respondent, DRFN, is a band as defined in the *Indian Act* R.S.C. 1985, c. I-5. It is located in Good Hope Lake a remote community in the Province of British Columbia.

Background:

4. Dease River First Nation elections are governed according to "*Regulations for the Custom Elections of the Chief and Council of the Dease River Band*" (the "*DRFN Election Regulations*").
5. DRFN held an Election for Council on July 6, 2020, with 2-year terms, and no Election has been held since.
6. Under the *DRFN Election Regulations*, Section 7 elections must be held every two years. It provides that a member of DRFN Council, "*the Chief and Councillors elected to the Dease River Indian Band Council shall hold office for a term of two (2) years commencing at midnight the day of the Dease River Indian Band election and terminating at midnight the day of the next Dease River Indian Band election*". As a result, the *DRFN Election Regulations* required the 2022 General Election is to be held no later than July 6, 2022. This did not occur.
7. On or around April 22, 2022, the DRFN executed a Band Council Resolution ("2022 Decision"), providing that they had consulted with Membership and were extending the two (2) year elected term to three (3) years. No new election date was fixed in this B.C.R. For the reasons discussed below, the Applicant's position is that the *B.C.R. and any other B.C.R. extending the 2020 Chief and Council terms are ultra vires* and could not be relied upon by the DRFN.

8. On or around May 5, 2023, the DRFN executed a Band Council Resolution (“2023 Decision”), providing that they had consulted with Membership and were extending the two (2) year elected term to four (4) years. No new election date was fixed in this B.C.R. For the reasons discussed below, the Applicant’s position is that the *B.C.R. and any other B.C.R. extending the 2020 Chief and Council terms are ultra vires* and could not be relied upon by the DRFN.
9. No consultation on the above Decision occurred.
10. On or around June 26, 2023, Annie Johnny, whom was an elected Councilor for DRFN, passed away.
11. Under the *DRFN Election Regulations*, Section 8 (b) and Section 9 deal with when an office becomes vacant upon death or resignation, a by-election should be held where an unexpired term of office is greater than six (6) months. Although the current Chief and Council has overhauled the original two (2) year term, which would have expired in July 2022, this is another example where the current *DRFN Election Regulations* are not followed.
12. On or around May 24, 2024, a Meeting was called on short notice where DRFN and their legal counsel advised that DRFN would not be calling an Election and would be making further unilaterally decisions to impose changes to the DRFN Election Regulations without consultation of the DRFN Membership which among other things extended the term of current Council and introduced a change to the Kaska ancestry requirement.
13. Under the *DRFN Election Regulations*, Section 11, the Dease River Band Council may make amendments from time-to-time, however, an Extension of the term is a fundamental and substantive change that shall not be permitted as it infringes upon the DRFN Membership to elect their Chief and Council.
14. These unilateral decisions directly impact the members of DRFN.
15. The Applicant was previously elected to. Based on the best of my recollection, DRFN Elections have been held every two (2) years. The extension of the two (2) years term is not a custom nor has it been properly decided by the Membership to be valid. This Decision was improper and should be reconsidered or rescinded.
16. DRFN holds four (4) *Indian Act Reserves* in northern British Columbia, including Dease River #4, at Good Hope Lake, British Columbia.

17. The Applicant is advised that the DRFN currently has approximately 178 Members, and there are approximately 154 Voting Members of DRFN.

The Decision Should be Set Aside:

18. The Applicant further states that the failure to set an election date in July 2022 is in contravention of the *DRFN Election Regulations*, which require that the tenure of the Chief and Councillors hold office for a term of two (2) years until “*midnight the day of the next Dease River Indian Band election*”.
19. The last DRFN Election occurred on July 6, 2020.
20. In 2022, the Council passed the B.C.R., extending their term from two (2) years to three (3) years, and have since failed to fix a new date, the B.C.R. is not in compliance with the *DRFN Regulations* and fails to comply with this basic requirement.
21. In 2023 the Council passed the B.C.R. extending their term from two (2) years to four (4) years, and have since failed to fix a new date, the B.C.R. is not in compliance with the *DRFN Regulations* and fails to comply with this basic requirement.
22. The Applicant states that the Decision in 2022 and 2023 *B.C.R. Decision* was made in a procedurally unfair manner and enacted without consulting DRFN members and further that it infringes on the Applicants Charter rights. The Federal Court has recognized that, a duty of fairness is owed to band members whose democratic rights are being fundamentally altered by a decision of this nature. In this case, the DRFN Council did not even attempt to consult with members, seek feedback, or give any advance notice that a decision like this was even being contemplated to extend their Term and not call an Election. This is a breach of the Applicant’s procedural fairness rights and warrants the decision being set aside.
23. The Applicant further states that the failure to properly add provisions to the *DRFN Election Regulations* that exclude such provisions as an Appeal Process fails to comply with this basic requirement.
24. The Applicant states that Rule 302 does not apply when the continuing course of conduct for the Decisions to extend their terms is ongoing (see *Shotclose*).
25. The Decisions were not made in a procedurally fair manner and must withstand reasonableness review. This is all the more crucial when the decision impacts such fundamental democratic rights like the right to vote for one’s leaders. The Applicant submits that the Decision fails to meet these standards and must be set aside, and an election must be called for DRFN without delay.

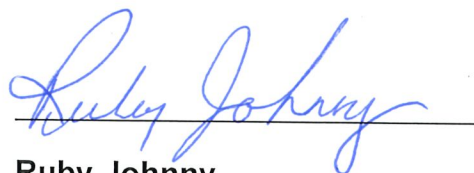
THE DECISIONS SHOULD BE SET ASIDE:

26. The Applicant submits that the Decision should be set aside and relies on the following reasons, in addition to the issues particularized above:
 - a. The Decision is made without authority / jurisdiction;
 - b. The Decision was made in a procedurally unfair manner – the Applicant was not given any opportunity to participate in the decision;
 - c. The Decision was made in conflict of interest and a reasonable apprehension of bias exists.
 - d. The Decision is unreasonable and lacks justification, transparency, and intelligibility;
 - e. The Decision was made in bad faith, and for an improper purpose;
 - f. The Decision is inconsistent with *Charter* values.
 - g. The Decision was otherwise unlawful, procedurally unfair, or unreasonable.
27. The Applicant submits that, in addition to setting aside the decision, the Court should issue a declaration in the nature of *quo warranto*, declaring that the term of DRFN Council has concluded effective July 6, 2022 and that they are no longer validly in office after this date.
28. The Applicant also submits that an order of *mandamus* is appropriate, compelling the DRFN to call an election as soon as reasonably practicable.
29. The Applicant is bringing this Application in the public interest and on behalf of DRFN band members to have their democratic rights vindicated. The Applicant submits that she should be entitled to costs in any event of the cause.
30. The Applicant will be requesting that this matter be expedited so that it may be heard in a timely way in Order that the relief sought is capable of being effective, including having it heard by June 20, 2024, or as soon as possible thereafter. In the event that the Application is not expedited, the Applicant may also seek interim injunctive relief. However, a motion for injunctive relief would be duplicative of the main Application and the Applicants submit that it is in the interests of all parties to expedite the hearing of this matter and avoid the added costs of an injunction motion.
31. The Applicant may also seek interim injunctive relief.
32. Federal Courts Act, RCS 1985 c F-7, SS 18(1), 18.1, 18.2.
33. *Shotclose v. Stoney First Nation*, 2011 FC 750, para 64 and 65
34. *Bertrand v. Acho Dene Koe First Nation*, 2021 FC 287
35. Such further grounds as Counsel may request and this Court may permit.

This Application will be supported by the following material:

36. Affidavit of the Applicant, to be served.
37. The Rule 317 response, requested below;
38. Such further and additional materials as the Applicants may advise and this Court may allow.
39. The Applicant requests, pursuant to Rule 317 of the *Federal Courts Rules*, that the Respondent DRFN send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the DRFN to the Applicant and to the Registry, including but not limited to:
 - a) All material considered by the DRFN in coming to the Decision, including, but not limited to:
 - b) All evidence or information relied upon in coming to the Decision;
 - c) Records regarding any meeting where the Decision was discussed, or where the *Regulations for the Custom Elections of the Chief and Council of the Dease River Band* was discussed including previous meetings where the Decision was initially raised, if applicable (the "Meetings");
 - d) Records regarding notice of the Meetings, minutes of the Meetings, the agenda for the Meetings, notes from any participants in the Meetings and any other record of the Meetings (including audio or video recordings);
 - e) Any internal communications amongst the Decision makers relating to the Decision, including text messages, emails, and other communications between members of Council
 - f) Any DRFN Laws, Bylaws or resolutions that were relied upon in relation to the Decision;
 - g) Any DRFN Laws, Bylaws or resolutions that relate to the procedures for duly convened meetings; and
 - h) Any other materials that are relevant to the decision

DATED: June 8, 2024



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the Applicant
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