

Federal Court



Cour fédérale

Date: 20260115

Docket: T-2700-24

Citation: 2026 FC 65

Ottawa, Ontario, January 15, 2026

PRESENT: The Honourable Madam Justice Cecily Y. Strickland

BETWEEN:

CHIEF JUDY DESJARLAIS

Applicant

and

**COUNCILLOR WAYNE YAHEY,
COUNCILLOR SHELLEY GAUTHIER,
COUNCILLOR TROY WOLF, COUNCILLOR
SHERRY DOMINIC, AS COUNCIL
REPRESENTTIVES OF BLUEBERRY RIVER
FIRST NATIONS, AND COUNCIL OF THE
BLUEBERRY RIVER FIRST NATIONS**

Respondents

ORDER AND REASONS

[1] In *Desjarlais v Yahey*, 2025 FC 1992, I dismissed the judicial review, brought by Judy Desjarlais [Applicant], of a Blueberry River First Nations [BRFN] band council resolution

passed by four BRFN Councillors [Respondent Councillors], removing the Applicant from the office of BRFN Chief.

[2] At the hearing of that matter, and prior to my determination of the judicial review, I agreed that written submissions on costs, not exceeding three pages in length, could be submitted by each of the parties by December 10, 2025, and that an order determining costs would be issued separately. This is that order.

General Principles

[3] Pursuant to Rule 400(1) of the *Federal Court Rules*, SOR/98-106 [Rules], the Court has full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. In exercising that discretion the Court may consider the factors set out in Rule 400(3), which include: (a) the result of the proceeding, (c) the importance and complexity of the issues, (g) the amount of work, (i) any conduct of a party that tended to unnecessarily lengthen the duration of the proceeding, (k) whether any step in the proceeding was improper, vexatious or unnecessary and, (o) any other matter that the Court considers relevant. The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs (Rule 400(4)).

[4] Under Rule 407, unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with Column III of the table to Tariff B. The usual level for a costs award is the mid-point range of Column III of Tariff B (*Canada (Attorney General) v Bertrand*, 2021 FCA 103 [*Bertrand*] at para 18; *Brass v Key First Nation*, 2024 FC 1226 [*Brass*] at para 32).

[5] The objective of awarding costs is three-fold: providing compensation; promoting settlement; and, deterring abusive behaviour (*Air Canada v Thibodeau*, 2007 FCA 115 at para 24).

[6] Absent other considerations, costs are awarded to the successful party against the losing party (*British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 20; *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 1119 [*Whalen*] at para 7).

Parties Positions

[7] The Applicant's primary position is that costs should be awarded to her in any event of the cause based on Column III of Tariff B and/or indemnification for the disbursements. She provided a bill of costs proposing legal fees of \$33,480 and \$7,191.93 in disbursements for a total of \$40,671.93. The Applicant submits that if she is unsuccessful and the Court disagrees with her primary position, then there should be a nominal award of costs or costs should be granted based on Column I. She sets out various factors that she submits supports her positions.

[8] The Respondent Councillors request that if the application is dismissed, then they be awarded \$37,000 in costs. This represents 75% of the submitted bill of costs. Alternatively, if the Court allowed the application, then they should pay 50% of a reasonable bill of costs or a lump sum of \$5,000. The Respondent Councillors' bill of costs includes \$38,908.80 for fees and taxes based on Column III of Tariff B and \$10,395.52 for disbursements and taxes for a total of \$49,304.32. They rely on Rule 400(3) factors (g), (i) and (k) and submit the amount of work and time involved was substantial and in part unnecessarily so. They also submit that the Applicant

should pay the Respondent Councillors a \$3,500 lump sum in any event of the cause for the costs of the Applicant's unsuccessful injunction motion.

[9] The Blueberry River First Nations Council [Respondent Council] seeks \$19,958 in costs based on a bill of costs provided and calculated under Column III of Tariff B using the mid-point range. They submit that if the Applicant is successful, then it would also be appropriate to award the mid-point of Column III of Tariff B. The Respondent Council notes the following factors under Rule 400(3): (a) the result of the proceeding, (c) the importance and complexity of the issues and (k) whether steps in the proceeding were unnecessary and/or improper. Additionally, they request costs in the amount of \$10,000 in any event of the cause for the injunction advanced in T-4770-25.

Analysis

[10] Here, the Applicant has been unsuccessful. Her application for judicial review has been dismissed. In my view, the Respondent Councillors and Respondent Council are entitled to an award of costs.

i. Injunction Motion (T-4770-25)

[11] As indicated in my decision on the merits, despite delay caused in large part, but not entirely, by the Applicant, the matter was ultimately set down by Order dated November 28, 2025 (the dates having previously been agreed) to be heard on an expedited basis on December 4 and 5, 2025. The expedited hearing, and time within which this matter had to be determined by

me, were necessitated by the fact that the next BRFN election of Councillors was set down to be held on January 12, 2026, with the election of Chief to occur the following day.

[12] On November 26, 2025, the Applicant filed a new application (T-4770-25) for judicial review challenging the decision of the Respondent Councillors setting the date for an election (which had the effect of also setting the date for nominations) and brought a last-minute urgent motion in that matter seeking to stay the December 3, 2025, BRFN nomination meeting. By Order dated December 2, 2025, Justice McVeigh denied the requested injunctive relief as, in the circumstances, it was an abuse of process. Justice McVeigh also found that the cost to the court and to counsel in dealing with the injunction motion, on the literal eve of the judicial review, was “[a] waste of judicial resources [that] is untenable” and that costs would be awarded in the cause of T-2700-24.

[13] Given this, and as the Applicant’s judicial review was not successful, I agree that a lump sum award of costs to each of the Respondents is appropriate with respect to the injunction motion. The Respondent Councillors submit that an award of \$3,500 would be appropriate while the Respondent Council submits that given the abusive and prejudicial nature of the injunction motion an elevated lump sum award of \$10,000 is appropriate and consistent with the policy goals of deterring abusive or frivolous lawsuits.

[14] In my view, a \$4,000 costs award to the Respondent Councillors and to the Respondent Council is appropriate in these circumstances, keeping in mind the abuse of process finding, but also that in the injunction motion neither of the Respondents were required to file written

submission (other than as to costs). They were, however, required to step away from preparation for the judicial review, which was to be heard in T-2700-24, in order to be prepared to address the T-4770-25 injunction motion.

ii. Judicial review costs

[15] Many of the “factors” relied upon by the Applicant in support of her costs submissions are not relevant. For example, she implicitly disagrees with Justice McVeigh’s finding of abuse of process in her argument that the new application for judicial review and last-minute injunction motion were brought in good faith. She argues that the Respondents did not bring the decision in *Apsassin v Yahey*, 2025 FC 1830 to my attention – yet that case was argued at length by the Applicant when appearing before me and was addressed by the Respondents (and in my reasons). She also states the Respondent Councillors failed to file a certified tribunal record [CTR] for 11 months. However, by Order of the Case Management Judge, dated September 16, 2025, the Respondent Council was required to file a CTR in the form of a list of records in the affidavits already served and filed, as well as their reasons for objecting to including certain materials sought by the Applicant in her Rule 317 request in the CTR. The Respondent Council did so. I will not be further addressing these submissions.

[16] Beyond this, the Applicant argues that the Respondents are not entitled to an elevated lump sum. She submits that the jurisprudence recognizes that there is an imbalance of resources between a removed Chief or Councillor and the removing Council which imbalance supports an award of elevated lumps sums for the removed Chief or Councillor but that there is no precedent supporting the reverse situation. She also argues that if she is not successful on judicial review

that this is a case of public interest to BRFN – being whether their Chief was properly removed – therefore costs could be awarded in any event of the cause, no costs or lower costs.

[17] In *Whalen*, relied upon by the Applicant, and which involved the successful application by a Councillor who was suspended from duty by the First Nation Council, Justice Grammond restated the general purposes and principles underlying costs award and addressed costs awards in First Nations governance disputes when considering whether to award costs on solicitor-client or an elevated lump sum basis. This also touches on issues of imbalance of resources and public interest. Justice Grammond summarized the applicable principles as being that:

- In First Nations governance cases, as in other cases, an award of costs is in the trial judge's discretion, which must be exercised after taking all relevant factors into consideration;
- The imbalance between the financial resources of an applicant and those of the First Nation, or a party whose legal fees are paid by the First Nation, is a relevant factor;
- Taken in isolation, however, the resource imbalance is not a sufficient factor to justify an award of costs on a solicitor-client basis;
- The fact that an application contributed to clarify the interpretation of a First Nation's laws or governance framework may be taken into account when making a costs award; but not every application falls in that category.

[18] Justice Grammond found that, in the case before him, those factors did not warrant an award of costs on a solicitor-client basis. However, they did justify a lump sum award on an elevated scale because an award of costs according to the Tariff would be insufficient. Lump sums must not be “plucked from thin air,” and have been found to fall within a range of 25-50% of the actual legal costs of the successful party (*Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at paras 15, 17; *Whalen* at para 33).

[19] In this case, neither of the Respondents is seeking costs on an elevated lump sum or solicitor-client costs basis. Further, while imbalance between the financial resources may more generally be a relevant costs factor, it is not determinative.

[20] As to public interest, to fall into that category, a matter must raise an issue that is novel or otherwise extends beyond the immediate interests of the parties (*Cowessess First Nation No. 73 v Pelletier*, 2017 FC 859 at para 23). In *Knebush v Pheasant Rump Nakota First Nation*, 2014 FC 1247 Justice Madamin stated:

... If a judicial review application properly addresses a question of the First Nation's law, it seems to me that, on the basis of public interest, individual applicants may be similarly entitled to look to the First Nation for costs.

I should think a reasonable costs award on a public interest basis against a First Nation that has benefited by having clarity brought to its governance laws avoids any adverse inference of winners and losers. The public interest served would be having the issue resolved in a manner and form that is in keeping with the sensibilities of the First Nation.

See also, for example, *Twinn v Sawridge First Nation*, 2017 FC 407 at para 131; *Coutlee v Lower Nicola First Nation*, 2015 FC 1305 at paras 22-24 aff'd 2016 FCA 239; *Bertrand v Acho*

Dene Koe First Nation, 2021 FC 525 at para 22-24 [*Acho Dene*]; *McCallum v Canoe Lake Cree First Nation*, 2022 FC 969 at para 128).

[21] Here, it is to be recalled that the decision under review was a disciplinary decision. Pursuant to the *Blueberry River Custom Election By-law, 2017* [By-law], an independent investigator, Sugden McFee and Roos LLP [SMR], was appointed to investigate the allegations of misconduct against the Applicant. SMR's report concluded that the evidence showed it was more likely than not that grounds for disciplinary action against the Applicant existed under section 184 of the By-law. Under the By-law, BRFN Council was then required to make one or more of the specified disciplinary orders (suspension, verbal warning, written warning, removal from office and/or legal action). It ordered the removal of the Applicant from the office of Chief.

[22] This is not a circumstance where the validity or constitutionality of the By-law was at issue. Nor does it raise issues that go to the heart of the BRFN electoral system, the clarification of which would benefit all BRFN members, such as *Acho Dene*. Nor does it involve a discrete and determinative issue of interpretation of the By-law which would have application to others. Rather, this was a very fact specific determination of the appropriate disciplinary action to be imposed on the Applicant based on the SMR findings and the factors set out in section 199 of the By-law. Further, the issues of reasonableness and procedural fairness raised by the Applicant are, again, highly fact dependant. I am not persuaded that the judicial review of the disciplinary decision to remove the Applicant (as opposed to any other disciplinary measure) made by the Respondent Councillors in this circumstance is a public interest case that would warrant no

award of costs against the Applicant, a reduction of those costs or an award of costs in favour of the Applicant.

[23] And, while I appreciate that being removed from elected office is a serious matter with serious consequences for the Applicant, in these circumstances, I do not agree with the Applicant that costs should be awarded to her in any event of the cause.

[24] Further, the Applicant's approach to the judicial review lacked focus and resulted in unnecessary time and effort in responding to the same. For example, her affidavit has 231 paragraphs and attaches 104 exhibits of approximately 1,094 pages of documents. Her affidavit is perhaps most accurately described as sprawling and addresses many matters that are simply not relevant to the judicial review of the removal decision. She also filed multiple other affidavits that were of limited relevance. And, as the Respondent Council points out, on September 25, 2025, the Case Management Judge issued directions that included a deadline for the Applicant to provide shortened affidavits, however, she did not do so and instead filed a new affidavit and brought a Rule 312 motion seeking to allow its admission. I declined to admit the new affidavit for the reasons I set out in my decision. As also discussed in my decision, the Applicant attempted to raise new issues that were not addressed in her Notice of Application (which she did not file a motion to amend) and to extend the scope of the judicial review to include the investigation and findings of the SMR report even though she had not previously challenged it, or any other decisions made prior to the removal decision, and had not sought an order under Rule 302 permitting her to do so. I also note that it was also open to the Applicant to have advised the Court, at the hearing, that she was no longer pursuing some aspects of her arguments given that,

in some instances, her own cross-examination evidence contradicted her arguments of non-compliance with identified By-law provisions. She did not do so and instead made evolving arguments. In short, this and other conduct by the Applicant unnecessarily lengthened the duration of the proceeding and required the Respondents and the Court to expend time and effort responding to matters that were improperly advanced.

[25] Taking all of the above into consideration as well as the cumulative costs awards to both Respondents including the injunction motion costs awards, and even though the Applicant's conduct of the litigation could warrant a higher costs award, I agree with the Respondent Council that costs of the judicial review should be awarded under the mid-point range of Column III of Tariff B (Rule 407; *Bertrand* at para 18; *Brass* at para 32). In that regard, the Respondent Council submits a bill of costs totalling \$19,958 for fees (no disbursements are claimed).

[26] The Respondent Councillors' bill of costs reflects the application of the maximum units under Column III of Tariff B. This results in \$38,908.80 for fees and taxes and \$10,395.52 for disbursements and taxes. The Respondent Councillors seek approximately 75% of the total Bill of Costs, being \$37,000, on the basis that this lump sum falls short of a "reasonable contribution" to their legal costs but would recognize the Respondent Councillors' defence of the Application and discourage other parties from taking steps that unnecessarily increase an opposing party's costs. However, recalculating the Respondent Councillors' costs utilizing the Tariff B Column III mid-point range (see *Johnny v Dease River First Nation*, 2024 CanLII 106413 (FC) at para 9) would reduce the fees to approximately \$24,000. Adding \$10,395.52 for disbursement would result in a total of \$34,385.92. While high, this is in keeping with the bill of costs submitted by

the Applicant proposing her legal fees at \$33,480 (although said to have been performed on a *pro bono* basis) and \$7,191.93 in disbursements for a total of \$40,671.93.

ORDER IN T-2700-24

THIS COURT ORDERS that:

1. The Respondent Councillors are awarded \$4,000 costs for the injunction motion (T-4770-25);
2. The Respondent Council is awarded \$4,000 costs for the injunction motion (T-4770-25);
3. The draft bills of costs of the Respondent Councillors (revised to reflect the mid-point range of Column III of Tariff B) and of the Respondent Council shall be submitted to an assessment officer to be assessed in accordance with the mid-point range of Column III of Tariff B. Reasonable disbursements shall also be assessed and applicable taxes added; and
4. Should the parties reach mutual agreement on the bills of costs, based on the mid-point range of Column III of Tariff B, then they need not be assessed and costs are awarded based on the agreed bills of costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2700-24

STYLE OF CAUSE: CHIEF JUDY DESJARLAIS v COUNCILLOR WAYNE YAHEY, COUNCILLOR SHELLEY GAUTHIER, COUNCILLOR TROY WOLF, COUNCILLOR SHERRY DOMINIC, AS COUNCIL, REPRESENTTIVES OF BLUEBERRY RIVER FIRST NATIONS, AND COUNCIL OF THE BLUEBERRY RIVER FIRST NATIONS

COSTS SUBMISSIONS MADE IN WRITING CONSIDERED AT OTTAWA, ONTARIO

ORDER AND REASONS: STRICKLAND J.

DATED: JANUARY 15, 2026

APPEARANCES:

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